



Appeal Decision

Site visit made on 18 February 2020

by S Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2020

Appeal Ref: APP/T3725/X/19/3226258

Ewe Green, Hockley Road, Hatton, Warwickshire CV35 7HQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Bobby Bhutta against the decision of Warwick District Council.
 - The application Ref W/18/1034, dated 31 May 2018, was refused by notice dated 3 August 2018.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is a change of use from outbuilding to granny annexe.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in the determination of the appeal is whether the Council's decision to refuse the application was well-founded.
3. An application for a LDC is not an application for planning permission. Its purpose is to ascertain whether specified uses or operations would have been lawful on the date that application was made. As such, the planning merits of the development in question are not relevant in the determination of the appeal which must be made having regard to the facts of the case and any relevant judicial authority.

Reasons

4. The proposal is for the change of use of an existing outbuilding to form a residential annexe to the bungalow, known as Ewe Green, for use by an elderly relative. The plans show that the annexe would have two bedrooms, a shower room and a living room with a kitchenette within one corner. No alterations to the exterior of the building are proposed. I noted, at my site visit, that the outbuilding was partially furnished and the kitchenette, incorporating a sink and cupboards/drawers with a small area of workspace, had been installed. However, it appeared to me that the outbuilding was not being occupied.
5. The outbuilding sits to the side of the main dwelling and there is a block of three domestic garages in between. The whole site is narrow and elongated with garden area mostly to the side of the bungalow and to the side of the outbuilding. The three units sit close together with an area of hardstanding in

between. The site has one vehicular access from the main highway which is located to the front of the garage block.

6. The appellant does not seek a LDC on the basis that the development would be permitted under the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO), but on the basis that no material change of use would arise if the building was used for a purpose that would be incidental to the existing dwellinghouse. Their argument is based on the fact that the use of the outbuilding as an annexe for an elderly relative, with some reliance on the main dwellinghouse, would not amount to development as defined by the Act.
7. Section 55(1) of the Act sets out the meaning of development for the purposes of the Act and that includes the making of a material change of use of any buildings or land. Section 55(2) clarifies operations or uses of land that "shall not be taken to involve development". As set out at paragraph (d) that includes the use of any buildings or land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse.
8. The concept of a material change of use of land is not defined in any statute or statutory instrument; it is a question of fact and degree in each individual case. Also relevant to the discussion is the concept of the planning unit. This principle has evolved as a means of determining the most appropriate physical area against which to assess the materiality of a change in the use of land or building. The tests for determining the planning unit are well established, and starting with the unit of occupation, turn on the concept of physical and functional separation.
9. For planning purposes, it is commonly held that the term "incidental to the enjoyment of the dwellinghouse" implies that the intended use should be subordinate to the main residential use of the property. The essential feature of an incidental use is that there should be a functional relationship with the primary use within the planning unit. In terms of the physical relationship, there is little doubt that, together, the dwelling, garage, outbuilding and the land associated with the dwelling currently form a single planning unit.
10. The Council's reason for refusal is based on the functional relationship with the primary use. Its reasons being that the proposal would have all of the elements necessary for day to day living, including washing and sleeping. As I have said elsewhere, the annexe would provide two bedrooms, a shower room and a large living room with an area set aside to be used as a kitchen, albeit, according to the appellant, not fitted with a cooker. It is the provision of these facilities which the Council believe could result in the outbuilding being capable of independent occupation. As such, this would create a separate planning unit which would require planning permission.
11. However, even if the accommodation provided facilities for independent day-to-day living, it would not necessarily become a separate planning unit from the main dwelling; it would be a matter of fact and degree. Accommodation may give an occupant the facilities of self-contained living, although it was intended to function as an annexe only, with the occupant sharing living activity in company with the family in the main dwelling. There is no reason, in law¹, why

¹ *Uttlesford DC v SSE & White* [1992] JPL 171

such accommodation should consequently become a separate planning unit from the main dwelling.

12. On the specific circumstances of this case, the key issue is whether the proposed use would result in a material change in the use of the outbuilding. It is necessary to consider if a separate planning unit would be created as a result of the proposal. Applying planning principles established in case law, it seems to me that if an outbuilding with its living accommodation was part of the same planning unit as the dwellinghouse, and provided that the planning unit remains in single family occupation and continues to function as a single household, no material change of use would be involved. The use of the proposed granny annexe for the elderly relative would be incidental to the enjoyment of the dwellinghouse. Planning permission would not be required for the change of use of the outbuilding for that purpose, provided the evidence, presented clearly and unambiguously, shows all occupants would function as a single-household.
13. The location plan attached to the LDC shows the proposed annexe and adjoining garden area outlined in red, omitting the main dwellinghouse, garage block and remaining garden. The proposal before me is an outbuilding with all the necessary facilities for day-to-day private existence and a plan that shows it physically separate from the main dwellinghouse with land in residential use. With no functional relationship with the primary use of the planning unit and a lack of specific evidence about the proposed occupation and use, this raises the prospect of a separate planning unit being created, given the significant degree of physical and functional separation.
14. Consequently, I consider that the outbuilding would no longer have a functional relationship with the primary use of the planning unit - the residential use of the dwellinghouse. Therefore, the proposed use would not be considered incidental to the use of the host dwelling as a dwellinghouse, and if instituted at the date of the LDC application, would have resulted in a change in the character of the site. That change would be a material change in the use of the outbuilding and appeal site falling within the scope of s55(1) of the Act.

Conclusion

15. For the reasons given above I conclude that the Council's refusal to grant a LDC in respect of the use of the existing outbuilding as a granny annexe for use by a family member 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.

S Hanson

INSPECTOR