



Appeal Decisions

Site visit made on 19 November 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2019

Appeal A Ref: APP/L5810/X/18/3216147

706A Hanworth Road, Hounslow, Middlesex TW4 5NT

- 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 Ajit Singh Sidhu against the decision of the Council of the London Borough of Richmond-upon-Thames.
- The application Ref 18/2296/ES191, dated 28 June 2018, was refused by notice dated 20 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 described on the application form as "*C3-residential use, self-contained dwelling continuous for over four years*".

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.

Appeal B Ref: APP/L5810/C/19/3221105

Land at 706 Hanworth Road, Hounslow, Middlesex TW4 5NT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Ajit Singh Sidhu against an enforcement notice issued by the Council of the London Borough of Richmond-upon-Thames.
- The enforcement notice was issued on 11 January 2019.
- The breach of planning control as alleged in the notice is without planning permission and within the last four years the unauthorised use of the single storey side extension as a separate self-contained, two-bedroom dwelling.
- The requirements of the notice are: (i) Cease the unauthorised use of the single storey side extension as a separate, self-contained residential unit; and (ii) Remove from the side extension the kitchen units including the integrated kitchen appliances; and (iii) Remove the bathroom facilities, including the sink, shower and WC; and (iv) Remove the internal front door to the side extension which separates it from the main dwelling; (v) Make good any damage resulting from compliance with steps 5(i) to 5(iv) above; (vi) Remove from the property all surplus materials and debris arising from compliance of the above steps 5(i) to 5(v) above.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Preliminary Matter

1. The description in the banner heading of the existing use for which an LDC is sought in Appeal A is taken from the application form. However, the allegation in the enforcement notice in Appeal B provides a clearer and more succinct description of the use. Therefore, I shall deal with both appeals on that basis.

Appeal A and Appeal B, ground (d)

Reasons

2. The appeal site contains a semi-detached dwelling (No 706). There is a single storey extension at the side, which projects slightly beyond the original rear wall of the dwelling. There is also an extension at ground floor level to the rear of the dwelling. A large detached outbuilding is towards the end of the rear garden. During my site visit, I saw that an external door at the front led into a small lobby containing two doors. One door opened into No 706, the other opened into the side extension. The side extension was self-contained, with no link to accommodation in No 706 apart from the lobby. Internally, the side extension contained a living area, bathroom, kitchen and two bedrooms.
3. An LDC is sought on the basis that at the application date, it was too late to take enforcement action in respect of use of the side extension as a separate, self-contained dwelling. The ground (d) appeal is made for a similar reason, at the date the notice was issued. The effect of s191(2) of the Act is that the use would be lawful if no enforcement action can be taken because the time for taking such action has expired. At s171B (2), the Act provides that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. Any four-year period is relevant, not just the four years immediately preceding the application or the date of the notice.
4. The onus is on the appellant to show that the use as a separate, self-contained dwelling is immune from enforcement action and consequently, lawful. This is qualified by the Planning Practice Guidance (PPG) 'Lawful Development Certificates', which advises that where a Council has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous in order to justify the grant of a certificate on the balance of probability¹.
5. The appellant supplied a Statutory Declaration (SD) dated 2 July 2018, in which he stated that shortly after acquiring the site in May 2010, he arranged for internal alterations to be undertaken to the side extension including installing a utility room, WC and shower. The dwelling together with the side extension were then let together as a single dwelling. The appellant went on to state that a separate gas supply was provided to the side extension in or around December 2013 and works including installing a cooker in the utility room and fitting of locks to the entrance were completed in early January 2014. He also stated that the side extension, subsequently known as No 706A, was then let under an Assured Shorthold Tenancy agreement (AST) dated

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

- 27 January 2014, which has since been renewed annually by the same tenant, who continues to reside there.
6. Exhibited with the appellant's SD were a plan of the side extension internal layout; annual copies of ASTs for '706A' signed by the appellant and the same tenant, dated between 27 January 2014 and 27 January 2018; copies of gas safety certificates issued following annual inspections undertaken for '706 ground floor left' between January 2014 and January 2018; Southern Electric invoices for use of the gas addressed to the same tenant at 'Annex 706A', between January 2014 to January 2015, and; a summary of gas usage between February 2017 and February 2018 addressed to the same tenant. A copy of a builder's invoice dated 4 January 2014 for fitting a cooker and locks to 'Annexe 706A' was also exhibited.
 7. Two further SDs were supplied. In an SD dated 28 June 2018, the tenant attested to being in residence continuously at the ground floor flat located on the left side annexe of No 706 known as No 706A since 27 January 2014, renewing their AST annually. The tenant had the same name as that given for the tenant by the appellant in their SD and shown on the ASTs. Similar documents to those described at paragraph 7 were exhibited. In their SD dated 28 June 2018, the current tenant of No 706 stated that they had lived there since 13 June 2016. The witness also stated that the tenant of No 706A had lived there before their arrival and continued to do so. Documents they exhibited included plans of the ground floor and first floor layout of No 706.
 8. The appellant and tenant of No 706A both provided first-hand evidence of the continuous use of the side extension as a separate, self-contained dwelling between 27 January 2014 and 2 July 2018, i.e. a period of more than four years. They clearly identified the side extension as having been occupied as a self-contained dwelling known as No 706A throughout that period. The accounts of both individuals are consistent. They are sufficiently precise and unambiguous. Although as set out above, the address is given variously in gas safety certificates, ASTs and other correspondence, when read in conjunction with the above SDs it is unlikely that the contemporaneous documents relate to a part of the site other than the side extension. During my site visit, it became clear that neither the garden outbuilding or rear extension to No 706 were capable of use as a separate unit. As a result, the documentary evidence provides significant support for the witness accounts. As the tenant of No 706 was not present throughout the relevant period, their SD was of limited evidential value. However, that does not cast any doubt on the appellant's other evidence. Therefore, in the absence of anything to indicate otherwise, the witness and documentary evidence provided in the SDs from the appellant and the tenant of No 706A should be afforded considerable weight.
 9. The Council did not produce any evidence of its own which might have cast doubt on the appellant's version of events and largely relied on what were regarded as inconsistencies and defects in the submitted documentation. However, the ASTs are dated and signed by the appellant and the tenant of No 706A. By exhibiting those documents with the SDs, the witnesses have attested to their veracity in the presence of a solicitor. Therefore, whether the ASTs were properly witnessed or certified at the time they were entered into has no material effect on their evidential value. Whilst the signature of the tenant of No 706A varies slightly between their SD and the ASTs, it is not dissimilar in terms of format and length. Variations in an individual's signature

could be due to several reasons; also, it would be unusual if a signature did not vary to an extent over time. As far as I could ascertain, the name of the tenant of No 706A was spelt consistently in the submitted documentation and the spelling agreed with that shown on their passport.

10. During the site visit, I ascertained that the internal layouts of the side extension and No 706 were not significantly different from the exhibited plans. There were no records of Council Tax being paid in respect of use of the side extension as a self-contained dwelling. Even so, the use for planning purposes is not dependent on such payments being made. The absence of a separate number or doorbell and sharing of the rear garden are not significant factors in terms of assessing whether the side extension has been used as a self-contained dwelling throughout the relevant period. Therefore, none of the matters raised by the Council materially affect the weight that should be given to the appellant's evidence.
11. For the reasons set out above, when taken together the SDs of the appellant and tenant of No 706A, together with the contemporaneous documents exhibited thereto, provide sufficiently precise and unambiguous evidence of continuity in the use of the side extension as a separate, self-contained dwelling for a period of more than four years before the application date. There is no evidence which contradicts or makes the appellant's version of events less than probable. Consequently, on the date of the application and at the time the notice was issued, it was too late for the Council to take enforcement action.
12. Representations were received from interested residents regarding additional noise, disturbance and parking problems. However, the planning merits do not fall to be considered in these appeals.

Conclusion

13. 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 use of the side extension as a separate, self-contained dwelling was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195 (2) of the Act. Also, for similar reasons I conclude that the ground (d) appeal should succeed. Accordingly, the enforcement notice will be quashed.

Appeal B

14. In the above circumstances the ground (g) appeal does not need to be considered.

Formal Decisions

15. Appeal A is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the existing use which is considered to be lawful.
16. Appeal B is allowed and the enforcement notice is quashed.

Stephen Hawkins

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 28 June 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and coloured solid black within the land edged 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 available evidence demonstrates that, on the balance of probability, the use of the side extension as a separate, self-contained dwelling began more than four years before the date of the application and has been continuous thereafter.

Signed

Stephen Hawkins

Inspector

Date: 29 November 2019

Reference: APP/L5810/X/18/3216147

First Schedule

Use of single storey side extension as a separate, self-contained two bedroom dwelling (Use Class C3).

Second Schedule

Land at 706A Hanworth Road, Hounslow, Middlesex TW4 5NT

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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: 29 November 2019

by **Stephen Hawkins MA MRTPI**

Land at: 706A Hanworth Road, Hounslow, Middlesex TW4 5NT

Reference: APP/L5810/X/18/3216147

Scale: Not to scale

