



Appeal Decision

Site visit made on 3 August 2021

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 August 2021

Appeal Ref: APP/E0345/X/21/3270720

16A The Kiln, Romany Lane, Tilehurst, Reading RG30 6AP

- 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 William Darlow against the decision of Reading Borough Council.
 - The application Ref 191318, dated 8 August 2019, was refused by notice dated 6 November 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 described as: The existing outbuilding at the address has been used as a separate dwellinghouse for more than 6 years.
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Summary of Decision

1. The appeal is dismissed.

Procedural Matter

2. Both parties consider that the appeal is suitable to be determined by the written procedure. That being so, I do not consider that injustice or prejudice to a party arises.

Main Issue

3. The main issue is whether the Council's decision to refuse a certificate of lawfulness for the use of an outbuilding as a dwelling is well founded.

Reasons

4. In matters such as this the onus is on the appellant to demonstrate his case on the balance of probabilities. In order to do so, a period of 4 years would need be demonstrated in order to affirmatively establish a continuous independent residential use that would then be lawful. It need not be the most recent 4-year period preceding the date of the application, only a continuous period of 4-years, when enforcement action could otherwise have been taken. Thereafter, a gap in actual occupation may not be critical, unless there is evidence of an intervening use.
5. The appellant's evidence principally concerns 3 statutory declarations. The Statutory Declaration of a Mr Young is that he occupied what he describes as "The Annexe" for 6 years from 18 January 2013. The declaration is sworn on

30 July 2019. There is also an accompanying plan annotated as “annexe” exhibited.

6. The Statutory Declaration of a Mrs Darlow is that the annexe had been let to Mr Young for at least 6 years. The declaration is also sworn on 30 July 2019 and also exhibited is a copy of a tenancy agreement for a 12-month period from 18 January 2013, which is then said to have subsequently rolled-over.
7. The Statutory Declaration of a Mr Kaur, also sworn on 30 July 2019, is that to his knowledge Mr Young has been in possession of the property since 18 January 2013 and that he pays for rent and for the utilities used at the premises.
8. The Statutory Declarations are sworn on the same date before the same witness. They appear to corroborate that Mr Young occupied the annexe for 6 years, albeit the actual tenancy agreement before me only relates to a 12-month period. However, it would be unlikely that declarations sworn on the same date before the same witness and submitted for the same application would do anything other than provide very close and convenient corroboration. Moreover, those declarations then lack detail and precision, such as when Mr Young’s occupation ceased. More pertinently, there is then very little contemporaneous evidence to demonstrate on the balance of probabilities that the annexe was actually occupied independently within its own planning unit, as opposed merely the annexe that has been described or what the tenancy agreement envisaged.
9. The Council highlights that the floorplan exhibited was inaccurate and this remains part of the declarations. That plan shows 3-rooms comprising bathroom, kitchen and living/bedroom and with only 3 large windows in a single elevation. During my site visit, I observed these 3 windows, but that there were only 2 rooms.
10. There is an evidence document submitted with the application which includes a photograph of the elevation with the 3 large windows and again the same floorplan. It also includes 3 internal photographs. Two of these show part of a kitchen, but these have different floor coverings, and, layouts, which are inconsistent with both each other and the floor-plan as well. The third photograph then shows a very small window, which is again inconsistent with the floorplans and my own observations. This casts considerable doubt in my mind as to the quality and validity of the appellant’s evidence. It is then said on behalf of the appellant that some internal changes have occurred to the layout of the building, but that these are minor and de-minimis. I do not accept that such works, if indeed they have taken place, to be minor in the context of this very small building. Moreover, this is not a first-hand evidential account and no dates or contemporaneous evidence has been provided concerning any such works. These works are therefore not immaterial to my assessment.
11. There is a hierarchy in terms of the weight to be afforded to different forms of evidence. The Statutory Declarations, and in also noting their convenient corroboration, remain brief and imprecise and the principal contemporaneous document is a tenancy agreement relating to a 12-month period. There is no other relevant first-hand evidence before me, and the appellants response to the Council’s case is in the form of a statement written on his behalf by a third party. I therefore only afford the appellant’s evidence moderate weight, and this is further limited by the situation surrounding the supposed layout changes

and photographs provided in the originally submitted documentation which combines to cast significant doubt in my mind.

12. I appreciate that the Council does not offer substantive evidence to directly contradict the appellants version of events. Nevertheless, it remains the case that the appellant's own evidence needs to be sufficiently precise and unambiguous to justify the grant of a certificate. As a matter of fact and degree, based upon the evidence before me, the appellant has not discharged the necessary burden of proof to demonstrate his case on the balance of probabilities.
13. The Council also refer to various conversations held at the site and raise the topic of concealment. However, there is no contemporaneous evidence from the Council to enable me to place considerable weight on those conversations. Whilst I then appreciate the appellant may have known that planning permission was required for the use, as well as the payment of Council Tax, the Council advances very little actual evidence to demonstrate on the balance of probabilities that there has been deliberate concealment.

Conclusion

14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development 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.

Formal Decision

15. The appeal is dismissed.

Paul T Hocking

INSPECTOR