The Planning Inspectorate

Appeal Decision

Site visit made on 18 February 2025

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 April 2025

Appeal Ref: APP/E2205/X/23/3329429
Malthouse Farm, Daniels Water, Great Chart, Ashford, Kent TN26 1JY

- 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 Michael Stockley, against the decision of Ashford Borough Council.
- The application Ref PA/2023/0135, dated 23 January 2023, was refused by notice dated 8 September 2023
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is described as *'Use as an independent dwelling.'*

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 considered to be lawful.

Application for Costs

2. An application for an award of costs was made by Mr Michael Stockley against Ashford Borough Council. This application is the subject of a separate decision.

Background

3. In an appeal under s195 of the Act against the refusal of a LDC the burden of proof is upon the appellant. Although by way of the provisions of the Levelling Up and Regeneration Act 2023, the four year immunity bar has ceased to exist for the unauthorised use of a building for residential purposes unless the use was affirmatively established by 24 April 2024. It still applies in this instance due to the dates involved.

4. The test of the evidence would need to show that the self-contained, independent residential unit of accommodation had been used on an uninterrupted basis since at least 23 January 2019 – otherwise known as the 'material date' - being four years prior to the date of the application made.

5. The onus of proof is on the appellant to demonstrate, on the balance of probability, that the outbuilding has been used for such, thereby confirming that the planning position is as claimed. Accordingly, the key is that the evidence should be precise and unambiguous to this end.

6. Where LDCs are involved the planning merits of the development applied for do not fall to be considered. Instead, the decision will be based strictly on the evidential facts, planning legislation and relevant case law.

7. Here, the outbuilding at issue is one originally built to provide garage floorspace with a store in the roofspace. Structural alterations were made in 2015 and a habitable room was then created in the roofspace for which Building Regulations were obtained. Subsequently, the building was then fully converted to create an independent residential unit of accommodation which, it is claimed has been the case since the occupier took residence in 2017. In planning terms this represented a material change of use for which the benefit of planning permission was necessary.

Main Issue

8. The main issue in this appeal is whether, on the balance of probability, the use was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990.

Reasons

9. S191(2) says that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them because the time for enforcement action has expired, and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

10. A self-contained residential unit is defined within s254 of the Housing Act 2004 as a separate set of premises which forms part of a building, either the whole or a material part of the building and in which all three basic amenities – defined as a toilet, personal washing facilities and also cooking facilities - are available for the exclusive use of its occupants.

11. The judgement in *Gravesham BC v SSE & O'Brien* [1982] sets out the distinctive characteristic of a dwellinghouse, being its ability to afford to those who use it the facilities required for day to day private domestic existence. Self-contained units are usually characterised by having exclusive use of all facilities within their own physical envelope. In this particular instance, from my site inspection, I can confirm that the outbuilding known as 'The Stables' represents a fully self-contained residential unit of accommodation.

12. Katie Jenette Pullinger who, it is said, has resided at The Stables outbuilding since September 2017, and remains in occupation, has produced what is titled a 'Statutory Declaration', although it is not signed, dated, sworn, nor witnessed by a solicitor. She has also provided a series of exhibits. Not all of these hold particular weight, but together they do give a picture of continuous occupation. There are certain receipts, and Electricity Direct Debit confirmations from February 2018 and January 2022, both of which show a supply connected to 'The Stables'.

13. There is also a P60 provided for the tax year ending 5 April 2020, stating Ms Pullinger's address, and evidence of Oil deliveries to the outbuilding in both December 2019 and October 2021 – one of which shows that Ms Pullinger indicated that the delivery should be to the tank located within the little fenced area, which I witnessed at my site visit. There are also Dinner money receipts for Emily Pullinger, a member of the family, from November 2017 and March 2021.

14. In addition the landowner, Michael Stockley (the current appellant), has provided a signed, dated and sworn Statutory Declaration in support of the appeal. He

says that he purchased the freehold of Malthouse Farm in 1993, and resides in the site's main dwelling. He confirms that Katie Pullinger and her family has occupied the outbuilding since September 2017, and says that the outbuilding's ground floor was fitted out to create an open plan living room/kitchen/dining area, which I also witnessed, and separate bedrooms and bathroom facilities at first floor level. He also confirms that the building's electricity supply is separately metered, along with its own oil tank for heating purposes.

15. The Council concentrates on the contents of inspection details and a Final Certificate issued by an approved Building Inspector from Aedis Group; the former, dated 23 January 2017 which, as mentioned earlier, described the project as a detached garage with a habitable room above. The site notes refer to works to the building involving first floor and roof insulation, including a new membrane. The Final Certificate was issued on 3 October 2018 and specifically states, under point 3, that the work does not concern a new dwelling.

16. Although this might create some confusion, from experience, such a statement relates to the fact that a new dwelling is not actually under construction. Further, and importantly, point 2 indicates that the works consistent with the said project are consistent with an initial notice dated and issued on 8 December 2015. Nonetheless, as referred to, a single, self-contained residential unit over two floors was then created with primary habitable accommodation including bedrooms in the roofspace.

17. From the above, and reading between the lines, it would seem to be the case that the conversion works were initiated towards the end of 2015 and, subsequently undertaken, were completed thereafter. Despite the evidence suggesting that Ms Pullinger's occupation commenced in September 2017, it would not be out of the ordinary that completing the conversion works continued for some twelve months afterwards.

18. Another issue raised by the Council is the fact that the new residential unit was never registered for Council tax, and the owner therefore ignored his responsibilities. An outbuilding or annexe is liable for Council Tax if it has been fitted out to function as independent living space, with its own sleeping, cooking and sanitation facilities; in other words being capable of use as separate and self-contained living accommodation. That is the case here.

19. On the basis of the above the Council raised the issue of concealment having taken place, which would have increased the immunity bar from four to ten years. However, by way of case law, namely the judgement of *Jackson v SSCLG* [2015] EWHC 20 (Admin), to show concealment there has to be 'positive deception', such as misleading correspondence where false information is provided by the contravener. In the current case no evidence of such was drawn to my attention, I must conclude therefore that the appellants' approach in this case, although irresponsible and irregular in relation to his obligations under planning legislation, did not amount to actual concealment.

20. A further matter is that the Council is of the view that the use of the surrounding garden area is in conflict with s171B(3) of the 1990 Act in that ten years had not passed since the date the residential use commenced. Despite the 'garden' area immediately surrounding the footprint of the building being incidental to the residential use within the outbuilding the use of the said land for such purposes goes beyond the scope of this application given that the habitable occupation is only being claimed from September 2017. In contrast to the residential use of the building, which is subject to the four year bar, the associated use of the land outside the building, even that within the small garden compound, only accrues

immunity status after ten years. Accordingly, its continued use as incidental garden technically requires the benefit of planning permission. Given that this is consistent with statute I am unable to exercise discretion otherwise. I am also of the view that the site plan, ringed red, has been drawn too widely to the west of the building, and takes in an area of yard where vehicles are parked. This area cannot be considered as residential curtilage which is not a matter of law but, instead, is a matter of fact and degree. Accordingly, curtilage is dependent on individual circumstances.

21. I acknowledge the 'Gabbitas' principle whereby it is held that if a local planning authority has no evidence itself to contradict the applicant's version of events then there is no good reason to refuse the application. Nonetheless, the evidence adduced should be precise and unambiguous to support the claim. In this instance, although the evidence is incomplete in parts, this relates primarily to the failure of the owner to register the building for Council tax purposes. This does not, though, affect immunity accruing in planning terms through the passage of time.

22. The Council has not provided any information sufficiently compelling to contradict the appellant's case and, therefore, I find that the veracity of the evidence supplied to support the claim of continuous residential use rights since at least 23 January 2019, with effective immunity from planning control, is to be reasonably believed. I therefore conclude that it was open for the Council to have issued an enforcement notice throughout the relevant four year period, but such action was not taken.

23. However, for the reasons explained, whilst acknowledging the factors in support of the outbuilding's use, I am unable to extend this to the area of land beyond the footprint of the building itself. Accordingly, with this limitation – and it must be said that the description of the development on the application form is correct and requires no amendment - I have correctly red-ringed the building's footprint, excluding the wider area of land ringed on the original site plan.

24. S191(4) allows the decision maker to modify the description of the existing use, operation or other matter and, at appeal, I am obliged to issue a LDC for any use or development that is shown to be lawful on the facts and evidence, rather than refuse a certificate on the basis of some error or misunderstanding in the application form.

25. In summary, I find that the appellants have discharged the burden of proof in respect of the outbuilding's immunity from planning control and, for the reasons given, and on the evidence available, its use as a single and independent residential dwelling has acquired immunity over a period in excess of the requisite four years.

26. For the reasons given above I conclude that, on the balance of probability, the use was lawful on 23 January 2023, within the meaning of section 191(2) of the Town and Country Planning Act 1990.

27. Accordingly, I will exercise my powers under section 195(2) of the Act.

Timothy C King

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

APPEAL REF. APP/E2205/X/23/3329429
TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 23 January 2023 the development described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and shown 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 time period for enforcement had expired and the use did not contravene any of the requirements of any enforcement notice or breach of condition notice then in force.

Date: **9 April 2025**

First Schedule

Use of the outbuilding as an independent dwelling.

Second Schedule

Malthouse Farm, Daniels Water, Great Chart, Ashford TN26 1JY

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

1. This certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990 as amended.
2. 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, would not have been liable to enforcement action under section 172 of the 1990 Act as amended on that date.
3. 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 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 attached to the Lawful Development Certificate dated: **9 April 2025**

by Timothy C King BA (Hons) MRTPI

The Stables

Malthouse Farm

Daniels Water

Ashford

Kent TN26 1JY

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