



Appeal Decision

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2025

Appeal Ref: APP/E3335/X/23/3333867

**Pennys Peace Cottage, Mackley Lane, Norton St. Philip, Frome, Somerset
BA2 7NL**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Ms C. Blumberg against Somerset Council.
 - The application ref 2023/1212/CLE is dated 27 June 2023.
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
 - The failure to comply with any condition or limitation for which a certificate of lawful use or development is sought is the use of the dwelling in breach of condition 3 of permission 109395/005 for a period in excess of 10 years.
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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 matter constituting a failure to comply with a condition or limitation which is found to be lawful.

Applications for costs

2. An application for costs was made by Ms C Blumberg against Somerset Council. That application is the subject of a separate decision.

Preliminary Matters

3. It has not been necessary to visit the site. This is because all the required information is included with the application and appeal documents, and a decision can be reached on the submitted information. The views of both parties were sought regarding this approach and no objections were received.

Main Issue

4. While the Council failed to give notice of its decision within the prescribed period, it has provided a copy of a Case Officer Report, which indicates that if a decision had been made, the Council would not have issued an LDC. Given the lack of a decision, the application is deemed to have been refused. Therefore, the main issue is whether or not that deemed refusal is well-founded, having particular regard to whether the stated condition has been breached for a period of at least 10 years.

Reasons

5. The burden of proof in satisfying the requirement of s191(c) falls to the appellant to establish that the use of Pennys Peace Cottage without compliance with condition 3 of planning permission 109395/005 commenced at least 10 years before the

date of the application on 27 June 2023 and continued without any significant interruption thereafter. The appropriate standard for testing the evidence is on the balance of probabilities, which is whether something is more likely than not.

6. The Planning Practice Guidance reflects prior Court judgments. It sets out that an appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.
7. Condition 3 states:

"The development hereby approved shall not be occupied other than for purposes of holiday accommodation and shall not be let to the same person(s) for more than 28 days in any calendar year, or such other period as may be first approved in writing by the Local Planning Authority, in accordance with written records of letting and occupiers to be available for inspection by the Local Planning Authority at any time."
8. The appellant has submitted details showing that the property has been let out for periods, other than for holiday accommodation, since October 2007. With the application, this information comprised:
 - Details of lettings provided in statements from Lettings R Us
 - A list of tenants and the dates they occupied the property
 - Details of bank statements, from between 2012 and 2016 which show the payment of rent for lettings.
9. Within the Council's Case Officer Report, it states that there is no dispute that the property has been occupied for periods in excess of 28 days beginning in 2007. Rather, the Council takes issue with the amount and length of breaks in occupation that have occurred between the individual lettings of the property. The Council refer to there being eight separate occasions between the tenancies, and that on these occasions the property was unoccupied for periods ranging from between 1 and 7 months. Over a 15-year period from 2007, the property was unoccupied for 32 months (2 years and 8 months) in total. Moreover, the Council states that no explanation has been given for these unoccupied periods, other than to say that the property was being refurbished/made ready for the next tenant.
10. I note reference to the Council highlighting the unoccupied times over the 15-year period. However, it is only necessary for the breach of the occupancy condition to be established over a period of 10 years, preceding the submission of the application. As such, the additional 5-year period that the Council refer to can be discounted from this consideration. I note that this period includes the longest of the unoccupied periods of 7.5 months.
11. From the time of the relevant date, i.e., 10 years before the submission of the application for the certificate, which was 27 June 2013, there have been six periods of letting, with them ranging from 6 months to over 6 years in duration. In between these, there have been gaps of up to 4 months, but I also note that between one pair of lettings there was no gap, with a letting ending one day and

another starting the very next, as well as another amounting to only approximately 2 weeks.

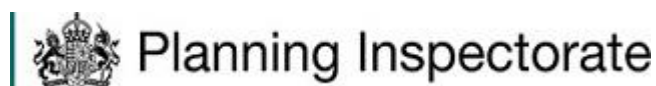
12. The appellant explains that when the property was not occupied it was either being redecorated and made ready for the next tenancy, or there was a period of vacancy while awaiting the next tenant. While the Council appear to pay this little regard in terms of explaining the vacant periods, I find that it is likely that there would be periods where the property would be unoccupied where it may have been advertised and a new tenant was awaited. In the context of the periods of letting when the property was occupied, I find that the periods of vacancy are not unreasonable, and not sufficient to result in a break such that the continuity of the breach of the occupancy condition is broken. The breach of the condition therefore subsisted during these unoccupied periods.
13. I note that the Council contends that during the periods where the property was unoccupied it would have been unable to take enforcement action. However, given that the appellant states that during these periods the property was either being redecorated, or simply vacant, I find nothing that would have prevented the Council taking action against a continuing breach that would have endured, considering the pattern of occupation together with the non-substantial periods of non-occupancy.
14. Based on the evidence that has been submitted, the appellant has proven on the balance of probabilities that the property has been occupied in breach of the relevant occupancy condition for a period of 10 years preceding the submission of the application. There is no evidence before me to counter this, and the periods of non-occupancy are not such that they represent a break in the continuity of the breach of the condition.

Conclusion

15. For the reasons given above I conclude, on the evidence now available that, had the Council refused to grant a certificate of lawful use or development in respect of the use of the dwelling in breach of condition 3 of permission 109395/005 for a period in excess of 10 years, that refusal would not have been 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).

Martin Allen

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 27 June 2023 the matter described in the First Schedule hereto, constituting a failure to comply with a condition or limitation subject to which planning permission has been granted, 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(3) of the Town and Country Planning Act 1990 (as amended), for the following reason:

- It has been proven on the balance of probabilities that the property has been occupied in breach of the relevant occupancy condition for a period of 10 years preceding the submission of the application.

Signed

Martin Allen

INSPECTOR

Date: 26 February 2025

Reference: APP/E3335/X/23/3333867

First Schedule

The use of the dwelling in breach of condition 3 of permission 109395/005 for a period in excess of 10 years

Second Schedule

Pennys Peace Cottage, Mackley Lane, Norton St. Philip, Frome, Somerset
BA2 7NL

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 matter, constituting a failure to comply with any condition or limitation subject to which planning permission has been granted, 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 or 187A of the 1990 Act, on that date.

This certificate applies only to the extent of the matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any matter 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: 26 February 2025

by Martin Allen BSc (Hons) MSc MRTPI

Land at: Pennys Peace Cottage, Mackley Lane, Norton St. Philip, Frome, Somerset BA2 7NL

Reference: APP/E3335/X/23/3333867

Scale: Not to Scale

