
Appeal Decision

Site visit made on 5 September 2016

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 22 September 2016

Appeal Ref: APP/Z5630/X/16/3146216

22 McDonough Close, Chessington, Surrey, KT9 1ER

- 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 Richard Howlett against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
- The application Ref 15/10360/LDE, dated 22 October 2015, was refused by notice dated 18 December 2015.
- 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 the existing use of The Shelter as a single dwellinghouse.

Summary of Decision: The appeal is dismissed.

Main Issue

1. The main issue in this appeal is the lawfulness of the existing use at the date on which the application was made, that is, 18 December 2015. Planning merits and matters raised by the Appellant including the manner in which the application was dealt with by the Council and his appeal by the Inspectorate, are not relevant in this case as they are not issues for consideration in an appeal under s.195 of the Act.

Reasoning

2. A LDC for an existing use can be granted if the Appellant proves, on the balance of probability, that the use of The Shelter as a single dwellinghouse began on or before 18 December 2011 (that is four years before the date of the application) and that it has been continuously used for that purpose for at least a four year period before 18 December 2015.
3. The application concerns a single storey building named The Shelter which is at one side of the front garden of The Mustard Seed (22 McDonough Close) which is a residential property situated at the end of an L-shaped path, 60m from the road, at the end of a cul-de-sac. The Shelter has a separate title from The Mustard Seed but both properties are owned by the Appellant. It appears that the building of The Shelter was completed in late 2000¹.
4. From the information provided by the Appellant and as agreed by the Council, The Shelter now has all the facilities required for day-to-day private domestic

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living in that, among other things, it has a shower room and w.c, a kitchen and space to live and sleep. It is the Appellant's case that it has had all these necessary facilities since about 2009 and there is no evidence from the Council that contradicts this.

5. Although The Shelter is at a different level from the main dwelling and some of the garden of 22 McDonough Close and there are steps down to it, as a matter of fact and degree, there is no physical separation of The Shelter from No 22.
6. Nor in my opinion is there any functional separation. The Appellant's case is that The Shelter has been used regularly by him and wife and by visitors who have stayed in it over the years². The evidence of use by visitors is provided in the form of letters and emails and I note that the Appellant maintains that the letters were not provided to show that The Shelter had been used as their permanent residence but to corroborate that the requisite facilities were present³. In my opinion, whatever their intention, the letters and emails are anecdotal and vague and lack the precision required in an appeal such as this⁴.
7. The use by the Appellant and his wife is said to be frequent and regular and akin to the use of a second home. The 'regular' and 'continuous use throughout the qualifying period' is not specified by the Appellant and in my view this also lacks the precision required in an appeal such as this. Whilst I accept that people have different ways of living, I do not consider it reasonable to describe The Shelter as a holiday home or second home given its proximity to the main house and I note that the Appellant refers to the simultaneous use of both buildings⁵.
8. The building that is now The Shelter was erected following the grant of a Lawful Development Certificate (LDC)⁶ in 1999 for the erection of a detached single storey outbuilding containing games rooms, toilet and store on land adjoining 22 McDonough Close for the reason that it was permitted development pursuant to Part 1 Class E Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995⁷. As the building was considered to be permitted development it follows that it was within the curtilage of No 22 on land which was purchased by Appellant in 1992 and that its use was incidental to the enjoyment of the dwellinghouse, that is, an ancillary use.
9. A second LDC for use of the outbuilding for physiotherapy treatment and as a home office was granted on appeal in 2001⁸. The Inspector in that appeal noted that 'The Council accept that the annexe is part of the dwellinghouse and that, as presently carried out the physiotherapy is incidental to the [Appellant's] use of the dwellinghouse. It seems to me that a different part of the dwellinghouse for the incidental physiotherapy use would not involve a change of use'⁹. I consider that there has been no change in that The Shelter remains part of the dwellinghouse and the use of it as living accommodation is an incidental use.

² Page 4/6 of the Appellant's letter dated 22 October 2015

³ Page 16 Doc 2

⁴ Planning Practice Guidance : Lawful Development Certificates paragraph 006

⁵ Page 13 Doc 3

⁶ Dated 28 May 1999 ref:99/02085/LDP

⁷ The GPDO then in force

⁸ T/APP/Z5630/X/01/1077222

⁹ Paragraph 8 of the appeal decision

10. Although The Shelter has all the necessary facilities for day to day independent living and it can function as a single dwelling I have to look at the existing use. The Appellant says it is used as a second home and for visitors and therefore there are two independent single dwellings and two different planning units but I find it impossible to distinguish the use he has described as anything other than as an extension to the living accommodation of the main house within one planning unit.
11. Even if The Shelter was a separate planning unit from The Mustard Seed, and given its location, ownership and function for the reasons given above I consider that it is not, there is no evidence of its continuous use for the required period as a single dwelling and the Appellant has not shown that, on the balance of probability, The Shelter has been occupied by a separate household from that of the other dwelling. Indeed the manner of its use as described by the Appellant is as an annex used by someone associated with the main house.
12. The Appellant has raised a large number of other matters all of which I have taken into account but they do not affect my conclusion that he has failed to prove his case on the balance of probability that the use of The Shelter is a single dwellinghouse.

Conclusions

13. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the existing use of The Shelter as a single dwellinghouse was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Decision

14. The appeal is dismissed.

Gloria McFarlane

Inspector