



Appeal Decision

Site visit made on 25 June 2019

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 August 2019

Appeal Ref: APP/M5450/X/18/3210523
12 Felbridge Avenue, Stanmore HA7 2BH

- 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 Ehi Irabor against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/2510/18, dated 7 June 2018, was refused by notice dated 10 August 2018.
 - 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 use of detached outbuilding as Granny Annexe.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's refusal to issue a certificate of lawfulness was well founded.

Reasons

3. In order for the appeal to succeed, it is necessary for the appellant to demonstrate, on the balance of probabilities, that the use of the detached outbuilding as a granny annexe was lawful as of 7 June 2018 – the date the application was made. The onus of proof is on the appellant. Nevertheless, case law has established that the evidence of the appellant should not be rejected simply because it is not corroborated.
4. The Council's reason for refusal was that the development would not be within the tolerances of Class E of Schedule 2 of Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). However, the purpose of the GPDO is to grant planning permission for development which falls within those classes set out in Schedule 2. Class E is one such class and it relates to the provision of buildings within the curtilage of dwelling houses. It does not relate to their subsequent use. The application before me is to determine whether the use of the building as an annexe was lawful at the date the application was made, not whether the building itself is lawful. Nevertheless, whilst the Council's reason for refusal seems to me to be misplaced, my remit in LDC cases is confined to the question of whether the Council's decision itself was well-founded, not the reasons for it.

5. Similarly, the appellant argues that the building was substantially complete more than 4 years from the date of the application and is therefore lawful. However, the application subject of this appeal is made under section 191(1)(a) of the 1990 Act, that being that the use of the building as an annexe in association with the main house was lawful at the time the application was made. It is not an application under section 191(1)(b) which seeks to establish that any building operations to construct the outbuilding are lawful.
6. As such, it is incumbent on me to determine whether or not the use of the outbuilding as a granny annexe was lawful at the date the application was made. In doing so, it is necessary determine whether the use of the building at the date of the application either: amounted to development for the purposes of section 55 of the 1990 Act; if it did amount to development, did not require planning permission; or, the time for enforcement action has expired.
7. Section 55(1) of the 1990 act defines development as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. There are certain exclusions set out under section 55(2) nonetheless. Section 55(2)(d) of the 1990 act states that the use of any buildings within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such does not constitute development.
8. However, whilst the appellant argues that the outbuilding is used for the storage of household items and as a home office/study area, it is clear from the evidence before me that it provides bathing, living and sleeping facilities. Indeed, the appellant indicates in his statement that it is used as an extra living area when friends are visiting. These are primary functions which would be integral to the main house. They are not by their very nature incidental to the enjoyment of it. As such, the exception under section 55(2)(d) is not applicable here.
9. Nevertheless, there remains the question over whether or not the use of the outbuilding at the time the application was made amounted to development in the form of a material change of use.
10. There is no indication that the building was not originally constructed for purposes incidental to the enjoyment of the dwellinghouse. The appellant indicates that the building was originally constructed under permitted development rights afforded by the GPDO as a storage building in April 2013. Whilst the Council indicates that satellite images indicate that the outbuilding did not exist in May 2014, I have little evidence to make the appellant's version of events that the outbuilding was constructed originally for storage use less than probable.
11. The key issue here is whether a separate planning unit has been created. If the outbuilding with its living accommodation was part of the same planning unit as the dwellinghouse and that planning unit remains in single family occupation and continues to function as a single household, no material change of use would have been involved, regardless of whether its use has changed from purposes incidental to the dwelling to purposes which are integral to it.
12. In those circumstances, the use of the outbuilding as an annex would have been lawful at the date the application was made because no development would have occurred.

13. In contrast, if a separate planning unit has been created by the use of the outbuilding as an independent, self-contained dwelling, then a material change of use would have occurred. In that case, the use of the outbuilding at the date of application would not have been lawful, because it would have amounted to development for which planning permission has not been granted and which is not immune from enforcement action.
14. The appellant argues that the outbuilding is not used as an independent dwelling. It is said that it is occupied as an annexe by family members from overseas when they come to visit for not more than few months a year. The appellant indicates that the building functionally cannot operate independently because it has not cooking facilities.
15. However, the Council has provided evidence that the outbuilding has been advertised as a 2-bedroom guest house on a short-term letting website. The advertisement indicates that the building has independent access from the main house without the need for interaction with those occupying the main house. Whilst the listing indicates that there are no cooking facilities available, it does not offer the use of cooking facilities in the main house as one would expect were the building to be occupied in connection with the main dwelling.
16. Indeed, the listing makes clear that the entire outbuilding is offered to persons on an entirely self-contained basis, noting that occupiers can come and go as they please with a separate entrance gate. Moreover, cutlery, crockery and a kettle are provided, as well as a fridge, which would allow occupiers to purchase pre-cooked food for consumption within the outbuilding.
17. This reflects my own observations on my site visit, where I saw that, whilst there was no delineation in the rear garden, the outbuilding was independently accessible via a gate from the path to the side of the building. Internally, a single door provided access into a hallway. From the hallway there was access to a small storage cupboard which contained a lawnmower and other domestic paraphernalia. There was a shower room comprising a shower, toilet and wash basin, a bedroom containing a single bed and a separate, larger room containing a double bed, fridge, television and a wardrobe with an ironing board.
18. I also saw that instructional notes had been placed on the electrical sockets. Again, one would expect that, were the building to have been occupied by family members in connection with the main house, they would not need constant reminders on how to use the sockets. This points towards a high turnover of occupation by persons unconnected to the main household.
19. The reviews provided by previous occupiers of the building in the short-term letting advertisement indicate that they are largely unconnected to the main household and have occupied the building on a short-term basis with a high turnover of occupants. There are also several reviews which pre-date the LDC application of June 2018.
20. The appellant indicates that it is not unusual for people to rent out rooms in their house on such short-term letting platforms. However, in such cases that occupation would rely on a degree of connection with the main property and would not provide independent, unfettered access as is the case here.

21. It seems to me therefore, that, at the time the application was made, the outbuilding was predominately being used for independent occupation by persons unrelated to the household residing in the main dwellinghouse. It cannot be said, therefore, that the use of the building was for a granny annexe occupied in connection with the main dwelling as a single household.
22. There is no evidence before me that the use of outbuilding as existed at the time the application was made would be granted planning permission either by virtue of Article 3 of the GPDO or under section 58 of the 1990 Act. Nor is there sufficient evidence that the use of the outbuilding would be immune from enforcement action.
23. The appellant points to decisions made by the Council at 51 Curzon Avenue and 34 Rocklands Drive, where it determined that outbuildings at those properties were annexes and not independent dwellings. Whilst in those cases, the outbuildings contained no cooking facilities, they were occupied in connection with the main dwelling with the availability of cooking facilities in the main house on offer. That is not the case here. In any event, I have determined this appeal on the individual merits of the submissions.
24. I conclude, therefore, on the balance of probabilities, that the use of the outbuilding at the date the application was made was as an independent, self-contained dwelling and not a granny annexe in connection with the main dwelling. On that basis, the existing use of the outbuilding at the date the application made was not lawful because it amounted to development for which no planning permission has been granted and enforcement action may have been taken in respect of it.

Conclusion

25. 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 use of the detached outbuilding as a Granny Annexe 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.

J Whitfield

INSPECTOR