
Appeal Decision

Site visit made on 15 June 2021

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2021

Appeal Ref: APP/K0235/X/21/3270734

The Lodge, Staploe, St. Neots PE19 5JB

- 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 Frank Squire against the decision of Bedford Borough Council.
 - The application Ref 20/01961/LDP, dated 28 August 2020, was refused by notice dated 26 October 2020.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended (the Act).
 - The use for which an LDC is sought is occupation of the Coach House as an annex.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Frank Squire against Bedford Borough Council. This application is the subject of a separate Decision.

Preliminary Matter

3. The description of the use for which an LDC is sought is taken from the planning supporting statement and the grounds of appeal and not from the application form, which described building operations comprising internal alterations and the replacement of a garage door with a glazing screen.
4. The appellant considers these works do not constitute development because they affect only the interior of the building and do not materially affect its external appearance. The Council did not confirm this when it made its decision, referring to the absence of a structural survey and noting the provisions of section 55(1A)(c) of the Act. This includes structural alterations of or additions to buildings within the definition of building operations comprising development.
5. A building survey submitted with the appeal confirms that the rafters require strengthening and added restraint to prevent further distortion of the masonry. It indicates that the need for these structural works arises from the current condition of the building, not the proposed use. While the Council has not commented on this, I shall consider the LDC being sought as relating solely to the proposed residential use as an annex to The Lodge.

Main Issue

6. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. If, on an application under section 192 of the Act, the local planning authority is provided with information satisfying it that the use described in the application would be lawful if instituted at the time of the application, it shall issue a certificate to that effect; and in any other case shall refuse the application.

Reasons

7. The Coach House is sited within the extensive grounds of The Lodge, which are maintained as a single domestic curtilage. It is used for domestic storage, primarily of gardening tools and equipment, a purpose incidental to the residential occupation of The Lodge. The planning unit thus comprises the entire area edged red on the location plan, occupied by a single household.
8. Section 55(2)(d) of the Act provides that the use of a building within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of that dwellinghouse as such is not development. The Council refused to issue an LDC because it considers the proposed residential use of the annex would result in the creation of a separate dwellinghouse, which would not be incidental to the residential occupation of The Lodge. If so, a separate planning unit would be formed and development requiring planning permission would occur.
9. As shown on drawing A/47452/03, the proposed annex would occupy approximately half of the ground floor and the entire upper floor of the Coach House. The remainder of the ground floor is annotated 'workshop' on the existing and proposed floor plans, and I saw this area is mainly used to store gardening equipment. Two lean-to garden stores attached to the Coach House are shown unchanged. There would be no internal connections between the annex and the workshop and the garden stores.
10. While it is intended that the annex would have all the facilities required for day to day living that does not, of itself, create an independent dwellinghouse. If occupiers of The Lodge and the annex live as a single household, there would continue to be one planning unit and a material change of use will not occur.
11. When considering the likely physical and functional relationship, the significant separation distance between the 2 buildings, over 100m, cannot be ignored. This and the fact that both buildings would separately have all the facilities required for day to day living serve to substantially reduce the probability that their occupiers would function as a single household. It seems particularly unlikely that a person living in the annex would routinely walk to The Lodge, or vice versa, for shared meals or to engage in other joint household activities in all weather. The physical separation between the 2 buildings would thus have a major influence on whether they would be occupied as a single planning unit.
12. My attention has been drawn to appeal decisions relating to existing and proposed residential occupation of outbuildings in Chichester¹ and Enfield². Both decisions concerned issues like those in this case, including whether the living accommodation in an outbuilding would be integral to the use of the existing dwelling. In both cases, the outbuildings had no separate access and

¹ APP/L3815/C/16/3158037 & 3161113, allowed 23 March 2017

² APP/Q5300/X/17/3181362, allowed 9 July 2018

no subdivision of the garden had occurred or was proposed, consistent with this appeal.

13. In the Chichester appeal, the Inspector found that the outbuilding had kept a clear physical relationship with the host property. In the Enfield appeal, the Inspector concluded that a new planning unit would not be created because the proposed annex "would not be physically separate or distinct from, or occupied for different or unrelated purposes to the use of the existing dwellinghouse within the same planning unit".
14. Neither decision records the distance between the outbuilding and the original dwelling or the size of the garden. However, the addresses indicate that they are within urban areas, where smaller curtilages and closer siting should be expected, and one is recorded as being in the middle of a terrace. It is therefore reasonable to assume that, had either plot been as large or the outbuilding as far away as in this case, it would have been noted in the decision. In view of this, and although the same planning principles should be applied, the size of the plot and the unusually long distance between The Lodge and the annex means that the physical circumstances of this case are different.
15. The submitted drawings do not include any proposed barriers to separate The Lodge and the annex. However, the distance between them and the substantial area of garden beyond the Coach House are such that distinct and separate garden areas could arise solely through patterns of occupation.
16. Notwithstanding that, the nature of the relationship between the occupiers may influence the character of the residential occupation. The appellant intends that the annex would be occupied by his son and daughter in law. Consequently, family ties would give the occupiers of the 2 buildings a closer relationship than might otherwise exist. However, it has not been demonstrated that, of itself, this would result in the residential occupation of the annex being ancillary to that of The Lodge or the occupiers of the 2 living as a single household. Even if it did, it would not be possible to make the grant of an LDC personal to a named occupier.
17. The appellant's son and daughter in law wish to provide care for him and his wife and it is reasonable to consider whether this would result in there being a single household. However, the provision of care need not be the preserve of family members so I shall consider it in isolation. There may be situations in which the nature and level of care result in those giving and those receiving living so closely together that they form a single household, even if they occupy more than one building. However, in this instance, while some information has been provided regarding the appellant's personal circumstances, the intended care arrangements have not been specified. It has thus not been demonstrated that the provision of care would result in the residential occupation of the annex being ancillary to that of The Lodge or the occupiers of the 2 living as a single household.
18. The appellant intends to use a restrictive covenant to prevent a separate dwelling occurring and to ensure that utility supplies are shared. However, there are no details of how those restrictions might be phrased or how, and by whom, they might be enforced. Consequently, I cannot afford weight to this matter.

19. The distance between The Lodge and the annex, the facilities each would provide, and the potential for separate garden uses combine to make a clear functional link and occupation by a single household less than probable. Set against this, the intended family and care-giving relationships would exhibit a stronger connection between the occupiers of the 2 buildings than might otherwise exist. However, it has not been demonstrated that these factors would outweigh the spatial characteristics and that, on the balance of probability, a single household would exist.
20. Accordingly, and as a matter of fact and degree, the annex would not be ancillary or integral to the residential occupation of The Lodge but would be occupied for unrelated purposes. It would thus constitute a separate planning unit of a dwellinghouse, which is development requiring planning permission.

Conclusion

21. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC for occupation of the Coach House as an annex was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

Mark Harbottle

INSPECTOR