Planning Inspectorate

Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 August 2025

Appeal Ref: APP/C1625/X/24/3347181
Clapton House Sanctuary, Clapton Farm Lane, Clapton, Berkeley, GL13 9QX

- 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 and Mrs G Peers against the decision of Stroud District Council.
- The application ref S.23/2372/CPE, dated 28 November 2023, was refused by notice dated 6 June 2024.
- The application was made under section 191(1)(c) 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 Clapton House Sanctuary as a separate independent dwelling.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I consider that this appeal can be determined without a site visit without causing injustice to any party. This is because I have been able to reach a decision based on the documentary evidence submitted.

3. In an LDC appeal, the planning merits are not relevant. My decision rests on the application of relevant planning law and judicial authority to the facts of the case.

4. In their submissions, the parties refer to the immunity period being ten years. Notwithstanding the appellants' comments, the time limits for taking enforcement action in respect of a breach of planning control consisting in the change of use of any building to use as a single dwelling house are set out in section 171(B)(2) of the 1990 Act. Whilst these have been amended, section 5 of The Planning Act 2008 (Commencement No.8) and Levelling-Up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 informs that these amendments do not apply where the breach occurred before 25 April 2024. The LDC application date is 28 November 2023. Therefore, the correct immunity period is 4 years. Both parties were consulted and given the opportunity to comment on this matter. I have taken their responses into account in my decision.

Planning History

5. Planning permission was granted on 6 April 2011 (Ref: S.11/0198/HHOLD) (hereafter referred to as the 2011 Permission) for the "Conversion of existing outbuilding to ancillary accommodation for dependant relative" subject to two conditions. Condition two states "The outbuilding permitted shall only be used for domestic purposes incidental or ancillary to the enjoyment of and in conjunction with the dwellinghouse Clapton House and shall not be separated from the main dwelling for use as an independent self-contained dwelling."

6. The reason for condition two is given as: "To ensure that a separate unit of residential accommodation is not created on a site outside of the defined settlement boundary and in an unsustainable location remote from facilities and would rely on the private motor vehicle, and to comply with Policy HN10 and HN16 of the Local Plan and PPS1, and to ensure compliance with Policy HN14 in relation to the creation of annexe accommodation."

Main Issue

7. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well founded.

Reasons

8. Where a breach of planning control involving the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of a period of four years. In an LDC application it is necessary to demonstrate that this occurred four years before the date of the application, which in this case is 28 November 2023. Thus, the material date is 28 November 2019.

9. Accordingly, for an LDC to be issued in respect of the appeal in accordance with s191(c), the appellants would need to show that the appeal site has been in a substantially uninterrupted use as an independent single dwelling for four years, constituting a failure to comply with condition two of the 2011 Permission. The burden of proof is on the appellants and the standard of proof is the balance of probabilities.

10. National Planning Policy Guidance advises that "In the case of applications for existing use, 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."

11. The appellants' case is that they moved into the outbuilding and occupied it as an independent dwelling known as Clapton House Sanctuary. Clapton House was then let on a number of short-term tenancies. Thus, it is argued that there has been a continuous breach of the planning condition for more than the requisite period.

12. The appellants' evidence comprises an identical statutory declaration from each appellant, an electricity completion certificate (exhibit GSP3), various photographs (GSP4), tenancy agreement for the period 10 July 2020 to 10 July 2021 (exhibit GSP5), a Council Tax letter (exhibit GPS6), a letter from a previous tenant for the period 1 December 2012 to 30 November 2013 (exhibit GSP7), letters from family members and friends (exhibits GSP8, GSP9 and GSP10) and a plan (exhibit GSP11).

13. The specific evidence from Mrs Carol Onstad indicates that she occupied Clapton House from 1 December 2012 to 30 November 2013. This evidence is inconsistent with the appellants' statutory declarations which state that Mrs Onstad occupied the property between 1 January 2013 until 30 November 2013. Mrs Onstad states that the appellants moved into the "annexe" on 20 December 2012.

14. The statutory declarations also indicate that Clapton House was occupied by Mrs Caroline Boyd between 1 January 2014 to August 2014, Mr Tony Sprigings

between August 2014 to 7 March 2018, Mr Philip Sanders from 12 March 2018 to March 2019, Mr Chris Keane between 31 May 2019 to 10 October 2019 and Mr Mike Fisher between 27 November 2019 to present date. Apart from the statutory declarations and an unsigned assured shorthold tenancy agreement in the name of Mr Michael Fisher for a 12-month term commencing 10 July 2020. No other evidence has been provided for these tenancies.

15. A letter from the appellants' daughter states that she helped her parents move furniture in preparation of her parents moving into the "annexe" on 20 December 2012 and although Mrs Paul does not say any more about how regularly she visited she does state that her family have been "regular visitors to their home since". Similarly, the letter from Mr Hudson (the appellants' son-in-law) states that since "the New Year, 2013" they have visited the appellants' at Clapton House Sanctuary. These letters do not indicate that visits to Clapton House Sanctuary were sufficiently frequent nor attest to the occupation of Clapton House Sanctuary being continuous for a four-year period.

16. The undated evidence from Mr Salter indicates that "over the past few years" he has visited regularly and been their gardener for two/three hours per week. Mr Salter states that the appellants never seem to go to the house or ask him to do anything at the house. Although Mr Salter says he is led to believe that the appellants own Clapton House and have had various tenants in over the years, he does not give any detail as to how he knew this.

17. Although these letters, indicate that the appellants have used Clapton House Sanctuary for residential purposes, they are not in themselves sufficient to show a continuous, substantially uninterrupted, four-year period of residential use in breach of the planning condition.

18. The planting of a hedge as shown in exhibit GSP4 and the electricity certificate for the installation of one or more new circuits in November 2012 at Clapton House (exhibit GPS3) are not indicative of a separate residential use.

19. The evidence indicates that Clapton House Sanctuary was rated as a dwelling for Council Tax purposes in October 2014. However, apart from the statutory declarations, no evidence has been submitted to show subsequent Council Tax payments for either Clapton House or Clapton House Sanctuary.

20. In cases dealt with by way of written representations the legally sworn statements must carry considerable weight since any deliberate untruth carries with it the risk of a perjury charge. In the complete absence of any evidence to the contrary there is nothing to cast doubt on the appellants' version of events. However, the statutory declarations give no detail regarding the nature of the residential use of Clapton House Sanctuary. The appellants case primarily relates to the tenancy occupation of Clapton House. Simply because Clapton House has been rented out for at least four years, it does not automatically follow that Clapton House Sanctuary has been occupied for a continuous four years as a separate independent dwelling. In order to demonstrate that Clapton House Sanctuary has been used in a way that is in breach of the planning condition as the appellants suggest, they need to show that the building has been occupied as a single independent dwelling, separate from Clapton House, substantially uninterrupted, for four years or more prior to 28 November 2023.

21. Furthermore, the submitted evidence fails to show that an area of the garden was used solely in connection with Clapton House Sanctuary, substantially uninterrupted for the requisite period.

Conclusion

22. Taking all these matters into account, I find that whilst it may have been used for residential purposes, the appellants' evidence is not sufficiently precise and unambiguous to show that on the balance of probabilities, Clapton House Sanctuary has been used as an independent single dwelling substantially uninterrupted, in breach of condition two of the 2011 Permission, for the requisite four-year period. Thus, the appellants have not discharged the burden of proof.

23. For the above reasons, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of Clapton House Sanctuary, Clapton Farm Lane, Berkeley, Gloucestershire GL13 9QX as an independent single dwellinghouse was 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.

Elizabeth Jones

INSPECTOR