



Appeal Decision

Site visit made on 10 June 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 June 2021

Appeal Ref: APP/M3645/X/19/3235886

Greengables, Ricketts Hill Road, Tatsfield, Westerham TN16 2NB

- 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 and Mrs Des Harriott Gayle against the decision of Tandridge District Council.
 - The application Ref TA/2019/918, dated 15 May 2019, was refused by notice dated 24 July 2019.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use which a certificate of lawful use or development is sought is use of ground floor annex for bed and breakfast accommodation.
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Summary Decision: the appeal is dismissed

Application for costs

1. An application for costs was made by Mr and Mrs Des Harriott Gayle against Tandridge District Council. This application is the subject of a separate Decision.

Reasons

2. Section 192(2) of the Town and Country Planning Act 1990 (the 1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded.
3. The main issue identified above is derived from section 195(2) of the 1990 Act which refers to the 'refusal' being not well-founded. This means the decision of the local planning authority, not the reasons for that decision. The application being appealed was made to ascertain whether the proposed use would be lawful on the date on which application was made. If the evidence taken as a whole suggests that the matter in question is not lawful, it would be wrong to grant a LDC, even if the local planning authority had different, and possibly misplaced, reasons for reaching the same conclusion. In this respect, the burden of proof is on the appellant to show that, on the balance of probability,

the development proposed would have been lawful on the date on which the application was made.

4. The starting point is the relevant planning unit. The leading case for determination of the planning unit is *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207. This case indicates that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically and/or functionally separate and distinct, and/or occupied for different and unrelated purposes. In *Burdle*, Bridge J suggested three broad categories of distinction:

- a) A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;

- b) A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another;

- c) The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.

It is necessary to apply the principles established in *Burdle* to the facts of this case.

5. The appeal property, known as Greengables, is a large dwelling occupied by the appellants and their two children. The dwelling provides a total of seven bedrooms, of which two are within a ground floor annex located to the side of the main house. I understand that this annex is used to accommodate visiting family and friends. The annex is in close proximity to the main dwelling but is neither physically attached to it nor physically separated from it. The annex does, however, share an access drive with the main dwelling.
6. Having regard to the above, it appears to me that the main dwelling; the annex; other outbuildings and the garden are all within the same unit of occupation and are not physically or functionally separated. I therefore find that, as a matter of fact and degree, the above collectively formed the planning unit at the time the application was made. There is no dispute that this planning unit is in residential use (Use Class C3).
7. A certificate of lawful use or development is sought for use of the ground floor annex for bed and breakfast accommodation. The annex would provide two bedrooms, a living room and a shower room. The annex would provide accommodation for three people. There would be no cooking facilities in the annex itself. All cooked food would be prepared in the main dwelling and consumed there by guests.
8. The LDC was refused, in part, on the basis that the use of the annex to provide bed and breakfast accommodation would be self-contained and as such would create a separate planning unit to the main dwelling. I understand that the annex had previously been used to provide bed and breakfast accommodation with cooking facilities provided within the annex itself. At the time of my site visit, there was a cooker hood and a dishwasher remaining in situ, with the space beneath the cooker hood being occupied by a cabinet. Clearly, neither of these facilities could be used for cooking food but it would nonetheless be a relatively simple matter to re-install a cooker.

9. I have, however, determined this appeal on the basis of the appellant's clearly stated position that no cooking facilities would be provided within the annex itself. As the appellants point out, the appeal property is located some distance from facilities that offer breakfast menus. I therefore accept that it would not be a realistic proposition for guests to rely upon outside catering facilities to provide a cooked breakfast. The corollary is that guests would have to rely upon the main dwelling for cooked food, including cooked breakfasts.
10. It follows that the proposed use of the ground floor annex for bed and breakfast accommodation would be dependent upon the main dwelling. The proposed use of the annex would therefore not be self-contained. It would not be physically or functionally separate from the main dwelling. I recognise that the entire outbuilding would be given over to bed and breakfast use when occupied by paying guests. But equally it could not reasonably function as bed and breakfast accommodation without access by those paying guests to the main dwelling. I am also mindful that it is the appellant's intention to continue using the ground floor annex for occasional use by family and friends.
11. This is therefore not a situation where the unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. As such, it is not an example of the third distinction of planning unit identified in *Burdle*. On that basis, I am satisfied that proposed use of the ground floor annex for bed and breakfast accommodation would not create a separate planning unit.
12. However, whilst the above formed part of the reason for refusal of the LDC, that is not the only relevant consideration in determining whether the proposed use would have been lawful on the date on which the application was made. The refusal of the LDC specifically states that the use of the ground floor annex for bed and breakfast accommodation use is considered by the Council to constitute a material change of use. It is therefore also necessary to consider whether the proposed use of the ground floor annex would result in a material change of use of the planning unit as a whole.
13. The appellants explain that the ground floor annex can accommodate up to three guests. This is probably not dissimilar from the numbers to be found in many of the family houses in the area and/or use of the annex for occasional stays by visiting family and friends. It is not indicated, perhaps because there is no way of knowing at this time, whether these three guests would comprise single families, individuals who have come together as groups or individuals with some other relationship or common interest or purpose.
14. The appellants also explain that the intention is to use the ground floor annex for limited/occasional use by non-family guests. But that 'limited' or 'occasional' use is not quantified in any way. The LDC as applied for does not propose any restriction on the number of days on which the annex could be used to provide bed and breakfast accommodation. Neither does the LDC propose any minimum or maximum duration of stay for paying guests. It is not permissible to impose conditions on a LDC to restrict or limit the use applied for. I must approach my consideration of this appeal on the basis of the LDC in the terms applied for. This means that, notwithstanding the appellant's stated intentions, there would be no restriction on the number of occasions on which the ground floor annex could be used to provide bed and breakfast accommodation.

15. In theory, therefore, the LDC as applied for could include use of the ground floor annex to provide bed and breakfast accommodation on any number of occasions throughout the year. Moreover, use of the annex could comprise a series of relatively short stays, potentially just a single night on each occasion. I recognise of course that it would be unlikely that the accommodation would be occupied every night of the year. But even if it was occupied for only a proportion of the time, this could still potentially give rise a high turnover of paying guests throughout the year.
16. The first point to make is that, in my view, the potential level of use could not be regarded as being *de minimis*. Similarly, in my view, the potential level of use could not be regarded as being ancillary or incidental to the main dwelling.
17. The salient point is that the unrestricted use of the ground floor annex to provide bed and breakfast accommodation points to consistently short periods of residency and a very frequent turnover of occupants. Associated with this very frequent turnover of occupants would be the frequent vehicular movements plus the comings and goings as paying guests arrive and depart together with, for longer stays, use of their vehicles whilst at the property. These are characteristic that would potentially be apparent throughout the year.
18. These factors, in particular the notably transient pattern of occupancy, together with the pattern of related arrivals and departures and associated activity, distinguishes the character of the use in question from the more settled pattern of occupancy typically associated with a residential dwelling. The difference in character would be such that, as a matter of fact and degree, I consider that it would amount to a material change of use of the planning unit as a whole. As such, the proposed use would constitute development for the purposes of section 55(1) of the 1990 Act. Section 57(1) of that Act states that planning permission is required for the carrying out of any development of land.
19. This material change of use resulting from the proposed use would result in a situation where the single planning unit would be in a mixed use because the land would be put to two activities and it is not possible to say that one is incidental to another. It would therefore be an example of the second distinction of planning unit identified in *Burdle*.

Conclusion

20. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of ground floor annex for bed and breakfast accommodation 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.

Decision

21. The appeal is dismissed.

Paul Freer

INSPECTOR