



Appeal Decision

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by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 JUNE 2025

Appeal Ref: APP/X1545/X/23/3334948

Guys Farm Cottage, Woodham Walter, Maldon, Essex, CM9 6LW

- 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 Mrs Louise Ratcliff against the decision of Maldon District Council.
 - The application ref 23/00154/LDE, dated 13 February 2023, was refused by notice dated 18 August 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 use as a single dwellinghouse (and its associated curtilage) within class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) of the property known as Guys Cottage, Manor Road, Woodham Walter, CM9 6LW.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that planning merits are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proof in respect of LDC applications made under section 191 of the Act lies with the applicant and the relevant test of the evidence is on the balance of probability.
3. The Planning Practice Guidance states 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.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC was well founded with particular regard as to whether the property falling within the red edge of drawing No. LPV3, submitted with the LDC application, is lawfully a use class C3 dwellinghouse (including the identified associated curtilage).

Reasons

5. While there is no evidence of the appeal property being granted planning permission to be used as an independent and separate dwellinghouse, the

appellant claims that it (including the identified curtilage) has been used as a use Class C3 dwellinghouse for more than four years and hence is lawful under section 171B(2) of the 1990 Act.

6. The evidence is that the appellant inherited the property in 1991 as part of Guys Farm, which comprises approximately 300 acres of farmland and associated buildings. The appellant states that tenants have lived in the appeal property as their sole residence from 2005. The evidence is that the property was let to Mr Chris Hibbert in February 2022 and continues to be occupied as such. Correspondence that is before me demonstrates that the appellant wrote to the Council in November 2020 in order that the property had its own separate listing for Council tax purposes (i.e., separate from the adjacent farmhouse).
7. In response to Council queries about the use of the appeal property, the appellant commented on 16 February 2021 that *'Guys Farmhouse is the main house of which Guys Farm Cottage is an annexe within the same building...The annexe is accessed by a separate side entrance, was used by farm workers and visitors, and offered pre-existing basic facilities with its own electric, toilet and kitchen facilities. Works undertaken 1) internal dividing wall May 2017, 2) installation of a boiler May 2017. Water supply, sewage and drainage is not split. Subsequently, the existing facilities have been refurbished to enable the letting of the property'*.
8. The appellant states that the above letter was *'hurried'*. She claims that comments were made in error. However, the letter was compiled by the appellant, and, in my judgement, it casts sufficient doubt about her claim that the appeal property was in use as a separate dwellinghouse prior to May 2017. Notwithstanding the letter dated 16 February 2021, the appellant comments in her statutory declaration, dated 10 February 2023, that the *'dividing wall has been in place at least since the time I inherited the property in 1991 and probably for a significant amount of time before then'* and *'it is likely that many years ago it may have been possible to pass from the Farmhouse into the property'*. In respect of the appellant's letter dated 16 February 2021, I also emphasise that while it infers that the existing facilities had been refurbished to enable the letting of the property, it does not confirm any dates or details of any tenancies.
9. I do not find that the appellant has provided a reasonable explanation as to why she said that dividing wall works had taken place in 2017 and why she is now claiming that it was not. I do not find that the claim about the letter being *'hurried'* constitutes precise and unambiguous justification. The information provided at the time was factual, and I cannot see why any more time to write the letter would have resulted in different information being provided. Indeed, the appellant inherited the property in 1991 and so would have been very familiar with its history and use when she wrote her letter to the Council on 16 February 2021. In my judgement, the appellant has not sufficiently justified why her alleged error or mistake occurred. In this regard, it is reasonable that I take the view that it may not in fact have been an error or a mistake.
10. In the letter to the Council dated 16 February 2021, the appellant refers to the provision of only basic facilities prior to May 2017 and the absence of a separate boiler, water supply and sewage/drainage system. The letter refers to *'works undertaken – internal dividing wall May 2017'*, thereby indicating that it is likely that there was an opening between the Farmhouse and the appeal building. Moreover, the reference to use by *'farm workers'* and *'visitors'* suggests, in my judgement, the

potential for the appeal building to have been used in association with, or incidental to, the enjoyment of Guys Farmhouse as a dwellinghouse. I find that the appellant's letter dated 16 February 2021 casts sufficient doubt about the nature of the occupation of the appeal building by the tenants listed in her statutory declaration. The collective evidence before me is contradictory in this regard.

11. The evidence is that since 2017, Council tax has been paid separately in respect of the appeal building. However, the payment of Council tax does not in itself mean that the property has been continuously used since this time as a separate dwellinghouse. The timeline in respect of the tenants' claimed occupation of the property from 2016 until the date of the LDC application includes several breaks in the continuity of residential use. There is approximately nine months between Mr Harris and Del Boswell moving out in 2016, and A King and C Mansfield moving in. Then there is approximately nine months between A King and C Mansfield moving out, and Mr and Mrs Devalient moving in. Finally, there is approximately five months between Mr and Mrs Devalient moving out, and Mr Chris Hibbert occupying the property in February 2022. The LDC application was made on 13 February 2023.
12. When considered as a whole, the above gaps in the claimed use of the property as a use class C3 dwellinghouse are significant. It could not reasonably be said that the gaps are de-minimis. During these gaps, the local planning authority could not have taken enforcement action. The Courts have held that a use can only become lawful if it continues throughout the relevant immunity period, such that the LPA could have taken enforcement action at any time.
13. The appellant makes the claim that even if a decision was reached that the property had not gained immunity from enforcement action between the period 2016 and the date of the LDC application, it was, in any event, occupied continuously between 2003 and 2016 by Kerry Harris and Derek (Del) Boswell. Hence, the appellant claims that it had been continuously used for more than four years as a use class C3 dwellinghouse.
14. The evidence, in the form of the appellant's letter to the Council dated 16 February 2021, casts sufficient doubt about the use of the property as a functionally separate/independent dwellinghouse to Guys Farmhouse and prior to 2017. Moreover, the evidence does not sufficiently demonstrate that the appeal building was continuously used by the above occupants such that it could, on the balance of probability, be precisely and unambiguously claimed that the property has been continuously used as a C3 dwellinghouse for four years between 2003 and 2016.
15. I acknowledge the signed witness statement of Derek (Del) Boswell who claims to have lived in the appeal property from *'around 2003 to October 2016 with his partner at the time, Kerry Harris'*. This comment contradicts that of the appellant who comments that the *'property was let to Kerry Harris from 2005...and was later joined in the property by her partner Del Boswell'*. Given this, I do not find that the evidence of Mr Derek Boswell can be afforded significant weight. Moreover, it is not a statutory declaration (i.e., sworn) and so has less weight for this reason as well.
16. I acknowledge the appellant's evidence which suggests that in 2005 there was a separate electricity supply, and that the property may have been being prepared

for some sort of letting. However, this is not sufficient alone to demonstrate four years continuous use as a class C3 dwellinghouse.

17. Mr Derek Boswell comments in his witness statement that there was *'no means of accessing Guys Farmhouse internally from the property'*. This comment is not reasonably substantiated, and other evidence casts doubt about this claim. Moreover, his evidence does not address the comment made by the appellant in her letter dated 16 February 2021 where she said the annexe was *'used by farm workers and visitors'*. There is an absence of objective and compelling evidence before me to corroborate the claims made by Mr Derek Boswell. It is noteworthy that he comments that *'I have not retained any relevant paperwork from this period of time to show that Kerry was a tenant of the property/we lived there together as a family'*.
18. The photographs attached to the witness statement do not in themselves demonstrate at least four continuous years of independent dwellinghouse use of the appeal property. Moreover, the £645 paid into Falaise Limited (the appellant's company) is from 27 August 2013 to 26 July 2016 and so does not account for four years rental income.
19. I acknowledge the email from Kerry Harris to the appellant dated 17 August 2011 where she says, *'as you know we have been at the cottage for 7 years, over this time the carpets have served us well but are now looking very worn and dirty'*. I do not know if Kerry Harris lived in the appeal property continuously prior to 2011 (there is for example no tenancy agreement(s) or any other objective evidence before me relating to this time) and, in any event, the appellant's letter dated 16 February 2021 casts sufficient doubt about the use of the appeal property as a separate and independent use class C3 dwellinghouse. While it may have been the case that Kerry Harris had made use of appeal building at some point, it is conceivable that this may have been on an occasional and/or visitor basis, and/or based on sharing facilities/services/amenities with Guys Farmhouse.
20. It is noteworthy that Kerry Harris made comments on a planning application on 23 February 2016 for Guys Farm Lodge. The comment states, *'we are a small farming community'*. This statement could be considered to accord with the statement made by the appellant in the letter to the Council dated 16th February 2021, whereby she states that the *'annexe'* has been used by farm workers. In addition, the appellant does not dispute the Council's comment that *'upon review of the Council's records, it is apparent that Kerry Harris has stated a residing address, and this is not the subject address'*. This therefore casts sufficient doubt about the claim made that Kerry Harris was continuously occupying the appeal building at this time.
21. I have considered the letters submitted by other interested parties including Mr Robert Peck, dated 31 January 2023, who says that the appeal property has been occupied as a separate dwellinghouse from the 1970s/1980s onwards, and from Nigel Cornwell of Guys Farm Lodge who says that he is aware of it being used as a separate dwellinghouse from 6 November 2015. However, these claims contradict the evidence provided by the appellant and, moreover, are not supported with precise and unambiguous evidence to demonstrate a continuous four-year use of the property as an independent/separate use class C3 dwellinghouse for any period between 2003 and the date of the LDC application.

22. The onus of proof is on the applicant in respect of this LDC application. On the evidence that is before me, including the various witness statements, letters, statutory declarations and other evidence, I do not find, on the balance of probability, that the appeal property can lawfully be used as a use class C3 dwellinghouse. It is not immune from enforcement action as the appellant's evidence is not sufficiently precise and unambiguous to demonstrate a continuous four-year use of the appeal property as an independent use class C3 dwellinghouse falling within its own planning unit.

Conclusion

23. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for use as a single dwellinghouse (and its associated curtilage) within class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) of the property known as Guys Cottage, Manor Road, Woodham Walter, CM9 6LW 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).

D Hartley

INSPECTOR