KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) Section 191/192

DELEGATED DECISION FOR APPLICATION FOR CERTIFICATE OF LAWFUL DEVELOPMENT

Reference no.: 2022/CL/91079/E

Site: Abbey Cottage, Abbey Road, Shepley, Huddersfield, HD8 8DY

Description: Certificate of Lawfulness for existing building operations comprising the partial re-building of an existing building

Case Officer**:** Alice Downham

Decision Reference: EXISTING OPERATIONS REFUSED

I hereby authorise the refusal of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.

Kevin Walton

AUTHORISED OFFICER

Date 25-May-2022

Officer report

Site description

The application site relates to Abbey Cottage, Abbey Road, Shepley, Huddersfield, a former dwelling.

Description of development

The applicant is seeking a determination that the building operations to Abbey Cottage, comprising partial re-building of the existing building, constitute lawful development.

Site visit & Publicity

A site visit was carried out and a site notice was erected, giving interested parties until 29/04/2022 to comment. No representations were received.

Consultation response

No consultations were deemed necessary for this proposal as it is an application for a Lawful Development Certificate.

Relevant policy / legislation

Town and Country Planning Act 1990 (as amended) ["the Act"].

Lawful Development Certificates

Section 191(1) of the Act permits any person who wishes to ascertain whether any operations or existing use of buildings or other land would be lawful to make an application to the Local Planning Authority.

Section 191(2) of the Act provides that uses are lawful if:

1. No enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for taking enforcement action has expired or for any other reason);

1. They did not constitute the contravention of any of the requirements of any enforcement notice then in force.

For the purposes of the Act a use is lawful at any time if no enforcement action may then be taken against the use, and the use does not contravene the requirements of any enforcement notice then in force. Section 191(2) (b) states that the inability to take enforcement action may come about because the use did not involve development, or because it did not require planning permission, or because the time for taking enforcement action has expired.

The relevant test

The burden of proof lies firmly with the Applicant and the relevant test for whether the operations can be deemed lawful is the 'balance of probability'. The applicant's evidence does not need to be corroborated by 'independent' evidence. If the Local Planning Authority has no evidence of their own, or 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 granting of a certificate on the balance of probability.

Limitations

The lawful development certificate must contain precise details of what use or operation are found to be lawful, why, and when. The details will not be legally equivalent to a planning condition or limitation. They will be a point of reference specifying what was lawful at a particular date, against which any subsequent change may be assessed. If the use subsequently intensifies or changes in some way to the point where a 'material' change of use takes place, the Local Planning Authority may then consider further development has taken place.

Relevant planning history

No relevant planning history found at the site.

Evidence submitted in support of the application

Supporting information submitted 29/03/2022 by the agent includes a completed application form and a location plan along with the following:

- Evidence statement.
- Sworn Statements of Declaration from the applicant and three others.
- Quote from A.E. Haywood & Sons for "Proposed remedial works to existing barn" (dated 2nd February 2015).
- Emails from A.E. Haywood & Sons to the applicant (dated 1st and 8th May 2015).
- 4no. photos (dated April, May, July & September 2015).
- Invoice for "Repair and refurbishment works at Dairy Cottage, 177 Abbey Road" from A.E. Haywood & Sons (dated 24th August 2015).

Evidence submitted against the application

None.

Evidence obtained from Kirklees Council records and other sources

Given the nature of the works under consideration, the Council's internal mapping and aerial photography are of minimal assistance.

Google street view images are available for 2011 and 2019, as shown below.



Google street view image, dated June 2011



Google street view image, dated April 2019

Assessment of the evidence

The applicant wants to establish that the building operations are now lawful, having been substantially completed more than four years ago.

The submitted evidence will be examined below.

The agent has stated that Abbey Cottage was partially rebuilt in 2015, with the resulting structure having a higher overall height and different design relative to the former building.

The sworn statements also state that the building operations to Abbey Cottage took place in 2015, although it is acknowledged this is anecdotal evidence which has limited weight on its own.

Further evidence provided includes a quote from A.E. Haywood & Sons dated 2nd February 2015; emails from A.E. Haywood & Sons to the applicant dated 1st and 8th May 2015; and an invoice from A.E. Haywood & Sons dated 24th August 2015. The invoice indicates that works completed on 21st August 2015. Although the invoice refers to works at Dairy Cottage, 177 Abbey Road, the applicant's sworn statement indicates that most of the works relate to Abbey Cottage. This has been annotated in black ink on the invoice. The items on the invoice relating to Abbey Cottage comprise "As per quote dated 20.2.15" and "As per quote dated 8.5.15". The quotes referenced on the invoice are considered to be the quotes submitted as part of this application (the formal quote and the emails from A.E. Haywood & Sons).

4no. photos have been provided. These are dated and show Abbey Cottage in various stages of building work, between April 2015 and September 2015.

Google street view images (above) are inconclusive as to the completion of the works.

The Local Planning Authority have no other evidence which would contradict the submitted evidence, and no interested parties have submitted representations.

The time limit for enforcement action are four years for a breach of planning control consisting of operational development.

As such, it is concluded that there appear to be no reasons to doubt the submitted evidence in terms of the former building having to be re-built to resolve identified structural problems, and that these building works ceased in 2015 leaving Abbey Cottage as it now stands.

However, we must also consider at what point in time the immunity conferred by s.171B starts to run. S.171B (1) states that immunity starts *"after the end of the period of four years beginning with the date on which the operations were substantially completed."* The critical question, therefore, is at what time can the works be said to be "substantially completed".

In *Sage v Secretary of State for the Environment, Transport and the Regions [2003] 1 WLR 983,* it was determined that "substantially completed" means when the intended works have been holistically completed and the building is fit for purpose. In this regard evidence would need to be provided to understand the responsible person's intentions for the building when the works first commenced.

In this instance, the building works appear to have resulted from safety concerns, leading to unexpected demolition and rebuilding of Abbey Cottage. As stated above it is clear these works ceased in 2015, when the building was essentially just a shell (as it remains today).

When applying *Sage* to this case, it is therefore a question of whether or not the building was completed for its purpose in 2015. If it was, then the unlawful operations to re-build became immune from enforcement action sometime in 2019. Whereas if the building was not fit for its intended purpose when the works ceased in 2015 and further operations are required to make the building capable for the use, the building is still not substantially complete and therefore not immune from enforcement action. These questions will turn on matters of fact and degree.

An argument could be made that the intention in 2015 was simply to rebuild the building in order to allow the adjoining Dairy Cottage, 177 Abbey Road to be safely rented out, whilst the intention to use Abbey Cottage as a dwelling only came about in 2019. However, officers find it difficult to accept, on the balance of probability, that the financial investment of the works to Abbey Cottage and the care taken in its re-building (such as re-use of existing facing stone and roof tiles, as per the statutory declaration of the applicant, Claire Clayton) would take place if someone did not have the intention to put the building to any use. To take that view that a building is substantially complete when not capable of being put to any use because further works are necessary would appear irrational and inconsistent with s.171B in so far as planning law does not envisage permissions would be given for incomplete building but rather grants planning permission for a building which will once completed will be put to a use.

In officers' opinion, despite the unexpected nature of the re-building operations, it is difficult to believe that the owners simply wished to re-build Abbey Cottage for it not to be used for any purpose. Indeed, there is no evidence to provided suggest this is the case other than a comment in the planning statement stating the certificate is not sought to establish a use. The statement is not qualified other than to state the building has not been used. This is most likely because the operations to complete the building have not reached a condition whereby it can be used.

Officers consider that, in terms of the final intentions for the building, weight can be placed on the building's design, in so far as it largely replicates the former cottage in terms of openings and appears to have been designed to be a residential property. The design of the building was a key issue in *Sage*. In fact, the applicant, Claire Clayton, in her statutory declaration states that the intention in 2019 was to utilise Abbey Cottage as a "granny annexe" and the questions of lawfulness only arose when they made enquiries to complete the installations of the windows. This intention is re-enforced in the statutory declaration of Katie Field. From this evidence alone it appears the building was re-built with the intention of using Abbey Cottage as a dwellinghouse and that further works were contemplated to carry on with works to complete.

As such it is not currently fit for that purpose and further operations are required to complete the building before the intended use can be commenced. It follows, therefore that the works have not been substantially completed.

Conclusion

On the balance of probability the applicant has not satisfied the Local Planning Authority that the building operations to Abbey Cottage, Abbey Road, Shepley, Huddersfield, comprising partial re-building of the existing building, have been substantially completed for the period in excess of 4 years.

Recommendation: Refuse certificate.

Decision Notice

On the balance of probability the applicant has not satisfied the Local Planning Authority that the building operations to Abbey Cottage, Abbey Road, Shepley, Huddersfield, comprising partial re-building of the existing building, have been substantially completed for the period in excess of 4 years.

Plans and specifications schedule:

Plan Type	Reference	Web ID	Date Received
Grouped Plans and Elevations	173AR-19-PL01 - Existing	924470	29/03/2022
Location Plan	-	924468	29/03/2022
Planning statement	Evidence Statement	924471	29/03/2022
Statutory Declarations	-	-	29/03/2022
Other evidence	-	-	29/03/2022