
Appeal Decision

Site visit made on 13 March 2017

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 16 March 2017

Appeal Ref: APP/R5510/X/16/3161221

24 Cranborne Way, Hayes, UB4 0HW

- 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 Abdul Razak Malik against the decision of the Council of the London Borough of Hillingdon.
- The application Ref 58779/APP/2016/2181, dated 6 June 2016, was refused by notice dated 18 August 2016.
- 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 building in use for over 10 years as additional accommodation to the main house used by the elderly occupants due to ill health as a daytime rest room and ground floor facilities.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued in the terms set out below in the Formal Decision.

Procedural matter

1. In order to succeed on appeal it is necessary for the appellant to demonstrate, on the balance of probabilities, that the occupation of the premises as primary accommodation in association with the main dwelling was continuous for four years¹. The date of the application is 6 June 2016 thus the building it would have had to be occupied as primary accommodation continuously since 6 June 2012 or alternatively for another continuous period of 4 years without any other intervening use. The onus of proof falls on the appellant but the Courts have held the evidence of the appellant should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, that is enough².

Reasons

2. No 24 is a semi-detached 2½ storey dwelling in a residential street. In the rear garden, there is a substantial outbuilding which occupies the greater part of the length of the garden. It is this building that is the subject of this appeal. At the far end of the garden there is a second outbuilding. I saw at the site visit that this is used for domestic and garden storage.

¹ S191 (4) of the Town and Country Planning Act 1990 as amended (the Act)

² *Gabbitas v SSE and Newham LBC* [1985] JPL 630

3. The main house has a lounge/diner and kitchen on the ground floor. There are no ground floor sanitary facilities. Three bedrooms and a bathroom are on the 1st floor and a fourth bedroom and en-suite are located in a loft conversion. The outbuilding currently provides a shower room and commode, fully fitted kitchen, study and seating area and a bedroom. Part of the outbuilding appears to have been originally constructed as a garage and there is independent access from the side of the property.
4. The appellant says he purchased No 24 in 1983 and Google map images have been provided showing that the outbuilding has been in situ since at least 2006. These statements have not been challenged by the Council, but these factors do not in isolation demonstrate that the use of the outbuilding is part of the primary accommodation.
5. The appellant has provided medical evidence that he has had ongoing and serious health issues since 1995 and this included hip replacements in 2007 and 2004. A copy letter from the Department for Work and Pensions has been provided to confirm that Mr Malik has been entitled to higher rate personal care payments since January 2013. In these circumstances and in view of evidence of other complex health issues it seems highly probable that this results in difficulties in terms of reduced mobility which in turn make climbing stairs problematic and difficult.
6. From what I saw, Mr Malik does appear to rely on walking aids and I have little doubt that using the first floor bathroom would be difficult. The only bathroom on the ground floor is that in the outbuilding. I also saw that the accommodation in the outbuilding was arranged to provide essential everyday facilities convenient and accessible for a resident with mobility issues.
7. His application has been supported by two affidavits. One was completed by the appellant and the other by Mr Ashraf of Dorchester Waye. These both say that Mr Malik has used the outbuilding as down stairs living space for over 10 years. Neither provides documentary evidence of when the alleged use of the outbuilding as primary accommodation commenced or if it was continuous for at least 4 years. However there is no counter evidence other than an unspecific and unsupported statement from a neighbour that suggests that the description of the development is "intentionally misleading".
8. Turning to the Council's evidence, it seems that reliance is placed on the electoral register and it is suggested that this provides significant doubt that the appellant is registered at the property. But on the contrary, the excerpts provide reliable documentary evidence that Mr Abdul Razak Malik has been registered on the electoral roll since at least 2011. In terms of Council Tax records, the Council says that these do not confirm that Mr Malik was using the outbuilding as primary accommodation in conjunction with the main dwelling. However it is not clear whether there has been any visit to the property by officers from that department and thus I can give this little weight.
9. At the time of my site visit it appeared that the appellant is occupying the outbuilding and also uses the ground floor accommodation of the main house. The main house appeared to be shared with his wife and other members of his family. From what I saw occupation of the outbuilding appears to be used in conjunction with and as part of the main house.

10. Consequently, although I agree that the appellant's evidence is relatively scant, taken as a whole, his version of events appears probable. Moreover no evidence has been produced to undermine or contradict such evidence as is before me.

Conclusion and Formal Decision

11. 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 building in use as additional accommodation to the main house used by the elderly occupants due to ill health as a daytime rest room and ground floor facilities 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 to grant a certificate.
12. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Sukie Tamplin

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

IT IS HEREBY CERTIFIED that on 6 June 2016 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched 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 reason:

The outbuilding has been used for at least 4 years in conjunction with and as part of the main dwelling at 24 Cranborne Waye.

Signed

Sukie Tamplin

Inspector

Date: 16 March 2017

Reference: APP/R5510/X/16/3161221

First Schedule

Use as additional accommodation to the main house used by the elderly occupants due to ill health as a daytime rest room and ground floor facilities.

Second Schedule

Land at 24 Cranborne Waye, Hayes, UB4 0HW

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 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.

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: 16 March 2017

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

Land at: 24 Cranborne Way, Hayes, UB4 0HW

Reference: APP/R5510/X/16/3161221

Scale: NTS

