



Appeal Decisions

Site visit made on 10 November 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 07 December 2022

Appeal Ref: APP/P1045/C/21/3271439 (Appeal A)

Manor Lodge, Little Bolehill, Bolehill, Matlock, Derbyshire DE4 4GR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr D Sheldon against an enforcement notice issued by Derbyshire Dales District Council.
 - The enforcement notice is dated 24 February 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised change of use of the building and associated land from office use (Use Class B1) permitted under Part 3, Class R of Schedule 2 of the Town and Country Planning (General Permitted Development (England) Order (2015) (as amended) to a Dwellinghouse (Use Class C3).
 - The requirements of the notice are: a) Permanently cease the residential occupation of the building. b) Return the building to its approved use as an office.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal Ref: APP/P1045/X/21/3269588 (Appeal B)

Manor Lodge, Little Bolehill, Bolehill, Matlock, Derbyshire DE4 4GR

- 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 D Sheldon against the decision of Derbyshire Dales District Council.
 - The application Ref 20/01247/CLEUD, dated 5 December 2020, was refused by notice dated 17 February 2021.
 - 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 'dwellinghouse'.
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Decisions

1. It is directed that the enforcement notice be corrected by:
 - the deletion of the following text in its entirety from the requirements paragraph: 'b) Return the building to its approved use as an office.'
 - The removal of the text 'three months' from the requirements paragraph and its replacement with the text 'six months'.
2. Appeal A is dismissed, and the enforcement notice, as corrected, is upheld.
3. Appeal B is dismissed.

The enforcement notice

4. The enforcement notice attacks an unauthorised material change of use, and it should go no further than is necessary to achieve its purpose, which in this case is to remedy the breach. The cessation of the unauthorised use is sufficient to achieve that purpose, and an enforcement notice cannot go on to require that a lawful use is actively carried out.
5. For that reason, I have directed that the notice be corrected to remove the second stage of the requirements. I am satisfied that this correction does not prejudice the appellant or make the notice more onerous.

Appeal A on ground (d) and Appeal B

6. Ground (d) is that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. Ground (d) is equivalent to an LDC application, and so I have considered these elements of the appeal as one.
7. The Planning Practice Guidance (PPG) says that an applicant is responsible for providing sufficient information to support an application for an LDC. It states that 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.
8. In order to succeed, the appellant therefore needs to submit sufficient precise and unambiguous evidence to show that the building has been in continuous use as a self-contained residential unit for four years or more prior to the date of the LDC application, which is 5 December 2020. The building therefore needs to have been in occupation from 5 December 2016 or before.
9. If this can be established, then lawfulness would have accrued, and Appeal A would succeed on ground (d) as it would have been too late for the Council to have served the enforcement notice on 24 February 2021.

The evidence for the residential occupation of the appeal site

10. The appellant produces a statement dated 5 May 2021 in which he outlines his involvement with the appeal site. I note that, whilst this document is set out and worded as a statutory declaration, it is not signed and has not been witnessed by a solicitor or a commissioner for oaths. That being the case, it is not a statutory declaration, and can carry no greater weight than any other piece of evidence adduced by the appellant. I note that it is now commonplace for documents to be submitted electronically without signatures, but nonetheless, it is essential that statutory declarations be signed and witnessed in the prescribed way to be valid.
11. Turning to the substance of the statement, the appellant explains that he acquired the building in 2005. It was originally granted planning permission in 1999 as a field barn. He used it for agricultural and commercial purposes until 2014, when he decided to convert it to an office. He began internal works, including the fitting of a kitchen and shower, which were completed by the late spring of 2016. He began the office use at that time, and completed the external works in October 2016.

12. He states that, by mid-October, he had moved in permanently. He goes on to say that his partner moved to the building in 2018, after which they had a son who also lives there. He installed a post box at the bottom of the drive and an intercom system for the gates.
13. In support of his case, the appellant submits an undated letter from his parents, Mr & Mrs Sheldon. They say the appellant lived with them in Middleton until October 2016, when he moved out of their house and went to live permanently at the appeal site. They have visited him there occasionally, but do not specify the dates of any of those visits. They finish by saying that the appeal site has been the appellant's home for more than four years.
14. A further letter is provided from the appellant's planning agent, Mr Yarwood. This is dated 21 December 2017, following a visit to the appeal site that he undertook on 25 November 2017. He refers to a previous visit on 10 October 2016, at which time he took the opportunity to look at the conversion work, and noted the discovery of a basement area. It was Mr Yarwood's impression that the building was being used as a dwelling at that time, and that was still his impression on the second visit in November.
15. The next piece of documentary evidence is a quotation from Richer Sounds for equipment for a cinema room, dated 30 September 2017. Although the quotation does not include an address, I did see this room in the basement of the building on my visit.
16. I have also been provided with a note from Mr Yarwood documenting his site visit with two Council officers on 14 June 2018. The installation of a kitchen was noted, as was the presence of a meter box in the walled yard. However, Mr Yarwood's email of 28 January 2021 to the Council states clearly that 'kitchen units were installed in the first stages of converting the building to an office'. That being the case, the presence of kitchen units in itself does not particularly assist the appellant in establishing the residential use of the site.
17. The Council maintain that, when their officers visited the appeal site on 14 June 2018 and 25 September 2019, they found no evidence to support a claim that the building was being occupied as a dwellinghouse. It is apparent that they did not enter the building, but they have submitted at their Appendix 1 photographs taken on the September visit.
18. With reference to these photographs, the appellant highlights a number of items seen inside the building, including an armchair on the ground floor and a bed with bedspread on the first floor. He also refers to the vent stack, with toilet, shower and washbasin waste pipes, indicating the presence of a shower room at first floor level. However, although this evidence shows that the building could have been inhabited, it does not amount to proof that the building was being lived in permanently at that time.
19. The appellant states that his postman would be willing to confirm that post has been delivered to the building throughout his tenure. However, no such statement has been forthcoming, and in any event, post could equally have been delivered to the building in association with the office use.
20. The Council raise the matter of bin collection, questioning why, if the building was lived in and generating domestic waste, there seemed to be no arrangements for refuse collection. Whilst the distance from the building to the

road might make it impractical to use a bin, they explain that black bin sacks can be collected instead.

21. In response, the appellant explains that he takes his rubbish to his parents' house because it is more convenient to load it into the car than carry it to the gate. Although such a solution is possible, it would not seem to be practical over the course of four years or more, especially when the bags could simply be left by the road in this way, rather than be transported elsewhere. I note that there is no reference to this arrangement in Mr and Mrs Sheldon's letter.

Conclusion

22. Taking the evidence as a whole, it points to some form of residential occupation of the appeal building in October 2016 and again in late 2017. Crucially, however, it is not sufficient to establish the commencement of a material change of use. Lawfulness can only accrue after four years of use that is continuous for planning purposes has been demonstrated. The evidence shows that the building was capable of habitation at various points after October 2016, but again, that is not proof of continuous use.
23. To this end, it would be expected that evidence of occupation of the building would be produced, for example, bills for services like gas/electric, water, phone, or broadband. Other examples could include receipts for domestic deliveries to the address, which could be differentiated from goods that might be needed for the office use. As it is, the only such document produced is the Richer Sounds quotation. However, that is not enough to show affirmatively that the building has been in permanent and continuous occupation for the required timescale. Furthermore, the significant timescale gaps in the evidence are of insurmountable concern.
24. I therefore conclude that the appellant has failed to produce enough precise and unambiguous evidence to show, on the balance of probabilities, that the continuous use of the appeal site as a residence subsisted for the requisite four year period.
25. As a result, Appeal A on ground (d) and Appeal B must fail.

Appeal A on ground (g)

26. Ground (g) is that the time given to comply with the notice is too short.
27. The appellant will need to find alternative accommodation for himself, his partner and their young child. He argues that a three month period is wholly inadequate and unreasonable and would cause undue hardship to those concerned. He suggests that a compliance period of six months would be reasonable.
28. As may be seen from the discussion above, the enforcement notice is upheld. Due to the timetabling of the appeal, this decision has been made in the winter months, which is generally a difficult time to find accommodation and move house. I therefore consider that six months would be a reasonable period for compliance with the notice. I note from the Council's statement that they have no objection to a six month period.
29. To that extent, therefore, Appeal A succeeds on ground (g).

Overall conclusion

30. Appeal A is dismissed, and the enforcement notice, as corrected, is upheld

31. With regard to Appeal B, I am satisfied that the Council's refusal to grant an LDC in the terms that were applied for was well founded. The appeal fails and I shall exercise the powers transferred to me in section 195(3) of the Act.

Elaine Gray

INSPECTOR