The Planning Inspectorate

Appeal Decision

Site visit made on 10 December 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date:20 December 2019

Appeal Ref: APP/E2001/X/19/3229165
Apartment, 43 Main Street, Wawne, Hull, East Yorkshire HU7 5XH

- 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 Mark Ombler against the decision of East Riding of Yorkshire Council.
- The application Ref DC/18/00725/CLE/EASTSE, dated 26 February 2018, was refused by notice dated 7 June 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 "The current building is being used as an annex to 43 Main Street, Wawne, Hull".

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The building to which this application relates is detached from the main dwelling and is situated at the rear of the property. At the visit it was not possible for me to gain access to view inside the building subject to the appeal. However the parties agreed that the layout of the building was in accordance with the 'Existing Ground Floor Plan' submitted by the appellant.

3. Although the building to which this case relates is described by the appellant as an annex[e], there is no dispute between the parties that it is distinct from the main dwelling in terms of Council tax liability and that it contains the facilities for independent living including a kitchen, bedroom, bathroom and lounge. Furthermore the address of the annexe, identified as "Apartment" on the application form and on Council tax bills, also distinguishes it from that of the main dwelling. The Council has described the use in its decision notice as "existing use of outbuilding as a dwelling (Apartment 43A) (Re-submission of 17/02240/CLE)", which has not been specifically disputed by the appellant.

4. Drawing the above considerations together, I concur that the correct approach is to interpret this as a lawfulness application for the existing use of the outbuilding as a dwelling. My decision is therefore made on this basis.

Reasons

5. Uses are lawful at any time if no enforcement action may be taken in respect of them, whether because they did not involve development or because the time for enforcement action has expired (s191(2)(a)). In this case, the appellant seeks to rely on the passage of time. However the proviso to this is that the use must not contravene the requirements of any enforcement notice then in force (s191(2)(b)).

6. As part of its evidence the Council has provided a copy of an enforcement notice which was previously issued in relation to the change of use of the outbuilding, subject to the present appeal, to use as a single dwelling-house. The notice required the use of the outbuilding as a dwelling-house to cease and the removal of the kitchen and all associated facilities. It appears that a valid appeal was not made in relation to this enforcement notice[1] and that consequently the notice came into effect on 22 May 2019.

7. I have set out above, why I am interpreting this application and appeal to be for the existing lawful use of the outbuilding as a dwelling. I therefore conclude that, notwithstanding the various evidence and information submitted by the appellant in relation to this appeal, the use for which an LDC is sought would contravene the requirements of an enforcement notice, which remains in force. Accordingly this use cannot be lawful.

8. Therefore 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 current building is being used as an annex to 43 Main Street, Wawne, Hull" at Apartment, 43 Main Street, Wawne, Hull, East Yorkshire HU7 5XH 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.

Roy Merrett

INSPECTOR

[1] See correspondence from PINS, dated 11 September 2019, turning away the appeal.