
Appeal Decision

Site visit made on 6 May 2025

by **A Walker MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 May 2025

Appeal Ref: APP/W1850/X/24/3347308

Woodsend, Burley Gate, Herefordshire, HR1 3RA

- 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 G Hodgetts against the decision of Herefordshire Council.
 - The application ref 240384, dated 8 February 2024, was refused by notice dated 14 June 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 the use of the Cider House, Woodsend, Burley Gate HR1 3RA as a residential dwelling.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

3. The onus is on the appellant to demonstrate that, on the balance of probabilities, the use was lawful at the time of the LDC application. A development is lawful under the provisions of section 191(2)(a) and (b) of the Act if no enforcement action may be taken because it did not involve development requiring planning permission, or because the time for enforcement action against the use has expired; and, providing it does not constitute contravention of any requirement of any enforcement notice then in force. 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 his evidence alone is sufficiently precise and unambiguous.
4. The application sought an LDC for the use of the appeal property as a separate dwelling to Woodsend. There is no extant enforcement notice preventing the lawful use of the building as a dwelling. Therefore, for the material change of use to be lawful through the passage of time, the appellant must show that the use of the property materially changed to a separate dwelling at least 4 years prior to the date of the application, namely by 8 February 2020, and that the use then continued for at least 4 years thereafter, without significant interruption.
5. There is no dispute the appellant's daughter has been living in the appeal property, Cider House, since 2016. Furthermore, there is no dispute the building is self-contained, with all the necessary facilities within it to provide day-to-day living.

6. However, parking for Cider House is within the grounds of Woodsend, as indicated on the site plan, dwg No 1928.00, which depicts 7 parking spaces, none of which are adjacent to Cider House. Furthermore, vehicular and pedestrian access to Cider House is via the driveway of Woodsend, with no separate access of its own.
7. Moreover, there is no physical distinction between the garden area for Cider House and Woodsend. Patio doors on the rear of Cider House open directly onto the garden area of Woodsend, clearly indicating that the occupants of Cider House rely on the outdoor amenity space of Woodsend.
8. Therefore, whilst the building clearly is self-contained and the occupants do not rely on any internal facilities within Woodsend, it does rely on its external facilities through the use of its access, parking and outdoor amenity space, to such an extent that its occupation is that of an annexe nature rather than a separate residential unit. It is also noted that the occupants of Cider House are the appellant's daughter and her child. Therefore, there is a strong familial relationship between the occupants of Woodsend and Cider House, which further contributes to my finding it is used as annexe accommodation rather than a separate dwelling.
9. Consequently, I find the evidence in support of the use of the appeal building as a dwelling is not sufficiently precise and unambiguous. I find therefore that it fails to demonstrate that, on the balance of probabilities, a material change of use of the appeal property to a dwelling has occurred continuously for a 4 year period prior to the date of the application, without significant interruption.

Conclusion

10. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development is 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.

A Walker

INSPECTOR