



Appeal Decision

Site visit made on 5 February 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2021

Appeal Ref: APP/T3725/X/20/3257925

Glenthorne, Five Ways Road, Shrewley CV35 7HZ

- 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 Richard O'Flynn against the decision of Warwick District Council.
 - The application Ref W/20/0940, dated 22 June 2020, was refused by notice dated 18 August 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 a building as a single private dwellinghouse.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant requested an inquiry on the appeal form, however, he has subsequently confirmed that he would like the procedure changed to written representations. The Council agreed to the written representations procedure and, following my assessment of the evidence I am satisfied that I have sufficient information on which to make a decision.
3. The appellant has made extensive and detailed representations about the planning merits of the use of the building as a single private dwellinghouse. He has also made reference to various case law, appeal decisions and policy in this regard, as well as the personal circumstances of the occupant of the building and the appellant's family. The appellant suggests this information was included due to the unresolved threat of enforcement action. Nevertheless, for the avoidance of doubt, planning merits form no part of the assessment of an application for a LDC under S191 of the Act which must be considered in the light of the facts and the law.
4. The appellant has raised concern regarding an enforcement investigation carried out by the Council and highlights the need to take into account personal circumstances when deciding whether to take enforcement action. However, the appeal before me is against a refusal to grant a LDC. There is no enforcement appeal before me and so I am unable to consider such matters.
5. When considering the appellant's case, I have taken into account the fact that the appellant is unrepresented and is not professionally qualified in the matter of planning law¹.

¹ Richard O'Flynn v SSCLG and Anr [2016] EWHC 2894 (Admin)

Applications for costs

6. Applications for costs were made by Mr Richard O'Flynn against Warwick District Council and by Warwick District Council against Mr Richard O'Flynn. These applications are the subject of a separate decision.

Main Issue

7. The main issue of the appeal is whether the Council's decision to refuse the certificate of lawfulness was well-founded.

Reasons

8. An application under S191(1)(a) of the Act² seeks to establish whether any existing use of buildings or other land is lawful. S191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may 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); and ii) They do not constitute a contravention of any enforcement notice then in force.
9. The Council refused the application for a LDC on the basis that the building had not been used as a separate residential dwelling continuously for 4 years prior to the submission of the application. Whilst the appellant may have intended to construct the building 4 years earlier, he confirms that building operations for the construction of the building didn't commence until 2 July 2018 and that the building was not substantially completed until the end of 2018.
10. The main thrust of the appellant's case is that his implementation of the development approved by W/17/2164 had the effect of creating a separate planning unit and since his implementation of it was lawful, the separate planning unit which it has created must also be lawful. This appeal will therefore turn on whether a new planning unit has been created and if so, whether its creation is permitted by W/17/2164.
11. To succeed on this appeal, the appellant must prove on the balance of probability that the refusal of an LDC was not well founded. In support of his case, the appellant has submitted a statutory declaration confirming that the statements and supporting evidence he has submitted are true and correct to the best of his knowledge and belief. As established in *Gabbittas v SSE & Newham LBC* [1985] JPL 630, an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
12. A LDC was granted on 30 January 2018, reference W/17/2164, for the proposed erection of 2no. detached outbuildings, siting of a caravan and formation of hardstanding. This appeal concerns the larger of the two outbuildings. Although the building that the appellant constructed was not in accordance with the submitted plans, the Council does not dispute that the appeal building would meet the size limitations of Class E.
13. The appeal site comprises a substantial detached brick building which is located in a generous plot and is accessed separately to the main dwelling at

² Town and Country Planning Act 1990 (as amended)

- Glenthorne via a drive off Five Ways Road. Fencing delineates the appeal plot and the adjacent property, Glenthorne, with a wooden gate which enables access between the two areas of land.
14. The appellant points out that it would have been evident to the Council during its consideration of W/17/2164 that the appeal building would require services and utilities and that some if not all would have to be separate from the dwellinghouse due to its considerable distance from the dwellinghouse. It would also have been evident that the building would have separate parking and vehicular access onto Five Ways Road.
 15. The appellant has drawn my attention to *Emin v SSE & Mid Sussex DC* [1989] JPL 909 and points out that the buildings proposed under W/17/2164 together with 'existing' incidental buildings would have provided more than double the internal space than the main dwelling, Glenthorne.
 16. The appellant suggests that due to the physical separation between the appeal building and the dwellinghouse of Glenthorne, along with the provision for separate car parking and vehicular access onto Five Ways Road, a separate planning unit would be created. However, case law has established it is necessary to assess both the physical and functional links between the use of the outbuilding and main dwelling and consider whether a separate planning unit has been created as a matter of fact and degree.
 17. The appellant and his wife are the owners of Glenthorne and the land to which this appeal relates. The appellant states that the building was constructed in 2018 and was used for various activities, including woodwork, a dance studio and as a gym. The appellant explains that, due to a change in circumstances, his wife moved into the building on 14 November 2019 and at some point afterwards, his wife's mother also stayed at the property.
 18. Although there is some ambiguity in how the building is used, the appellant confirms that since September 2018, he has regularly undertaken woodwork projects in two of the south facing rooms as part of his own DIY requirements and hobby activities and I have no reason to doubt the appellant's evidence in this regard. Whilst the appeal building appears to be physically separate from the main dwelling of Glenthorne, it appears that there remains a functional link between the use of the main dwelling and the appeal building.
 19. The appellant has therefore not demonstrated, on the balance of probabilities, that the appeal building is actually being used as a separate dwellinghouse and that a separate planning unit has been created. Moreover, the appellant confirms within his statement of case that he has never stated that the appeal building was converted to a separate dwelling.
 20. Article 3(2) of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO) states that any permission granted... is subject to any relevant exception, limitation or condition specified in Schedule 2. Class E of Part 1 of Schedule 2 of the GPDO permits the provision within the curtilage of the dwellinghouse of (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure.

21. S192(4) provides that the lawfulness of any use or operation for which an LDC is in force under s192 shall be conclusively presumed unless there is a material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness. Planning permission for the outbuilding is only granted by the GPDO if the building is 'incidental', Class E cannot grant planning permission for a building which is not incidental and whilst the Council issued a decision in respect of W/17/2164, this is not the equivalent of a planning permission.
22. The appellant suggests that the Council would be estopped from succeeding in any enforcement action because he has relied upon its confirmation that the operational development responsible for the material change of use would be lawful. However, application W/17/2164 would not have this effect since it can do no more than confirm that the development as proposed by the appellant, namely a building incidental to the enjoyment of a dwellinghouse, would have been lawful if instituted or begun on the date of application.
23. Therefore, even if the appellant had provided sufficiently precise and unambiguous evidence that the appeal building is actually being used as a separate dwellinghouse and a new planning unit had been created, the creation of a new planning unit and change of use of the outbuilding to a single dwellinghouse would be a material change in the use of the land and would be development for which planning permission is required.
24. The appellant states that in the middle of November 2019, parts of the building had acquired an ancillary residential use which would not be development and would be lawful because of the provisions of S55(2)(f) of the Town and Country Planning Act 1990 (as amended). The appellant has also drawn my attention to *Uttlesford DC v SSE & White* [1992] JPL 171 where it was held that the residential use of an extension or outbuilding may be regarded as part and parcel of (rather than incidental to) the use of the dwellinghouse, even if it contains the facilities required for use as a self-contained dwellinghouse.
25. I accept that if the dwellinghouse and outbuilding remain part of the same planning unit, and that is still occupied by a functionally single household, no material change of use would be involved, even if the building was constructed as under Class E and the use of the building was subsequently changed to a use integral to that of the dwellinghouse. However, were I to consider the lawfulness of the outbuilding as part and parcel of the use of the dwellinghouse, this would be at odds with the description of the existing use as a single private dwellinghouse.
26. The Planning Practice Guidance (PPG) advises that precision in the terms of any certificate is vital, there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it. Whilst S191(4) allows the local planning authority to modify the description of the existing use, operation or other matter, it does not empower the grant of an LDC for something totally different to what is applied for.
27. Accordingly, for the reasons given above, in my view, the appellant's evidence is not sufficiently precise and unambiguous and has not demonstrated, on the balance of probabilities, that the use of the appeal building as a single private dwellinghouse would be lawful.

Conclusion

28. Thus, for the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of a building as a single private dwellinghouse was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

M Savage

INSPECTOR