The Planning Inspectorate

Appeal Decision

Site visit made on 15 May 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st May 2024

Appeal Ref: APP/U1430/X/22/3313394
The Cottage, Stream Farm, Chapel Lane, Guestling Green TN35 4HN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Colin McNulty against the decision of Rother District Council.
- The application ref RR/2022/2250/O, dated 1 September 2022, was refused by notice dated 30 November 2022.
- The application was made under section 191(1)(a) of the Act.
- The use for which a certificate of lawful use or development is sought is the use of the garage building as a residential dwelling.

Decision

1. The appeal is allowed and attached to this decision is an LDC describing the existing use which is found to be lawful.

Background

2. The Cottage was erected as a garage at some point after conditional planning permission was granted for development described as 'outbuilding comprising garage for tractor or Land Rover, 2 cars and storage loft over and enlarged residential curtilage' in 1996[1]. That planning permission was sought by Dr Chinery, who has owned Stream Farm since 1982. Dr Chinery lives in Stream Farmhouse, next to The Cottage.

3. The Statutory Declaration (SD) of Dr Chinery explains that his son, Thomas Chinery, moved into the first floor room of the building now known as The Cottage following its partial conversion to a 'semi-converted garage' in or about 2002/3. Dr Chinery's SD goes on to describe the conversion of the building to a dwelling being completed after May 2007, when his daughter Millie Chinery and her daughter moved in. They lived in The Cottage until November 2014.

4. The Cottage is currently occupied by Colin McNulty, his wife Joanna McNulty, and their 2 young children. Mr McNulty is a grandson of Dr Chinery. The SDs of Mr and Mrs McNulty state that they commenced living in The Cottage on 18 November 2014, and have remained living there since. Mr McNulty works away from the site, whereas Mrs McNulty part-runs a DIY livery yard at Stream Farm, which was established by the late wife of Dr Chinery. The Cottage has benefited from its own building insurance policy since September 2012[2].

5. No evidence has been provided by the Council to dispute the above.

[1] The Council's ref: RR/96/794/P
[2] Letter dated 10 February 2023 from NFU Mutual, addressed to Dr Chinery at Stream Farm House

6. Section 191(2) of the Act states that uses are lawful at any time if no enforcement action may be taken against them and they do not constitute a contravention of any requirements of any enforcement notice. I have not been referred to any enforcement notices affecting the land the subject of the application.

7. At the time the application was made, section 171B(2) of the Act stated that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.

Main Issue

8. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded, with particular regard to whether The Cottage had been occupied as a single dwellinghouse independently of Stream Farmhouse for a continuous period of at least 4 years before the date of the application.

Reasons

9. The Cottage is a detached, separate building to Stream Farmhouse. It is surrounded by close-boarded fencing to its northeast and southeast and forms part of a collection of buildings varying in size at Stream Farm. That fencing has the effect of enclosing small areas of land which act as garden space serving The Cottage, separate to the adjacent large garden space which serves Stream Farmhouse. The Cottage is a modestly sized building, whereas Stream Farmhouse is substantial in size.

10. There is a close relationship between The Cottage and Stream Farmhouse and they share parking areas and access from Chapel Lane. No council tax is paid in respect of The Cottage; however, it is very easy to access The Cottage independently of Stream Farmhouse. Dr Chinery's SD refers to separate refuse and recycling storage bins being used by the occupants of each building.

11. Residential accommodation is provided at ground and first floor levels within The Cottage. At ground floor level it has 4 separate rooms providing kitchen/dining, lounge, utility/toilet, and conservatory spaces, and a staircase to the first floor. It has 3 bedrooms and a shower room at first floor level, in the roof space. There are 2 access doors at ground level, and an external stair leads to an access door to the main bedroom. I saw the kitchen to be fully functioning with a sink, fridge/freezer, oven, 4-ring hob and extensive worktops and cupboards. The utility room contains a washing machine and a tumble dryer.

12. With regard to caselaw, consideration should be given to whether The Cottage has provided for the main activities of, and ordinarily afforded the facilities required for, day-to-day private domestic existence, and the actual use that The Cottage has been put to. On the evidence presented The Cottage currently provides those facilities and is currently used as a private dwelling.

13. The SDs are limited in detail, but they explain how The Cottage has been used since it was first occupied for residential purposes. They are broadly consistent with each other, and the photographs and insurance document provided. There is minor inconsistency between the SDs in that Mr and Mrs McNulty refer to the garage being converted into residential use in or about 2006, rather than

2002/3 or 2007, as suggested by Dr Chinery. However, Mr and Mrs McNulty's SDs state that they understood that to be the case based on information from the owner. Dr Chinery's subsequent SD therefore clarifies this point.

14. I consider it unlikely that a buildings insurance policy for 'Stream Farm Cottage' would have been created separate to 'Stream Farm House' in 2012, had The Cottage not comprised an independent dwelling at that time. I therefore find this is reliable evidence which goes some way towards supporting statements made in the SDs.

15. The internal photographs provided are limited in detail, but it is not disputed that they show a functioning bedroom in a photograph posted on social media by Mrs McNulty on 30 December 2015 and a functioning and occupied lounge in photographs posted on 16 October 2016, 23 November 2016, and 3 October 2017. I therefore find these are reliable evidence which go some way towards supporting statements made in the SDs.

16. The SDs are formal statements made under the Statutory Declarations Act 1835, witnessed by and signed in the presence of a solicitor who is a commissioner for oaths. Under the provisions of the Perjury Act 1911, there are serious implications where any person makes a false statement in a statutory declaration. I therefore assign significant weight to the relevant claims made in the SDs of Dr Chinery and Mr and Mrs McNulty, which are consistent with the other evidence.

17. The Council's case relies on the assumption that The Cottage provides accommodation ancillary to Stream Farmhouse, rather than independent to it. This is on account of the family relationship between the occupants of those buildings and Mrs McNulty telling the Council's Officer that rent is paid to Dr Chinery to cover all bills. No details of rent or bill payments have been provided.

18. It is not uncommon for tenants of independent dwellings to pay rent directly to a family member acting as a landlord, or for those payments to cover the costs of all services. I can also see why council tax may not have been paid voluntarily for an independent dwelling which does not benefit from planning permission, if payment of council tax has not been formally demanded. This would also explain why The Cottage has not been formally registered as a separate address. The absence of itemised bills in these regards does not therefore lead me to doubt the appellant's evidence or find that The Cottage has not been occupied as an independent dwelling.

19. Aside from help with childcare, which may ordinarily be expected from parents/grandparents living nearby, there is no evidence that Millie Chinery or Mr and Mrs McNulty have relied on any of the facilities within Stream Farmhouse when living in The Cottage. The family relationships between the occupants of The Cottage and Stream Farmhouse, and the difference between the sizes of those buildings, does not necessarily mean that The Cottage must have been used ancillary to Stream Farmhouse. The layout of Stream Farm and the circumstances of The Cottage mean the buildings can easily be lived in independently of each other.

20. The Council's Officer Report refers to the Planning Practice Guidance, which reflects the findings in *Gabbitas*[3]. If a local planning authority has no evidence to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse to grant an LDC, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify the grant of an LDC on the balance of probabilities.

21. Although I have found the appellant's evidence to be basic and limited in detail, I assign it significant weight overall. It is sufficiently precise and unambiguous to show, on the balance of probabilities, that The Cottage has been occupied as an independent single dwellinghouse consistently since at least 4 years before the date on which the application was made. There is no evidence to contradict or make the appellant's claims less than probable.

Conclusion

22. 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 use of the garage building as a residential dwelling was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act.

L Douglas

INSPECTOR

[3] Gabbitas v SSE & Newham LBC [1985] JPL 630

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 1 September 2022 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:

The evidence demonstrates, on the balance of probabilities, that the material change of use of The Cottage (also known as 'the garage building') on the land edged in red on the attached plan from a garage to a single dwellinghouse took place at least 4 years before 1 September 2022, and that it has been occupied and used as a single dwellinghouse independent to Stream Farmhouse and any other dwellinghouse consistently for at least 4 years before 1 September 2022. No enforcement action may therefore be taken in respect of the use of The Cottage as a single dwellinghouse and the use as such is lawful with regard to sections 171B(2) and 191 of the Town and Country Planning Act 1990 (as amended) and Regulation 5 of The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024.

Signed

L Douglas
Inspector

Date: 21st May 2024
Reference: APP/U1430/X/22/3313394

First Schedule

The use of the garage building as a residential dwelling

Second Schedule

Land at The Cottage, Stream Farm, Chapel Lane, Guestling Green TN35 4HN

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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: 21st May 2024

by L Douglas BSc (Hons) MSc MRTPI

Land at: The Cottage, Stream Farm, Chapel Lane, Guestling Green TN35 4HN

Reference: APP/U1430/X/22/3313394

Scale: Not to Scale