



Appeal Decision

Site visit made on 29 October 2020

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 18 December 2020

Appeal Ref: APP/J2210/X/20/3248649

48 High Street, Littlebourne, Canterbury CT3 1ST

- 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 W McNicholas against the decision of Canterbury City Council.
 - The application Ref 19/01975 is dated 7 October 2019
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as '*The use of No 48 High Street as our private 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 considered to be lawful.

Background

2. S171B of the 1990 Act as amended says that where there has been a breach of planning control involving the change of use of any building to use as a single dwellinghouse no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
3. On this basis the appellant must successfully demonstrate, on the balance of probability, that any breach of control commenced four years before, ie prior to 7 October 2015 (hereinafter referred to as "*the material date*") and has continued since.
4. In an appeal under s195 of the Act against the refusal of a LDC the burden of proof is upon the appellant. The test of the evidence is one of balance of probability. As such, the planning merits of the development applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law.

Main Issue

5. The main issue in this appeal is whether, on the balance of probability, the use was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990.

Reasons

6. No 48 High Street is part of a period-age terrace, with the largest property, No 50, in use as a Bed & Breakfast establishment, known as 'The Pilgrims Rest'. The appellant and his family, who are the proprietors of the business, use No 48

as their living quarters. At my site visit I noted that there is only one internal link between the two properties, in the form of a ground floor level door, connecting No 50's breakfast room with No 48's lounge. There is no access between the properties at first floor level, and I also observed that No 48 has a private rear garden area, although there is an outside door leading out into this area from No 50's kitchen.

7. It is understood that the appellant purchased both properties in 2007, since which time, he claims, his family has used No 48 as a private domestic residence. This occupation initially allowed No 50 to be refurbished and prepared for its current purpose. A Statutory Declaration has been sworn by the appellant to this effect. On inspection I observed that the internal layout corresponds with the submitted plans (drawings nos 001 A and 002 A) and comprises, at ground floor level, a sizeable main living area and separate kitchen with, at first floor level, two bedrooms and en-suite bathrooms.
8. The Council accepts that no guests staying at Pilgrims Rest would use any of No 48's facilities and to confirm the properties' independent uses I have had regard to the contents of several letters provided by the appellant, written by both family friends and former guests. However, the Council refused the issue of the LDC as, due to the appellant having previously said that he uses the internal door for easy access between the properties – he could, instead, have left and entered via each properties' front doors, which would have amounted to the same thing - it considered that No 48 is used in an ancillary capacity to the running of the Bed & Breakfast business. Mention is also made that the appellant was unable to provide separate Council tax registrations or utility bills for the properties.
9. In planning terms a dwelling or dwellinghouse is defined as a self-contained building or part of a building used as residential accommodation, and usually housing a single household. In the case of *Gravesham BC v SSE & O'Brien* [1982] it was held that the distinctive characteristic of a dwellinghouse was its ability, to afford to those who used it, the facilities required for day to day private domestic existence. Here, No 48 easily satisfies the test.
10. Where a self-contained or virtually self-contained area within a single planning unit provides all the facilities necessary for independent day-to-day living - for cooking, eating and sleeping – whether within a building or part of a building – and the building or land is used for residential purposes, its use as someone's home or dwelling would not normally be incidental or ancillary to some other main use of the land. It can, though, be necessary for a residential use to be carried out in connection with other uses where there is a functional requirement for someone to live on site. However, while the *occupation* of the dwelling might be regarded as tied to or functionally related to a primary use the residential *use* is normally a separate main use, for which planning permission is required. An exception may arise where the primary use is itself a form of residential use where, for example, staff or management may be ordinarily expected to live above in a building providing accommodation for guests, a hotel, or a hostel. That, though, is not the situation here given the separate uses and their clear divide.
11. I now turn to the concept of the planning unit to explore the matter further. The leading case in which this was defined is *Burdle v SSE* [1972] 3 All E.R. 240. In this judgement it was suggested that there may be three possible situations which

can be identified when considering the planning unit. First, there may be a single main purpose, to which any secondary activities are ancillary or incidental. Second, there may be a variety of activities which do not have a primary/ancillary relationship to each other but are composite within the whole planning unit. Finally, there may be sites where separate and distinct areas are occupied for unrelated purposes. In such instances these areas are actually separate planning units and each is to be considered by itself.

12. I find that the development at appeal reflects that of the third scenario, with Nos 48 and 50 each representing separate and distinct areas, both of occupation for unrelated purposes, in both physical and functional terms. Being separate addresses only serves to reinforce the fact that the current arrangement has not served to merge the individual planning units. That the occupiers of No 48 might regularly cross through into the accommodation at No 50 does not materially affect this planning context. Likewise, given the relationship, the external door from No 50's kitchen into No 48's garden area does not significantly weigh against my general findings.
13. A fact and degree judgment has to be made on the specific circumstance of each case and, given the circumstances and the nature of No 50's use, the fact that there are no separate Council tax registrations or utility bills is fully understandable.

Conclusion

14. Having interpreted and weighed up all the evidence available I must conclude that the appellant has discharged his burden of proof with sufficient precision and unambiguity demonstrating, on the balance of probabilities, that the use of No 48 as an independent dwelling enjoys immunity from enforcement action. Moreover, this has existed over a period considerably longer than the requisite four years from the material date.
15. For the reasons given above I conclude, on the evidence available, that the use was lawful on 7 October 2019, within the meaning of section 191(2) of the Town and Country Planning Act 1990.
16. Accordingly, I will exercise my powers under section 195(2) of the Act.

Timothy C King

INSPECTOR



Lawful Development Certificate

APPEAL REF. APP/J2210/X/20/3248649

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191

(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 7 October 2019 the development described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and shown 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:

The time period for enforcement had expired and the use did not contravene any of the requirements of any enforcement notice or breach of condition notice then in force.

Timothy C King

INSPECTOR

Date: 18 December 2020

First Schedule

Use of No 48 High Street, a two-storey property, as a self-contained dwelling or unit of residential accommodation, and its associated curtilage for incidental purposes thereto, in accordance with the submitted drawings, nos 001 A and 002 A.

Second Schedule

48 High Street, Littlebourne, Canterbury CT3 1ST

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

1. This certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990 as amended.
2. 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, would not have been liable to enforcement action under section 172 of the 1990 Act as amended on that date.
3. 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 attached to the Lawful Development Certificate dated: 18 December 2020
by **Timothy C King BA (Hons) MRTPI**

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Scale: Do not scale

