The appeal is made under section 195 of the Town and Country Planning Act 1990 [hereinafter “the Act”] 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 Jabhill Properties Ltd against the decision of Stratford on Avon District Council.

The application [Ref 13/01012/LDE], dated 25 April 2013, was refused by notice dated 14 June 2013.

The application was made under section 191 (1) (a) of the Act.

The development for which an LDC was sought was “use as a single dwelling house”.

Decision

1. The appeal is allowed and an LDC is issued, in the terms set out in the attached LDC, for use of the building known as Peewit Lodge as a single dwelling house. A plan that identifies Peewit Lodge, hatched black, is attached to the LDC.

Procedural matters

2. The Council’s final comments raise a concern about the late submission of the statutory declaration by Kathleen Wijesuriya, which was not before the Council when it made its decision but attached to the Appellant's statement of case. As The Planning Inspectorate's website makes clear, the advice quoted by the Council, whilst relating to planning appeals and called-in planning applications, is considered good practice for lawful development certificate appeals as well. However the bottom line is that the evidence was submitted at 6-week stage in this appeal and, crucially, the Council had an opportunity to comment on that evidence. For this reason the statutory declaration of Kathleen Wijesuriya is a document that I intend to take into account in reaching my decision. Although the Council has said that it “may need to apply for costs” at the time of writing no such application has been made.

3. The Council has offered no evidence to dispute the Appellant’s version of events but focussed on the legal consequences of what has happened. In these circumstances I accept the statutory declarations provided by Kumarjit Wijesuriya and Sandra Fulford insofar as they establish that the property was let by the former to the latter from 1 June 2007. This is more than 4-years but less than 10-years before the date on which the application was made.

4. Paragraph 1.3 of the Appellant’s grounds of appeal asserts that lawfulness is established irrespective of whether the 4-year or 10-year rule applies, as the condition has not been complied with for at least 10-years. In order to make out this claim the Appellant would need to demonstrate, on the balance of probability, that the use commenced prior to 25 April 2003 and continued, but

http://www.planningportal.gov.uk/planning/appeals/otherappealscasework/lawfuldevelopment
the evidence does not support the claim. The statutory declarations provided by Kumarjit Wijesuriya and Kathleen Wijesuriya both refer to “2003” without any further specification. The letter dated 28 June 2013 from Kumarjit Wijesuriya is unsworn and can only be given very limited weight. Amongst other things the letter dated 2 February 2013 regarding Council Tax says that Peewit Lodge was initially assessed for Council Tax on 19 November 2003 and this date is then cited in answer to question 9 of the application form. It is beyond dispute that this is less than 10-years before the date of application. For these reasons any claim in this appeal regarding 10-years cannot succeed. The claim that the extension to the cottage was implemented “in around about 2002” does not show that the condition was not complied with from that date.

5. Paragraph 6 of the statutory declaration of Mr Wijesuriya says: “For the first few years following its conversion, I used to allow The Studio to be occupied by friends for holiday breaks”. Paragraph 3 says that The Studio is also known as Peewit Lodge but I shall adopt the latter because that is cited in answer to question 3 of the application form. The statutory declaration of Mrs Wijesuriya elaborates on the nature of the use by family and friends from 1995 until 2003. Paragraph 5.1 of the Council’s statement says that no evidence was submitted to indicate that the 1995 permission, which I examine in detail below, was not implemented and this claim has not been disputed at final comments stage.

Main issue

6. The main issue is whether the 4-year or 10-year rule applies.

Reasons

7. As noted above the Council’s view that planning permission [No S95/0200] was implemented has not been disputed. It permitted: “Change of use of studio buildings to use as ancillary accommodation and holiday letting”. Condition 2 of the permission says: “This permission shall authorise the use of the building solely for the purposes of holiday accommodation and ancillary accommodation to the main dwelling house known as Peewit Cottage and shall not permit its use as a separate dwelling unit”. The reason given for imposition of condition 2 is: “Current planning policies are not supportive of the establishment of new residential accommodation in the open countryside in the absence of special circumstances which, in this case, have not been shown to exist”.

8. On its face this decision notice permitted “ancillary accommodation” so whilst I have noted the terms of the Council’s delegated report dated 22 May 1995 there is no need to go behind the decision notice to look at the background documents. The planning permission is clear and unambiguous on its face.

9. The Council refers to the case of Bloomfield v Secretary of State for the Environment, Transport and the Regions [1999] 2 P.L.R 79. In that case the judge held that the planning permission granted in 1992 permitted use as a dwelling house. As such there had been no change of use to a single dwelling house but a breach of condition which was subject of the 10-year rule. The same point arose in R v Tunbridge Wells BC, Ex p. Blue Boys Development Ltd [1989] 59 P. & C.R. 315 whilst Moore v Secretary of State for the Environment and another [1998] 2 P.L.R 65 held that a building can be described as a dwelling house even though it is not occupied as a permanent home. The Council has not provided a copy of either of these transcripts, although the latter is quoted in Bloomfield from which my summary is taken.

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2 The only scenario in which the 10-year rule would apply is where the condition governed the use of a dwelling.

http://www.planning-inspectorate.gov.uk
10. In *First Secretary of State v (1) Arun DC and (2) Karen Brown* [2006] EWCA Civ 1172, the position was materially different because, as set out in paragraph 29 of the judgement, what had been permitted was an extension that was to be occupied only by a dependent relative. Conditions had been imposed to control that use, including that upon vacation of the extension by the relative, it should at all times be used for purposes incidental to the main dwelling and not be used as a separate independent unit of accommodation. On this basis the Court of Appeal, reversing the judgement at first instance, held the change from a residential use, which was ancillary to and part of the main dwelling, to independent use as student accommodation, constituted a change of use of the building to use as a single dwelling house within section 171B (2) of the Act.

11. In my view it is clear that what the Council permitted in 1995 was ancillary accommodation rather than use as a dwelling house. There was, therefore, a change of use of the building to use as a single dwelling house. On the unchallenged evidence before me that change of use commenced by 1 June 2007, at the latest, which is more than 4-years before the date of application.

12. I have no reason to doubt that the building at issue has the day to day facilities expected to be found in a dwelling but there is no evidence to suggest that position has changed during the period at issue. The Council has provided a copy of the approved plans dated February 1995 and drawing No K-9429-11 shows that the accommodation comprised a number of rooms at ground floor level, including a kitchen, as well as a first floor bedroom and bathroom. Paragraph 5 of the statutory declaration of Mr Wijesuriya says “At the time of its conversion [in about 1995] and at all times since, it has contained an entrance hall, kitchen, downstairs toilet, full height living room…3 bedrooms and a bathroom”. The fact that the “ground floor plan” approved in 1995 does not label the 2 rooms to the south-east of the main living room, or “studio”, as bedrooms does not alter my view that the Council permitted the conversion with the day to day facilities normally found in a dwelling. However it was not authorised as a dwelling house by virtue of the planning permission that the Council granted. It was expressly permitted as “ancillary accommodation” and was later used as such in compliance with the terms of the permission. In that sense it is no different to the situation in *Arun* where the permitted ancillary accommodation was later used by students unrelated to the main household.

13. The Council also rely on *Secretary of State for Communities and Local Government and another v Welwyn Hatfield Borough Council* [2011] UKSC 15. However the specific paragraphs to which I am referred are 19 and 75-79 with regard to *Arun* and, amongst other things, the view that by letting part of her house Mrs Brown, the Appellant in *Arun*, did not invoke the Connor principle.3 The Council make no claim regarding deception in this appeal and I note that the Appellant did advise the Council of the change in position for the purpose of Council Tax in November 2003. I accept that *Arun* is still pertinent case law, as is Bloomfield, but the latter can be distinguished because the Council did not permit the lodge to be used as a single dwelling house subject to a condition.

14. I agree with the Council that whether the accommodation was occupied for holiday letting or ancillary accommodation does not particularly matter. The planning permission appears to have been implemented as the description of development encompassed both elements. I accept that such use would have complied with condition 2. However *Arun* is authority for the application of the

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4-year rule whether that relates to a breach of condition or a straightforward change of use to a single dwelling. I have no reason to dispute the Council’s claim that Peewit Lodge is 16 m from the main dwelling whereas the Arun case was concerned with an extension, but that does not alter the fact that in this case the Council permitted ancillary accommodation. Condition 2 expressly said that it was not permitted to be used as a separate dwelling. Thus although the Council make an analogy with a holiday let what is at issue here does not comprise a dwelling house subject to a standard holiday occupancy condition.

15. On the main issue, I conclude that there has been a change of use of what was expressly permitted as “ancillary accommodation” to use as a single dwelling house within section 171B (2) of the Act. The use commenced before 25 April 2009, being 4-years prior to the date of the application, and has continued.

Other matters

16. I appreciate that the Council has issued a breach of condition notice, dated 22 July 2013, and has acted responsibly in extending the period for compliance pending the outcome of this appeal. However it must follow from my earlier reasoning that the breach of condition notice was issued too late.

Conclusion

17. For these reasons, having regard to all other matters raised, I am satisfied that the Council’s refusal to grant an LDC for use as a single dwelling house was not well founded. The appeal succeeds and I shall exercise the powers transferred to me in section 195 (2) of the Act.

Pete Drew
INSPECTOR
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 (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 25 April 2013 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Act, for the following reason:

1. The breach of planning control consisting in the change of use of the building, identified in the Second Schedule, from ancillary accommodation and holiday letting to use as a single dwelling house commenced prior to 25 April 2009 and has continued for a period of more than 4-years.

Signed

Pete Drew
Inspector

Date: 31.12.2013

Reference: APP/J3720/X/13/2201676

First Schedule

Use as a single dwelling house.

Second Schedule

Peewit Lodge, Barton-on-the-Heath, Moreton-in-Marsh GL56 0PQ
NOTES

This certificate is issued solely for the purpose of Section 191 of the Act.

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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: 31.12.2013

by Pete Drew BSc (Hons), Dip TP (Dist) MRTPI

Peewit Lodge, Barton-on-the-Heath, Moreton-in-Marsh GL56 0PQ

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Scale: Do not scale as original plan has been scanned which might cause variations.