
Appeal Decision

Site visit made on 7 October 2020

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 November 2020

Appeal Ref: APP/V1260/X/20/3255926

142 York Road, Broadstone, Poole, Dorset BH18 8EY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr S Daniels against the decision of Bournemouth, Christchurch and Poole Council.
 - The application Ref APP/20/00205/J, dated 13 February 2020, was refused by notice dated 22 May 2020.
 - 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 use of building as a self-contained dwelling.
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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 found to be lawful.

Main Issue

2. The main issue is whether the Council's decision to refuse the application was well-founded.

Reasons

3. The onus of proof for a certificate of lawfulness lies with the applicant, and evidence needs to be assessed on the balance of probabilities. The Planning Practice Guidance says that in the case of applications for existing use, if a local planning authority 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 to justify the grant of a certificate on the balance of probabilities.
4. The building in question lies in the back garden of a detached bungalow, hidden from view from the street by a garage and gate. It is a small, flat-roofed building, comprising a double bedroom, a living room/kitchen and a bathroom, providing all the facilities necessary for independent living. It has a separate rear garden from that of the house at No 142, bounded by fencing, but parking to the front is shared.
5. The appellant's evidence is that the building was extended and completed in September 2015 to provide the accommodation that I saw on my visit. A statutory declaration has been submitted that explains that the building was let

to a tenant, along with the main house, and that tenant then sub-let the appeal building to another occupier up until around July 2019, at which time the sub-tenant left, and the tenant took up occupation. This evidence is supported by copies of tenancy agreements, dating from 1 June 2014 (covering only the annex (the appeal building)), whilst others (dated 1 February 2015 and 1 April 2016) cover both the main dwelling and the annex.

6. Although these tenancy agreements are unsigned and undated copies, they nevertheless have some probative value, and are supplemented by copies of bank statements which record rents being paid to the appellant covering the period from February 2015 until July 2019, after which time the appellant says that a relationship of trust had been established which enabled the tenant to pay the rent in cash.
7. The Council has no evidence to refute the appellant's claim. It says that no supporting documents were submitted with the application to support the appellant's claims, but the appellant's email acknowledgements from the Council and correspondence indicates that the evidence was received by the Council, but unaccountably, it was not considered by officers in preparing the report leading to the decision to refuse the application.
8. The Council says that there had been no payments of Council tax until 2019 and that no occupiers appeared on the electoral register. No Buildings Regulations applications were received for the change of the use of the building as required. However, such omissions do not refute the appellant's stronger evidence of fact.
9. The Council also suggests that there is no evidence to show that the annex was not used as accommodation ancillary to the use of the house at No 142 as a single dwellinghouse. However, there is nothing which indicates that there has been any functional or familial relationship between the tenants in the annex and those in the dwellinghouse, which has been used as a house in multiple occupation for 4 people.
10. Accordingly, on the balance of probabilities, I find that the appellant's version of events is more likely than not, and that the certificate should be granted. Thus, 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 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 1990 Act as amended.

JP Roberts

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 13 February 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched 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:

No enforcement action may be taken in respect of the use because the time for enforcement action has expired and the use does not constitute a contravention of any of the requirements of any enforcement notice in force.

Signed

JP Roberts
INSPECTOR

Date 06 November 2020
Reference: APP/V1260/X/20/3255926

First Schedule

The use of the building as a self-contained dwelling.

Second Schedule

Land at 142 York Road, Broadstone, Poole, Dorset BH18 8EY

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 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 use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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: 06 November 2020

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Land at: 142 York Road, Broadstone, Poole, Dorset BH18 8EY

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Not to scale

