



Appeal Decisions

Site visit made on 5 March 2024

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 April 2024

Appeal A Ref: APP/G2245/X/22/3300271

Water Wood, off Knatts Lane, West Kingsdown, Kent TN15 6AG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Paul Gardner against the decision of Sevenoaks District Council.
 - The application ref SE/12/03239/LDCEX, dated 30 November 2012, was refused by notice dated 28 July 2016.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought was described as "substantial completion of building by autumn of 2008".
-

Appeal B Ref: APP/G2245/X/22/3299628

Woodland Building, Water Wood, off Knatts Lane, West Kingsdown, Kent TN15 6AG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Paul Gardner against the decision of Sevenoaks District Council.
 - The application ref 22/00644/LDCEX, dated 1 March 2022, was refused by notice dated 9 May 2022.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought was described as "use for storage personal goods".
-

Decisions

1. The appeals are dismissed.

Background and Main Issue

2. Appeals A and B relate to the same building at Water Wood. The description of the development in appeal A relates to building works and the description in appeal B relates to the use of the building.
3. Under section 171B(1) of the Town and Country Planning Act 1990 (the Act), no enforcement action may be taken after the end of a period of four years beginning with the date on which the operations were substantially completed. In the case of the use, section 171B(3) of the Act states that no enforcement action may be taken if the use described were to have continued for a period of ten years beginning with the date on which the use started. I will refer to these periods as "the relevant period(s)".

4. The dates of the applications are set out in the banner heading above. Consequently, the building operations or use could be confirmed to have become lawful through these appeals if the relevant periods had occurred prior to those dates.
5. If I were to find that the building operations were not lawful under appeal A, I would also need to consider whether it was lawful as part of appeal B in considering its use.
6. I note that section 191(4) of the Act allows the local planning authority, or Inspector on appeal, to modify the description of the existing use or operation. I will take this into account in coming to my decision.
7. The Council suggest the building has been marked on the incorrect position on the site plan. I will consider this prior to considering when the building was substantially complete and whether the use had continued for the relevant period.
8. The burden of proof for an LDC is on the appellant, with the relevant test of the evidence being on the balance of probability. Evidence does not need to be corroborated by independent evidence to be accepted, but does need to be sufficiently precise and unambiguous, even if there is no evidence to contradict it.
9. The main issue on an appeal under section 195 of the Act is whether the refusal of the LDC by the Council was well-founded.

Reasons

Accuracy of plan

10. The appellant was able to show me on site where the fence and gate posts were from which they measured the building. I understand they consider these mark the boundary of the site. They suggest that the Ordnance Survey grid lines are incorrect in this location.
11. The Council have based their calculations on an aerial photograph and suggest the position marked on the appellant's plan is significantly closer to the public footpath that extends from Knockmill and the access than the actual position.
12. The evidence submitted is unclear. The OS grid lines appear to be incorrectly marked on the plan submitted by the appellant. They have annotated them, it appears to me correctly, by hand but do not appear to have altered the position of the building accordingly. Taking account of the distance I walked from the public footpath on my site visit, on the balance of probability, I consider the evidence from the Council is more likely to be correct.
13. For these reasons, I conclude that the plans attached to the applications subject of appeals A and B are not correct and the Council's decision to refuse the LDCs was well-founded in this regard. Nevertheless, it is clear that the parties are considering the same building and I could use a different plan on any LDC. On that basis, I will continue to consider whether the building is substantially complete and for what purpose it has been used.

Whether substantially complete

14. Whether a building is substantially complete needs to be considered holistically. A building may not be regarded as substantially completed even if outstanding works affect only the interior. To be substantially complete, it must be a fully detailed building of a certain character.
15. The building began construction in 2008-2009 using reclaimed or second hand materials. The external walls and roof were completed during that period. However, the large double doors to the front were not installed, with photographs dated 2 June 2016 showing chipboard covering the opening. Internally, the floor at first floor level had been largely constructed but was supported by scaffold poles. The appellant accepts that the building was not complete in June 2016.
16. A Statutory Declaration signed by the appellant dated 14 February 2022 states that works to complete the building were undertaken since August 2016. This was clarified with a Statement dated 15 August 2022 stating that works to complete the barn doors to the front took one day and to support the floor joists taking two days. These were completed over two weekends, by 21 August 2016.
17. The lower floor is open, with an earth floor. The first floor is laid out with several rooms, divided by timber framing with door frames. There are large glazed openings to two gable ends and rooflights providing natural light to the upper floor. Most of the walls do not have plaster or other boarding, with the frames open. Building materials are stored in the building, I understand intended for use in completing the building, for example insulation and plasterboard for the unfinished walls. Supporting documentation suggests this is the only use for the building.
18. The Council appears to suggest that, given what they consider to be the intended, storage, use, the building does not need to be insulated internally and accept that the first floor being accessed by a ladder is acceptable to be considered substantially complete. That reflects the use indicated in the amended description of the development in the decision notice subject of appeal A that states 'Woodland Building'. However, an email dated 9 January 2013 from the appellant to the Council relating to the application subject of appeal A stated that the intended use of the building was for two stables, a tackroom, indoor grooming area, machinery store, W.C., hay store, etc. That reflects the description of development for a building granted planning permission at appeal (reference APP/G2245/A/06/2029707) in the position shown on the appellant's site plan.
19. Whilst a ladder to access a storage and amenity space may not be unreasonable, the subdivision of the upper floor into rooms of various sizes with windows and rooflights suggests that the final intended use may not have been simply for storage and welfare facilities. The ladder appears to be located in what was intended to be a stair well. It is unclear how the building would have been used for the stable use, given that the ground floor is not subdivided.
20. The evidence in support comprises a number of statutory declarations. They provide vague assertions, such as stating that the building existed but not describing it in any detail or lack dates as to when events took place. That of

Martin Christopher Willis dated 14 February 2022 indicates that he helped with construction of the building and maintenance of the woodland in April 2021. He also refers to storing materials in the building in the 5 years up to the date of his Statutory Declaration. It is unclear what works of construction he refers to, or what materials were stored, but indicates the building may not have been substantially complete in April 2021.

21. For these reasons, the character of the building is uncertain, such that it cannot be a fully detailed building of a certain character. As such, I consider that it is not substantially complete. Evidence relating to the construction of the building is not sufficiently precise and unambiguous to demonstrate that it is lawful under section 171B(1) of the Act. As a result, I conclude that the Council's decision to refuse both LDCs was well-founded.

Use – Appeal B

22. As set out above, the building was originally intended as a stable and related uses. The application form suggests that the building is in a mixed use for the storage of personal goods or materials and a rest/tea room. In the documentation supporting the appeal, the appellant states that the building has no use other than storing building materials, which he needs for the construction.
23. The Council visited the site on 2 June 2016 during consideration of the LDC subject of appeal A and subsequently indicated that the ground floor was not being used, and had never then used, for any purpose. According to a letter from the Council dated 12 August 2016, the building was then used for storage of non-agricultural items including garden furniture, white container, compost bin, vehicle, digger, portaloo and a trailer. These appear to reflect storage of materials for constructing the building and managing the land, along with related rest facilities.
24. In the Statutory Declaration of the appellant dated 14 February 2022 he states that he decided to use the building for storage of his personal goods in July 2017, following anti-social behaviour on the site and having an electrical generator stolen. The materials stored included timber and other reclaimed building materials and his mother's domestic materials. In addition was a rest/tea room for use while he, and others, look after the surrounding land. The layout of these uses within the building is shown on drawing PG/P03. This reflects how the building now appears to be used.
25. On that basis I consider that the evidence is not sufficiently precise or unambiguous as to how the building has been used over time. Any storage uses beyond those relating to the construction of the building and management of the land appear not to have begun until July 2017. On that basis, even if it were substantially complete, it has not become lawful for storage of personal goods as described in the application for an LDC under section 171B(3) of the Act. For these reasons, the Council's decision was well-founded.

Other matters

26. The appellant suggests that advice from the Council has been inconsistent, including that they suggested the building was substantially complete by 2012. However, I need to consider whether the development is lawful based on the evidence in front of me.

Conclusion

Appeal A

27. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of "substantial completion of building by autumn of 2008" was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Appeal B

28. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of "use for storage personal goods" was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

AJ Steen

INSPECTOR