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## Appeal Decision

Site visit made on 12 November 2019

**by D Fleming BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 December 2019**

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**Appeal Ref: APP/L3245/X/19/3222768**

**Clematis Cottage, 4 Rudge Heath Road, Rudge Heath, Claverley WV5 7DJ**

- 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 Pavan Banger against the decision of Shropshire Council.
  - The application, Ref 18/023245/CPE, dated 12 July 2018, was refused by notice dated 3 January 2019.
  - 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 described as the use of stables as a dwelling.
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### Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the use of the stables as a dwelling and the erection of a carport to the rear of the stables, which are considered to be lawful.

### Procedural Matter

2. The appeal building sits within the grounds of Clematis Cottage and, whilst it is approached by the same drive from Rudge Heath Road, it is fenced off from the main house and has a separate parking area. The Council described it as having the appearance of stables with a large lean-to extension. There is also a large carport structure to the rear. The appellant initially made no reference to the carport in his application but the Council considered whether it had been in situ for four years as part of their determination of the application. The appellant subsequently addressed this in his grounds of appeal and submitted evidence to support his case. I shall therefore proceed on the basis that the application is for the use of stables as a dwelling and the erection of a carport.

### Main Issue

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

### Reasons

4. Section 191(2) of the 1990 Act, as amended, indicates that uses and operational development are lawful at any time if (a) no enforcement action may then be taken in respect of them because, for instance, the time for enforcement action has expired and (b) they do not contravene the

- requirements of any enforcement notice in force. Lawfulness in this case is to be decided at the time of the application, that is the 12 July 2018.
5. Subsection 191(2)(b) is met here as there is no enforcement notice in force. With regard to subsection 191(2)(a), sections 171B (1) and (2) say that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house or operational development has taken place, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. The relevant period for consideration in this instance is more than four years before the date of the application, so the 12 July 2014 is the relevant date.
  6. The appellant has submitted a statutory declaration dated the 3 July 2018 to declare that he has lived in the stables since the 20 February 2008. After he married on the 17 November 2012 his wife also lived in the stables and they have since had a child. His father bought Clematis Cottage on the 1 November 2004 and the appellant began converting the stables into habitable accommodation on the 1 February 2008, resulting in about 180sqm of floor space. This comprises a lounge, bedroom, kitchen, bathroom, playroom and two other rooms and the work was completed on the 20 February 2008.
  7. The appellant has also submitted documentary evidence to support what he declares and to demonstrate continuous use. There is a receipt from an electrician dated the 12 February 2018 entitled "Stable block wiring for conversion to dwelling, 100a board" which lists an electric shower fitting, six double sockets, three light fittings, spotlights and an external floodlight. There is also a receipt from The Kitchen and Flooring Centre dated the 15 February 2008 addressed to the appellant at the stable block. This itemises a single basin, mixer tap, a two hob ceramic cooker and six kitchen units.
  8. Finally, there are Sky subscription bills addressed to the stables. These appear to be for selected months from the following years: 2014 (28 June-27 July); 2016 (28 July-27 August); 2017 (28 January-27 February); and 2018 (28 August-27 September).
  9. In respect of the carport, there is a receipt from The Builders Centre Limited dated the 27 September 2013 itemising: fence panels, 200ft 2x3 timber, plyboard sheets and 20 rolls of roofing felt. This is accompanied by a letter from JR Interiors confirming that a concrete base was laid and a carport was erected beginning on the 6 October 2013 and that the works took around 14 days to complete.
  10. The Council confirmed that the property is not registered for Council Tax or electoral registration and no address is listed with the Royal Mail.
  11. With regard to the carport, there is evidence that building materials were ordered in September 2013, which appear to be the materials used in the construction of the carport. In addition, a firm of builders confirmed that they made use of the materials provided to erect it in October 2013. As more than four years has elapsed since that date and those four years are before the 12 July 2018, I find the erection of the carport, on the balance of probabilities, is lawful, there being no evidence from elsewhere to contradict the appellant. The appellant's evidence is also precise and unambiguous.

12. With regard to the residential use, I am required to consider not the availability or suitability of the stables for residential use but whether they were actually put to such use. Furthermore, that the use has continued without material interruption thereafter so as to be immune from enforcement.
13. I saw at the site visit that the fittings in the kitchen matched those described in the receipt. There was also an electric shower over the bath, a light fitting in the bedroom, an external floodlight and lighting elsewhere that corresponded with the electrician's receipt. In addition, the Council have produced a Google Streetview image, dated March 2009, which shows a brown window frame installed in the end elevation. It is therefore considered, in the absence of any information to the contrary, that the appellant did indeed carry out the conversion of the stables to facilitate a residential use in February 2008.
14. With regard to continuous residential use, the appellant has provided a statutory declaration describing his use of the property from 20 February 2008. There are no separate utility bills, which would provide evidence of use, as there are no separate meters from Clematis Cottage. However, the appellant has produced evidence from his Sky television bills. His partner pays a monthly subscription and the bills show she has an account, so it would appear that these are not one-off payments. The earliest bill is dated 28 June 2014, so this is before the relevant date.
15. The Council submit that the lack of an official correspondence address and no registration for Council Tax or for electoral purposes means that the property has only been used as ancillary accommodation to Clematis Cottage. However, they have no evidence to demonstrate that this is the case, other than pointing out there are no separate utility meters, and the appellant states he has his own curtilage and his own parking area. In any event, it does not follow that non-payment of Council Tax and relying on another property for post means that the stables were not in residential use. It simply means the appellant chose, for whatever reason, not to pay tax and carry out these requirements. Furthermore, payment of rent in some accommodation often includes utilities but that does not mean that the use of the accommodation is not self-contained.
16. In an appeal relating to an LDC, the burden of proving relevant facts rests with the appellant and the test of the evidence is the balance of probabilities. The appellant's own evidence does not have to be corroborated by independent evidence. If there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate, provided that it is sufficiently precise and unambiguous.<sup>1</sup>
17. From all the material before me it is concluded, on the balance of probabilities, that the use of the stables as a self-contained residential unit took place more than four years before the date of the application. There is no evidence to contradict the appellant's statutory declaration and the proving of relevant facts is precise and unambiguous.

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<sup>1</sup> Planning Practice Guidance

## **Conclusion**

18. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the stables as a dwelling and the erection of a carport to the rear of the stables was not well founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

*D Fleming*

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 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on 12 July 2018 the operation described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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 reasons:

The use of the stables as a dwelling began more than four years before the date of the application and continued thereafter; and the use does not contravene the requirements of any enforcement notice in force.

The erection of the carport was substantially complete by 2014 at the latest and does not contravene the requirements of any enforcement notice in force.

Signed

*D Fleming*

Inspector

Date: 16 December 2019

Reference: APP/L3245/X/19/3222768

### **First Schedule**

The use of the stables as a dwelling and the erection of a carport to the rear of the stables.

### **Second Schedule**

The stables, Clematis Cottage, 4 Rudge Heath Road, Rudge Heath, Claverley  
WV5 7DJ

## NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

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.

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.



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## Plan

This is the plan referred to in the Lawful Development Certificate dated: 16 December 2019

by **D Fleming BA (Hons) MRTPI**

**Land at: The stables, Clematis Cottage, 4 Rudge Heath Road, Rudge Heath, Claverley WV5 7DJ**

**Reference: APP/L3245/X/19/3222768**

Scale: not to scale

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