



Appeal Decision

Site visit made on 3 June 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2024

Appeal Ref: APP/L1765/X/22/3305330

Broom Copse Farm, Spiers Lane, New Alresford SO24 9TY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Roger Smith against the decision of Winchester City Council.
 - The application Ref 22/00132/LDC, dated 19 January 2022, was refused by notice dated 11 August 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 is: Construction of a building and its use as a single dwellinghouse.
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Summary of Decision

1. The appeal is allowed and a certificate of lawfulness is issued, in the terms set out below in the Formal Decision.

Preliminary Matter

2. In the interests of brevity, I have adopted the description of the development used by the Council. I have however also considered that used by the appellant for the purposes of my assessment.

Application for Costs

3. An application for costs was made by Mr Roger Smith against Winchester City Council. This application is the subject of a separate Decision.

Main Issue

4. The main issue is whether the Council's refusal to grant a certificate of lawfulness is well founded.

Reasons

5. The site relates to a parcel of woodland which comprises a number of buildings that facilitate a forestry business.
6. In matters such as this the onus is on the appellant to demonstrate their case on the balance of probabilities. My assessment is therefore very fact specific, based upon the evidence before me.
7. As means of overview, the appellant's case is that a caravan was brought to the site in October 2014 following which works were undertaken which included

adding an extension and decking, amongst other things. It was then used as a forestry shelter, office and for storage. Since January 2017 it has been residentially occupied as a dwellinghouse.

8. The Council accepts that there has been continuous residential occupation since 2017. Following the refusal of the appeal application, the appellant has also provided the Council with additional evidence. The Council has subsequently accepted that the caravan is now a building. Having undertaken a site visit, I have little reason to disagree with this conclusion.
9. Consequent to this, the Council queries whether there is sufficient evidence to demonstrate on the balance of probabilities as to when the caravan was brought onto the land and altered to become a building and whether there had been a material intervening use of the building prior to its residential occupation in 2017. These matters are applicable for the purposes of the relevant periods for immunity; namely 4 or 10 years pursuant to the statutory provisions of the Act.
10. In response, the appellant has provided further additional evidence for the purposes of this appeal in the form of a significant number of statements and statutory declarations. The Council has been provided with an opportunity to comment on this evidence.
11. A statutory declaration is a formal statement made under the provisions of the Statutory Declarations Act 1835 to affirm that something is true to the best knowledge of the person making the declaration. A statutory declaration should be treated as sworn first-hand evidence.
12. I am satisfied that the appellant's evidence in his original statutory declaration is sufficiently precise and unambiguous to demonstrate on the balance of probabilities that the caravan was brought to the site in October 2014, with the works described undertaken during the subsequent winter. It was then used as an office for a forestry business and for the storing of tools and equipment until January 2017. This is also corroborated by other evidence, including an invoice for the extension. Consequently, the absence of date stamps on photographs does not cast significant doubt in my mind. The Council also holds no evidence to dispute this version of events.
13. I recognise the invoice then refers to the extension as a bedroom, which is inconsistent with the remainder of the evidence. I however accept that it does not connote evidence as to its use, for example that it was used for sleeping, only that it was in appearance an extension to what had been a residential caravan. The reference to a bedroom does therefore not cast significant doubt in my mind as to the appellant's version of events. The reason for adding the extension is then not directly relevant to my assessment, however, the evidence indicates why the storage of a large number of tools was necessary, given there were four employees.
14. The further additional evidence then describes, amongst other things, the office use, before it was moved to a barn in 2017, as well as other rooms for storage and for taking breaks. It also corroborates the residential address of the appellant, prior to 2017. Taken as a whole, the further additional evidence demonstrates on the balance of probabilities that a material intervening use associated with a forestry business took place prior to the residential use commencing in January 2017.

15. Accordingly, the relevant period for immunity is 4-years. As a matter of fact and degree the appellant has for the aforementioned reasons demonstrated on the balance of probabilities the asserted building operation and subsequent use for a relevant period and so has discharged the necessary burden of proof. The Council accordingly would have been in a position to have previously taken enforcement action and so a certificate of lawfulness should now be granted.

Conclusion

16. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawfulness was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

17. The appeal is allowed and attached to this decision is a certificate of lawfulness describing the existing development which is considered to be lawful.

Paul T Hocking

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 19 January 2022 the development described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and coloured 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 appellant has demonstrated on the balance of probabilities the construction of a building and its use as a single dwellinghouse for a relevant period.

Signed

Paul T Hocking

Inspector

Date: 23 August 2024

Reference: APP/L1765/X/22/3305330

First Schedule

Construction of a building and its use as a single dwellinghouse

Second Schedule

Broom Copse Farm, Spiers Lane, New Alresford SO24 9TY

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 were lawful, on the certified date and, thus, 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: 23 August 2024

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Scale: DO NOT SCALE

