



Appeal Decision

Site visit made on 15 September 2020

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 13 October 2020

Appeal Ref: APP/C3620/X/19/3243421

2 Milton Street, Westcott, Dorking RH4 3PX

- 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 Bishop against the decision of Mole Valley District Council.
 - The application Ref MO/2019/0909/ECL, dated 13 May 2019, was refused by notice dated 24 July 2019.
 - The application was made under section 191(1) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the implementation of planning use C3(dwelling).
-

Procedural Matters

1. I have treated this appeal as if it relates to the implementation of permission MO/2015/0124.

Decision

2. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the operation/development which is considered to be lawful.

Reasons

3. Prior approval was sought for the change of use of a building to a dwelling and this was granted. Pre-commencement conditions were discharged, so the building was lawfully able to be converted and there is no dispute about this. However, the Council does not agree that the conversion has been commenced, with a material operation, within the 3 years that the permission was valid.
4. The building was indicated to have existing services, but these are from the associated main dwelling and not separate services as now required for the converted building. The appellant argues that a trench was dug and pipes/ducts inserted for the water and electricity supplies to serve the converted dwelling.
5. The excavation of a trench and insertion of services is a material operation that would commence the development. The Council suggest these services could have been inserted for the existing building and are effectively not relevant to a change of use. However, I consider it is highly unlikely that they would be provided for the existing use, had the permission not been granted, as the building already had adequate supplies for its previous purpose, from the main

dwelling. The Council appears to be treating the situation on the basis that it is a change of use only, but the permission was not only for change of use, but the conversion as well. I consider that on the balance of probability these services are associated with the conversion of the building.

6. The Council notes that the services were not part of the application, but it would be unusual to require services to be shown on planning drawings as they generally have no effect in planning terms and are not usually a specific part of an approval.
7. There is evidence in the form of the appellant's testimony, photographs and invoices for materials and equipment that are associated with the building operation of the insertion of services at the time indicated, within the three year period. To my mind, when all these factors are put together with relevant dates, the hire of a digger, the purchase of materials and dated photograph it is clear that, on the balance of probability, a material operation in the conversion of the building has occurred and therefore it was lawfully implemented within the required 3 year period.
8. There is various other evidence related to commencement which is contested by the Council, but whether or not that in itself proves commencement, on the balance of probability, is not relevant as it only has to be demonstrated that a material operation has occurred within the time period.
9. 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 implementation of planning use C3(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.

Graham Dudley

Planning 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 date of application the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched in black on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The excavation for, and the insertion of, new services is a material operation and commenced the development within 3 years of the permission (MO/2015/0124), so its implementation is lawful.

Signed

Graham Dudley

Planning Inspector

Date: 13 October 2020

Reference: APP/ C3620/X/19/3243421

First Schedule

Implementation of permission MO/2015/0124

Second Schedule

Land at 2 Milton Street, Westcott, Dorking RH4 3PX

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 operations described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the 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: 13 October 2020

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

Land at 2 Milton Street, Westcott, Dorking RH4 3PX

Reference: APP/ C3620/X/19/3243421

Scale:NTS

