



Appeal Decision

Site visit made on 18 May 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 09 June 2020

Appeal Ref: APP/B3410/X/19/3239498

Annexe/Water Lodge, Lodge Hill, Tutbury, Burton-on-Trent, Staffordshire DE13 9HF

- 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 in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Jennifer Jobson against the decision of East Staffordshire Borough Council.
 - The application (Ref. P/2019/00438), dated 10 April 2019, was refused in part by the Council by notice dated 20 September 2019.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
 - The use for which a certificate of lawful use or development is sought is described as '*an independent one bedroom dwelling including a garden and independent drive which enters the site near the north east corner*'.
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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 proposed operation which is considered to be lawful.

Preliminary Matters

2. A refusal in part includes a modification by the Council of the development described in the application. In this case, having read the respective statements and supporting information, it is clear that a LDC is being sought not simply on the basis that the building and land have been put to residential use but that they have been used as a dwellinghouse, independently of the adjacent dwelling at Water House. Therefore, even though the Council's Decision Notice certified that the continued use of the building as an annexe to Water House was lawful that is to be treated as a part refusal of the application applied for. In addition, it confined the certificate to the building only, excluding all the land around the building which had been included within the red line delineating the application site. I have dealt with the appeal on this basis.
3. The description of the development for which a LDC is sought is taken from the application form. However, a more accurate description of the use for which a certificate is sought would be, "*the use of the building and adjacent land as an independent dwellinghouse*". I have considered the appeal on that basis.
4. Due to the restrictions in place in relation to the COVID-19 pandemic I undertook an unaccompanied site visit on the basis that I was allowed access, alone, on to the site in question. As such, I was not able to inspect the internal

parts of the appeal property. Both main parties agreed to the appeal being dealt with on this basis.

5. I note that the Parish Council has referred to the planning merits of the development. Nevertheless, the planning merits of the development are not relevant in this appeal which relates to an application for an LDC. My decision rests on the facts of the case, on relevant planning law and judicial authority. The test of evidence is made on the balance of probability.

Background and Main Issue

6. Taking into account the above, the main issue is therefore whether the Council's part refusal of the LDC was well founded.

Reasons

7. The appeal property is a single storey building adjacent to an access track that appears to serve a number of properties and is also a public right of way (PROW). This building is in relatively close proximity to Water House, a 2-storey dwelling, the latter being the appellant's residence.
8. Where a LDC is sought, the onus of proof is on the appellant and the standard is the balance of probabilities. The appellant's case is that the use of the Annexe/Water Lodge as a separate unit of accommodation is lawful because the time for taking enforcement action against the use has expired.
9. Section 191(2) of the 1990 Act states that uses are lawful at any time if (a) no enforcement action may be taken in respect of them – in this case because the time for taking action has expired and (b) they do not contravene the requirements of any enforcement notice in force. Lawfulness is to be decided at the time of the application; that is 10 April 2019.
10. Subsection 191(2)(b) is met in this case in that there is no enforcement notice in force. With regard to subsection (a), section 171B(2) of the 1990 Act says 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 that breach.
11. To ascertain the lawfulness of a material change of use, it is necessary to address whether the change of use has occurred as a matter of fact and degree. There is no dispute that Waterhouse and the appeal site are all owned by the appellant and that the overall site was in use as one dwellinghouse with its associated grounds prior to the conversion of the appeal building.
12. According to the appellant's Statutory Declaration (SD), she acquired Waterhouse in 2012 and at that time the word 'annexe' was used to describe the appeal property. In my experience, the difference between ancillary residential accommodation (an annexe) and the creation of a separate dwelling is often a fine line, depending crucially on-site specific factors, which in this case I consider to be as follows.
13. There is no dispute that the appeal property contains all of the facilities required for day-to-day private domestic existence, including a living area/bedroom, a shower room and kitchen. In addition, the appellant's SD includes a number of invoices and documents relating to works that were

carried out in 2014 to install services and facilities into the appeal property. Furthermore, a number of Assured Shorthold Tenancy Agreements (AST) also form part of the SD and they confirm the appellant's version of events that the appeal property was occupied continuously (or without material interruption) by tenants who appear to not be related to the appellant from September 2014 for at least four years prior to the date of the application for the LDC.

14. In this case the appeal property and Waterhouse sit on opposite sides of a parking area and access drive and that provides a degree of physical separation even though they are in relatively close proximity. There are 2 access points from the PROW and a line of planters/pots currently delineates the parking area/access drive and stops vehicular access between the 2 accesses. As a result, the appeal property and Waterhouse have their own separate vehicular access points and parking areas.
15. The AST, in the main, refer to the use of a garden area in connection with the appeal property. There is a landscaped area of land that is bound by the access drive, that is part of the appeal site, and provides what appears to be an area of amenity space that is distinct from the garden/tennis court associated with Waterhouse that is on the opposite side of the access drive. I acknowledge that whilst there is some hedging on the opposite side of the access drive parts of the garden to Waterhouse are open to that drive.
16. In addition, the appeal property does not appear to have a separate electricity or water supply. According to the AST, the rent was inclusive of all bills including Council Tax, therefore, there are no separate utility bills. Nevertheless, those arrangements are entirely typical of landlord/tenant relationships. How the landlord chooses to have the services supplied or charge for bills does not influence the fact that the building has been let out as a self-contained unit of residential accommodation. Moreover, the tenants of the appeal building appear to have lived/live as a totally separate household to that of the appellant and therefore the use of the appeal building and the adjacent land is functionally separate to Waterhouse.
17. I note that the appeal property is cited as 'the Annexe' and 'Water Lodge' as its address within the documents that form part of the appellant's SD. There is a plaque on the wall of the appeal property facing the PROW which states 'Water Lodge' on it. However, I have little evidence to indicate when this was erected. In addition, physically, the appeal property has the appearance of an outbuilding when viewed from the PROW. Nonetheless, it does have a domestic appearance when viewed from the access drive. Moreover, there is no evidence before me to indicate that the appellant deliberately concealed the use of the appeal site.
18. I find that the submitted evidence in the form of the appellant's SD is precise and unambiguous as to when the use of the appeal property as an independent dwellinghouse commenced and the continuity of such use, together with that of the adjacent land. The Planning Practice Guidance (PPG)¹ 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 LDC on the balance of probability.

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

19. Enforcement action against the use of the appeal building and adjacent land as an independent dwellinghouse could have been taken at any time during the period of four years beginning in September 2014. However, it would have been too late to take such action on the date of the application for the LDC and the disputed use was thereby lawful at that time.
20. For the reasons given above I conclude, on the evidence now available, that the Council's refusal in part to grant a LDC 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.

D. Boffin

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 10 April 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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 appeal building and adjacent land as an independent dwellinghouse began more than four years before the date of the application and continued without material interruption thereafter.

Signed

D. Boffin

INSPECTOR

Date: 09 June 2020

Reference: APP/B3410/X/19/3239498

First Schedule

The use of the building and adjacent land as an independent dwellinghouse.

Second Schedule

Land at Annexe/Water Lodge, Lodge Hill, Tutbury, Burton-on-Trent, Staffordshire
DE13 9HF

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: 09 June 2020

by **D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC**

Land at: Land at Annexe/Water Lodge, Lodge Hill, Tutbury, Burton-on-Trent, Staffordshire DE13 9HF

Reference: APP/B3410/X/19/3239498

Scale: Not to Scale

