



Appeal Decisions

Inquiry held on 24 July 2024

Site visit made on 24 July 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th August 2024

Appeal A Ref: APP/Q1153/C/24/3341622

Appeal B Ref: APP/Q1153/C/24/3341666

Land at Little Blackthorn Stables, road from Haye Down to Sportman's Cross, Haye Down, Devon PL19 0NN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ('the Act'). The appeals are made by Mr John Gerard McLaughlin (Appeal A) and Mrs Deborah Jane McLaughlin (Appeal B) against an enforcement notice issued by West Devon Borough Council.
- The notice was issued on 14 December 2023.
- The breach of planning control as alleged in the notice is Within the last 4 years and without planning permission, a material change of use of the stable block on the Land from equestrian use to use as a single dwelling-house.
- The requirements of the notice are: 1. Cease the residential occupation and use of the Land. 2. Remove all domestic fixtures and fittings except for a WC and sink pedestal. 3. Remove all associated domestic paraphernalia from the Land. 4. Revert the Land to its authorised form and appearance as shown on approved drawing 839/01 on planning permission 12424/2008/TAV.
- The period for compliance with the requirements is 12 months from the date the notice takes effect.
- The appeals are proceeding on the grounds set out in section 174(2)(d) and (g) of the Act.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

1. Evidence was given on sworn affirmation prior to the Inquiry being adjourned for the site visit. I was unable to resume the Inquiry on the same date. Therefore, closing submissions were made in writing and the Inquiry was closed in writing on 29 July 2024.
2. Another enforcement notice in respect of the alleged breach of planning control was issued by the Council on 6 December 2022. That notice was withdrawn on 14 December 2023, when the notice the subject of this appeal was issued.

Ground (d)

3. To succeed under this ground of appeal the appellants need to demonstrate, on the balance of probabilities, that the change of use to a dwelling took place at least 4 years before enforcement action was taken and that the use continued substantially uninterrupted throughout that period. The latest date by which the change of use must have taken place is 6 December 2018¹.

¹ This is not disputed, with regard to the first notice issued by the Council and section 171B of the Act.

4. It is the appellants' case that the stable block building was converted into a dwelling at the end of 2016 and that it was first occupied as a dwelling by Mr McLaughlin at some point between the end of 2016 and May 2017. It is claimed that Mr McLaughlin has lived in the building continually since, and that Mrs McLaughlin and their children moved in to live with him in January 2021, following the sale of their house, Torr View. Prior to this, Mrs McLaughlin and the children only stayed in the building on weekends.
5. The Council contend that the appellants' evidence is not sufficiently precise and unambiguous, and that it contradicts the Council's evidence and that of neighbours to the site. The neighbours' evidence is limited to an unsigned letter which claims the appellants first started living in the building in the summer of 2021. I assign that evidence very little weight due to its lack of detail.
6. The appellants have an ongoing dispute with neighbours and security concerns relating to the site. These explain the reasoning behind converting the building and Mr McLaughlin 'camping out' at the site before starting to live in the building. The personal circumstances of the appellants also provide a plausible explanation for Mr McLaughlin living in the building alone initially, while Mrs McLaughlin and their children lived at Torr View until the sale of that house. These do not explain, however, the lack of detailed and consistent evidence relating to when the building became a dwelling and its use as such continuously since.
7. I have seen that the building is a 3 bedroom dwelling with a lounge, kitchen, bathroom and storage room with electricity, water, a wood burner, and limited insulation. It has been converted in a crude manner, but it is capable of providing basic living accommodation for a family of 4.
8. The evidence indicates that works were carried out to the building at the end of 2016, which included the installation of insulation, internal and external walls, a bathroom, and a septic tank. Those works were carried out by Mr McLaughlin, accompanied on occasions by William Mudge, Thomas Tucker, and Peter Williams, with Vinny Mulvaney carrying out electrical works and Andrew Bellamy helping fit the septic tank.
9. At the Inquiry, neither Mr Mudge nor Mr Tucker were able to recall in specific detail the works they carried out to the building at specific times. The invoices of Mr Williams, Mr Bellamy and Mr Mulvaney lack detail, but they suggest that electrical works relating to a new shower, cooker and domestic sockets were carried out in October/November 2016 and that the septic tank was installed in November 2016. Mr Williams, Mr Bellamy and Mr Mulvaney did not provide evidence to the Inquiry.
10. In cross-examination Mr Mudge said he had "no idea" who was living in the building when he visited between 2017 and 2020 to speak to Mr McLaughlin, including times when his children played there with the appellants' children. Mr Tucker said that he understood Mr McLaughlin was living there "mainly" after the conversion works, but he did not want to pry when visiting the site as "people were coming and going".
11. The first statutory declaration (SD) of Mr McLaughlin refers to a water harvesting system collecting rainwater from the roof, which was stored in stainless steel tanks and gravity fed into the building. It states that drinking water was bottled water, before a bore hole was created at the site, and it

refers to 2 wells on the land. The SD of Mr Mudge refers to diary entries, including those dated 13 November and 3 December 2016 which were said to relate to the rainwater harvesting system. Under cross-examination Mr Mudge could not remember specifically what those diary entries referred to, other than possibly walking a pipe.

12. At the Inquiry, Mr McLaughlin explained that the rainwater harvesting system provided water for flushing the toilet. He said that the bore hole was not created at the site until after January 2021, and that before then a bore hole at another site was relied upon. Prior to January 2021, water was transported by him from the other site in 2 x 500 litre tanks on the back of a truck, which was then filtered and stored in a 1,000 litre tank previously used for milk. This is somewhat inconsistent with the arrangements set out in his first SD, which makes no mention of these significant organised processes involved in supplying water to the building prior to the on-site bore hole.
13. Electricity bills relating to the site are inconclusive. Mrs McLaughlin explained that most of them are based on low estimated meter readings, which resulted in a large closing bill on 25 July 2022, once corrected with an actual meter reading. However, actual meter readings are referred to in the bills for 6 March 2019, 7 November 2019, and 1 November 2020. The large closing bill is based on an estimated meter reading for 20 February 2022 for the period from 2 November 2020. In the absence of detailed explanations and other actual meter readings, the electricity bills merely show the site was using a modest amount of electricity between 7 November 2017 and 20 February 2022, which could have been for a number of purposes. They offer very little in support of the appellants' claims.
14. Reasonable explanations were given for how Mr McLaughlin knew the 2 invoices for a small amount of building materials delivered to the site in October 2016 related to conversion works. Mr McLaughlin's employment on other building sites provides a reasonable explanation for the absence of invoices relating to some other building materials, as he used leftovers. This is consistent with the standard to which the building has been converted, but it is unlikely to have applied to all other building components used. It is unclear why there are no invoices, receipts or bank statements relating to other items which are likely to have been purchased in association with the conversion works and use, even if many were bought informally and second hand.
15. The lack of any dated photographs relating to conversion works and use is also surprising, even against the background of challenging personal issues, considering the prolonged period in question and the number of people involved. Mr McLaughlin accepted that photographs would have been taken on the land prior to the first notice being issued, but probably on old telephones. None of the witnesses provided satisfactory explanations as to why dated photographs which may have been taken on old telephones were absent.
16. This brings me to the applications made by the appellants for a Certificate of Lawfulness (LDC) relating to the existing use of the building as a dwelling in September and December 2021², and the subsequent appeal³. Mr McLaughlin claimed that a lot of relevant receipts and paperwork have disappeared as they were provided to the planning agent who submitted the LDC applications.

² The Council's refs: 3569/21/CLE and 4550/21/CLE

³ Appeal ref: APP/Q1153/X/22/3294429

Conversely, Mrs McLaughlin claimed that their previous planning agent had not asked for, and had not been provided with, any such documents, and that many records had been lost or destroyed while difficult personal circumstances persisted and in the process of moving.

17. I have serious concerns regarding the consistency of the evidence presented as part of the LDC applications with the evidence which is presented as part of this appeal. The appellants accept that the evidence provided as part of the LDC applications was false where it refers to the stable building being used as a dwelling by both of the appellants consistently since 2015. That evidence includes 5 SDs made by the appellants' friends and family. No satisfactory explanations were provided as to how the appellants' friends and family may have ended up providing false information in SDs without the knowledge of the appellants.
18. Furthermore, I find it difficult to accept that the appellants did not at least review and seek to correct the false information submitted following the refusal of the LDC applications, prior to the LDC appeal. It is difficult to envisage 5 friends/family members signing SDs potentially containing false information without them first discussing matters with the appellants, considering they may have been committing criminal offences. None of those people provided evidence to the Inquiry to correct their statements or clarify matters.
19. Alongside this, Mrs McLaughlin informed the Council, when registering the name of the property in January 2021, that 'we have business use for this property but we want to sell it and any prospective buyers would need an address'. Under cross-examination Mrs McLaughlin explained that she did not think it relevant to mention at that time that the property was already occupied, or would continue to be occupied, as a dwelling. This was because businesses were run from the site, but she agreed that it was contradictory with other evidence presented to the Inquiry.
20. Moreover, the Council's records show that Council tax was only backdated to July 2021 when Mrs McLaughlin registered it for that purpose in December 2022. This is claimed to be because the whole family did not start living there until July 2021. Mrs McLaughlin does not recall whether the Council Tax Team asked if the building had been a dwelling before that time, or whether she explained to them that Mr McLaughlin had lived there alone before that time.
21. In summary, the appellants' evidence lacks precision and is ambiguous in a number of respects. The Council was unaware of the use of the site prior to the first LDC application and I take the points made under sworn affirmation which show there were personal issues which put the appellants under considerable pressure since at least 2016. However, these do not explain the contradictory nature of large parts of the evidence. In particular, there are significant gaps in the evidence as to when the building first became a dwelling and how it may have remained in use as such without substantial interruption since. The contradictory nature of the evidence available exposes those gaps and reduces the reliability of the evidence presented.
22. Caselaw has found that if there is no evidence to contradict the appellants' version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted. As a matter of fact and degree, I find the evidence is not sufficiently precise and unambiguous to show, on the balance of probabilities, that the building was a dwelling in 2016

or 2017 and that the building was in such use without substantial interruption for at least 4 years before the first notice was issued.

23. The appeal under ground (d) therefore fails.

Ground (g)

24. To succeed under this ground of appeal the appellants need to show that 12 months falls short of what should reasonably be allowed for the notice to be complied with. It is claimed that 18 months would be reasonable to secure alternative accommodation for the whole family, which includes 2 children.

25. Article 8 of the Human Rights Act 1998 (HRA) affords the right to respect for private and family life, home and correspondence. Article 1 of the First Protocol states that every person is entitled to the peaceful enjoyment of their possessions, and no one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. These are qualified rights, and interference may be justified where it is in the public interest. Furthermore, as my decision has the potential to affect children, and because age is a protected characteristic under the Equality Act 2010, I must have regard to the Public Sector Equality Duty (PSED).

26. No specific concerns have been raised by the appellants in respect of the above. Moreover, there is no detailed information before me to explain how any aspects of the housing market, including costs, would make it difficult for the appellants and their children to find suitable and economical alternative accommodation within 12 months. It is also unclear how an additional 6 months to comply with the notice would help deal with such issues in a meaningful way.

27. No appeals have been made under grounds (a) and (f), and the notice and its requirements will be upheld as the appeals under ground (d), which are based on legal matters only, have failed. Compliance with the notice would interfere with the rights of the appellants and their children under Article 8 and Article 1 of the First Protocol of the HRA. That interference would be in accordance with the law and necessary in the public interest to ensure effective enforcement within a reasonable period and maintain confidence in the planning system.

28. I consider 12 months a reasonable period for the notice to be complied with, which is proportionate to the breach of planning control and the rights of the appellants and their children, as outlined above. A 12 month compliance period would not therefore unacceptably violate the rights of the appellants or their children, and the protection of the public interest cannot be achieved by means which are less interfering with their rights.

29. I have had due regard to the PSED and I do not find any harm caused by a 12 month compliance period which may be outweighed by any benefits associated with a longer compliance period. I reach this conclusion having considered the aims of the PSED to eliminate discrimination against persons with the protected characteristic of age, to advance equality of opportunity for those persons, and to foster good relations between them and others.

30. The appeal under ground (g) therefore fails.

Conclusion

31. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

Formal Decisions

32. The appeals are dismissed and the enforcement notice is upheld.

L Douglas

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Graham Cridland, Solicitor instructed by the appellants

He called:

John Gerard McLaughlin
Deborah Jane McLaughlin
William Alan Mudge
Thomas Tucker

The appellant in Appeal A
The appellant in Appeal B
Friend of the appellants
Friend of the appellants

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Fraser of Counsel, instructed by WDBC Legal Services

He called:

Darren Jarvis

Planning Enforcement Officer