
Appeal Decision

Site visit made on 24 April 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 5 May 2017

Appeal Ref: APP/U3935/X/16/3161022
208 Frobisher Drive, Swindon, SN3 3ES

- 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.
 - The appeal is made by Mr Martin Ayres against the decision of Swindon Borough Council.
 - The application Ref S/LDE/16/0881/AMBU, dated 20 June 2016, was refused by notice dated 19 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 (LDC) is sought is described as use as two dwellings since 2006.
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Decision

1. The appeal is dismissed.

Reasons

2. Section 191(2) of the Act states that uses and operations are lawful at any time if (a) no enforcement action may be taken in respect of them and (b) they do not contravene any requirement of an enforcement notice then in force. Section 191(4) indicates that the relevant time for determining lawfulness is at the date of the application which in this case is 20 June 2016.
3. Section 192(2)(b) does not apply in this case and so is satisfied. To satisfy the requirements of s191(2)(a) the Appellant needs to demonstrate, on the balance of probability, that the time limit set out in s171B(2) is met. That is that the use of the building the subject of the application as two separate dwellings began more than 4 years prior to the date of the application (hence before 20 June 2012) with no material change since.
4. Where an LDC is sought, the burden of proving relevant facts rests with the Appellant, and the test of the evidence is the balance of probability. The Appellant's own evidence does not have to be corroborated by independent evidence, and 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 an LDC provided that it is sufficiently precise and unambiguous¹.

¹ PPG Paragraph: 006 Reference ID: 17c-006-20140306

5. The Appellant's evidence in his affidavit is that planning permission and Building Regulation approval for a two storey side and rear extension were granted in 2002, with construction commencing in the same year and completion in 2003. Also, that the side extension replaced an original garage and comprised a downstairs living room with kitchen, and upstairs a large bedroom with en-suite shower and toilet.
6. However, that is markedly different to the approved plans which were for a ground floor garage, workshop and utility room. In addition, the Appellant states that *during the construction of the extension a separate staircase was erected and instead of a garage door on the front elevation a window was inserted and a separate front door to the side*. Given these significant variances to the approved plans I consider that the 2002 planning permission was never implemented, and thus the extension as constructed was built without planning permission.
7. As an unauthorised building it would not have become immune from enforcement action until 4 years from the date of its substantial completion, around 2007. That said, it does not affect the Appellant's argument in respect of the use of the whole building as two separate dwellings since before 20 June 2012.
8. Turning to the use of the building, the Appellant's affidavit states that he and his wife have lived in the extension since March 2005. However, that contradicts the answer provided in the Appellant's application form² which states that the use commenced on 1 April 2006. I acknowledge that is still well before 20 June 2012, but the discrepancy nonetheless introduces a degree of ambiguity in terms of evidence and raises the question of whether it can be relied upon.
9. Notwithstanding the above discrepancy, the Council's evidence includes photographic images³ of the building which show the replacement of the garage door with a window and separate front door to the side had not taken place by June 2012. That is very clearly at odds with the Appellant's evidence that these works took place during the construction of the extension and were completed in 2003. This adds a considerable degree of ambiguity to the Appellant's case.
10. No other evidence of any substance has been submitted which would support the claim that the extension was occupied independently, rather than it simply providing extended family accommodation in conjunction with the original house.
11. Taking all of the above factors together, I conclude that the Appellant has not provided sufficiently precise and unambiguous evidence to demonstrate on the balance of probability that the building has been used as two separate dwellings for in excess of 4 years prior to 20 June 2016, so as to have become the lawful use.

Conclusion

12. For all the above reasons I conclude that the Council's refusal to grant a certificate of lawful use or development for use as two separate dwellings at

² LDC application form submitted to the Council, question No.10

³ Google street view images taken in June 2012 and July 2015

208 Frobisher Drive, Swindon, was well-founded, and the appeal therefore fails. I exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

Thomas Shields

INSPECTOR

