



Appeal Decision

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2020

Appeal Ref: APP/F0114/X/19/3242962

The Old Forge, Upper Stanton, Stanton Drew, Bristol BS39 4EG

- 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 Mr Mike Davis against the decision of Bath & North East Somerset Council.
 - The application (Ref. 17/03004/CLPU), dated 19 June 2017, was refused in part by the Council by notice dated 23 August 2017.
 - The application was made under section 192(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 change of use of building from incidental to ancillary residential use.
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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 use which is considered to be lawful.

Procedural Matters

2. Given the nature of the appeal and the arguments made, the Council and appellant were asked for their views on whether a site visit was required. Both opined that this was not necessary and, after taking their views into consideration, no site visit was carried out as neither party would be prejudiced.

Reasons

3. Amongst other things, section 192(1)(a) of the 1990 Act allows a person to make an application to ascertain whether the proposed use of building would be lawful. Here, the appellant seeks to ascertain whether the use of an outbuilding that is currently used for purposes incidental to the use of The Old Forge could be used for purposes ancillary to that property's use.
4. The evidence shows that the appeal site to be a single-storey building ('the building') that lies at the end of the long rear garden of The Old Forge. The Existing Plan¹ shows that roughly half of the building accommodates a kitchenette, lounge, bathroom, shower room and sauna. An internal link gives access to a room annotated as a gym. Beyond this, the remainder of the building is taken up by a garage.
5. The rear garden runs back for a considerable distance from The Old Forge, which lies adjacent to Upper Stanton. Parties make reference to an outbuilding part-way up this garden that is used for purposes ancillary to the main house.

¹ Drawing Number: PL3822/2

Neither this, nor the swimming pool that is also referred to in the submissions, is identified on the location plan that accompanied the application.

6. The proposed layout of the building² would entail the creation of a gym in what is presently the garage, with its remainder being used to form a self-contained residential unit. The plan³ shows the replacement of the present garage's double doors with windows and French doors.
7. The judgement in the *Uttlesford*⁴ case determined that even where accommodation provided facilities for independent day-to-day living it there was no reason in law why this should necessarily become a planning unit separate from the main dwelling. This would be a matter of fact and degree and each case should be assessed on its individual merits.
8. In this case, no sub-division of the curtilage is proposed, and it is stated that the appellant's son would live in the converted building. Access to the building would share that serving The Old Forge, as there is no other access to the site. The occupant of the building and The Old Forge would share the use of the garden, the swimming pool and the proposed gym in the building. The appellant states that there would be shared meals and socialising and argues that the result would be strong social interaction between all occupants of the site because there is only one narrow driveway.
9. The Council has provided two appeal decision letters. The first relates to an appeal against an enforcement notice⁵. This had an associated planning appeal, but as that dealt with the planning merits of the case, it is not relevant here. The second decision letter relates to an appeal against the refusal of an application for a certificate of existing lawful use, made under s191 of the Act⁶. Briefly, the appeals related to whether the use of buildings for residential purposes was ancillary to the use of dwellinghouses.
10. In both cases, the Inspectors had considerable evidence before them to show how the subject buildings had been used over a period of some years. Both decisions turned on this information, which was specific to those cases, in the manner set out in *Uttlesford*.
11. This case before me differs in that I am reliant on descriptions of a use that is proposed. Whilst the building is a considerable distance from the main dwelling, the evidence shows that it does lie within its curtilage, which it is not proposed to sub-divide. I understand that there are occasions where separate and independent dwellings share an access. However, that is not what is proposed here. In this case, it is proposed that the whole of the land remains as a single planning unit.
12. The appeal cases, above, provide some guidance on the level of interaction that might be required to show an ancillary use of the building. Here, I find that the sharing of the property's facilities in the manner that is set out in the appellant's submissions provides sufficient evidence to show, on the balance of probability, that the building would be used for purposes ancillary to The Old Forge.

² Proposed Plans: Drawing Number PL3822/3

³ *ibid*

⁴ *Uttlesford DC v SSE & White* [1992] JPL 171143.

⁵ APP/D3505/A/01/1060441

⁶ APP/X1545/X/11/2147310

13. Of course, should the building not be used in an ancillary manner, allowing this appeal does not fetter the Council from using its enforcement powers to address any such breach of planning control.
14. That there is no reason put forward by the appellant as to why his son cannot use another outbuilding in the garden as ancillary accommodation is not sufficient reason to refuse to issue a certificate. This decision has to be made on the basis of the evidence relating to the proposed lawful use of the subject building alone.

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 in respect of change of use of building from incidental to ancillary residential use 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.

R Curnow

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 19 June 2017 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use of the building in the manner set out in the application would amount to its use for purposes ancillary to the use of The Old Forge.

Roy Curnow

Inspector

Date: 16 September 2020

Reference: APP/F0114/X/19/3242962

First Schedule

Change of use of building from incidental to ancillary residential use

Second Schedule

Land at The Old Forge, Upper Stanton, Stanton Drew, Bristol BS39 4EG

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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: 16 September 2020

by **Roy Curnow MA BSc(Hons) MRTPI**

Land at: The Old Forge, Upper Stanton, Stanton Drew, Bristol BS39 4EG

Reference: APP/F0114/X/19/3242962

Scale: Not to scale

