

Appeal Decision

Site visit made on 17 September 2024

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 October 2024

Appeal Ref: APP/W1525/X/22/3292622

Broadgates Barn, The Street, Roxwell, Chelmsford CM1 4PA

- 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 David Heffernan against the decision of Chelmsford City Council.
 - The application ref 21/02394/CLEUD, dated 6 December 2021, was refused by notice dated 9 February 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 is sought is conversion of barn to residential use under planning permission reference 97/CHL/0667.
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Decision

1. The appeal is dismissed.

Preliminary Matters

1. Through this appeal, the appellant is seeking to ascertain whether development subject of Planning permission reference 97/CHL/0667 was lawfully begun. The application for a certificate of lawful use or development also seeks to ascertain whether listed building consent reference 97/CHL/0668/LB was implemented. However, it is not possible to determine that through a certificate of lawful use or development under section 191 of the Town and Country Planning Act 1990 as amended (the Act).
2. A certificate under section 191 of the Act, as applied for, would determine whether any works or use that had taken place by the date of application (the relevant date) was lawful. It would not determine whether further works could take place, which would require a certificate under section 192 of the Act.
3. The burden of proof for a certificate of lawfulness 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.

Main Issue

4. The main issue on an appeal under section 195 of the Act is whether the refusal of the certificate of lawful use by the Council was well-founded.

Reasons

Use

5. The application is for a certificate of lawful use. The appellant suggests that the residential use has continued for a period in excess of 4 years prior to the date of application. If that were the case, the use may have become lawful under section 171B of the Act. Section 171B(2) of the Act states that no enforcement action may be taken after the end of a period of 4 years beginning with the date of the breach.
6. Evidence in support of the application largely relates to whether building works have commenced in relation to the planning permission reference 97/CHL/0667. There is little to suggest the building has ever been lived in. As a result, whilst it had planning permission for conversion to residential use, that use has never begun.
7. On the balance of probability, I consider that the building has not been in residential use for a period of 4 years beginning with the date of the breach of planning control prior to the date of application.

Building operations

8. Planning permission reference 97/CHL/0667 was granted on 24 November 1997 for conversion of barn to residential use subject to conditions. The appellant is seeking to ascertain whether development was begun within five years, as required by condition 1, such that the planning permission was implemented.
9. In order to be a conversion, as described in the planning application, there would be limited new structural elements in the building and the operations would involve a limited degree of rebuilding.
10. The appellant states that operations commenced on 18 October 2002, including the demolition and reconstruction of the building. Those works are clearly beyond what could be considered a conversion as approved under planning permission reference 97/CHL/0667.
11. I accept that operations began within the 5 year period. I understand the demolition was to enable operations to be carried out to the foundations. Details as to precisely how the operations took place are unclear. I note further reference to scaffolding being used to shore up the structure not being removed, strip the roof fully, remove a structural bay and expose the footings. I note that the building was re-roofed and re-clad. Taking account of the evidence submitted, particularly the reference to demolition, on the balance of probability I consider that the operations were beyond what could be considered a conversion such that they were not in accordance with planning permission reference 97/CHL/0667.
12. Correspondence from the appellant dated 6 June 2013 refers to "... the collapse of the property prior to commencement of works". Email

correspondence dated 17 October 2002 supplied by the Council suggests it to be too dilapidated to be converted and any attempt to do so would probably result in demolition. This further indicates the operations related to demolition and reconstruction rather than conversion.

13. My attention has been drawn to an application for building regulations consent under reference 02/01854/CONBN. There is some dispute as to whether that was valid. The appellant indicates that they paid for it and received a visit from the Council's Building Inspector at the start of works. At that meeting, they agreed the foundation requirements. Nevertheless, I note correspondence in an email dated 17 October 2002 supplied by the Council referring to a potential for conflict between the planning permission and building regulations requirements. I have limited further information as to the application for building regulations consent. It is not clear whether the operation subject of the planning permission was the same as that subject of the building regulations consent.
14. On 16 January 2013 the Council wrote to the appellant stating that they considered the planning permission had not been implemented. They suggested that further works may require planning permission and listed building consent. The final letter in correspondence from the Council in 2013 stated that "The work you intend carrying out will be monitored and it is hoped that once completed, the building will be in keeping with the main listed building and the surrounding area." Whilst that indicates there were no concerns relating to the operations taking place at that time, it is not clear that they related to the conversion of the building in accordance with permission reference 97/CHL/0667. In any event, I note that was an opinion of the author, rather than being a formal decision of the Council as local planning authority.
15. My attention has been drawn to the judgements in *Field v First Secretary of State and Crawley BC* [2004] EWHC 147 (Admin) and *Spackman v SSE and Another* [1977] 33 P&CR 430. I have taken these into account in coming to my decision.
16. For these reasons and on the balance of probability, I conclude that the operations undertaken to the building were not in accordance with planning permission reference 97/CHL/0667. Evidence is not sufficiently precise and unambiguous that the permission was implemented and the operations that have taken place are lawful.

Other matters

17. I note that the appellant suggests that conditions attached to planning permission reference 97/CHL/0667 may be conditions precedent. To be so, and taking account of the judgement in *Greyfort Properties Ltd v SSCLG & Torbay Council* [2011] EWCA Civ 908; [2012] JPL 39, they must prohibit commencement of development until a requirement has been met and go to the heart of the permission. Any conditions precedent would have needed to be dealt with prior to implementation of the planning permission. However, as I have concluded the permission has not been implemented, I do not need to consider this matter further.

18. I understand that the barn has been subject of theft and vandalism. This includes removal of some structural beams and has resulted in a lean and having to strip the roof. However, that would not affect the lawfulness of any development.
19. I note neighbouring St Michael and All Angels Church and the Parish Council indicate they consider Broadgates Barn to be derelict and support it being brought back into use. However, they do not provide evidence that operations have taken place in accordance with planning permission reference 97/CHL/0667 or that any use of the barn is lawful.
20. Reference is made to the history of neighbouring sites, including another barn that appears to have been converted to residential use, and the effect of these on this development. However, it is unclear how these might affect the lawful use of this barn.
21. My attention has been drawn to the effect of the building on the character and appearance of the Conservation Area and setting of neighbouring listed buildings, comprising grade II listed Broadgates House and grade II* listed Church of St Michael and All Angels. However, these planning considerations are not relevant facts contributing toward establishing lawfulness.
22. Reference has also been made to Class Q, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. This class is subject of conditions requiring an application to the local planning authority prior to the beginning of the development. My attention has not been drawn to any such application. In any event, this would not affect my conclusions on the main issues.

Conclusion

23. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of conversion of barn to residential use under planning permission reference 97/CHL/0667 at Broadgates Barn, The Street, Roxwell, Chelmsford CM1 4PA 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