



Appeal Decision

by Zoë Franks, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 20 DECEMBER 2024

Appeal Ref: APP/K0940/X/23/3333125

Ormside Inn, Ormside, APPLEBY-IN-WESTMORLAND, CA16 6EJ

- 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 M Downs against the decision of Westmorland and Furness Council.
 - The application ref 23/0528, dated 2 August 2023, was refused by notice dated 26 September 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 C3 - Dwellinghouse.
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Decision

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

Main Issue

2. The main issue is whether the Council's decision to refuse to issue the LDC for the use of the entire property as a C3 dwellinghouse was well-founded. It is for the appellant to prove on the balance of probability that the appeal property was used as a single dwellinghouse for a substantially uninterrupted period of more than 4 years prior to the making of the LDC application on 2 August 2023.
3. The appellant and his wife have owned the appeal property since 2004, and have not used it as a public house or for other primary commercial activity since that time. The Council's concern is that a previous LDC application reference 22/0813 ("the 2022 Application"), submitted personally by the appellant, stated:

"This property has only been used as a residential property (within the owner's accommodation) during our entire and continuous ownership from May 2004 (over eighteen years); with the exception of any specific areas within the property that have been designated specifically for commercial use, of which has been unused during the same period."

4. The Council say that this is inconsistent with the current LDC appeal in that the appellant had previously stated in the 2022 Application that the areas formerly used for the public house had been unused during their ownership.
5. However, the appellant's case is that the wording used during the 2022 application was clumsy, and was rather intended to mean that the former bar areas had not been used for a commercial/public house use.

6. Planning Practice Guidance advises that it is for the appellant to provide sufficient information to support their application, and if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
7. The appellant has provided photographs showing the bar area at various times during their ownership. The photographs simply provide snapshots in time, but the number of them from a variety of dates supports the appellant's description of the use of the bar area and supports his case.
8. The four statutory declarations provided in support of the appellant's case clearly state that the property had not been used commercially since 2004, and that the room formerly used as the games room had been used for a variety of purposes, all associated with the residential use of the rest of the property (and mainly for associated storage).
9. Whilst the appellant states that that it was their initial intention to operate a small public house following the conversion of the property pursuant to appeal decision reference APP/H0928/A/07/2041321 this in fact never happened. Indeed, it is not contested that there has been no element of use of the property as a public house since at least 2004, and following the conversion of the property there had been no provision of public toilets which could be used in association with such a use.
10. The Council's file shows that there had been various visits to the property prior to October 2013 when it was concluded that there was not a change of use at those points in time. However, the last of these visits was around 10 years before the LDC application was made and the Council has no further evidence of its own to contradict the use described by the appellant.
11. Taking into account the sworn evidence regarding the use of the former games room provided in the statutory declaration and the supporting photographs, I accept the appellant's explanation regarding the previous LDC application. On balance, it seems more likely than not that the previous wording, whilst ambiguous, was intended to convey the fact the room had been unused for a commercial purpose, rather than that it was unused all together. As the specific evidence regarding the use provided by the appellant has not been contradicted or challenged, I am satisfied that sufficient information has been provided which is sufficiently precise and unambiguous so as to justify the grant of the LDC on the balance of probability.
12. For the reasons given above I conclude, on the evidence now available that, that the Council's refusal to grant a certificate of lawful use or development in respect of use as a C3 – Dwellinghouse 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.

Zoë Franks

INSPECTOR

Plan

This is the plan referred to in the Lawful Development Certificate dated: 20 DECEMBER 2024

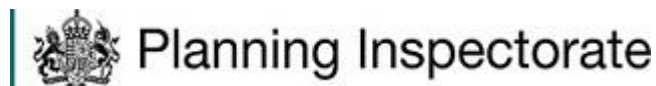
by Zoë Franks

Land at: Ormside Inn, APPLEBY-IN-WESTMORLAND, CA16 6EJ

Reference: APP/K0940/X/23/3333125

Scale: Not to Scale





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 2 August 2023 the C3 dwellinghouse 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:

It has been shown on the balance of probability that the whole of the land has been in C3 dwellinghouse use for a substantially uninterrupted period of more than 4 years prior to 2 August 2023.

Signed

Zoë Franks

Inspector

Date: **20 DECEMBER 2024**

Reference: APP/K0940/X/23/3333125

First Schedule

C3 Dwellinghouse

Second Schedule

Land at Ormside Inn, APPLEBY-IN-WESTMORLAND, CA16 6EJ

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 /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.