
Appeal Decision

Site visit made on 8 June 2017

by Martin Joyce DipTP MRTPI

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

Decision date: 22 June 2017

Appeal Ref: APP/N0410/X/16/3162525

Building at Brooklands Lodge, Oxford Road, Gerrards Cross, Bucks SL9 8TB

- 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 Existing Lawful Use or Development (CLEUD).
- The appeal is made by Mr T Gutteridge against the decision of the South Bucks District Council.
- The application, Ref: 15/01188/CLEUD, dated 10 June 2015, was refused by notice dated 14 August 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 CLEUD is sought is the use of a building as a self-contained single dwellinghouse.

Summary of Decision: The appeal is dismissed.

Background

1. The appeal concerns a former double garage building at the western end of the curtilage of Brooklands Lodge, a single-storey dwelling located in the open countryside west of Gerrards Cross. The garage has a dual hipped roof, with a central valley gutter running along the length of the structure. The majority of the building has been converted into a single-bedroom flat, accessed through a pair of French doors on the south-western elevation. The flat contains a living room/kitchen, with a full range of equipment including a cooker and washing machine, a shower room/toilet, a small dining room/study, lit by two roof lights, and a double bedroom. Central heating, via radiators, is provided by a combi-gas boiler.
 2. The front part of the building is used as a store, with domestic and builders' paraphernalia present at the time of my visit. A pair of metal garage doors remains on the north-western elevation facing the lay-by that serves as an access from the main A40 Oxford Road for both Brooklands Lodge and Beaconsfield Lodge, another detached dwelling.
 3. Vehicular access to Brooklands Lodge, from the lay-by, is obtained through a pair of double gates close to the garage building, and there is a single pedestrian gate, with a keypad lock, adjoining. Much of the curtilage is hard-surfaced as is a small parking area, covered with gravel, outside the gates. A sign "Brooklands Flat" is positioned on the brick wall that forms the northern boundary of the site, next to the pedestrian gate.
 4. Close-boarded fencing has been erected to the south-east of the garage building so as to provide a small screened area for outdoor storage and private
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recreation. At the time of my visit, however, much of that fencing had been taken down, possibly as a consequence of wind damage.

THE CASE FOR THE APPELLANT

5. The appellant's case is, essentially, that the appeal building has been used continuously as a single dwellinghouse for more than four years preceding the date of the application for a CLEUD. The use began in May 2009 when a kitchen was installed and the appellant's son, Daniel, returned to live in the flat, following a period when he resided at Denham Green. Thereafter he has lived in the flat independently, providing for himself in respect of cooking, cleaning, washing, ironing and shopping, as the flat contains all of the facilities needed for such independent living. Although the flat does not have separate metering, a contribution is made to household bills, and a separate telephone line and broadband connection has been installed. Other services are provided through connections from the main dwelling at Brooklands Lodge.
6. Supporting documentary evidence in the form of a number of statements and Statutory Declarations from both the appellant, his wife and two of their sons, as well as the builder who helped to install the kitchen, and a number of friends of the family with knowledge of the property, has been provided. Additionally, submissions have been made, and supporting Statutory Declarations produced, in relation to, and in contradiction of, the case of the Council, which is based upon two site visits made to the appeal site in September and October 2012. Finally, copies of an invoice for the installation of the kitchen, dated 28 May 2009, and a BT bill, dated 21 January 2015, have been submitted.
7. The appellant accepts that the burden of proof in an appeal of this nature lies with him, and that the relevant test is on the balance of probability. However, he draws attention to the content of relevant Planning Practice Guidance (PPG)¹. This states that an appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted, and that if a Local Planning Authority has no contrary evidence of its own, or from others, to contradict or make the appellant's version of events less than probable, there is no good reason to refuse and a Certificate should be issued, provided the appellant's evidence in support of the application is sufficiently precise and unambiguous. In all of the above circumstances, and having regard to the supporting evidence produced, it is contended that the flat has been occupied by Mr Daniel Gutteridge as his sole residence during the relevant period, as a self-contained unit of accommodation with normal cooking, washing and sleeping facilities. There is no known contrary evidence and the Council has relied on assumptions from limited observations and comments by their Enforcement Officer that have been shown to be misconstrued. The appeal should therefore be allowed and a CLEUD should be granted.

THE CASE FOR THE COUNCIL

8. The Council accept that the evidence submitted by the appellant suggests that Daniel Gutteridge appears to have lived separately in the flat away from the family home, but contend that they have not been provided with irrefutable evidence that he has lived separately and independently for a continuous period of four years up to the date of the application for a CLEUD, as the statements submitted do not comment on the relationship between the

¹ Planning Practice Guidance (PPG) paragraph 17c-006-20140306.

occupier of the flat and the occupants of the main dwellinghouse. This is emphasised by the lack of specific dates within the statements and definitive corroborative evidence. It is also noted that the signed statements are not sworn declarations and are not, therefore, legally binding. Additionally it is of significance that there is no separate electoral register entry for the appellant's son at the appeal property, no Council Tax entry, and a lack of separate utility services for the flat, thus there is a substantial degree of ambiguity as to the lawful use of the appeal property.

9. With regard to the observations of the Council's enforcement officer in 2012, whilst he may not have been able to access the property at his first visit, in September 2012, he did observe that the garage doors were in place, and this is factually correct. Their presence adds to the ambiguity of the use of the building. Moreover, when he inspected the interior of the property, the following month, he took photographs of the interior and they show a lounge with a sofa and a television. There is, however, no photographic evidence of a kitchen which suggests that it was not there, as it would clearly have been of interest to the investigation then being undertaken.
10. In conclusion, therefore, and based upon the lack of supporting evidence provided, the Council maintain that there is no irrefutable evidence to suggest that the building was being used as separate and independent residential accommodation for a continuous period of four years up to the date of submission of the application on 19 June 2015. Furthermore, the Council also considers that, based on the lack of supportive information provided, it cannot be assumed that, on the balance of probability, the building was being used as separate and independent residential accommodation for that period. The appeal should therefore be dismissed.

Appraisal

11. The main issue in this appeal is whether the former garage building has been used continuously as a single dwellinghouse for a period of four years preceding the date of the application for a CLEUD. In considering this issue, it is necessary to state at the outset that the planning merits of the development are not before me in this appeal, only the question of whether or not the use for which a CLEUD is sought was lawful at the date of the application, that is on 10 June 2015². In this context I confirm that the burden of proof lies with the appellant, having regard to national procedural guidance³, as referred to in the PPG, and pertinent case law⁴, with the relevant test being on the balance of probabilities⁵. I note, at this point, that the Council refer at times, in their appeal statement, to the lack of provision of "irrefutable evidence". That term does not appear in pertinent guidance, and implies a stricter and inappropriate level of proof. I shall use the accepted test in my subsequent deliberations. In the context of this appeal, the appellant must show, on the balance of probabilities, that the use began before 10 June 2011 and has continued uninterrupted throughout the relevant four-year period.
12. On a further preliminary point, the Council suggest that some of the appellant's evidence should be given less weight because it has been provided by way of

² The date given on the application forms.

³ Annex E of Procedural Guide "Enforcement Notice Appeals – England", 23 March 2016, Planning Inspectorate.

⁴ *Nelsovil v Minister of Housing and Local Government* [1962] 1 WLR 404.

⁵ *Thrasylvoulou v Secretary of State for the Environment* No 1 [1984] JPL a732.

statement rather than Statutory Declaration, thus such evidence is not “legally binding”. This is, however, incorrect, as each person who has provided written evidence has, as a matter of fact, done so by way of Statutory Declaration. This evidence therefore attracts significant weight in the context of this appeal.

13. Turning to the substance of the appeal, in the context of the main issue identified above, there are two elements or components to the use of the appeal property as a single dwellinghouse that need to be considered. Firstly, the physical works of conversion of the former garage and, secondly, the nature of the use made of the converted building over the relevant four-year period.
14. On the first element, the only evidence put forward in support of the works of conversion that have taken place concerns the installation of a kitchen. A single invoice to the appellant from Harris Construction, dated 28 May 2009, gives a price for the supply and fitting of a kitchen in the “flat at Brooklands Lodge”. This was amplified, following comments from the Council about the legitimacy of that invoice, by a Statutory Declaration from Mr Harris, in which he states that he supplied and fitted the basic kitchen units with the appellant, and also helped with the installation of an oven, microwave, refrigerator, sink unit and washing machine that had been purchased by Mr Gutteridge. No copies of receipts for those items have, however, been provided.
15. In addition, no evidence whatsoever has been submitted in relation to the other works of conversion of the appeal building such as the provision of a bathroom, gas boiler, doors and windows, including roof lights, plumbing and mains services. There is no reference either to other works, such as the provision of external screen fencing, decoration or the supply and installation of furniture. The lack of such evidence does not, therefore, assist in the determination of the date at which the building, as it now appears, was fully converted and available for residential use.
16. In respect of the second component, it is clear that the “flat” currently has all of the facilities necessary for day-to-day living, as set out above. However, it is important to note that the entire building has not been converted – as the front part of the original garage is still used for storage purposes in association with the main dwellinghouse at Brooklands Lodge. In respect of the flat, the various Statutory Declarations make fairly consistent reference to the appellant’s son, Mr Daniel Gutteridge, living there “independently” since 2009, and that he “provides for himself”, doing his own cooking, cleaning and washing. However, whilst it appears that the appellant’s son may occupy the property with a fair degree of independence, details of the exact nature of such occupation are imprecise and ambiguous.
17. The flat relies upon service connections from the main dwelling, and there are no separate gas, electric or water meters. The BT bill produced shows nothing more than that a phone line and broadband service was being provided on a specific date in January 2015 to Mr D Gutteridge, thus there is some ambiguity, as another of the appellant’s sons is called David. In addition, it is addressed to Brooklands Lodge, so provides no proof of any connection to the appeal building. Crucially, no mention is made in the submissions of any rent paid in respect of the accommodation, merely a reference to a “contribution” being made to household bills. No details in respect of the amount paid, or regularity of payment, have been given, and the reference to “household bills” suggests

that there is significant connectivity and inter-dependence, not least in financial terms, between the two properties. This suggests to me that it is likely that there has been a single household on the overall site, albeit accommodated in two buildings with one son living in an annex to the main dwellinghouse.

18. The Council have drawn attention to the fact that the appeal building is not separately rated for Council Tax, and that there is no distinction made in the Electoral Roll between the two properties. The provision of a nameplate on the wall next to the gates appears to be fairly recent, but use of this as an entrance to the flat, mentioned by several of those who submitted written evidence, is misleading, as the double gates also provide the main vehicular access for Brooklands Lodge itself, and bulky deliveries to both buildings are likely to be made at this point.
19. The Council's reliance on assumptions made at site visits in 2012 creates a degree of confusion in this appeal. It would appear that a mobile home was sited on the overall site at that time, occupied by David Gutteridge, and information given about domestic arrangements was probably misinterpreted. However, there can be no certainty about the matter and it is difficult to draw definitive conclusions without contemporaneous notes or a written statement or Statutory Declaration from the officers concerned.
20. Drawing all of these matters together, I have reached the conclusion that the evidence produced by the appellant is insufficiently precise and unambiguous to show, on the balance of probabilities, that the appeal property has been used as a single dwellinghouse for a continuous period of four years from 10 June 2011. It is a matter of fact that part of the appeal building is used for storage purposes in associated with Brooklands Lodge, thus it is not, in any event, in sole use as a single dwelling. Moreover, the lack of precise and clear evidence about the financial and domestic arrangements appertaining to the appellant and his family suggests that the two properties have retained such a degree of inter-dependency that neither a separate dwellinghouse use has commenced, nor has a new planning unit been created.

Conclusions

21. For the reasons given above I conclude that the Council's refusal to grant a CLEUD in respect of the use of a building as a self-contained 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.

Other Matters

22. I have taken account of all other matters raised in the written representations but they do not outweigh the conclusions I have reached in respect of the main grounds and issues of this appeal.

FORMAL DECISION

23. The appeal is dismissed.

Martin Joyce

INSPECTOR