



Appeal Decision

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2025

Appeal Ref: APP/J3720/X/24/3346258

The Garden House Coughton Fields Lane, Coughton, Alcester B49 6BS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Alexander Sims against the decision of Stratford-on-Avon District Council.
 - The application ref 23/03177/LDE, dated 28 November 2023, was refused by notice dated 23 May 2024.
 - The application was made under section 191(1)(c) of the Act.
 - The use failure to comply with any condition or limitation for which a certificate of lawful use or development is sought is described as: "Use of the Garden House as a freestanding Class C3 dwelling, not in compliance with Condition 2 and Condition 3, along with changes made to approved drawings."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I did not carry out a site visit having informed the main parties that I considered that it should not be necessary as the appeal could be dealt with purely on the written submissions. The main parties agreed to this approach.

Main Issue

3. The main issue is whether the Council's decision to refuse the LDC was well founded. The onus is upon the appellant to demonstrate their case and planning merits are not relevant to consider.
4. The Planning Practice Guidance (PPG), states that an application needs to describe precisely what is being applied for and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. It has also been held that if there is no evidence to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse an LDC provided the evidence is sufficiently precise and unambiguous.

Reasons

Background and planning permissions

5. The plan that accompanied the application shows the Garden House is physically separate from but within the same ownership as Coughton Field House (the main dwelling) where the appellant now lives. The properties share part of a driveway but as other information shows such as the sales brochure, the buildings each

have parking and garden areas which are partially separated by landscaping.

6. Planning permission (Ref 07/02306/FUL – the 2007 permission) was given on 23 October 2007 for the development concerning the Garden House as a “proposed office and annexe barn conversion”. Another planning permission (08/01959/FUL – the 2008 permission) was granted on 9 September 2008 relating to the same building for a “change of use from commercial office to annexed living accommodation (part retrospective).”
7. It seems clear that the 2008 permission was implemented particularly as it was submitted partly retrospectively, albeit that the activities taking place were also in part what had been approved by the 2007 permission. The 2008 permission appears logically to have therefore superseded the previous planning permission. The applicable conditions therefore are those from the 2008 permission. Condition 2 states: *“The development hereby permitted shall not be used for any purposes other than in connection with the residential use of the dwelling known as Coughton Fields House and for no commercial purpose.”* Condition 3 then states: *“The development hereby permitted shall not be occupied or used at any time as a separate dwelling unit.”*

Legal background

8. The time-limits for taking enforcement action are set out in s171B of the Act. The LDC application as originally submitted was made, according to the application form, on the basis that the effective condition or conditions had been breached for more than 10 years. The Council’s decision refers to 4 years and that is consistent with established legal authorities which confirm that s171B(2) of the Act provides a 4 year immunity period where the expression “breach of planning control” in section 171B(2) applied both to development without planning permission and to a failure to comply with a condition subject to which planning permission was granted. The four-year time limit therefore applies to a change of use (whether material or not) to use as a single dwellinghouse in breach of a condition.
9. The appellant needs to demonstrate that there has been a continuous breach of the conditions for a period of 4 years prior to the application date, therefore the breach would need to have started by 28 November 2019 at the latest.

Assessment of evidence

10. There appears to be little dispute between the main parties regarding the chronology of occupation of the building. The planning conditions should be considered in terms of how a reasonable reader would understand them bearing in mind the natural and ordinary meaning of the words and the context of the permission as a whole. It is also a principle of considering the continuity of breaches of planning control to ask whether enforcement action could have been taken at the time in question.
11. The previous owner ‘LM’ has provided a statutory declaration explaining who occupied the garden dwelling during their ownership. They had submitted the planning applications, including the 2008 permission. Overall, there is very little detail provided in this evidence about how the Garden House was used in terms of the day-to-day activities and routine of the occupants of each of the buildings. It explains that their father occupied the building from April 2009 until he died in June

2015. There was then a break and in November 2015 until June 2017. Their mother-in-law then took up occupation of the building.

12. The declaration states that these occupants during those periods were living “entirely separate” and “wholly and entirely freestanding from the property”. However, those generalised comments are what one person considers is entirely separate or freestanding and may vary greatly from another person’s opinion. Condition 2 of the 2008 permission seeks to ensure that occupation is “in connection with” the main house and clearly there was a connection at least by way of being related. There is no explanation about whether these relatives were cared for in any way on a day-to-day basis or how the households mixed. Being close relatives it is not unreasonable to expect the reason for an older relative living nearby is because they require some form of assistance from younger relatives or elder relatives often take on some caring duties of younger family members. There is no mention of any barriers to the use of the land or any forms of legal agreements about what land around the building those occupants were permitted to use. It would seem harsh to prevent a parent from utilising the wider attributes of a site in such a way. Such sharing of outside space and buildings can take place whilst retaining some independence between households. The Council do refer to the justification for the conversion being approved originally in 2007 was for the owner’s elderly parents “as a typical ‘granny annexe’.”
13. Whether a kitchen was installed or not at that time, does not necessarily indicate that a breach of the planning conditions had occurred or that there was a lack of inter-relationship in usage between the buildings or wider site owned by the occupant of the main dwelling. Furthermore, even if the occupation by these close relatives had been completely independent, there is a gap in occupation between June 2015 and November 2015. During that period, there would appear to have been no occupation of the Garden House which was, on the face of it, a significant period when no breach of either of the relevant conditions could have been identified and therefore no enforcement action taken. Similarly, after LM’s mother-in-law left the property in June 2017, there was a further gap until August 2017 when the Garden House was eventually let as holiday accommodation. That was a gap of at least 1 month when there was no apparent breach of either condition.
14. On the balance of probabilities, the breaches of planning control may have commenced around August 2017 although I am given little evidence regarding the continuity of the occupation after that date. No continuous breach had been established for long enough up to that point to bring about lawfulness.
15. It is not completely clear what happened after August 2017 although there seems to have been some holiday use which may have breached the conditions, depending upon the nature of that occupation. Notwithstanding that and the above, the main area of dispute between the parties, relates to the period of between 3 December 2021 and 12 May 2022. For some of that time, the Garden House was occupied by the appellant who owned the whole site and who now lives in the main dwelling. Condition 2 imposes a requirement that the use of the Garden House is only for purposes “in connection with the residential use” of the main house. It is a reasonable interpretation to consider that the occupation of the Garden House during the 3 December 2021 and 12 May 2022 period by the appellant’s family who would eventually live in the main houses was due to a potential connection. There was clearly a connection in terms of ownership and control of the 2 buildings as well as land around them.

16. It is not disputed that the use of the Garden House during that time enabled the renovation of the main dwelling and for the family to reside on the same site as their chosen family home. The family were nearby to oversee the work. The appellant's own evidence shows that at some times, the inside of the main dwelling was used by them. Photographs showing a child playing were included with the submitted evidence. That photograph does also show personal effects as well as Christmas decorations on display. In this narrow field of view alone it indicates some form of use of the main dwelling by the people who were occupying at that time, the Garden House. Furthermore, it would be contrived logic to just assume that the property as a whole was not used by the appellants during their occupation of one smaller part of that wider site that they owned. These factors in the round indicate that there was a connection for purposes related to the residential use of the main house and also that the Garden House was not separate functionally or physically from the wider planning unit.
17. For the purposes of this appeal, the undisputed facts regarding who occupied the building raises more questions about how that occupancy manifested itself in relation to the site and other land in the appellant's ownership. Broad statements are insufficiently specific to explain the nature of the occupation. In relation to the matters in dispute, the evidence is not therefore sufficiently unambiguous or precise to demonstrate the appellant's case on the balance of probabilities.
18. In addition, but importantly, due to the covid pandemic during March, April, May and June of 2020 there was no occupation of the Garden House. There were over 12 weeks when there was no breach of either condition. For much of November and December 2020 there were also over 7 weeks when the Garden House was not occupied. As a matter of fact and degree, these periods are significant. Had the Council investigated the situation during those times which they could have done including through the service of planning contravention notices¹, (if visits were problematic due to Covid-19 restrictions) it should have revealed whether or not there was an enforceable breach of the conditions. However, had they investigated, it would appear from the evidence that no breaches would have been identified that could have led to enforcement action. From the evidence provided, those periods would each be significant enough to interrupt any continuity of any breaches of the relevant conditions, re-starting the clock for the time-limits for taking enforcement action. Those periods are within 4 years of the material date.

Conclusion

19. On the basis of the evidence provided and on the balance of probabilities, there has not been a breach of the planning conditions for a continuous period of 4 years prior to the application date. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the "Use of the Garden House as a freestanding Class C3 dwelling, not in compliance with Condition 2 and Condition 3, along with changes made to approved drawings", was well founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

Andy Harwood

INSPECTOR

¹ Section 171C of the Act