The Planning Inspectorate

Appeal Decision

Site visit made on 10 November 2020

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th December 2020

Appeal Ref: APP/M5450/X/20/3249967
34 Milford Gardens, Edgware HA8 6EY

- 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 S Hussain against the decision of the Council of the London Borough of Harrow.
- The application Ref P/4065/19, dated 16 September 2019, was refused by notice dated 16 January 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 the use of outbuilding as habitable room with shower/wc.

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 considered to be lawful.

Preliminary matter

2. The description of development set out in the Council's decision notice has been altered to include the words "and kitchenette; Replacement of garage doors with door". While these elements have occurred, I find the appellant's description of development on the application form to adequately describe the use applied for.

3. The outbuilding was erected as a single detached garage for use in connection with 34 Milford Gardens. There is no dispute that the outbuilding was erected more than 4 years ago or that it was used for purposes ancillary to the residential occupation of No34.

Reasons

4. The **main issue** is whether the Council's refusal to issue a LDC is well founded. This turns on whether the appellant can show, on the balance of probability, that the habitable use of the outbuilding is lawful. S191(2)(a) of the 1990 Act states that uses or operations are lawful if "no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason)".

5. The burden of proof rests with the appellant and the evidence must be sufficiently precise and unambiguous to justify the grant of a LDC. While the appellant's own evidence does not have to be corroborated by independent

evidence, there should be no evidence that contradicts the appellant's version of events.

6. The host property is a two storey dwellinghouse with bathroom and sleeping accommodation provided on the first-floor. The appellant claims that accessing the first-floor bathroom and sleeping facilities within the dwelling places considerable strain on his health. The outbuilding was converted from a garage to habitable accommodation to provide him with bathing and bedroom facilities at ground floor level. This allows him to continue to live in the family home, improving his quality of life.

7. The Council claim that the appellant has provided insufficient evidence to prove that the outbuilding is used for purposes incidental to the enjoyment of the dwellinghouse. Furthermore, they say it has not been shown that the outbuilding has been in use as a self-contained residential unit for a continuous period of at least 4 years prior to the date of the application.

Assessment of the evidence

8. The appellant has provided evidence in the form of letters from his doctor, which confirm the appellant's version of events leading up to the conversion of the garage to habitable accommodation. Plans and photographs have also been provided, which show the outbuilding was originally used as a garage and now contains a separate toilet and shower room, along with the provision of kitchen units, incorporating a sink and dual ring hob, in the main habitable space. The appellant confirms the outbuilding's use is, and always has been, ancillary to the residential occupation of No34.

9. The Council claims that the habitable use of the outbuilding cannot be ancillary to the occupation of the host dwelling as it contains primary living accommodation. The Council suggests, having regard to Article 3, Schedule 2, Part 1, Class E of the GPDO[1], that an outbuilding erected for the purpose of containing habitable accommodation, such as a bathroom or kitchen, would not be permitted development as the accommodation would not be incidental to the residential occupation of the host dwelling. In their opinion, a self-contained unit of residential accommodation has therefore been created and the appellant needs to show that the use has been continuous for a period of at least 4 years prior to the date of the LDC application to become lawful.

10. In this instance, however, the outbuilding was erected as a garage, which is an incidental use. The question is, whether the change of use from an incidental garage to habitable accommodation represents a material change of use. The habitable use to which the outbuilding is being put is not in dispute. However, whether this use amounts to the creation of an additional self-contained unit of residential accommodation at the property needs to be considered.

11. While the outbuilding may provide facilities for independent day-to-day living, this does not necessarily equate to the creation of an additional self-contained residential unit, which would be a separate planning unit from the host dwelling. In Uttlesford[2] planning permission had been granted for an incidental garage but the accommodation provided gave the occupant the facilities of a self-contained unit, intended to function as an annexe only, with the occupant sharing her living activity in company with the family in the main dwelling. A

[1] Town and Country Planning (General Permitted Development) (England) Order 2015 as amended
[2] Uttlesford DC v SSE & White [1992]

fact and degree judgement was made on the specific circumstances of the case, and the key issue was that a separate planning unit had not been created.

12. In this instance, the appellant uses the accommodation to provide bathing and sleeping facilities. There is nothing in the evidence to suggest that he lives separately to his family that occupies the host dwelling. The habitable accommodation contained within the outbuilding is therefore part of the same planning unit as the host dwelling, which remains in single family occupation and continues to function as a single household. A material change of use has not therefore occurred and the use would not constitute development as set out in s55(3)(a) of the 1990 Act.

13. For the reasons given above, the appellant's evidence precisely and unambiguously shows, having regard to fact and degree, that the use of the outbuilding does not constitute development and, in accordance with s191(2) of the 1990 Act, no enforcement action may be taken in respect of it.

Other matter

14. The replacement of the garage doors with a door did not materially affect the subservient domestic external appearance of the outbuilding. S55(2) of the 1990 Act states that "The following operations … shall not be taken for the purposes of this Act to involve development - (a) the carrying out for maintenance, improvement or other alteration of any building of works which - (ii) do not materially affect the external appearance of the building". As such, the alteration of the doors does not constitute development and my findings on the main issue are unaffected.

Conclusion

15. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the detached outbuilding as a habitable room with shower/wc 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.

M Madge

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 16 September 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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 as the use does not involve development.

Signed

M Madge
Inspector

Date
Reference: APP/M5450/X/20/3249967

First Schedule
The use of outbuilding as habitable room with shower/wc

Second Schedule

Land at 34 Milford Gardens, Edgware HA8 6EY

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.

The Planning Inspectorate

Plan

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

by M Madge DipTP MRTPI

Land at:

Reference: APP/M5450/X/20/3249967

Not to Scale