



Appeal Decision

Inquiry held on 4 May 2011

Site visit made on 4 May 2011

by Sara Morgan LLB (Hons) MA Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 June 2011

Appeal Ref: APP/R3325/X/10/2135822

Land opposite Autumn Leaves, Pibsbury, Langport, Somerset TA10 9EJ

- 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 Keith Hayton against the decision of South Somerset District Council.
 - The application Ref 10/00820/COL, dated 15 February 2010, was refused by notice dated 17 May 2010.
 - 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 storage of building materials and other items within subject building (Use Class B8).
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Decision

1. I allow the appeal, and I attach to this decision a certificate of lawful use or development describing the existing use which I consider to be lawful.

Preliminary

2. The appeal site is a small piece of land on the south side of the A272 road at Pibsbury, on which stands a building. The application for a LDC clearly refers to storage "within subject building" ie within the building on the land, and not to storage of items on the land outside the building. I shall deal with the appeal on that basis.
3. All oral evidence to the Inquiry was given on oath.

Background

4. The building was originally erected pursuant to planning permission for the erection of a block of three stables¹. That permission was granted subject to a condition (condition 3) restricting the use of the stables to "*the private and non-commercial use of the occupants of the approved dwellinghouse under application 940913 or the occupants of the adjacent bungalow known as Autumn Leaves*".
5. The evidence of Mr Clark, who owned Autumn Leaves and the appeal site jointly with his wife at this time², and of Mr Perrin who built the appeal building, was that the building was completed by late 1999. Mr Clark says it

¹ 952092 dated 30 October 1995. This was a variation of the original permission given for the stable block in May 1994 (ref 940912).

² The property was registered in Mrs Clark's sole name.

has never been used as stables. The Council wrote to Mr Clark in October 1999 telling him that the approved use of the site was for a stable block and paddock for equestrian purposes, and was not an extension of the residential curtilage of Autumn Leaves. In a further letter in December 1999 the Council advised him that garden furniture should not be stored in the stable block, and that the site should not be used for the storage of any materials other than those to be directly used in the construction of the stable block.

6. In 2000 Mr Clark sought a variation of condition 3 to allow part use of the stables for purposes ancillary to the occupation of Autumn Leaves. That application was refused and the refusal upheld on appeal in 2001³. The Inspector commented that there was no doubt that the planning permission, in relation to the building, meant a building to house horses and would not allow for other domestic activities or use ancillary to a residential occupancy.
7. At the time of my site visit, the building had a bare concrete floor and unrendered blockwork walls. It was divided into two areas (roughly one third and two thirds) by a blockwork wall which did not extend for the full height of the building, and over which it was possible to see into the other part of the building. Mr Clark said that when the building had first been built it had no internal partitions, and he had been told by the Council that partitions should be provided to divide the building into stables. He had therefore constructed two walls, one of which remains but the other of which he had demolished immediately after building.
8. When I carried out my site visit I saw a snooker table in the larger part of the building, with overhead lighting of the type typically used to illuminate snooker tables. The snooker table was covered with a large blue plastic sheet. Although there were numerous light switches and sockets around the building, together with trunking or electrical wiring, and a fuse box, none of the light switches appeared to be working. Mr Clark demonstrated on the site visit how the wiring would be connected up to a generator to provide power when he was in the building.
9. There were a few miscellaneous items on the floor around the snooker table, but otherwise the area was largely clear. In the smaller part of the building there were a number of items of builders' materials, as well as two children's mechanical rides and a very small number of what appeared to be domestic or household items. I was told there were personal items stored in the loft of the building, but I did not see these as access to the loft space was not possible.

Main Issue

10. The main issue is whether the use of the building for the storage of building materials and other items began before 15 February 2000 ie ten years before the date of the appeal application and continued thereafter for ten years, so as to be immune from enforcement action.

Reasons

The evidence

11. Mr Clark's evidence was that upon completion of the building he immediately began to use it for the storage of various personal and household items such as a snooker table (which is still there) and items of furniture and children's toys.

³ APP/R3325/A/00/1052422

He said he also stored bits of cars relating to car sales he was doing, while he was living in the house, as well as stuff from the house. The snooker table went into the building before 2000. He said that the snooker table had been used 2 or 3 times, and it was used on the night before the Millennium, but he was no good at snooker. In cross-examination he said that the snooker table was clear so you could play on it, but that it hadn't been played on for 10 years because he had taken all the cues with him when he had left Autumn Leaves at the end of 2001 when his marriage broke up.

12. Mr Clark allowed Mr Perrin to use the building to store building materials from the date the building was finished. Mr Perrin used the smaller part of the building. If Mr Perrin had bits over he would use the remainder of the building, but Mr Clark says he tried to keep that part clear as he was using it himself.
13. He agreed in cross-examination that the Council's letter of December 1999 had been prompted by the garage being put to domestic use, but that he had not stopped using it for that purpose. He also agreed that the application for permission for change of use to purposes ancillary to the occupation of Autumn Leaves in 2000 reflected what he was using the building for at that time, but that at the same time Mr Perrin was storing his building materials in the smaller part of the building.
14. Mr Perrin gave evidence that the building had been continuously used since its completion for storage purposes, mainly by himself. He said he started using the building for storage of his building materials from the date when the roof went on the building. Before then, he had not had any storage space for his business, but kept his materials in his garden and shed. When he started using the appeal building he had moved everything out of his shed and put it into the building. The items stored included building materials, in the smaller part of the building, and stacks of blocks outside.
15. When he first started using the building the snooker table was not there, and he had some stuff in the larger area. He only used the larger area for UPVC windows or anything that wouldn't make much mess. He had never played snooker on the table because he was rubbish at snooker, and it was too dark in the building to play. The building had no electricity supply.
16. Mr Perrin produced invoices relating to building materials which he said had been delivered to the stable building. He also produced letters from two building materials suppliers saying they had delivered products to the stables over the period since 1999, but no dates or details were provided.
17. Mr Hayton said he had gone into the building "at the time of the divorce" (ie Mr and Mrs Clark's divorce) when he says he saw building materials in the smaller part of the garage, and the snooker table together with household materials - overspill materials from the house - in the larger part.
18. Mr Richmond, who is retired and said he is active working around his property, lives opposite the site and also owns land adjoining the site on two sides. He said that he had lived at his property since 2002 and, up to the time Mrs Clark left Autumn Leaves [2004] he estimated he had seen inside the stable building between 6 and 12 times. These views were either from the doorway or from immediately outside. He said that the smaller section of the building was full of redundant domestic equipment until Mrs Clark left. On the occasions that he saw inside the building, Mrs Clark or her partner would chat with him and they would be putting things in or taking them out of the building.

19. He said that when Mrs Clark left, the building was cleared and Mr Perrin started putting his things in there. Once the domestic paraphernalia had been mainly cleared away, small quantities of bricks, wheelbarrows and other items came and went. Mr Richmond said he had never seen Mr Perrin at the appeal site until 2004 and the transition of ownership of Autumn Leaves between Ms Clark and Mrs Goodin. After that, he thought he had seen Mr Perrin at the site around once a month until recently. Since the appeal had been lodged, he had seen Mr Perrin at the site much more frequently. Mr Richmond said he had never seen any deliveries of building materials to the site.
20. Mrs Goodin has lived at Autumn Leaves since December 2004, when she bought the property from Mrs Clark. She said she is regularly outside, and had not noticed any regular activity of any sort at the appeal site. She had not seen any deliveries of building materials to the site. On one occasion, in 2006 or 2007, she saw one of the stable doors open and climbed over the gate to investigate. The door appeared to have been forced open, and she looked inside. She saw a snooker table to the right, with overhead lighting. She said the rest of the building appeared to be full of children's toys, bikes and household articles.
21. Mr Barton and Mr Dowdell gave evidence that they regularly pass the site and have never seen any activity or deliveries at the site.
22. Mrs Clark did not give evidence in person, but in a statutory declaration she states that throughout the period of her ownership and occupation the appeal building "was for all practical purposes used for general domestic storage, including that of a large snooker table, unused furniture, children's toys and white goods and continued to be so used on an intermittent basis for such purposes." She further stated that at no time did Mr Perrin have her authority to store items in the building, nor did he or anyone else do so. Mr Perrin said under cross-examination that this was not true, and that he had used the building since the roof had gone on it, when he was doing jobs round her house and afterwards.

Assessment

23. The land on which the appeal building stands is a discrete and clearly defined area of land having the appearance of an overgrown field. It is some distance from Autumn Leaves, which is a residential house and garden on the other side of the A272 road but not directly opposite. In view of the clear physical separation between the two areas, I consider that the appeal site is not and has never been part of the same planning unit as Autumn Leaves, notwithstanding that the two areas were under common ownership until 2004, when Mr Clark, who had become the legal owner of the site as part of the divorce settlement, sold the appeal site to Mr Hayton.
24. The permitted use of the building was as stables for the keeping of horses. Consequently, the use of the appeal building for storage of personal, household and domestic items by Mr and Mrs Clark was a use which required planning permission because it was materially different from, and had no functional relationship with, the permitted use. That was the view taken by the Council when it sent letters to Mr Clark in 1999 about the use of the building, and it was the view of the 2001 Inspector. None of the evidence leads me to disagree with the views expressed then.

25. The Council has argued that the use of the building by Mr and Mrs Clark can be regarded as ancillary to the primary residential use at Autumn Leaves even if it does not form part of the same planning unit, relying on the High Court decision in *Swinbank v SOSE and Darlington BC*⁴. However, in my view it is not correct to regard activities carried on within one planning unit as ancillary to activities carried on outside that unit, and it is not, therefore, correct to regard the storage by Mr and Mrs Clark of personal and household items in the stable as a residential use ancillary to their residential occupation of Autumn Leaves. An ancillary use must be carried on in the same planning unit as the primary use⁵, and that is not what is happening here.
26. What is important here is the character of the use, not the purposes of the occupier. "Storage" carries with it the connotation of putting an item away for a period of time for future use, because it is not needed in the short term. Storage can take place without there being any commercial activity; there is no difference in character in planning terms between storage of items by a private individual and storage of items on commercial terms or by someone operating a business. Nor is there any difference between storage of domestic or household items and storage of building materials, or storage of any other objects.
27. Mrs Clark's description of her use of the building falls within the definition of storage, within Use Class B8, because it describes putting items away for a period of time which are not needed in the short term. It does not describe residential use. I attach less weight to her evidence than to that of the witnesses giving evidence on oath at the Inquiry, because it was not tested under cross-examination. Nonetheless, what she says about the use of the building for "general domestic storage" is consistent with the evidence of Mr Clark and Mr Perrin, and with that of Mr Richmond, who saw Mrs Clark and her partner putting things into the building or taking them out. It is also consistent with Mrs Goodin's observations of the inside of the building on the one occasion she saw inside it.
28. There is no evidence that the building was used as a games room. Mr Clark says he played snooker on the snooker table on a very small number of occasions, but this minimal use would not be sufficient to result in a change in the use of the building as a whole even if it had occurred after 15 February 2000, and there is no evidence of that.
29. As to the use of the building by Mr Perrin, I accept Mr Perrin's and Mr Clark's evidence that Mr Perrin's use of the building began in late 1999, because it is not contradicted by any other evidence. Indeed the Council's letter in December 1999 implies that some storage of building materials unconnected with the construction of the building was going on at that time, and so is consistent with their evidence. Mrs Clark says that neither Mr Perrin nor anyone else stored any items at the property between the date of her separation from Mr Clark and the date of transfer of the property under the divorce settlement. I assume this means "anyone else other than Mrs Clark", otherwise it would conflict with her earlier statement that the building was used at that time for general domestic storage. However, what Mrs Clark says on this point is contradicted by Mr Clark and by Mr Perrin himself, and I prefer their evidence on this point as it was tested under cross-examination.

⁴ [1987] JPL 781

⁵ Encyclopaedia of Planning Law P55.43.

30. Mr Perrin's evidence indicates a falling-out between him and Mrs Clark at some stage before she left Autumn Leaves, and it is possible Mr Perrin did not visit the site as often after that or kept a low profile. But Mr Perrin was clear that he continued to use the building to store his building materials, and I accept his evidence on this point.
31. The local residents did not see any activity in relation to his use of the building until later, but that is not inconsistent with a low-key storage use of the type that appears to have been going on here. Even those local residents who were at home for much of the day would be unlikely to be watching the appeal site at all times of the day and night. The evidence also points to Mr Perrin using the building after the departure of Mrs Clark. Even if Mr Perrin had not been storing his building materials for a period before Mrs Clark left, it is clear from the evidence that at this time the building was being used to store a variety of personal, domestic and household items. It is also clear that these items continued to be stored in the building after her departure.
32. As to Mr Perrin's evidence about deliveries of stone and cement to the site, he said the materials delivered were all stored outside the building, so this evidence is not strictly relevant to the issue of the use of the building.
33. I conclude, therefore, having regard to all matters raised, that the use of the appeal building for the storage of various items including building materials, a snooker table, children's toys and other personal, domestic and household items, falling within Use Class B8, began before 15 February 2000 and continued for at least 10 years afterwards. The use is therefore immune from enforcement action, and consequently I am satisfied that the Council's refusal to issue a certificate was not well founded.
34. Consequently I shall allow the appeal and grant a certificate of lawfulness. In the certificate I shall identify the building and the items that have been stored in it, in the interests of precision and in accordance with the advice in Annex 8 of Circular 10/97 "*Enforcing Planning Control*". I shall not make specific reference to "car parts" in the certificate, because there is no evidence that such items were stored in the building throughout the 10 year period.

Sara Morgan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mrs Louise Humphreys	Solicitor, Peyto Law, instructed by Mr Peter Salmon, Town Planning and Development Consultant
She called	
Mr Colin Clark	Former owner of appeal site
Mr Tony Perrin	Occupier of appeal site and general builder
Mr Keith Hayton	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Angela Watson	Solicitor and Legal Services Manager, South Somerset District Council
She called	
Mr Gary Richmond	Local resident
Mr Glenn Barton	Local resident
Mr Terence Dowdell	Local resident
Mrs Carole Ann Goodin	Local resident

DOCUMENTS AND PHOTOGRAPHS HANDED IN AT INQUIRY

- 1 Council's letters of notification and list of persons notified
- 2 List of appearances for South Somerset DC
- 3 Land Registry official copy of register of title no. ST124363 handed in by the Council
- 4 Google maps Streetview photographs of appeal building handed in by the Council
- 5 2 A3 sheets of photographs of the appeal building handed in by the Council
- 6 Closing submissions of South Somerset District Council
- 7 *Thrasylvoulou v Secretary of State for the Environment and others* House of Lords 14.12.1989 handed in by the appellant

DOCUMENTS SUBMITTED AFTER CLOSE OF THE INQUIRY

- 8 Letter and enclosures dated 5 May 2011 from Mrs Watson on behalf of the Council
- 9 Signed statement of common ground
- 10 Letter from Mrs Humphreys dated 9 May 2011



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE)
ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 15 February 2010 the use described in the First Schedule hereto in respect of the building specified in the Second Schedule hereto and edged and cross hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use began before 15 February 2000 and has continued for at least 10 years thereafter. Consequently no enforcement action can be taken in respect of the use because the time for enforcement action has expired.

Signed

Sara Morgan

INSPECTOR

Date 06.06.2011

Reference: APP/R3325/X/10/2135822

First Schedule

Storage of building materials, a snooker table, children's toys and other personal, domestic and household items, falling within Use Class B8.

Second Schedule

The building sited on land opposite Autumn Leaves, Pibsbury, Langport, Somerset TA10 9EJ

NOTES

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

3. This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 06.06.2011

by Sara Morgan LLB (Hons) MA Solicitor

Land opposite Autumn Leaves, Pibsbury, Langport, Somerset TA10 9EJ

Reference: APP/R3325/X/10/2135822

Scale: DO NOT SCALE

