
Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 June 2020

Appeal Ref: APP/F5540/X/19/3240606

50 Blossom Waye, Hounslow, Middlesex TW5 9HD

- 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 Harnek Sidhu against the decision of the Council of the London Borough of Hounslow.
 - The application, Ref 00126/50/LAW2, dated 12 July 2019, was refused by notice dated 27 September 2019.
 - 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 as 'Existing use of side extension as C3 dwelling house'.
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Decision

1. 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.

Preliminary Matter

2. The Planning Inspectorate initially decided that this appeal could be determined following a site visit. That event could not take place given the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and related guidance.
3. The file has subsequently been reviewed to consider the optimal procedure for the appeal. It appeared that the appeal could be determined on the papers – that is, without a site visit – without causing prejudice to any party. This is because the case turns on legal points and the parties have submitted sufficient plans and photographs to understand the nature of the site given the points in dispute. As such, I can proceed to a decision on this basis.

Procedural Matters

4. Any application for an LDC is seeking to ask a question, namely whether a particular use or development, as described in the application, is lawful. In this case, from the description of the development within the application form and the layout of the property shown on the plans, the Council have interpreted the question being asked as being whether the use of the side extension as a separate dwelling house is lawful.
5. However, from the accompanying Planning Support Statement (PSS), it is apparent (paragraph 4.3) that the question being asked is actually whether the

lawful use of the entire building remains as a single dwelling house following the erection and use of the side extension. The appellant is not seeking to demonstrate that the use of the side extension is a separate dwelling. The application appears to have been made in response to a Council investigation regarding the alleged use of the side extension as a self-contained flat. To date, no enforcement notice has not been issued in respect of that allegation.

6. It is my view that I can proceed on the basis of the appellant's description of the development as set out in his PSS. This is because section 39 of the Town and Country Planning (Development Management Procedure)(England) Order 2015 states that an application for a certificate must be accompanied by not only the relevant form and plans but also '(b) Such evidence verifying the information included in the application as the applicant can provide'. The appellant sets this out in his PSS. There would be no injustice to the Council to my proceeding as outlined because their position is that they do not accept the extension has been used as a separate self-contained unit.

Main Issue

7. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development was well founded. This turns on whether the appellant can show, on the balance of probabilities, that the use of the property as one Class C3¹ dwelling house has continued following the construction and use of the side extension.

Reasons

8. The appeal site comprises a detached dwelling situated on the corner of Blossom Waye and The Vale. Planning permission was granted in October 2009 for the erection of an infill single storey side and rear extension. However, it appears this was not implemented as planning permission was granted in December 2009 for the erection of a single storey side and rear extension and new pitched roof to existing single storey extension.
9. The appellant states the December permission was implemented in 2010. The plans submitted with the appeal application show that the side extension is laid out as a bedroom, shower room and kitchen with access to the bedroom from the main hallway of the house. There is a door leading from the extension kitchen into the garden. The photographs in the PSS show the bedroom area with a bed, sofa, drawers and a television. They also show a small kitchen with what appears to be only enough room for one person to stand at a time. It has an extremely compact layout and contains a sink, cooker, fridge freezer, microwave, toaster, base and wall units.
10. The appellant states his nephew and partner live with his household as part of his family and occupy the bedroom in the side extension. They do not pay any rent and they access the property in the same way as the rest of his family, through the front door. There are no additional doorbells, letter boxes or refuse bins or divisions in the parking area. Whilst there is a lock on the

¹ Town and Country planning (Use Classes) Order 1987, Use Class C3 Dwellinghouses: Use as a dwellinghouse (whether or not as a sole or main residence) by (a) a single person or by people to be regarded as forming a single household; (b) not more than six residents living together as a single household where care is provided for residents; or (c) not more than six residents living together as a single household where no care is provided for residents (other than a use within class C4).

extension bedroom door, this is to provide his nephew and partner with some privacy. He describes the kitchen as a kitchenette, which is used as a utility area when there are family gatherings and functions in the house. He also states the extension kitchen is used as an 'additional Indian kitchen' but does not explain how this is different from any other kitchen. The garden has also not been subdivided.

11. In an appeal relating to an LDC, the burden of proving relevant facts rests with the appellant and the test of the evidence is the balance of probabilities. The appellant's own evidence does not have to be corroborated by 'independent' evidence. If there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate. This is provided that it is sufficiently precise and unambiguous.
12. The Council express concern that the appellant has not submitted any documents such as affidavits, tenancy agreements, Council tax bills or utility bills. However, the Council do not submit any evidence to contradict the appellant's case. In fact, they confirm what the appellant states in one respect, that the property remains as one unit for Council tax purposes. The appellant does not produce any of the documents referred to by the Council as the use of the property remains as a single family dwelling house following the erection and use of the extension.
13. In my view, this is the case even though in order to access the 'additional Indian kitchen' the appellant would have to either pass through the nephew's bedroom or exit the main kitchen into the garden and walk round to the 'additional Indian kitchen' external door. This may well be what happens when the family gathers but it seems to me that the nephew and his partner, in all likelihood, make use of the kitchenette in the same way as a lodger or grandparent has access to separate cooking facilities, for some element of independence. The layout and use of the extension is not unlike an annex and I find the appellant's description of its use to be plausible. His wife has some health conditions which means she needs care and this is provided by the appellant's nephew. The manner in which the extension is used does not change the overall use of the property as a single dwelling house.
14. The appellant does not state when his nephew began living with him and the date in the application form for when the use began is rather confusingly the date of the planning application for the extension. However, use of the additional accommodation no doubt began on or just after completion of the extension otherwise it would have made no sense to build it. Notwithstanding this inconsistency, having regard to the totality of the evidence this one point does not make the appellant's version of events less than probable. In my view, the appellant's evidence is sufficiently precise and unambiguous to support his case that the lawful use of the whole property remains as a single family dwelling house within Class C3 of the Town and Country Planning (Use Classes) Order 1987. The test for the evidence is on the balance of probabilities, namely what is more likely than not. That balance of the evidence need only be slightly more than half in order to satisfy the test. In the absence of any evidence from the Council to the contrary, it is concluded that the use of No 50 Blossom Waye following the construction of the extension remains as a single dwelling. The use is therefore lawful.

Conclusion

15. 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 an integral part of the Class C3 use of the building was not well founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 act as amended.

D Fleming

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 12 July 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and 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 use of the extension as an integral part of the Class C3 use of the building took place after it was erected in 2010. This use has continued without interruption and there has been no subsequent material change of use of the property prior to the submission of the application. The use also does not contravene the requirements of any enforcement notice in force.

Signed

D Fleming

Inspector

Date: 02 June 2020

Reference: APP/F5540/X/19/3240606

First Schedule

Use of the side extension as an integral part of the Class C3 use of the building

Second Schedule

Land at 50 Blossom Waye, Hounslow, Middlesex TW5 9HD

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

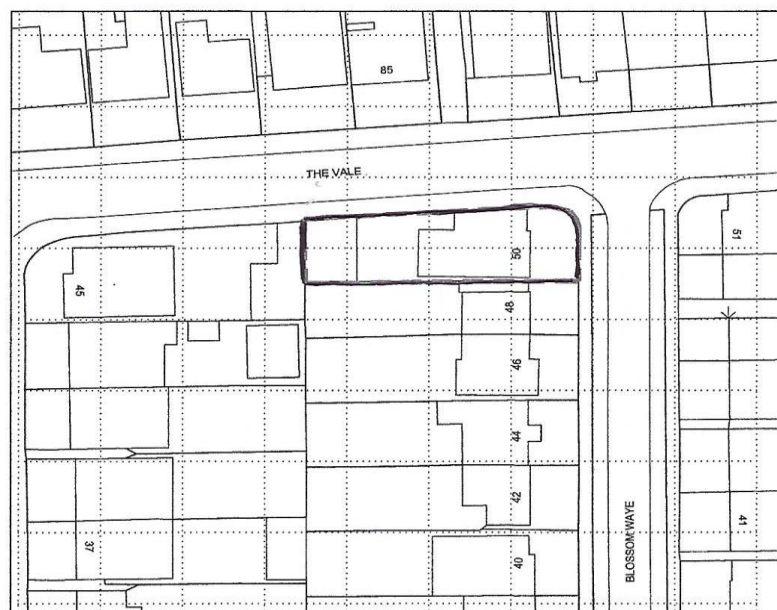
This is the plan referred to in the Lawful Development Certificate dated: 02 June 2020

by D Fleming BA (Hons) MRTPI

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Scale: not to scale



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BLOCK PLAN

