



Appeal Decision

Site visit made on 20 October 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2020

Appeal Ref: APP/N5090/X/19/3243802

7 Laurel Gardens, Mill Hill, London NW7 3HA

- 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 Jadeep Pattni and Mrs Baljeet Chane against the decision of the Council of the London Borough of Barnet.
- The application Ref 19/6139/191, dated 11 November 2019, was refused by notice dated 11 December 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 the use of the existing granny annex as a one bedroom self-contained flat.

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.

Preliminary Matters

1. In the interests of accuracy, I have taken the spelling of the appellants' surnames from the appeal form.
2. The only relevant consideration in this appeal is whether, on the facts of the case and having regard to relevant planning law, an LDC should be issued in respect of what has been applied for. Therefore, planning merits issues do not fall to be considered. Matters of ownership, private property rights and loss of property value are not planning issues so are also not before me.

Application for Costs

3. An application for costs was made by Mr Jadeep Pattni and Mrs Baljeet Chane against the Council of the London Borough of Barnet. This application is the subject of a separate Decision.

Background

4. The site contains a semi-detached dwelling with a single storey extension at the side and rear. It is this extension, described in the application as a granny annex, which the appellants claim has been used as a separate self-contained dwelling. Internally, the extension is laid out as residential living accommodation with a kitchen and lounge, a bathroom and a bedroom. The extension can be accessed independently from the main dwelling, via a door at the side. It is also possible to access the main dwelling internally from the extension, via a door which opens into a shared lobby.

Main Issue

5. 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 extension as a separate self-contained 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 there has been continuous use of the extension as a separate self-contained dwelling for a period of more than four years before the date of the application.

Reasons

6. 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 probability¹. Relevant case law is clear that an applicant's evidence should not be rejected simply because it is not corroborated by independent evidence².
7. The appellants signed affidavits dated 23 September 2019, in which they attest to occupying the extension as a self-contained dwelling with its own bathroom, kitchen, living room and bedroom, with a share of the garden and its own independent access, since July 2001. The affidavits were accompanied by extracts from 12-month Assured Shorthold Tenancy agreements (ASTs) between the appellants and the occupier of the main dwelling, in respect of property described as 7 Laurel Gardens. The older ASTs are dated between 13 June 2001 and 16 May 2003. Two rent receipts dated June 2001 in respect of the same address and an estate agent's letter dated 16 April 2002 to the appellants at that address concerning renewal of their tenancy of the same, were provided. Extracts were provided from more recent 12-month ASTs, also signed by the appellants and the occupier of the main dwelling in respect of property described as "7 Laurel Gardens (Granny Annex Flat)" or similar, dated yearly from 15 June 2015 up to 26 May 2019, the latest AST expiring at the end of May 2020. Additionally, a petition signed by ten third parties was provided. The petition signatories refer to visiting the appellants "...on many occasions in the past in their self-contained flat at 7 Laurel Gardens..." the date of their first visits varying from 2001 to August 2015 and they describe the facilities available in the extension together with the means of access. Further, a note signed by the occupier of the main dwelling, reiterating the appellants' account of events, was supplied.
8. The appellants provided first-hand evidence of the continuous use of the extension as a separate self-contained dwelling for a period of more than four years. As the appellants' affidavits were sworn before a solicitor, they have properly attested to the truthfulness of their evidence. The appellants'

¹ Lawful development certificates. Paragraph: 006 Reference ID: 17c-006-20140306.

² *Gabbitts v SSE & Newham LBC* [1985] JPL630.

accounts are consistent. They are precise and unambiguous. Therefore, the appellants' evidence should be afforded considerable weight, unless there is anything that might indicate otherwise.

9. There is little doubt that the ASTs refer to the extension and not to any other property. ASTs were not provided for the period after 14 June 2004 up to mid-2015. However, when taken together those ASTs that were submitted suggest a pattern of continuous residential occupation of the extension by the appellants going back to mid-2001. In any event, the ASTs submitted for the period from 1 June 2015 onwards covered a period of continuous residential occupation of the extension by the appellants for in excess of four years. In terms of the appellant's other evidence, when taken together with the ASTs there can be little doubt that the receipts and letters dating from 2001 and 2002 referred to the appellants' occupation of the extension. The petition from third parties and the representations made at the appeal stage by some of those parties, are also supportive of the appellants' claim. Such documents cannot carry the same weight as sworn affidavits, but still have some evidential value. Therefore, there is nothing in the available evidence to indicate that the appellants have not occupied the extension residentially for a continuous period of at least four years before the date of the application.
10. I acknowledge that providing the facilities required for independent day-to-day living would not necessarily mean that the extension is in a separate residential planning unit to the main dwelling. Relevant case law confirms that whether this is the case is therefore a matter of fact and degree³. Nevertheless, the appellants clearly attest to their use of the extension as a self-contained dwelling. The ASTs provide support in this respect, when taken together with the facilities available in the extension. This is because the ASTs show that the relationship between the appellants and the occupier of the main dwelling was principally one of a landlord and his tenants, rather than any relationship akin to that of a family. The formality created by the ASTs in relation to the appellants' occupation of the extension and the respective legal rights afforded to them and the occupier of the main dwelling would not normally be found where persons were living together as a single household. Therefore, the above evidence suggests that the extension and the main dwelling have not formed a single unit of accommodation between June 2001 and the application date.
11. I am given to understand that the appellants have routinely used the internal door between the extension and the main dwelling, largely to access a washing machine in the kitchen of the latter. On its own, this does not imply that the appellants were sharing any living activity with the occupier of the main dwelling. It is not unreasonable to expect that residential occupiers who do not own a washing machine, either due to a lack of space or perhaps for financial reasons, might use such facilities belonging to a neighbour or friend. Any arrangement between the appellants and the occupier of the main dwelling to access a washing machine is little different in this respect. There was no evidence to suggest that the appellants had shared any other facilities or that the occupier of the main dwelling had accessed the extension. Significant sharing of facilities might reasonably have been expected in a single unit of accommodation. Accordingly, there is little to indicate that the appellants and the occupier of the main dwelling might have lived together as a single

³ *Uttlesford DC v SSE & White* [1992] JPL 171.

household. Whilst the extension and the main dwelling share the rear garden, this is not unusual for dwellings in an urban context; the occupiers of many residential flats have access to communal gardens, but each individual flat is regarded as a separate dwelling. As a result, there is little in the above that is suggestive of the extension forming a single unit of accommodation with the main dwelling.

12. The extension shares utilities including gas, electricity and water with the main dwelling, the bills being shared between the respective occupiers. Also, the extension is not rated separately for Council Tax. As the available evidence is that the extension and the main dwelling have been occupied by the same persons since June 2001, the utility and rating arrangements are longstanding. Over such a long time, it is not unreasonable to expect that the occupier of the main dwelling has built up a good level of trust and amicable relations with his tenants. As a result, it is perhaps unsurprising that shared arrangements in relation to the utilities have persisted. In the absence of anything requiring the alteration of those arrangements, such as a change in tenants or their circumstances, it is likely that a situation where separation of the utilities or a separate rating was considered necessary has simply not arisen. In any event, the existence or otherwise of shared utilities or a separate Council Tax rating are not conclusive as to whether a separate unit of residential accommodation has been created. Therefore, the above factors do not indicate that the extension and the main dwelling form a single unit of accommodation.
13. In reaching the above findings I have given the note from the occupier of the main dwelling little weight. This is because his note added little to the sum of the available evidence. In any event, representations made on his behalf during the appeal suggested that he no longer supported the appellants' claim of use of the extension as a separate self-contained dwelling, for reasons addressed elsewhere in my decision.
14. Reference was made by the Council to information accompanying a recent pre-application enquiry and a subsequent planning application, each prepared by a different planning agent, where the extension was referred to as an "existing granny annex" and the use as a dwelling described as "proposed". However, I was not given any information to suggest that the agents who had made those submissions had investigated the use of the extension and its planning history in any great detail. Neither can I be certain that those agents possessed an in-depth knowledge of the complexities surrounding existing uses and whether they are lawful for planning purposes, as opposed to being professionals engaged in practice more generally. It is entirely possible that the agents simply took a description of the extension as a granny annex at face value without investigating its use and the planning history and focussed solely on the matter on which they had been instructed. Consequently, I afford this evidence limited weight.
15. Therefore, on the balance of probability and as a matter of fact and degree, the appellants' affidavits and contemporaneous documentation together with the other supporting information provides sufficiently precise and unambiguous evidence of continuity in the use of the extension as a separate, self-contained dwelling for a period of more than four years before the application date. There is little evidence which contradicts or makes the appellants' version of events less than probable. In particular, the available evidence does not support a conclusion that the extension formed part of a single unit of

residential accommodation, either physically or functionally, with the main dwelling since the appellants' occupation began. Consequently, on the application date it was too late for the Council to take enforcement action.

Conclusion

16. 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 extension as a separate self-contained 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

17. 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



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 11 November 2019 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 single storey side extension at the side and rear of the main dwelling (described in the application as a granny annex) as a one bedroom self-contained flat 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/N5090/X/19/3243802

First Schedule

Use of the existing granny annex as a one bedroom self-contained flat

Second Schedule

Land at 7 Laurel Gardens, Mill Hill, London NW7 3HA

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.



Plan

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

by Stephen Hawkins MA MRTPI

Land at: 7 Laurel Gardens, Mill Hill, London NW7 3HA

Reference: APP/N5090/X/19/3243802

Scale: Not to scale

