



Penderfyniad ar yr Apêl

Ymchwiliad a gynhaliwyd ar 23/10/12
Ymweliad â safle a wnaed ar 23/10/12

**gan Tim Belcher FCII, LLB (Hons),
Cyfreithiwr (Nad yw'n Ymarfer)**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 04/01/13

Appeal Decision

Inquiry held on 23/10/12
Site visit made on 23/10/12

**by Tim Belcher FCII, LLB (Hons),
Solicitor (Non-Practising)**

an Inspector appointed by the Welsh Ministers

Date: 04/01/13

Appeal Ref: APP/H6955/X/12/2178385

Site address: Grasmere, Holt Road, Bowling Bank, Wrexham, LL13 9RL

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under Section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the 1990 Act) against a refusal to grant a Certificate of Lawful Use or Development (Lawful Development Certificate).
- The appeal is made by Mrs C. Fyffe against the decision of Wrexham County Borough Council.
- The application Ref ISY P/2011/0906, dated 13 December 2011, was refused by notice dated 14 February 2012.
- The application was made under Section 191(1)(a) of the 1990 Act.
- The use for which a Lawful Development Certificate is sought is a self contained private dwelling house with domestic curtilage, garage, parking and access.

Procedural Matters

1. All oral evidence was given on oath.
2. The appellant did not give evidence at the Inquiry as she was indisposed. I have given limited weight to her Statutory Declaration dated 24 November 2011 as the Council were unable to question her about its contents.
3. In my Appeal Decision I will refer to the property which the application seeks a Lawful Development Certificate in respect of as Grasmere although it was not called this until about 2009. The dwelling to the south of Grasmere is known as Gatehouse. The postcode quoted on the application form, LL13 9RR, was incorrect. It was agreed at the inquiry that the correct form of the appeal site address should therefore be Grasmere, Holt Road, Bowling Bank, Wrexham, LL13 9RL, and this is what I shall use in my decision letter.
4. Reference to "domestic curtilage" in the description of what is being sought is not a use of land. The proper description of the use is that of a garden.

Important Background Matters

5. Conditional planning permission¹ was granted in March 1991 for an extension to Gatehouse and the erection of a detached garage. The detached garage is the building now known as Grasmere. Condition 05 of the planning permission stated,

¹ Document 1

“The garage/store shall only be used for a purpose incidental to the residential use of the application property”. The reason for imposing that condition is stated to be , “To ensure that the garage is not used in a manner prejudicial to or likely to cause nuisance or disturbance to the occupiers of nearby properties”. I will refer to this condition as the 1991 planning condition.

6. In April 1999 the appellant and her husband, David Stephen Fyffe, bought Gatehouse, Grasmere and the land and buildings to the north and south of those buildings. Prior to the appellant's acquisition, Grasmere was used in a way which was wholly ancillary to the residential use of Gatehouse.
7. Glenyce Fyffe, the appellant's mother in law, viewed Gatehouse and Grasmere prior to it being bought with a view to her living in Grasmere once it had been converted.
8. In the spring of 1999 Mr Fyffe carried out works to Grasmere so as to make it habitable for his mother, Glenyce Fyffe. After these works were completed I understand that the accommodation comprised a garage, kitchen, living room, two bedrooms and a bathroom. As at the date of my site visit there was a garage, kitchen and dining room on the ground floor and a lounge, bedroom and bathroom on the first floor. No external alterations have been made to Grasmere to facilitate its residential use.
9. The appellant, her husband and their family lived at Gatehouse.
10. Glenyce Fyffe moved into Grasmere in the summer of 1999. She confirmed that she pays what she referred to as a nominal rent of £70 pcm to the appellant for the use of Grasmere.
11. Grasmere has electricity and water supplies but these are not separately metered. Glenyce Fyffe confirmed that her son pays these utility bills which are combined with those for Gatehouse. Grasmere has its own LPG supply and telephone line. Glenyce Fyffe is responsible the telephone and gas bills.
12. In 2000 the Council carried out enforcement investigations² as to the use of Grasmere. On 7 September 2000 Mr Fyffe telephoned the Council. The information as recorded by the Council Officer was, “His mother lives in the building when he is at home – he estimates this to be about five months of the year. All services are provided. He will write and confirm this”. No written confirmation was received. The case was closed in December 2000. The Officer stated, “I am confident that the property is not being used as a separate residence”. At the Inquiry it was asserted on behalf of the appellant that this information was not correct. However, no evidence was adduced to contradict it.
13. The Council wrote to the appellant on 14 December 2009 and confirmed in that letter³ that Council Tax records indicated that Glenyce Fyffe's occupation of Grasmere commenced in April 2001.
14. Between 2001 and 2004 (the exact dates could not be recalled) the appellant, Mr Fyffe and their family moved to, and lived in, the USA. For one of those three years (again the actual dates could not be recalled) Glenyce Fyffe lived in Gatehouse and two young women lived in Grasmere.

² Document 4

³ Document 2

15. In 2007 the Council investigated the possible use of Grasmere as a separate living unit. At that time there was no fence that separated Grasmere from Gatehouse. On 23 February 2007 the investigating Officer spoke to Mr Fyffe who declared that the, “barn was not used to provide residential accommodation outside the dependent family”. The case was closed on the 2 April 2007⁴.
16. The Council’s evidence to the Inquiry was that Grasmere only became liable for Council Tax in September 2007. This evidence conflicts with that set out in the letter from the Council dated 14 December 2009⁵.
17. On 12 March 2009 the Council issued a Planning Contravention Notice⁶ in relation to the use of Grasmere as a separate dwelling. The reply⁷ dated 29 March 2009 confirmed that Grasmere was occupied as a separate dwelling by Glenyce Fyffe.
18. On 4 April 2009 the Council wrote a letter⁸ to the appellant requesting that she apply for planning permission for the use of Grasmere as a self contained dwelling and also for the erection of screen fencing along the site’s frontage which was in excess of 1m in height.
19. On 12 August 2009 the Council served a further Planning Contravention Notice⁹ requiring further information in relation to Grasmere and Gatehouse. A reply¹⁰ was received by the Council sometime after 23 November 2009.
20. By some date in 2009 a fence had been erected parallel to the side elevation of Grasmere. I will refer to this fence as the dividing fence. There was a movable panel within the dividing fence which allowed the occupiers of either property to go onto the neighbouring property without having to use the public highway.
21. On 5 August 2010 the Council issued two Enforcement Notices. The first Enforcement Notice required the removal of fence panels and posts along the front of the site and the lowering of a gate and posts to 1m in height. The second Enforcement Notice alleged the breach of the 1991 planning condition. The Enforcement Notice required the removal of the dividing fence and the “Grasmere” nameplate. It is clear from the wording of the Enforcement Notice that the Council were fully aware that there was a second planning unit i.e. Grasmere but they did not seek to prohibit its independent residential use. The Enforcement Notices were not appealed and they took effect on 10 September 2010.
22. On 23 August 2010 the appellant wrote a letter¹¹ to the Council’s Chief Finance & Performance Officer enclosing a copy of Glenyce Fyffe’s birth certificate. In that letter she refers to a telephone conversation with a Council Officer in the Council Tax Section and she explains that Grasmere is an annex to Gatehouse. Further, she states that Glenyce Fyffe, “is an elderly lady who has frequent periods of illness and because of this, we take care of her needs all year round. You mentioned that in these cases, the separate Council Tax is not chargeable while she is living with us”.

⁴ Document 5

⁵ Document 2

⁶ Document 7

⁷ Document 8

⁸ Document 9

⁹ Document 10

¹⁰ Document 12

¹¹ Document 6

Main Issue

23. The main issue in this case is whether Grasmere has been used as a single dwelling house since on or before the 13 December 2007 and continued to be used as such from that date to 13 December 2011?

Reasons

24. I am aware that:

- a) Glenyce Fyffe has never appeared on the electoral roll as living at Grasmere, or
- b) the Royal Mail has not recorded Grasmere as a property in its own right until sometime after April 2012.

25. The evidence of Glenyce Fyffe was very clear and I have no doubts as to its truthfulness. She occupied and used Grasmere as a single dwelling house between the relevant dates. Her use was independent of the appellant's use of Gatehouse as a separate residential unit of accommodation for herself, Mr Fyffe and their family. Glenyce Fyffe did not share or use any facilities within Gatehouse in connection with her residential use of Grasmere.
26. The fact that her son paid most of the bills arising from Glenyce Fyffe's use of Grasmere is not relevant as to whether Grasmere was used as a separate dwelling-house during the relevant period. It is not unusual for children to help their elderly parents with finances when needed and when possible.
27. The fact that the garage at Grasmere was used not only by Glenyce Fyffe but also by Mr Fyffe and his family as domestic storage is not surprising given that he lived next door and it was convenient for both parties. In any event I noted that Glenyce Fyffe described this storage use as her allowing him to use this space – he did not use it as a right.
28. The same is also true about the use of a recently constructed lean-to at Grasmere. This is used mainly for the storage of timber by Mr Fyffe again with the permission of Glenyce Fyffe.
29. I note the correspondence between the appellant and the Council's Chief Finance & Performance Officer. No explanation was provided by the appellant as to why this letter was written. However, it was obvious from the evidence of Glenyce Fyffe that she was completely unaware of the correspondence. She totally rejected the appellant's portrayal of her state of health. She explained that she had been in hospital for about 8 or 9 days possibly about the time the letter was written but she did not receive the level of care and attention that was suggested in that letter. Further, whilst she suffered from time to time with migraine attacks this did not result in any change to her independent residential occupation of Grasmere. She described her health for an 80 year old as being very good and she has never had medical or social care whilst living at Grasmere.
30. I am aware that the dividing fence (which should have been permanently removed by now) is once again in situ. I understand from Glenyce Fyffe's evidence that she wanted the fence to be erected so as to provide more privacy. In my assessment the erection of the dividing fence does not undermine the Glenyce Fyffe's evidence as to her independent residential use of Grasmere.

31. Finally, I have had regard to those parts¹² of the judgement which were brought to my attention in the case of Secretary of State for Communities & Local Government & another (Respondents) v Welwyn Hatfield Borough Council (Appellant) dated 6 April 2011¹³. The facts in this case are very different from that which applied in the case before the Supreme Court. It is not entirely clear from the evidence that is before me that the information provided to the local planning authority by Mr Fyffe was intended to positively and deliberately deceive them. The Council were aware from the wording of the Enforcement Notice relating to the dividing fence that there was a second planning unit but they did not seek to prohibit its use. Whatever Mr Fyffe told the Officers it is clear to me that a reasonable course of action in a case such as this should have involved the full inspection of Grasmere and obtaining information from Glenyce Fyffe (the occupier) as to her residential use of that property. There is no evidence before me that this was done either in 2000 or 2007. Had it been the Council would have been in no doubt that Glenyce Fyffe's occupation of Grasmere was a breach of planning control.

Overall Conclusions

32. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a Lawful Development Certificate in respect of the use of Grasmere as a self contained private dwelling house with a garden, garage, parking and access 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.

Decision

33. The appeal is allowed and attached to this decision is a Lawful Development Certificate describing the existing use which is considered to be lawful.

Tim Belcher

Inspector

¹² Paragraphs 34, 53, 54 & 56.

¹³ Document 3

APPEARANCES

FOR THE APPELLANT

Elfed R. Williams LLM, MA, FRICS, MRTPI ERW Consulting

He called:

Glenyce Fyffe Occupier of Grasmere

Peter Jones Community Council Councillor

FOR WREXHAM COUNTY BOROUGH COUNCIL

Trefor Lloyd of Counsel
Instructed by the Council's Legal Department.

He called:

Matthew David Phillips Planning Officer
BSc(Hons), MSc, MRTPI

DOCUMENTS

- Document 1 – Planning permission dated 25 March 1991 – Council Ref: ISY 18964 & approved plans.
- Document 2 – Letter from Council to appellant dated 14 December 2009.
- Document 3 – Case History & Judgment – Secretary of State for Communities & Local Government & another (Respondents) v Welwyn Hatfield Borough Council (Appellant) dated 6 April 2011.
- Document 4 – Extract from Council's Computer System entitled "Planning Enforcement History from Plane" for various dates in 2000.
- Document 5 – Extract from Council's Computer Records for 2 April 2007.
- Document 6 – Letter dated 23 August 2010 from the appellant to the Chief Finance & Performance Officer.
- Document 7 – Planning Contravention Notice relating to Grasmere & Gatehouse dated 12 March 2009.
- Document 8 – Appellant's reply to the Planning Contravention Notice dated 29 March 2009.
- Document 9 – Letter dated 4 April 2009 from the Council to the Appellant.
- Document 10 – Planning Contravention Notice relating to Grasmere & Gatehouse dated 12 August 2009.
- Document 11 – Letter dated 11 September 2009 from the Council to the Appellant.
- Document 12 – Reply from appellant to the second Planning Contravention Notice.



Lawful Development Certificate

(hereinafter referred to as “the Certificate”)

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

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

IT IS HEREBY CERTIFIED that on 13 December 2011 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to the Certificate, was lawful within the meaning of Section 191(2) of the 1990 Act, for the following reason:

The use of Grasmere is lawful because no enforcement action can be taken in respect of its use as set out in the First Schedule because the time for taking enforcement action has expired and the use does not constitute a contravention of any requirement of any Enforcement Notice then in force.

Signed: *Tim Belcher*

Tim Belcher
Inspector

Date: 04/01/13

Reference: APP/H6955/X/12/2178385

First Schedule

A self contained private dwelling house with garden, garage, parking and access.

Second Schedule

Grasmere, Holt Road, Bowling Bank, Wrexham, LL13 9RL

NOTES

1. The Certificate is issued solely for the purpose of Section 191 of the 1990 Act.
2. 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 1990 Act, on that date.
3. The 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 Certificate dated: 04/01/13

by Tim Belcher FCII, LLB(Hons), Solicitor (Non-Practising)

Grasmere, Holt Road, Bowling Bank, Wrexham, LL13 9RL

Reference: APP/H6955/X/12/2178385

Do Not Scale

