Appeal Decision

Site visit made on 11 August 2020

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2020

Appeal Ref: APP/Q3630/X/19/3240132
8 Malus Drive, Addlestone KT15 1EP

- 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 Bernard Barden against the decision of Runnymede Borough Council.
- The application Ref: RU.19/0472, dated 22 March 2019, was refused by notice dated 11 June 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 C3 - Dwellinghouses.

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 description of development stated in section 4 of the application form was C3 - Dwellinghouses. The Council has described the development on the decision notice as Certificate of Existing Lawful Development for use of the Annex as a self contained residential dwelling. In my view, this more accurately describes the use which the appellant is seeking to demonstrate is lawful and I will determine the appeal on the basis of this description.

3. Section 191(4) of the Act allows the local planning authority to modify the terms of an application for an LDC for an existing use or development and I, as the Inspector, may exercise the same power on appeal. Indeed, the Panton judgement indicated I am obliged to issue an LDC for any use of the planning unit which the evidence shows is lawful and to modify or substitute the descriptions of the use of the land if necessary.

Main Issue

4. 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 Annex as a self-contained dwelling has continued for a period of

Reasons

5. 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. It is for the appellant to prove that Annex was used as a self contained dwelling for more than four years before the date of the application and that the use has continued without material interruption since that date. The relevant date in this context is 22 March 2015.

6. 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.

7. The Council have confirmed that there is no dispute about the evidence submitted. However, the Council consider that it is the interpretation of that evidence in relation to the nature of the occupation of the unit and whether it can be considered to be an independent dwelling that is the issue.

8. The appellant has provided a sworn statutory declaration (SD) and there is one other SD from a tenant who lived in the Annex from September 2013 with her partner until 4 March 2019, when the couple moved out. In addition to the SD's the following evidence was submitted with the application:

   - Gas Safety Certificate for "The Annexe, 8 Malus Drive" for boiler check dated 15 February 2016 which was addressed to the tenants.
   - Letter from J.L.Crossingham, Plumbing and Heating Engineer, addressed to the appellant and dated 11th March 2019. Mr Crossingham stated that he had carried out plumbing and heating maintenance work to the Annexe of No 8 over a period of six years.
   - Inspection Schedule Certificate from Kewtech dated 8th April 2013. This relates to electrical installation at "The Annex".
   - Invoice from R&D Hitch Ltd Electrical Contractors dated 10th September 2018 relating to an Electrical Installation Condition Inspection at "The Annexe, 8 Malus Drive".
   - Invoice from R&D Hitch Ltd Electrical Contractors dated 20th November 2018 relating to electrical work at "The Annexe, 8 Malus Drive".
   - Certificate of Electrical Appliance Testing from R&D Hitch Ltd dated 24th August 2018 for "The Annexe, 8 Malus Drive".
   - Letter from occupier of 9 Malus Drive confirming knowing the couple who were tenants and the Annex until March 2019 and stating they lived in the Annex for the last 6 years.
   - Letter from Wendy Evans, with an address at Staines Library, who states that she saw and spoke to the tenants occupying the Annexe on several occasions during the last six years.

9. No 8 is a detached dwelling and the Annex the subject of this appeal is an extension to the original dwelling. Planning permission was granted for a two storey side and single storey rear extension (reference 04/0717) in June 2004. The appellant states that as this extension was nearing completion in spring 2005 he applied for building regulations to include an integral second staircase. He further states that the Annex was laid out as a separate unit of

accommodation, with a kitchen, living room/dining room on the ground floor with two bedrooms and a bathroom upstairs.

10. The plans referred to in the SD show the same layout of the Annex that I saw on my site visit. The Annex is accessed via a door on the flank elevation straight into a kitchen. A door leads from the kitchen into a lounge/living area which has patio doors to patio/amenity area serving the unit. The stairs to the first floor lead off the living room. On the first floor there are two bedrooms and a bathroom.

11. The appellant states that his son and grandchild lived in the Annex from the completion of the building works until early 2013. At that time there was a connecting door between the Annex and No 8, the original dwelling. In 2013 the Annex was rented to a couple who occupied the premises continually from September 2013 until 4 March 2019. It is stated that prior to the occupation of the Annex by the couple the internal door was blocked off.

12. To the rear of the Annex is a patio and amenity area. This area is separated by a fence (which did not appear recently erected) along much of the boundary with No 8 and there is some planting. There is a shed/storage unit adjacent to the fence. Pedestrian access from the garden of No 8 across the area to the rear of the Annex is available and there is no gate. However, the rear patio and amenity area is clearly associated with, and available to, the occupiers of the Annex. While there is an unfenced pedestrian gap between the rear garden of No 8 and the patio/amenity area of the Annex, this is not an unusual situation. Such pedestrian access ways are not uncommon in terraced properties. In my view, the lack of a physical barrier along the whole of the flank boundary does not make the use of the patio/amenity area to the rear of the Annex not part of the use of that unit. This area clearly is used with the Annex and is separated and distinct from the rear garden of No 8, albeit with pedestrian access at the furthest end of it for those occupying No 8.

13. The Council refer within the Officer's report that there was no fence between the two rear areas at No 8 and the Annex in 2013 and 2019. However, I note that within the Council letter dated 27 May 2013 the garden to the rear of the extension is noted as having been fenced off from the remainder of the garden 'in recent months'. The May 2013 letter advises that the fence be removed to ensure that all of the external facilities for the dwelling remain as one plot.

14. The Council note that the refuse and recycling bins are shared between No 8 and the Annex. The Electoral Register shows three individuals registered at No 8 from July 2016. Those registered are the applicant and the couple who occupied the Annex between 2013 and 2019. Council tax records record only a single household. There is no record of Council Tax liability for the extension as a separate dwelling. In my view, these do not demonstrate that the Annex was not occupied as a self contained dwelling and nor do they contradict the evidence within the SD's.

15. I saw at my site visit that a gas meter was in the cupboard off the kitchen of the Annex and an electricity meter for the Annex was sited within the garage of No 8. The appellant explains he settles the accounts for the utilities direct with the providers and the meters serving the Annex provides the information for him to calculate the usage of gas and electricity by the occupiers of the Annex. While there are not separate bills for No 8 and the Annex, it is clear that the occupiers of the Annex pay for the use of utilities. While the electricity meter is

not within the Annex and both the gas and electricity meters are not provided by the utility providers, I am satisfied that the evidence supports separate responsibility for the payment of the utilities used by the occupiers of the Annex.

16. The documentary evidence supports the statements in the SD. While I accept that the various documents and letters are not a full record of the electoral installation and checks over the relevant period, there is no evidence to contradict the statements in the SD's and neither does the documentary evidence contradict the statements within the SD's. I am satisfied that the Annex and the patio/amenity area were used for a continuous period as a self contained dwelling from 2013 to March 2019 which is in excess of the four year continuous period required for the use of the Annex as a self contained dwelling to be immune from enforcement action.

17. 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 Annex as a self-contained dwelling has been demonstrated for a continuous period of four years before the material date. The use is therefore lawful.

18. 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 use of the Annex as a self contained residential dwelling 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.

Hilda Higenbottam

Inspector

The Planning Inspectorate

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 [date of application] 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 evidence has demonstrated that the Annex has been in use as a self contained dwelling for a continuous period of four years before 22 March 2019 (the date of the application). As such it is lawful.

Signed

Hilda Higenbottam

Inspector

Date 28 September 2020

Reference: APP/Q3630/X/19/3240132

First Schedule

Use of the Annex as a self contained residential dwelling

Second Schedule

Land at 8 Malus Drive, Addlestone KT15 1EP

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.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated:28 September 2020

by Mrs H M Higenbottam BA (Hons) MRTPI

Land at: 8 Malus Drive, Addlestone KT15 1EP

Reference: APP/Q3630/X/19/3240132

Scale: NTS

Location Plan near 8 Malus Drive, Addlestone KT15 1EP