
Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2021

Appeal Ref: APP/M5450/X/20/3263164

22 Camrose Avenue, Edgware, Middlesex HA8 6EG

- 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 Bob Sharpe against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/0472/20, dated 9 February 2020, was refused by notice dated 14 August 2020.
 - The application was made under section 191(1)(a) and 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The use and development for which a certificate of lawful use or development is sought is described as "The erection of a self-contained rear garden outbuilding in 2015 with subsequent and continuous use as a separate dwelling by rent paying tenants unrelated to the owners from 2015 to the present time."
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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 and operation, which is found to be lawful.

Preliminary and Procedural Matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, a decision can be reached on the papers.
3. The Procedural Guide - Certificate of lawful use or development appeals – England, dated November 2020, states at paragraph A.9.4. "Where the appeal concerns a case, which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the case without a site visit." In addition, Footnote 12 within Appendix F states that a small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents.
4. Part of the appellant's evidence comprises a set of witness statements made under the Criminal Procedure Rules, r.27.2; the Criminal Justice Act 1967 s9 and the Magistrates Courts Act 1980 s5B. They are all signed, dated and contain the statement "This statement (consisting of one page signed by me) is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true". It is not clear

either why the appellant has submitted statements in this format or whether he believes they will carry more weight as a result.

5. During the processing of the application, the Council raised concerns about these statements with the applicant and he subsequently arranged for two of the statements to be witnessed by a solicitor. The solicitor added to the end of each statement her name, signature and Roll Number together with the following words "This witness statement was executed before me at Edgware, England, this 24th August 2020 by (the appellant and his wife and the tenant and his wife) identified to me by their *name of country* passports and other personal documents".
6. None of these witness statements are either statutory declarations made in accordance with the Statutory Declarations Act 1835 or sworn affidavits, which are another form of sworn written statement of fact. The appellant's witness statements with their reference to the Criminal Justice Act 1967 etc are not contained within a document tendered in court proceedings and, as they are not sworn, no sanctions apply. The weight given to them is therefore reduced. The two statements counter signed by a solicitor merit slightly more weight than the others as the solicitor has verified the person before them is the person who has made the statement.

Main Issue

7. The appeal concerns a detached outbuilding¹ that has been built within the rear garden of a semi-detached house. It is apparent from the appellant's description that he is seeking to establish the lawfulness of both the built development as well as its use as a self-contained dwelling. The reason for refusal does not dispute the lawfulness of the erection of the outbuilding and in the Council Officer's report it is stated that it appears the outbuilding was erected sometime between 3 May (*sic*) 2015 and 1 September 2015². As such, it appears that the Council accept that the outbuilding was substantially complete more than four years before the date of the application, which was 9 February 2020, and I see no reason to take a different view.
8. In the light of that background, the main issue is whether the Council's refusal to issue a certificate of lawfulness in respect of the self-contained residential use of the outbuilding was well-founded. That turns on whether the appellant can show, on the balance of probabilities, that firstly, the self-contained residential use began more than four years before the date of the application. Secondly, whether the appellant can show that the use has continued without material interruption thereafter so as to be immune from enforcement action.

Reasons

9. Section 191(2) of the Town and Country Planning Act 1990, as amended, indicates that uses and operational development are lawful at any time if (a) no enforcement action may then be taken in respect of them because, for instance, the time for enforcement action has expired and (b) they do not contravene the requirements of any enforcement notice in force. Lawfulness in

¹ The outbuilding is stated to be 7m by 4m in area and 3.2m high and is shown on a set of drawings submitted with the application.

² 3 August (not May as stated by the Council) 2015 date of builder's invoice provided by the appellant and 1 September 2015 date of current occupier's tenancy agreement.

this case is to be decided at the time of the application, that is 9 February 2020.

10. Subsection 191(2)(b) is met here as there is no enforcement notice in force. With regard to subsection 191(2)(a), sections 171B (1) and (2) say that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house or operational development has taken place, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. The relevant period for consideration in this instance is more than four years before the date of the application, so 9 February 2016 is the relevant date.

The appellant's case

11. The outbuilding appears to have been occupied by the same couple since it was built and the appellant's evidence comprises;
- 7 witness statements including from the appellant and the occupiers of the outbuilding;
 - An extract from the current electoral roll listing the appellant, his wife and the occupiers of the outbuilding;
 - A copy of the first rent receipt for the period 1 Sept 2015 - 30 Sept 2015 dated 1 September 2015 and listing the names of the current occupiers;
 - Appellant's letters to Council Tax and the Council, dated February 2020, stating that the occupiers moved in on 1 Sept 2015 and that the rent includes all bills;
 - A copy of the tenancy agreement dated 1 Sept 2015 signed by one of the occupiers in which it is stated that the agreement is a periodic agreement;
 - A copy of a mobile phone agreement addressed to one of the occupiers at the appeal site, dated 2 Dec 2019;
 - A copy of a payslip addressed to one of the occupiers at the appeal site, dated 5 Dec 2019;
 - A copy of a bank statement addressed to one of the occupiers at the appeal site, dated 15 Aug 2019;
 - A copy of an Argos card statement addressed to one of the occupiers at the appeal site, dated 14 Nov 2019;
 - A copy of a letter from Job Centre Plus addressed to one of the occupiers at the appeal site, dated 4 July 2017; and
 - A copy of a driving licence belonging to one of the occupiers issued on 29 Nov 2019 and showing the address of the appeal site.

The appellant also includes a bundle of correspondence between himself and the Council but this relates to the Council's handling of the application. In addition, there are also some photographs which show the external appearance of the outbuilding.

Assessment

12. The appellant has documents that support when the use began in September 2015 (the tenancy agreement signed by the parties, but not witnessed, and a rent receipt, though the amount differs from that stated as being due in the tenancy agreement) and that the people who moved in at the start of the use were still there at the date of the application (electoral roll, tenant's statement executed before a solicitor).
13. In order to show continuous use, the appellant relies on documents dated 4 July 2017 and others dated August, November and December 2019. These all contain the address "22 Camrose Avenue" and do not differentiate between the principal dwelling on site and the outbuilding. However, there is no suggestion from the appellant that the tenants have ever lived in the principal dwelling as lodgers and it is therefore more likely than not that the documents relate to the occupiers of the outbuilding. There are, however, no official documents to show that the use was continuing in 2016 and 2018.
14. For this the appellant relies on the statements of two nearby neighbours. They both say the outbuilding has been continuously occupied by the original tenants. One of them knows this for sure as he allows one of the tenants to park his van on his drive. The other living opposite the appeal site would have a good view of the comings and goings of the tenants and they confirm one of the tenants helped them assemble their arbour.
15. In addition, there are three other statements from friends of the appellant who are regular visitors to the principal dwelling. They all confirmed that the self-contained residential use has been continuous. However, none explain how regular their visits were, whether they were weekly, monthly or whether there were longer periods between visits. As such, they may not have been aware of any interruptions in the self-contained residential use. Such events, depending on their length, can be sufficient to break any accrued residential use and I note the appellant states that the tenants returned to their own country for two weeks after the application had been submitted³.
16. Whilst there are some inconsistencies in the evidence, such as the amount of rent paid compared to what was agreed, having regard to the totality of the evidence, it does not make the appellant's version of events less than probable. In addition, there is no evidence from the Council to contradict the appellant's version of events. Whilst the Council are concerned that there were no Council tax records "which would clearly demonstrate a continuous use", the appellant provided a plausible explanation as to why he had not registered the outbuilding. I find there are also other ways in which to demonstrate continuous use.
17. In arriving at my conclusion, I am conscious that the appellant's case for the residential use relies on statements and recollections as well as some documents. It is inevitable when seeking to document a residential use that occurred some time ago that some of the evidence is inconsistent. Notwithstanding this, having regard to the totality of the evidence and its overall consistency, I find the appellant's evidence is sufficiently precise and unambiguous to support the existence of a self-contained residential use of the outbuilding. The test for the evidence is on the balance of probabilities namely,

³ Correspondence letter No 11

what is more likely than not and that balance of the evidence need only be slightly more than half in order to satisfy the test.

18. In an appeal relating to an LDC, the burden of proving relevant facts rests with the appellant. The appellant's own evidence does not have to be corroborated by "independent" evidence. If there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate. This is provided the evidence is sufficiently precise and unambiguous.⁴
19. In my view the appellant's evidence is sufficiently precise and unambiguous to support the existence of a self-contained residential use of the outbuilding throughout the relevant period. I conclude that the residential use began during September 2015 and continued thereafter, becoming immune from enforcement action after four years during September 2019. There have been no other intervening uses between September 2019 and the date of the application. The self-contained residential use of the outbuilding is therefore lawful.

Conclusion

20. 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 erection of a self-contained rear garden outbuilding with subsequent and continuous use as a separate 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.

D Fleming

INSPECTOR

⁴ Planning Practice Guidance



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 9 February 2020 the use and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The erection of the outbuilding was substantially complete by September 2015 at the latest and does not contravene the requirements of any enforcement notice in force.

The use of the outbuilding as a self-contained dwelling began more than four years before the date of the application and continued thereafter; and the use does not contravene the requirements of any enforcement notice in force.

Signed

D Fleming

Inspector

Date 13 May 2021

Reference: APP/M5450/X/20/3263164

First Schedule

The erection of a self-contained rear garden outbuilding with subsequent and continuous use as a separate self-contained dwelling.

Second Schedule

Land at 22 Camrose Avenue, Edgware, Middlesex HA8 6EG

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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:

by D Fleming BA (Hons) MRTPI

Land at: 22 Camrose Avenue, Edgware, Middlesex HA8 6EG

Reference: APP/M5450/X/20/3263164

Scale: not to scale

