The Planning Inspectorate

Appeal Decision

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Housing Communities and Local Government

Decision date: 5 October 2020

Appeal Ref: APP/T0355/X/19/3241911
95 Dedworth Road, Windsor SL4 5BB

- 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 Simon Tattersfield against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
- The application Ref 19/0204/CLD, dated 24 July 2019, was refused by notice dated 17 October 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: *'to determine whether existing use of garage as a separate unit of accommodation is lawful'.*

Decision

1. The appeal is dismissed. See formal decision below

Matters of clarification

2. Further to the case officer's letters to the parties, I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the initial documents; the later submissions and the photographic records as submitted. The appellant and the Council have agreed to the appeal proceeding without a site visit and I am satisfied that, in dealing with it in this manner, no injustice has been caused.

Background information

3. The appeal property is the former garage to the large detached dwellinghouse at No 95. The house is located on the south side of Dedworth Road and is in a predominantly residential area with some local shops nearby. The building is positioned along the western boundary of the house, to the rear and south-west of the two storey dwellinghouse. There is one access to the house and the appeal building from the highway.

4. Various permissions have been granted between 1989 and 1994 for front and rear extensions to the house. In 2018 permission was allowed (18/01771/FULL) on appeal for ancillary accommodation in the garage. Later, in 2018, planning permission was granted on appeal (APP/T0355/D/18/3215670) to extend the garage. One of the conditions attached to that approval was as follows: *'No 4 The extension hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 95 Dedworth Road'.* Before the appeal it had been stated that the garage formed ancillary accommodation to the main house.

Reasons

Introduction

5. An appeal relating to a Certificate of Lawful Use or Development (LDC) is confined to the narrow remit of reviewing the Local Planning Authority's (LPA) reason for refusal and then deciding whether the reasons are well founded. The planning merits of the case do not fall to be considered and the relevant test, relating to the submitted evidence, is *'the balance of probability'*.

6. National Planning Practice Guidance (PPG) indicates that an applicant is responsible for providing sufficient information to support a LDC application and that, without sufficient, precise and unambiguous information (my underlining), a LPA may be justified in refusing to grant a certificate. However, PPG also indicates that if an LPA has no contrary evidence itself and there is none 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.

The gist of the case for the appellant

7. It is contended that from February 2013 onwards, the building has been used as a separate unit of accommodation. Evidence in support of the application includes a Statutory Declaration with rental agreements. The declaration indicates that the building has been used for independent residential use since 1 February 2013. It is also stated that the submitted floor plan is correct; that it shows the dimensions and layout of the building accurately and that the building contains a sofa bed, double bed, WC, shower room, basin, toilet, kitchen with built in oven and other appliances. The statement concludes that the building has all the internal facilities to make it a dwelling. The Council does not dispute any of these facts.

8. Signed rental agreements have been submitted. These show that Agreement 1 began on 1 February 2013 with no end date; Agreement 2 began on 15 February 2015 with no end date; Agreement 3 began on 20 November 2015 with no end date and Agreement 4 began on 8 May 2016 and ended on 7 May 2017.

9. Further evidence includes annual self-assessment rental statements provided by Horler and Associates, the appellant's Lettings Negotiator (May 2013- 2018). The information submitted indicates that the appellant has received income from the rental of the converted garage from 7 May 2013 to 11 September 2018 on a monthly basis. It also indicates the names of those renting the property for the relevant periods; the amount of rent received; the annual rental income totals and deductions. Other appeal decisions are quoted in support of the application. These are: APP/B9506/X/10/2130277–Trim Cottage; APP/R5510/X/18/3206551–204 Northwood; APP/N1920/C/14/3000979–Land at New Grange, Blance Lane and APP/X1545/X/11/2147310–Stiches Farm.

10. It has been indicated that *'the outbuilding was vacated by the last tenant to allow the Tattersfield's daughter to move in, in an emergency situation'.* However, she did not move in and the building remained vacant. It is contended that this does not mean that it lost its lawful rights and the case of *Panton and Farmer v. SSETR [1999]* is relied upon. In particular it is stressed that the whole of the planning history needs to be considered and not just the 10 (or in this case 4) year period and that the court found that a use right could only be lost by abandonment, a change in the planning unit or the introduction of a new use.

11. In this case, it is stressed that there has been no abandonment, no change in the planning unit or any introduction of a new use. It is contended, therefore that at the time the certificate of lawfulness was submitted the use remained as

accommodation which was independent from the main dwellinghouse. It is suggested that this is the same scenario if the owners had moved overseas for a year in that the use of their house would not be lost. It would still remain as a dwellinghouse.

The gist of the case for the Council

12. The Council indicates that an email was received from the Borough's Council Tax department stating that 'Council Tax has been paid against 95 Dedworth Road since 1st April 1993. The second property (the garage) at 95 Dedworth Road has only been banded for Council Tax since 17th March 2019'.

13. The planning history is referred to and in particular the application allowed on appeal (see above). It is stressed that during the course of that application reference was made to the garage being ancillary to the main house and that the Design and Access statement referred to the garage being '*currently used as a spare room with shower'.* It is considered that the use of the building from June 2018 onward is uncertain. It is considered that from around June 2018 onward the building may not have been used as an independent unit and the sworn statement is therefore questionable and can only be attributed limited weight.

14. The Council also refers to the Grounds of Appeal statement for application No. 18/01771/FULL (November 2018) which was submitted to support an appeal against the refusal of the application which sought to extend the converted garage.

15. It is accepted that the rental information provided by Horler and Associates (the appellant's lettings negotiator) shows that rent has been received for occupation of the converted and extended garage by several tenants from 7 May 2013 to 11 September 2018, on a monthly basis. It is also accepted that, although there are small gaps in the rental information, this is not uncommon as there are often transition periods between rentals.

16. The rental information is considered to show that between those dates (a period in excess of 4 years) the property was used as a separate and independent unit of residential accommodation. It is agreed that the rental agreements support the information provided as they clearly show that each person mentioned has signed an agreement to live in the converted garage. The Council indicates that an officer has visited the property and there is no dispute that the building has all the facilities for independent residential accommodation.

17. Reference is made to appeal decision, APP/B9506/X/10/2130277 whereby the inspector dealing with the appeal against the refusal at Trim cottage clearly states that '*there is no evidence of substance from which to draw a conclusion that the building has been used in any manner that might be described as incidental or ancillary'*. The appeal at 204 APP/R5510/X/18/3206551 Northwood is not considered to be comparable as it seeks a certificate of lawfulness for an annexe to be used alongside the main house, and not a separate unit of accommodation as proposed in this application.

18. In relation to the other two appeals APP/X1545/X/11/2147310 and APP/N1920/C/14/3000979), the amount of information and types of evidence submitted to support those applications differs from this development, as such the schemes are not considered comparable. It is also stressed that none of the appeals provide evidence that the building subject of this appeal has been used as separate unit of accommodation. Overall, therefore, the submitted appeal decisions are given limited weight as evidence in favour of the development.

19. Council tax information suggests that the annexe has only recently been banded for payments since 17th March 2019' and thus the Council has received no tax payments from the annexe from February2013 until at least March 2019. This weighs against the claim that the building has been independently used for 4 years. However, it is accepted that although Council tax payments are an obligation for residents it is not uncommon for payments to be missed.

20. The Council accepts in principle that the use as a separate unit of accommodation still exists. However, taking into consideration that the agent and applicant have continuously submitted conflicting information throughout this application and the appeal process into the refusal of the last application (18/01771/FULL), limited weight is given to this claim.

21. Reference is made to the previous grounds for appeal whereby the agent who is now arguing that the building is an independent dwelling, then argued that the building was ancillary and had been for some time. The Planning Inspector accepted that the building was ancillary and in granting the appeal in 2019 added a condition to ensure that the extension could only be occupied for purposes ancillary to the residential use of the dwelling known as 95 Dedworth Road.

22. For these reasons and taking into consideration the sites planning history from June 2018 - February 2019 it is contended that, on the balance of probability, the garage has not been used as a separate dwellinghouse for the relevant period.

My assessment

23. Having considered all of the submissions, I share the Council's concerns that the evidence submitted in support of the application is not sufficiently clear and unambiguous to indicate that the garage has been in use as a separate dwelling for the required period.

24. Like the Council I accept that the building has been used from February 2013 to at least June 2018 as a separate unit of accommodation. There is no dispute that the named individuals occupied the self-contained accommodation for periods mentioned; that they paid rent to the appellant for the accommodation and that the income was declared for tax purposes for the relevant years.

25. However, in my view, the overall evidence and circumstances of this case are far from conclusive that the garage had been used as a separate dwellinghouse for the relevant 4 year period. In the first instance the garage does not form a separate planning unit from the main house. It is accessed via the side of the main house and does not have a separate access from Dedworth Road.

26. I consider that the planning history of the garage; the details relating to the previous applications and appeals and the type of rental agreement all cast doubt on whether the garage was occupied as a separate dwellinghouse from the main house at No 95. It seems to me that, although the garage was let for the agreed periods, it was akin to letting another part of the house for residential purposes by the tenants. In effect the garage accommodation was ancillary to the main house in the same way that a *'Granny Annexe'* would be ancillary and not a separate and totally independent dwellinghouse.

27. My view in this respect is reinforced by the type of rental agreement used for the letting of this part of 95 Dedworth Road. It is clear from the submitted documents that the lettings were made on the basis of a *'Resident Landlord excluded tenancy agreement',* as opposed to a full Assured Tenancy Agreement. Furthermore, it is evident that the rent included all services; electricity, gas,

Council Tax and Water Charges. There is no evidence that the garage had separate services and it was only subject to Council Tax bill from 17 March 2019.

28. From the above it seems to me that the letting of the garage was akin to letting another part of the property. The lettings clearly provided an income for the appellant by way of renting out the ancillary accommodation and also presented a possible opportunity to provide somewhere for his daughter to live. The fact that this did not occur makes no difference to my conclusion that the garage accommodation was ancillary to that of the main house as opposed to being a separate dwellinghouse in its own right.

29. I consider that, on the balance of probability, the continuous residential occupation for the 4 year period was residential occupation of an ancillary part (or annexe) of No 95 Dedworth Road. The evidence is not sufficiently precise or unambiguous to indicate that there had been a change of use from a use ancillary to the dwelling to a separate dwelling adjacent to No 95. Thus the case-law (*in Panton)* and other arguments raised in relation to abandonment and/or temporary use do not directly apply.

30. For the above reasons I consider that the Council's reasons for refusing to issue a LDC were sound. It follows that a certificate for the use applied for will not be issued and the appeal must fail.

Other Matters

31. In reaching my conclusions I have taken into account all of the submissions made by the appellant and the Council. These include the full planning history of the property; the details relating to tenants and rental agreements; the submitted affidavit; the various application plans and documentation; e-mails and taxation information; the submitted photographs and the latest submissions.

32. However, none of these carries sufficient weight to alter my conclusions that the use of the garage as a separate dwellinghouse was lawful for planning purposes on the date of the LDC application. Nor is any other matter of such significance so as to change my decision.

Formal Decision

33. The appeal is dismissed and a Lawful Development Certificate is not issued.

Anthony J Wharton

Inspector