



Appeal Decision

Site visit made on 16 April 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 May 2024

Appeal Ref: APP/N2535/X/23/3334694

Crown Inn, Main Street, Osgodby, Market Rasen, Lincolnshire LN8 3TA

- 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 Richard Heavens against the decision of West Lindsey District Council.
 - The application ref 147308, dated 12 September 2023, was refused by notice dated 3 November 2023.
 - 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 is the change of use of a sui generis class public house to a C3 class dwelling house.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development (LDC) describing the existing use which is considered to be lawful.

Application for costs

2. An application for costs was made by Mr Richard Heavens against West Lindsey District Council. This application is the subject of a separate decision.

Main Issue

3. The main issue is whether the Council's decision to refuse the LDC was well-founded. This turns on whether the appellant can show that the use of the building for residential purposes was lawful on the date of the application. The onus of proof is on the appellant to show, on the balance of probability, that the use of the building for residential purposes began on or before 12 September 2019, which is the material date. The use also has to be shown to have continued without significant interruption for 4 years thereafter, so as to be immune from enforcement action.

Reasons

The Site

4. The Crown Inn is located along a main road in the village of Osgodby, a linear settlement set in rural surroundings. The two-storey building stands in a generous plot with a gravelled car parking area to the front and a generous garden area to the rear.
5. The probability is that the public house closed and ceased trading at some point during 2016 following the surrender of its premises licence. Prior to its

closure, the ground floor accommodation included a bar area along with seating and various other fixtures and fittings associated with a public house. On the first floor was living accommodation that included bedrooms along with kitchen and bathroom facilities.

6. On my site visit it was clear that the internal layout of the ground floor had significantly changed, with the bar and other fittings associated with a public house being removed. The ground floor was now in residential use and included a living room, kitchen, and toilet. The first floor comprised of living accommodation and formed part of a single planning unit. Both internally and externally the building had the appearance of a residential dwelling, and at the time of my visit it was unequivocally being used as a single dwelling house.

The Evidence

7. The judgement in *Gabbitas v SSE & Newham LBC [1985] JPL 630* makes it clear that if the local planning authority has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse to grant a LDC, provided the appellant's evidence alone is sufficiently precise and unambiguous.
8. The appellant has provided numerous documents to demonstrate the use of the property as a dwellinghouse. The documentary evidence includes Council Tax bills, electricity bills, garden waste collection subscriptions, and liquid petroleum gas bills. These date from as far back as October 2018 through to May 2023. The claim is that this evidence shows residential use of the building. A statement witnessed by a solicitor, but not fulfilling the requirements of a statutory declaration under the Statutory Declarations Act 1835, has also been provided by Mrs Julie Smith. In this statement Mrs Smith states that she has visited the property on several occasions in the last four years and saw that the ground floor of the property had been fully converted to a residential lounge and kitchen. Mrs Smith also states that she is aware that Mr & Mrs Heavens have used the entire property as a dwelling since they moved into the property in 2018.
9. An array of dated photographs from between October 2018 and November 2022 have also been provided by the appellant which show a residential occupation of the building. Of particular relevance are the photographs dated 2 April 2019 showing the removal of the public bar from the ground floor, 3 September 2019 showing the removal of the kitchen at first floor with subsequent photos showing a new kitchen at ground floor, and photographs showing residential use of the ground floor including those dated 23 December 2018, 2 February 2019, 5 September 2020, and 2 January 2022.
10. The appellant also refers to a previous appeal decision¹ following the Council's refusal to grant planning permission for the change of use of the property from a public house to a residential dwelling house. The appointed Inspector visited the property on the 30 July 2019 and at paragraph 11 stated "*Internally, the building lacks many of the fixtures and fittings required to use it as a public house. It was clear from my site visit that comprehensive improvements and refurbishment would be required*". This further corroborates the photographic evidence that shows there being little remaining evidence of a public house use by mid-2019.

¹ APP/N2535/W/19/3229612

11. The Council claim that it is unclear whether the various bills and documents submitted by the appellant relate to the occupation of the first floor or ground floor of the property. In particular, the Council refer to there being no change to the Council tax band despite the claim that the entire property is now a dwelling. There is no evidence though to suggest that the Council Tax team visited the property or were aware of any concerns regarding its use. The Council however do accept that the photographic evidence provided shows "*the downstairs area in some state of residential use over the last 4 years*".
12. The Council's planning enforcement team are said to have visited the property on the 22 October 2019 and 6 November 2019, after which a letter dated 3 December 2019 was sent to the appellant "*regarding the use of the pub as residential*". A copy of this letter or notes from the Council's visits have not been provided, and therefore the Council's view regarding the use of the property at that particular time is unclear. Nevertheless, given that the visits were some six months after the removal of the bar from the ground floor of the property, it must have been readily apparent that the only activity taking place at the property was residential.
13. The third-party representations submitted do not allege that the appellant has not resided in the property during the relevant period, but instead focus almost entirely on whether deliberate concealment has taken place which is a matter I turn to later in my decision.
14. There is therefore significant evidence that demonstrates that the appellant and his family have resided in the property since they purchased it in 2018. This does not appear to be disputed by the Council who instead focus on the use of the ground floor only. It is necessary though to ascertain the correct planning unit, and the present and previous primary (as opposed to ancillary) uses of that unit. Case law² has established that the planning unit is usually the unit of occupation, unless a smaller area can be identified which is physically separate and distinct, and/or occupied for different and unrelated purposes.
15. From the evidence available to me, I consider that the relevant planning unit is the Crown Inn in its entirety. There is no sub-division or internal separation between the ground floor and first floor, which is accessed internally via a staircase. It is not disputed that the established use of the premises is as a public house, which included the bar on the ground floor with living accommodation upstairs. There is no evidence to suggest that the living accommodation on the first floor has at any time prior to the date at which the Crown Inn ceased trading, been occupied for any purpose that was not in some way associated with the primary use of the premises as a Public House.
16. It is possible that the primary use of the property changed at some point in 2018 when it was first occupied by the appellant for residential purposes without being associated with the public house on the ground floor. In any event, in my judgement the removal of the bar in April 2019 categorically resulted in the public house use ceasing and resulted in the sole use of the Crown Inn being a residential dwelling. The submitted documentation and photographic evidence detailing the continuing residential use of the planning unit since April 2019, including the ground floor, further demonstrates the residential use of the planning unit since that time.

² Burdle and Williams v SSE & New Forest DC [1972] 1 WLR 1207

17. I therefore consider that the evidence provided by the appellant is sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that the Crown Inn has been occupied as a single dwellinghouse for a period of at least 4 years, without significant interruption, so as to be immune from enforcement action.

Deliberate Concealment

18. It is argued that there has been deliberate concealment of the change of use, in the manner of *Welwyn Hatfield*³. The principles on deception and public policy derived from *Welwyn Hatfield* are: that positive deception is a matter integral to the planning process; that deception was directly intended to undermine the planning process; it did undermine that process; and, the wrong-doer would profit from the deception if the normal limitation period were to enable him to resist enforcement.
19. The case for deliberate concealment is based on two grounds, the first of which relates to the Council's notes of a telephone call from the appellant on the 3 December 2019. During this phone call Mr Heaven is said to have stated "*He is only living in the accommodation above and the downstairs remains as a pub and untouched*". The appellant disputes that his response was dishonest, and that he thought that the Council sought to establish whether any further removal of fixtures and fittings had taken place since previous visits.
20. Irrespective of the appellant's intentions, the Council had recently been afforded access to the property on the 22 October and 6 November 2019. This followed the previous Inspector's site visit on 30 July 2019. As already established, the bar along with the majority of other fixtures and fittings associated with the public house had already been removed by the time these visits took place. Consequently, the Council would have been aware that it could not reasonably be said that the ground floor "*remains as a pub and untouched*". The Council will have also been aware of the appellants desire to change the use of the property to residential, following the submission of the planning application⁴ and subsequent appeal.
21. Secondly it is alleged that curtains in the road fronting windows at ground floor level were permanently kept drawn so to avoid the use of the ground floor for residential purposes being detected. Although I note that the curtains are drawn in some of the photographs provided by the appellant, there is limited evidence to demonstrate that this was a permanent event. Indeed, the statement by Mrs Smith disputes this version of events.
22. The Council were aware from at least mid-2019 that the bar and other fixtures and fittings associated with the public house had been removed. Consequently, the Council will have known that the building was no longer able to function as a public house and the only activity taking place at the premises was that of a residential dwelling. Council Officers were also afforded access to the property twice in 2019 during the material period, and there is no evidence to suggest that the Council were prevented from undertaking further visits if so desired.
23. Overall, on the basis of the evidence before me, I do not find that there has been deliberate concealment.

³ *Welwyn Hatfield v SSCLG v Beesley* [2011] UKSC 15

⁴ Council Ref: 138946

Other Matters

24. A third-party representation has been received which raises concerns that the change of use of the public house to a dwelling would result in the loss of an asset to the local community. However, the planning merits of the matters applied for do not fall to be considered, with the decision based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

Conclusion

25. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the *change of use of a sui generis class public house to a C3 class dwelling house*, was not well-founded and that the appeal succeeds. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

David Jones

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 12 September 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability, the available evidence demonstrates that the use of the building as a dwelling house has been continuous for a period of more than four years prior to the date of the application, so that the time for taking enforcement action in s171B (2) of the Act has expired.

Signed

David Jones

Inspector

Date: 21 May 2024

Reference: APP/N2535/X/23/3334694

First Schedule

Change of use of a sui generis class public house to a C3 class dwelling house

Second Schedule

Land at Crown Inn, Main Street, Osgodby, Market Rasen, Lincolnshire LN8 3TA

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 21 May 2024

by David Jones BSc (Hons) MPlan MRTPI

Land at: Crown Inn, Main Street, Osgodby, Market Rasen, Lincolnshire LN8 3TA

Reference: APP/N2535/X/23/3334694

Scale: Not to Scale

