



Appeal Decision

Site visit made on 10 November 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 5 January 2021

Appeal Ref: APP/W5780/X/20/3249361
72 Icknield Drive, Gants Hill, Ilford IG2 6SD

- 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 Mohd Ifrahim against the decision of the Council of the London Borough of Redbridge.
 - The application Ref 4580/19 is dated 29 November 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 '*residential*'
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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.

Preliminary Matters

2. The Council, having assessed the application, has termed the description of the development involved as '*Use of detached rear outbuilding as a self-contained studio flat*'. Adding the wording "*for residential purposes*", I would agree that this accurately describes the LDC sought.
3. 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, of which a self-contained studio flat is a case in point, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. 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 29 November 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. The appeal property comprises a two-storey dwelling and, at the far end of its back garden is situated a single-storey L-shaped outbuilding. The main part, or rear section, of the outbuilding has been fitted out as a small, self-contained residential unit of accommodation, the interior of which I observed at my site visit, and this is the subject of the appeal. A side projection therefrom is, however, used separately as a store for the benefit of the occupants of the main dwelling, and cannot be accessed from the studio flat.
7. The submitted drawing no 510-03 shows the physical arrangement and refers to the relevant section of the outbuilding as No 72A. There is no physical demarcation between the main dwelling's rear garden and the outbuilding and I noted at my site visit that access can be readily gained via both the garden area and also the solid metal gate within the property's flank wall which abuts the Ashurst Drive footway, and from which I entered the site.
8. In support of the appeal, by way of separate Statutory Declarations (SD), sworn and submitted by the appellant and his wife, it is understood that the appellant and his wife purchased No 72 in 2003. It is claimed that the outbuilding was subsequently erected in 2011, following a planning permission granted the previous year.
9. The appellant indicates that he had a kitchen installed within the outbuilding in 2014, which is corroborated by a Mr Tariq Riaz who, in his own SD, says that he fitted this in December 2014. The appellant indicates that, due to family problems, he moved into the outbuilding in January 2015, and has resided there since. His wife, who has remained in the main dwelling, and two nearby occupiers who have also produced SDs, Ms Bhatia at No 67 Icknield Drive and Mr Nahid of No 69, have provided Statements which largely corroborate the appellant's account.
10. Evidence in cases such as this should not be rejected simply because it is uncorroborated. In the court judgement of *Gabbitts v SSE & Newham LBC* [1985] JPL 630 it was held that if there is no evidence to contradict the appellant's version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted. Often the question is simply whether the appellant's evidence is precise and unambiguous enough to discharge the burden of proof.
11. 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, the outbuilding, labelled No 72A, satisfies the test in that it gives the clear impression of a settled residential unit.
12. It is also necessary to consider the planning unit or units involved. The leading case in which the planning unit 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.

13. I find, from my inspection of the outbuilding here, along with the evidence adduced, that the development at appeal reflects that of the third scenario, with Nos 72 and 72A each representing separate and distinct areas, both for residential occupation, but for unrelated purposes.
14. A fact and degree judgment has to be made on the specific circumstance of each case and, given those relevant here, the fact that there are no separate Council tax registrations, tenancy agreements or utility bills is understandable. Further, the Council, in its case report, makes mention of only a single site visit carried out by an official on 4 February 2014. At that time it was noted that a kitchen area had been created in the outbuilding with some associated fittings and a sink installed, along with a separate bathroom. This, though, was some 21 months prior to the date in November 2015, material to this appeal, and I must afford these findings little weight in the attempt to rebut the appellant's case.

Conclusion

15. I have interpreted and weighed up all the evidence available, and having had regard to the *Gabbitas* judgement, I am satisfied that the settled, self-contained residential accommodation I witnessed within the outbuilding has, on the balance of probability, continued on an uninterrupted basis since before the material date. Accordingly, I find that the appellant has discharged his burden of proof with sufficient precision and unambiguity demonstrating that the use of the outbuilding as an independent dwelling enjoys immunity from enforcement action.
16. For the reasons given above I conclude, on the evidence available, that the use was lawful on 29 November 2019, within the meaning of section 191(2) of the Town and Country Planning Act 1990.
17. Accordingly, I will exercise my powers under section 195(2) of the Act.

Timothy C King

INSPECTOR



Lawful Development Certificate

APPEAL REF. APP/W5780/X/20/3249361

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 29 November 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: 5 January 2021

First Schedule

Use of a detached rear outbuilding as a self-contained studio flat for residential purposes.

Second Schedule

72 Icknield Drive, Gants Hill, Ilford IG2 6SD

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: 5 January 2021
by **Timothy C King BA (Hons) MRTPI**

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Scale: Do not scale

