



Appeal Decision

Site visit made on 11 February 2025

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 March 2025

Appeal Ref: APP/J3720/X/24/3345767

Brook House Farm, Brook House Gardens, Stratford Road, Hockley Heath, Solihull B94 5NP

- 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 Gregory Richards against the decision of Stratford-on-Avon District Council.
- The application ref 24/00236/LDE, dated 31 January 2024, was refused by notice dated 27 March 2024.
- 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 dwellinghouses'.

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 refusal to grant a lawful development certificate (LDC) was well-founded.

Reasons

3. An application under section 191(1)(a) of the Act¹ seeks to establish whether any existing use of buildings or other land is lawful. Section 191(2) sets out that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
4. Planning merits form no part of the assessment of an application for a LDC which must be considered in the light of the facts and the law. In an application for a LDC, the onus is firmly on the applicant to demonstrate, on the balance of probabilities, that the development is lawful. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
5. The appeal site comprises a two-storey building which was originally built as a domestic garage to serve Brook House Farm. The main thrust of the appellant's case is that the appeal building was converted into a self-contained dwellinghouse

¹ Town and Country Planning Act 1990 (as amended)

in 2011 and independent occupation of the building began in August 2011. Between 2011 and March 2019, three different occupants are stated to have lived in the building as their permanent residence. The appellant is stated to have lived in the appeal building continuously since 2019. This appeal will turn on whether the material change of use of the building to a self-contained dwelling began on or before 31 January 2020 and if so, whether it continued without significant interruption for at least 4 years thereafter.

6. In support of their case, the appellant has submitted two statutory declarations, one made by the appellant and the other made by their daughter. The statutory declarations both suggest that the building was converted to a self-contained dwelling in 2011 and was occupied by a number of different tenants between August 2011 and March 2019. A series of Council Tax bills have also been provided, which show that the appellant has been liable for Council Tax, with a single occupier discount, since 17 March 2020². Although Council Tax is not determinative of occupation, it is consistent with the appellant's claim that they resided at the property between 2019 and 2024.
7. I note that an interested party suggests that the tenant identified as living at the property between 2013 and 2016 did not. It is also suggested that the building did not have windows at the rear wall on the first floor, or windows in the roof. However, this would not have prevented it being occupied as a dwellinghouse. Furthermore, even if the property was not occupied by the named tenant between those years, occupation by the appellant between 2019 and 2024 would be sufficient for the use to become immune.
8. Another interested party, although seeking to contradict the appellant's evidence regarding the erection of a fence, advises that they were friends with the occupant stated to have resided at the property between December 2016 and March 2019. However, this appears to assume that the appellant is referring to the fencing located between the appeal site and the neighbouring property. Furthermore, the interested party does not appear to dispute that the tenant occupied the building at that time, which is consistent with the appellant's evidence.
9. Significantly, the Council does not dispute that the building was converted into a separate dwelling more than four years ago, or that it has been occupied for residential purposes. The main focus of the Council's case is that any previous established residential use of the building has been lost through the erection of a two storey extension.
10. Prior to submission of the LDC application the appellant started to construct a two-storey extension to the appeal building. The extension was not completed by the time of my site visit. Nevertheless, I saw that the original part of the building has the facilities required for day to day living and was clearly occupied at the time of my site visit. From my inspection of the building, it seems the works carried out to date have extended the building without compromising the original structure. Indeed, external windows were still evident in the wall between the original end wall and the extension. Although substantial, I do not agree that the operations have created a new building.
11. The Council has drawn my attention to *Sage v SSETR & Maidstone BC* [2003] UKHL 22; [2003] JPL 1299. However, this concerned the application of section

² Between 1 April 2019 and 16 March 2020, reference is made to Discount Class (0%) Furnished 2nd home.

- 171B(1) of the Act in respect of operational development, not a material change of use, and whether the four year period did not begin until the whole operation of creating a dwellinghouse was substantially completed.
12. The Council has also drawn my attention to *Devine vs Secretary of State for Levelling Up Housing and Communities* [2022] EWHC 2031. As the appellant points out, this was subject to further challenge through the Court of Appeal, which also upheld the Inspector's decision. The appeal concerned an enforcement notice alleging the unauthorised construction of a new building in place of an existing barn. The Inspector found in that case that the original building no longer existed as a recognisable structure and that the allegation in the notice was correct.
 13. However, the *Devine* case and the appeal before me are simply not comparable. The appellant has extended an existing structure, whereas the appellant in the *Devine* case had (the Inspector found) rebuilt the building. While I accept in such a case it is possible to take a landowner's intentions into account when considering the character and purpose of a structure, this is, in my view, simply not relevant to my consideration of whether the use of the appeal building is lawful in this case.
 14. The appellant is not seeking a determination that the extension is lawful, and the extension does not render the use unlawful. Even if the appellant were to occupy the extension once it was completed, if it was used as part and parcel of the use of the building, there would be no material change of use of the building. Whether the operational development would be lawful would be a different matter, but that is not what is before me, and I make no comment on it.
 15. An interested party has drawn my attention to an enforcement notice that has been issued in respect of the site. The appellant advises that the enforcement notice was issued in June 1999 on the grounds that the garage building had not been constructed in accordance with the approved plans and that the notice required the appellant to construct the building in accordance with the approved plans to remedy the breach.
 16. However, the appellant advises that following the issue of the enforcement notice, planning permission was granted on appeal to make alterations to Brook House Farm, including the construction of an extension linking the garage building to Brook House Farm, reference APP/J3720/A/00/1054636. The Council does not dispute this, nor does it suggest that an enforcement notice has previously been issued in respect of the use of the building as a dwellinghouse.
 17. Section 180 of the Act provides that where, after the service of an enforcement notice planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission. Moreover, it seems unlikely the enforcement notice would have attacked the use of the building, since it concerned operational development not carried out in accordance with approved plans. As such, it seems unlikely the use of the building as a self-contained dwelling would have constituted a contravention of any of the requirements of any enforcement notice then in force.
 18. From the evidence before me, I find that the use of the appeal building as a self-contained dwelling begun on or before 31 January 2020 and continued for at least 4 years without significant interruption thereafter. I therefore find, on the balance of probabilities, that the use of the building as C3 dwellinghouse was lawful at the date of the application.

Other Matters

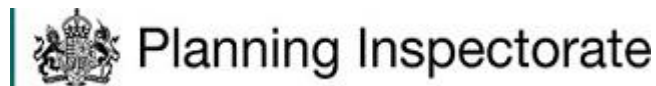
19. Concern is raised by a number of interested parties regarding the merits of the two storey extension, the erection of a fence and matters concerning the accuracy of plans and previous alleged breaches of planning control. Whilst I have considered the comments made by interested parties in respect of the appeal, an application for planning permission has not been made and so I am unable to consider planning merits. It is clear from the plans provided which building the appellant is seeking to establish the lawfulness of. Any dispute regarding land boundaries and ownership are not matters for me to determine in this appeal.
20. With respect to alleged breaches of planning control. I have set out above why previous enforcement action has not prevented the appellant's appeal from succeeding. Whether or not there have been subsequent breaches, they also do not prevent the appellant's appeal from succeeding for the reasons set out above.

Conclusion

21. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for a C3 dwellinghouse is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

M Savage

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 31 January 2024 the 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:

The evidence shows that the use of the appeal building as a self-contained dwelling begun on or before 31 January 2020 and continued for at least 4 years without significant interruption thereafter. I therefore find, on the balance of probabilities, that the use of the building as C3 dwellinghouse was lawful at the date of the application.

Signed

M Savage

Inspector

Date: **13 March 2025**

Reference: APP/J3720/X/24/3345767

First Schedule

Use as a C3 dwellinghouse

Second Schedule

Brook House Farm, Brook House Gardens, Stratford Road, Hockley Heath, Solihull
B94 5NP

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /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: 13 March 2025

by M Savage

Land at: Brook House Farm, Brook House Gardens, Stratford Road, Hockley Heath, Solihull
B94 5NP

Reference: APP/J3720/X/24/3345767

Scale: Not to Scale

