



Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 24TH JUNE 2021

Appeal Ref: APP/J1915/X/21/3269301

42 Church Road, Little Berkhamsted, Hertford, SG13 8LY

- 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 Mike Harris (Islandbridge Properties Limited) against the decision of East Hertfordshire District Council.
 - The application Ref 3/20/2103/CLXU, dated 27 October 2020, was refused by notice dated 23 December 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 of a building incidental to the occupation of the dwellinghouse.
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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.

Reasons

2. The main issue is whether the Council's refusal to issue a certificate of lawfulness was well-founded. The use is lawful if no enforcement action can be taken in respect of it and provided it does not contravene the requirements of any enforcement notice then in force.¹ No evidence was submitted regarding an enforcement notice relating to this property at the time of the application during the appeal.
3. In order to succeed in this appeal the appellant must show that the building is within the curtilage of a dwellinghouse (i.e. 42 Church Road) and has been used for a purpose incidental to the enjoyment of that dwellinghouse. The burden of proof is on the appellant. If a local planning authority has no evidence itself, nor from others, to contradict or otherwise make the appellant's version of events less than probable, provided the appellant's evidence alone is sufficiently precise and unambiguous, the appeal should be allowed and the LDC granted. The test to be applied in weighing the evidence is on the balance of probabilities.
4. The appellant's case is that the building is within the residential curtilage of 42 Church Road and in fact pre-dates the host bungalow. I am unclear about the

¹ Section 191(2) of the 1990 Act.

current ownership of the appeal property but that is not relevant for the purposes of the appeal. An affidavit provided by Anthony Catt, the previous owners' son states that he has been familiar with the property since around 1988 and that the building was used from that time, and including during the last 10 years, for purposes incidental and in association with the occupation of the host dwellinghouse. The affidavit goes on to state that the use of the building subject to the LDC application included the storage of cars, the storage of tools and machinery related to the property and the garden as well as a greenhouse. Mr Catt states that all uses were incidental to the family's enjoyment of the dwelling. An incidental activity for the purposes of s55(2)(d) is not part and parcel of a primary use but functionally related to that residential use. The activities described by Mr Catt are functionally related to the use of the dwellinghouse and fall within the meaning of incidental for these purposes.

5. The Council's reason for refusal was that insufficient evidence was provided to demonstrate on the balance of probabilities that the existing outbuilding at 42 Church Road has been used as incidental to the main dwellinghouse for a period of not less than 10 years prior to the date of submission. However, this was not the correct test as the use of any buildings or land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such shall not be taken to involve development of the land.² There is no requirement for a particular period of use (although Mr Catt provided evidence of the incidental use well in excess of a 10 year period).
6. The Council did not provide its own evidence during the course of this appeal to contradict the appellant's case, and in particular no information to contradict the sworn evidence of Mr Catt. Several interested parties, residents of neighbouring properties, have made representations regarding the appeal but the information that they have provided does not make the appellant's version of events less than probable. The interested parties refer to the building as a garage or outbuilding and their primary concern seems to be regarding the potential change of use of the building to a separate unit of living accommodation, not a matter which is being considered in this appeal. Neither the Council nor the interested parties have provided any evidence or details regarding the building being used separately and in a way that was not incidental to the host property.
7. The photographs and plans of the building are consistent with the description of use provided by the appellant. It is not in issue that the building is within the curtilage of 42 Church Road, and the photographs and plans support this view. The outbuilding is large, including when compared with the host dwellinghouse, but that is not enough in itself to suggest that it was not used as described by Mr Catt.
8. 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 a building incidental to the use of a dwellinghouse 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.

Zoë Franks

² Section 55(2)(d) of the Town and Country Planning Act 1990

INSPECTOR



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 27 October 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched green 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 building is within the curtilage of the dwellinghouse at 42 Church Road and is used for purposes incidental to the enjoyment of that dwellinghouse.

The use does not contravene the requirements of any enforcement notice in force.

Signed

Zoë Frank

Inspector

Date 24TH JUNE 2021

Reference: APP/J1915/X/21/3269301

First Schedule

Use of a building for purposes incidental to the enjoyment of the dwellinghouse at 42 Church Road.

Second Schedule

Land at 42 Church Road, Little Berkhamsted, Hertford, SG13 8LY

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, 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 /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 Zoë Franks, Solicitor

Land at: 42 Church Road, Little Berkhamsted, Hertford, SG13 8LY

Reference: APP/X/J1915/X/21/3269301

Scale: Not to scale



