



Appeal Decision

Site visit made on 13 July 2021

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th October 2021

Appeal Ref: APP/T0355/X/21/3271220

Land at 58 Coppermill Road, Wraysbury, Staines TW19 5NS

- 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 Mrs Siddhu against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 20/03319, dated 9 December 2020, was refused by notice dated 11 February 2021.
 - 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 the use of front annexe as a self-contained dwelling; and rear annexe and separate WC/shower room as a self-contained dwelling.
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Decision

1. The appeal is allowed in part and attached to this decision is a certificate of lawful development describing the existing matters which are found to be lawful. Otherwise, the appeal is dismissed.

Main Issue

2. Section 191(4) of The Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. The main issue in this case is whether the Council's decision to refuse to grant a LDC was well founded.
3. The plans submitted with the LDC application show a 'rear annexe' (which I will refer to as Building A) and a 'front annexe' (which I will refer to as Building B). The plans also show a separate w.c. and shower provided in a separate building (which I will refer to as Building C). The description of the LDC is for the use of Building B as a self-contained dwelling, and also the use of Building A and Building C as a self-contained dwelling. However, the application relates to the whole of the property at 58 Coppermill Road.
4. Having regard to the case put forward, the main considerations are whether a material change of the appeal site has occurred by reason of the use of the appeal buildings as self-contained dwellings separate from that at No 58, and whether any such use has continued substantially uninterrupted so as to be

immune from enforcement action. With regard to the relevant time period, the parties have both referred to a period of 4 years, as specified in section 171B(2) of the 1990 Act. As the LDC application was made on 9 December 2020, the relevant date 4 years prior to this is 9 December 2016. The burden of proof is on the appellant, and the test of the evidence is the balance of probabilities.

5. If the Council has no evidence itself, nor any from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal and refuse to grant the LDC, provided the appellant's evidence alone is sufficiently precise and unambiguous.

Reasons

Has a material change of use occurred?

6. I start by examining whether or not it is the case that the appeal buildings are used as self-contained dwellings separate from the dwellinghouse at No 58. In this case it is plain that the planning unit started as the property at No 58 and its plot, which includes the appeal buildings. I note that there is no dispute that the buildings were constructed as outbuildings ancillary to the dwelling at No 58.
7. Access to the buildings is from Coppermill Road via the main access to No 58. There is a parking area to the front of No 58 and only a pedestrian link to the buildings along the side of this dwelling. At the site visit I noted that there are no physical features on the ground that would indicate that the buildings benefit from their own garden area. It is possible to walk freely through the garden to reach the buildings. It appears, therefore, as though there is one garden which provides the only access to all three of the appeal buildings.
8. With regard to the facilities within the buildings, I am mindful of the settled case law¹, referred to by the Council, that identifies the distinctive characteristics of a dwelling-house as being its ability to afford to those who use it the facilities required for day-to-day private domestic existence. There are two rooms within Building B. The smaller of the two accommodates a w.c., shower and sink, whilst in the larger room I noted a fitted kitchen area with a sink providing running water. There was also a washing machine together with a tabletop cooker and oven. The larger room also accommodates, amongst other items, fitted cupboards along one wall, a bed and a small table and chair.
9. In the case of Building A, I noted that this is a single room occupied with furniture such as a bed, sofa, television and cabinet. The building accommodates a free standing refrigerator, a table with a tabletop hob and some other electrical cooking items. These facilities are, however, provided in a makeshift manner, rather than as a fitted kitchen, and I also noted that there is not a kitchen sink or other form of running water in the building. I am told that the bathroom facilities and, therefore, the water supply for Building A is provided within Building C, which I saw accommodates a w.c., shower and sink, as well as a washing machine.
10. Turning to the evidence of how the buildings have been occupied, this is limited to the appellant's statements, which say that the appeal buildings are self-contained and that functionally there is no connection between the buildings

¹ *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

and No 58. The statement also suggests that the buildings have a separate access, however I did not observe this on site. As noted above, I saw a single means of access off Coppermill Road and access to the appeal buildings through the single garden area to the rear of the dwelling at no 58. Although affidavits are provided from the owner of No 58 and a former tenant of Building A, these refer mainly to the tenant's occupation of 'annexe 2' and the monthly rental arrangements.

11. The Council point to the lack of any separate utilities or Council tax payments for the buildings. The appellant states that the fixed monthly rental amount is inclusive of utility payments. There could be various reasons why a landlord may choose to include utility charges and Council Tax within the rent. It does not mean that the accommodation provided is ancillary to the main dwelling. I note the tenancy agreements that have been submitted. Whilst these are more relevant to the continuity of the use, such agreements indicate a severance in terms of the occupation of the building they relate to from any other part of the site. I note, however, that only the most recent of these specifically refer to the appeal buildings, which is a matter that I will come to later in my decision.

- Summary on Building B

12. Whilst I acknowledge that Building B is small, particularly in comparison to Building A, it provides an area to sleep and relax, purpose built kitchen facilities with running water, and a room accommodating a w.c. and facilities to wash. Accordingly, I can be satisfied that it affords to those who use it the facilities required for day-to-day private domestic existence. I acknowledge that the evidence of any functional relationship between the building and the dwelling at No 58 is very limited, and that the layout of the appeal site as a whole does not lend itself to a conclusion that the planning unit has been sub divided. However, there is little to contradict the claim that Building B is used in a way that is functionally separate from the dwelling at No 58. The lack of separate utilities and Council Tax payments does not alone signify a position either way. All things considered, I can only conclude that, as a matter of fact and degree, the use of Building B is as a self-contained dwelling.

- Summary on Buildings A and C

13. Building A is a room that has little in the way of fixtures and fittings. Whilst it provides space for sleeping, relaxing, preparing food and eating, food preparation takes place in a makeshift manner. Significantly, there is no running water in the building and water needed for cooking and cleaning is provided elsewhere on the appeal site. It is the same for the w.c. and washing facilities. To my mind, these are essential facilities required for day-to-day private domestic existence. Whilst these are provided elsewhere on the site, access to them is external, passed another dwelling and through a garden shared with two other households. For these reasons, I cannot regard Building A as affording to those who use it the facilities required for day-to-day private domestic existence, even if the facilities within Building C are taken into account.
14. I have had regard to the limited evidence of the functional relationship between the building and the dwelling at No 58, as well as to the tenancy agreements submitted. These are not sufficient to persuade me to alter my conclusions that, as a matter of fact and degree, the use of Building A together with Building C is not as a self-contained dwelling. In view of this conclusion, the

appeal as it relates to these buildings must fail. I have not, therefore, considered the use of these buildings further.

Continuity of use - Building B Only

15. For the appellant's appeal to succeed insofar as it relates to Building B, the use of the building as a self-contained dwelling must have continued substantially uninterrupted for a period of four years before it can acquire immunity from enforcement action. The appellant's evidence of this period relates to the four years or so prior to the date the LDC application was made. The use must be affirmatively established during this period. The correct approach in this case is to ask whether there was any period during the four years when the Council could not have taken enforcement action against the use. As noted earlier in this decision, the relevant date four years prior to the application is 9 December 2016.
16. Five assured shorthold tenancy agreements have been submitted in respect of Building B. The first of these is for an initial 12 month term commencing on 1 April 2015, which is of course more than a year prior to the relevant date. The second agreement, signed by a Mr Gardener, is also for a 12 month period from 2 September 2015; again prior to the relevant date. The next agreement starts a 12 month period from 31 August 2018, which is, of course, some three years after the date the 12 month period started in Mr Gardener's agreement. I also note that, rather than referring to Building B specifically, the agreements so far give the address of the property to which they relate as 'the dwelling known as 58 Coppermill Road, Wraysbury, TW19 5NS'. The final two agreements are with the same tenant and are for the 12 month periods from 14 September 2019 and 14 September 2020. Both agreements state that the property rented is Annexe 2, 58 Coppermill Road, which again is Building B.
17. As an explanation for the gap of some 3 years between the date of Mr Gardener's agreement and the agreement of the third tenant, the LDC application was accompanied by a signed statement from Mr Gardener stating that his occupation was from 2 September 2015 to 2 May 2018. He also states that he occupied the 'front annexe', which is what I refer to as Building B. Not submitted with the LDC application, the appeal has been accompanied by an affidavit from Mr Richard Ian Gardener. In this he gives a later date of 3 August 2018 for the end of his occupation of the front annexe. It also adds further information, such as how much rent was paid; into which bank account this was paid; and that the reference he gave for the bank transfer payment was 'Richie Gardener'. An affidavit signed by the appellant and her husband confirms the same information.
18. Whilst there is a discrepancy between Mr Gardener's first signed statement and the affidavits in the date given of his vacation of Building B, I do not consider this to be fatal to the appellant's case. The first statement is briefly stated, whereas the affidavits contain more precise information around the relevant dates and circumstances of Mr Gardener's vacation of the property. I am also mindful of the significant weight that is carried by evidence provided in sworn statements, in view of the sanctions that could be imposed should these contain false or misleading evidence.
19. I have noted above that the first three agreements do not refer to Building B. However, the second tenant, Mr Gardener, confirms in his affidavit that he occupied Building B, which is corroborated by the sworn statement from the

appellant and her husband. I acknowledge that I do not have a similar sworn statement from the third tenant. However, their tenancy agreement is sandwiched between the evidence we have from Mr Gardener and the last two agreements that refer specifically to Building B. As such, I find it more likely than not that all five of these agreements relate to Building B.

20. In addition to this, I note the copies of bank statements dating back from as early as September 2017. Whilst these do not cover the whole of the 4 year period prior to the submission of the LDC application, they corroborate some of the payments made by Mr Gardener, referred to in the affidavits, as well as some of the payments from the final two tenants, which match the amounts stated in their respective agreements.
21. There are small gaps between the period covered by each tenancy. These are, however, to be expected in the case of rented properties, but they are not of a duration that would lead me to conclude that the use had been interrupted, such that the Council could not have taken enforcement action against the use during these times. I acknowledge that the evidence I have of Mr Gardener's occupation of the building is more detailed than that for the other tenants. There is, however, nothing before me to lead me to the conclusion that Building B was not occupied by the other tenants at any point during the periods covered by their respective tenancy agreements.
22. Having regard to all of the above, I find the appellant's evidence to be sufficiently precise and unambiguous with regard to the use of Building B during the four years or more prior to the date the LDC application was made. There is no evidence before me that is sufficient to contradict or otherwise make the appellant's version of events less than probable. There is, therefore, no good reason to dismiss the appeal insofar as it relates to Building B and refuse to grant the LDC for the use of this building as a self-contained dwelling. Accordingly, I conclude that the appellant has demonstrated that, on the balance of probability, the use of Building B as a self-contained dwelling has continued substantially uninterrupted for a period in excess of four years and was lawful on the date the application was made.

Conclusion

23. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the use of the front annexe (referred to by me as Building B) as a self-contained dwelling was not well-founded and that the appeal should succeed in part. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act.
24. Otherwise, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the rear annexe (Building A) and separate w.c./shower room (Building C) as a self-contained dwelling was well-founded and that the appeal should fail insofar as it relates to this matter. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

J Moss

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 9 December 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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:

It has been demonstrated, on the balance of probability, that the building referred to as the 'Front Annexe' on the appeal site is used as a self-contained dwelling, that the use has continued substantially uninterrupted for a period in excess of four years, and that the use was lawful on the date the application for a lawful development certificate was made.

Signed

J Moss

Inspector

Date: 25th October 2021

Reference: APP/T0355/X/21/3271220

First Schedule

The use as a self-contained dwelling of the building in the location labelled on the attached plan as the 'Front Annexe'.

Second Schedule

Land at 58 Coppermill Road, Wraysbury, Staines TW19 5NS

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 lawful, 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 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 J Moss BSc (Hons) DipTP MRTPI

Land at: 58 Coppermill Road, Wraysbury, Staines TW19 5NS

Reference: APP/T0355/X/21/3271220

Scale: Not to scale

