



Appeal Decision

Site visit made on 20 November 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 12th December 2019

Appeal Ref: APP/F5540/X/19/3221410

Land at 61 Hadley Gardens, Southall, London, UB2 5SH

- 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 lawful development certificate (LDC) by the Council of the London Borough of Hounslow dated 25 July 2018.
- The appeal is made by Mr Jaspal Singh.
- The application ref. 00539/61/LAW1 was dated 30 May 2018.
- The application was made under section 191(1) of the Town and Country Planning Act 1990 as amended.
- The development for which a lawful development certificate is sought is (existing) use of outbuilding in rear garden as a self-contained residential unit.

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.

Application for costs

1. The Council has made an application for a partial award of costs against the Appellant. This is the subject of a separate decision.

Preliminary Matter

2. I should explain that the planning merits of the development are not relevant to this appeal which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests on the Appellant and the test of evidence is made on the balance of probability.

Main Issue

3. I consider that the main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

4. The application the subject of this appeal concerns an outbuilding in the rear garden of a residential dwellinghouse. There is no dispute that its use as a one bedroom self-contained residential unit does not have planning permission. The Appellant's argument is that the use as a single residential unit has been

- continuous for more than four years and therefore is immune from enforcement action and is lawful.
5. Section 171B(2) of the 1990 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 dwellinghouse no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
 6. There is no dispute between the parties that a breach of planning control consisting in the change of use of the appeal site to use as a single dwellinghouse commenced in October 2009 and continued until March 2017. Unless the lawful use has been lost the established use is still capable of being certified to be lawful on the date of the application for the LDC. The issue in dispute is whether at the date of the LDC application (May 2018) lawful use as a single dwellinghouse had been lost.
 7. The case of *Panton*¹ sets out the ways in which a lawful use may be lost, namely by the formation of a new planning unit, abandonment or by way of a material change of use. The Council's argument is that the lawful use was abandoned in the period between March 2017 and May 2018.
 8. I have before me a statutory declaration from the Appellant which states that an occupier moved into the property in March 2017 and moved out in July 2019 and that he was replaced by the current occupier who moved into the property in July 2019. In contrast the Council say that at a visit to the property in January 2018 the property had been vacated. The Council officer's note states 'tenant moved out in 2017' and photographs show the outbuilding as furnished but appearing to the Council to be unoccupied. The Appellant does not challenge the assertion that the tenant had moved out at the time of the site visit. He says that he thought it better if the building was empty at the time of the site visit and that the occupier stayed briefly at another property.
 9. The Appellant's evidence does not need to be independently corroborated in order to be relied on but it does need to be precise and unambiguous. I am not satisfied on the evidence before me that the Appellant intended to cease the residential use permanently nor that the period of non-use was lengthy. The Council's evidence does not cast serious doubt on the Appellant's version of events. The Appellant's explanation of events makes it more likely than not that the lawful use of the site was not lost. His evidence is sufficiently precise and unambiguous to satisfy the burden of proof that rests upon him in this appeal. I have noted the Council tax records but these are not conclusive of actual use and do not alter my conclusions.
 10. I conclude that the Appellant has demonstrated, on the balance of probabilities, that the use of the outbuilding as a self-contained single residential dwelling unit commenced in 2009 continued for a period of not less than four years and has not been lost by the formation of a new planning unit, abandonment or by way of a material change of use.
 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 (existing) use of outbuilding in rear garden as a self-contained residential unit at 61 Hadley Gardens Southall, London, UB2 5SH was not well-founded,

¹ *Panton & Farmer v SSETR and Vale of White Horse DC* (1999)

and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act as amended.

Formal Decision

12. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

S. Prail

Inspector



LAWFUL DEVELOPMENT CERTIFICATE

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191 (as amended by the Planning and
Compensation Act 1991)

IT IS HEREBY CERTIFIED that on 30 May 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and marked edged red on the plan attached to this certificate would have been lawful within the meaning of section 191(1) of the Town and Country Planning Act 1990 as amended, for the following reason:

The use of the outbuilding as a self-contained residential unit commenced in October 2009, continued for a period of not less than four years and has not thereafter been lost by the formation of a new planning unit, abandonment or by way of a material change of use.

S. Prail

INSPECTOR

Date: 12th December 2019

Reference: APP/F5540/X/19/3221410

First Schedule

The use of the outbuilding in rear garden as a self-contained residential unit as shown on the plans submitted with application ref. 00539/61/LAW1 dated 30 May 2018.

Second Schedule

Land at 61 Hadley Gardens, Southall, London, UB2 5SH.

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 would have been lawful, on the certified date and, thus, would not have been 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 operation/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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 12th December 2019

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Not to Scale

