The Planning Inspectorate

Appeal Decision

Site visit made on 13 October 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2020

Appeal Ref: APP/Z5630/X/18/3217186
The Annex, 17a Seething Wells Lane, Surbiton KT6 5NR

- 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 Omar Haddo against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
- The application Ref 18/16224/LDE, dated 15 March 2018, was refused by notice dated 20 July 2018.
- 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 Use Class of The Annex as a separate dwelling for in excess of four years.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued in the terms set out below in the Formal Decision.

Background

1. The building described in the application as "The Annex" is a single storey detached structure with a parking space in front. Internally, the building is laid out as residential living accommodation, with a kitchen and lounge, a bedroom/study and a bathroom. The building is located at the end of the rear garden of an extended semi-detached dwelling (No 17a).

Main Issue

2. An LDC is sought on the basis that at the application date, it was too late to take enforcement action in respect of the use of the building as a separate dwelling. The effect of s191 (2) of the Act is that such use would be lawful if no enforcement action can be taken because the time for taking such action has expired. At s171B (2), the Act provides that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. The main issue in this appeal is therefore whether the available evidence demonstrates that the building has been used as a separate dwelling for a continuous period of more than four years before the date of the application.

Reasons

3. The onus is on the appellant to show that the use applied for is lawful. The Planning Practice Guidance advises that where the 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 certificate on the balance of probability[1].

4. To support his claim, the appellant submitted a Statutory Declaration (SD) dated 6 March 2018, signed by him and witnessed by a solicitor. Copies of several contemporaneous documents are exhibited, including Assured Shorthold Tenancies (ASTs). The ASTs are signed by the appellant and various tenants, they are dated from 19 September 2009 and continue at yearly intervals, the latest AST dated 25 May 2017 expiring on 29 July 2018. The 2009 AST relates to a property described as a "room in a shared house with use of outbuilding" at No 17a. Subsequent ASTs relate to property described variously as an "unfurnished 1 bedroom" and a "1 bedroom annex" at No 17a, whilst since 1 August 2013 the ASTs relate to property described as a "rear ground floor room and annex" at No 17a. Also exhibited are copies of utility bills, mostly in respect of electricity but also for water services, for property described as "the office" at 17 Seething Wells Lane (No 17), addressed to the appellant and dated between 6 May 2008 and 1 December 2017. Furthermore, correspondence dated 23 February 2018 is exhibited, in which an agent describing themselves as being responsible for letting the building since 2011 stated that it had been let on a separate tenancy, the occupiers having access to a room at the rear of No 17a for storage.

5. The reference in the 2009 AST to a room in a shared house with use of an outbuilding does not make it clear that the building was in use as primary living accommodation at that time. This is because those tenants could have been occupying part of No 17a and using the building for incidental purposes. Nevertheless, the AST dated 1 August 2010 is signed by a different tenant, who also signed subsequent ASTs up to 1 August 2013. Successive ASTs in respect of this tenant at the same address suggests that, in all likelihood, they occupied the same accommodation during that period. Since 1 August 2012, the ASTs have included reference to an annex in the description of the property. The description as an annex strongly implies that there is a degree of self-containment and separation from other living accommodation such as might be found in a detached structure, as in the case of the building. Consequently, there was no good reason to suggest that the ASTs since 1 August 2010 did not all relate to the building, notwithstanding the varying ways in how it was described.

6. The presence of private kitchen and bathroom facilities means that the building affords the occupiers the facilities required for day-to-day private domestic existence, this being the distinctive characteristic of a dwelling according to established case law[2]. When the existence of ASTs since at least 1 August 2010 is also considered, this points to the continuous use of the building as primary living accommodation between that date and the date of the application. As the term 'incidental' refers to a use or activity that would not be expected to be found as an integral part of a use, it cannot apply to primary living accommodation. Given the above evidence, the building could not have been in a use incidental to that of No 17a in the intervening period between 1 August 2010 and the application date.

[1] Lawful development certificates. Paragraph: 006 Reference ID: 17c-006-20140306.
[2] *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142.

7. The above is not necessarily conclusive of the use of the building as a separate dwelling, as it might still have been used as an integral part of the residential accommodation of No 17a. Established case law endorses the approach that in such instances, whether a separate residential planning unit has been formed is therefore a matter of fact and degree[3]. In this respect, the exhibited utility bills indicate that electricity and water services for the building have been separate from those of No 17a since prior to 1 August 2010 and throughout the intervening period up to the application date. There was little evidence to suggest that this was not the case. Copies of all the utility bills since August 2010 were not exhibited and those that have been are, in the main, addressed to the appellant at "the office" at No 17. Even so, there was no good reason to suggest that the bills did not relate to the building, planning permission having been granted for its extension and use as a personal office in 2007[4]. It would be unusual for there to be separate utilities, if the building and No 17a had in fact formed one unit of residential accommodation. The continuous existence of separate electricity and water services since prior to 1 August 2010 is therefore a factor supportive of the use of the building as having been separate from that of No 17a in the intervening period up to the application date.

8. Although the ASTs show that from August 2013 onwards tenants of the building could access a ground floor room at the rear of No 17a, that does not necessarily imply that occupiers of the respective accommodation were sharing any living activity. There was little evidence to suggest that tenants of the building had shared any facilities in No 17a at any time. The ASTs gave no indication that tenants of the building had rights to access the accommodation at No 17a, other than the room in question. Also, tenants of the building did not require access to other parts of No 17a, as the room could be accessed externally. During my visit, the room was full of stored household items which I am given to understand belong to the current tenant of the building and it could not be accessed by the occupiers of No 17a. There was little evidence to show that the room had been used other than for storage. The rear garden is shared and no boundary enclosure separates the respective accommodation. However, neither this nor the storage use of the room in No 17a by tenants of the building is dissimilar to residential flats, where the occupiers might have storage facilities outside their own units of occupation as well as access to communal gardens, but each individual flat is regarded as a separate dwelling. Consequently, as a matter of fact and degree the available evidence suggests that the building did not form part of a single unit of residential accommodation, either physically or functionally, with No 17a, from at least 1 August 2010 and up to the application date.

9. Planning conditions attached in 2007 and on a subsequent permission[5] restricted the use of the building to purposes incidental to the occupation and enjoyment of No 17a. In a 2013 application, the building was described as being used as an office, rest area and cloakroom. However, as there is no record of any internal inspection, the above does not represent firm evidence of the building being used for such purposes at that time. It follows that the building's recorded planning history does not cast any significant doubt on the appellant's claim.

[3] *Uttlesford DC v SSE & White* [1992] JPL 171.
[4] Council Ref: 07/16500/FUL.
[5] Council Ref: 18/16176/FUL.

10. Therefore, when taken together the appellant's SD and contemporaneous documentation should be afforded considerable weight, as it provides sufficiently precise and unambiguous evidence of the use of the building as a separate dwelling for a continuous period of greater than four years. There is little evidence to contradict or make the appellant's version of events less than probable. In particular, the available evidence does not suggest that the building has formed part of a single residential planning unit with No 17a at any time since 1 August 2010, the use of the building having been physically and functionally separate from the accommodation at No 17a throughout the intervening period up to the application date.

11. Consequently, the available evidence enables me to conclude that the building has, on the balance of probability, been in continuous use as a separate dwelling for more than four years prior to the date of the application.

Conclusion

12. 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 the use of the building as a separate 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 Act.

Formal Decision

13. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the existing use which is considered to be lawful.

Stephen Hawkins

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 13 March 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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 building as a separate dwelling began more than four years before the date of the application and has been continuous thereafter.

Signed

Stephen Hawkins

Inspector

Date: 28 October 2020
Reference: APP/Z5630/X/18/3217186

First Schedule

C3 Use Class of The Annex as a separate dwelling for in excess of four years

Second Schedule

Land at the Annex, 17a Seething Wells Lane, Surbiton KT6 5NR

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.

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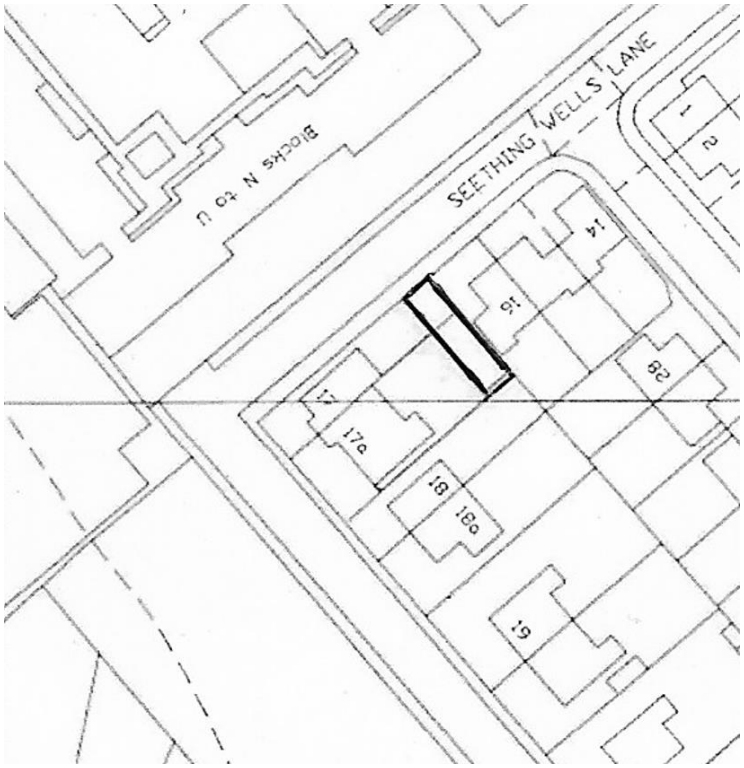
Plan

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

by Stephen Hawkins MA MRTPI

Land at: The Annex, 17a Seething Wells Lane, Surbiton KT6 5NR

Reference: APP/Z5630/X/18/3217186

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