



Appeal Decision

by G Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 January 2022

Appeal Ref: APP/M1710/X/21/3268002

Land between 37 and 41 Fairview Road, Headley Down, Bordon, GU35 8EJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Maurice Butcher against the decision of East Hampshire District Council.
 - The application ref 32218/005, dated 10 February 2020, was refused by notice dated 6 April 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 'Continuous residential sole occupancy of a building for a period in excess of 4 years.'
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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 found to be lawful.

Preliminary Matters

2. On the application form for the LDC, the existing use is described as set out in the banner heading above. That is the description used on the Council's decision notice as well. However, the development that the LDC application seeks to establish is lawful is a dwellinghouse in Use Class C3 of the Town and Country Planning (Use Classes) Order 1987, which is made clear at section 4 of the application form. I shall use this description of development on the LDC attached to this decision.
3. The outcome of the appeal involves considering legal grounds only and the material date for establishing the lawfulness of the C3 use is the date of the application, that being 10 February 2020. Therefore, whilst I note that the appellant considers a site visit was necessary in considering the matter of planning units, a visit now would not assist me. Furthermore, I have sufficient evidence from both sides on the matter anyway. Neither party has therefore been prejudiced by the appeal proceeding without an Inspector site visit.
4. The burden to make out the case successfully rests with the appellant and the test of the evidence is the balance of probability.

Main Issue

5. The main issue is whether the building has been used as a self-contained dwellinghouse (C3 use) over a substantially uninterrupted basis for at least four years by the material date.

Reasons

6. The appellant claims that due to marriage difficulties he started converting the appeal building situated on land to the rear of the marital home 'The Firs' in the early part of 2014 and by May 2014 he had moved in. Although in land registry terms the building and the land which the appellant occupies is included in the title deeds for 'The Firs', land ownership is not necessarily a determining factor when it comes to defining the planning unit. There are, for example, many flats in C3 use in larger buildings that because of the way they are occupied and rented by different persons would be considered individual planning units even if they are owned by one landlord. The prevailing consideration is the way that the unit is used and occupied.
7. In this case, the appeal site has an access separate from the 'The Firs' off Fairview Road. Access to 'The Firs' is from Kenley Road. The appellant also states that the yard where the building is is fenced and it has never been part of the garden to the house. This has not been disputed. Moreover, the Council describe the planning unit relating to the land and buildings in between and to the rear of 37 and 41 Fairview Road which is also distinguished by the plans and information provided. Furthermore, at a site visit by the Council in October 2019 it was confirmed that the yard and access track were enclosed by hedgerows and fencing and that by reason of its boundary screening the outbuilding is physically separate from any dwellinghouse. It seems to me, therefore, that the appeal site is physically separate from 'The Firs'.
8. The diary extracts from someone who helped the appellant to convert the building may be written in the past tense. However, in my view it is not unusual for diary entries to record future events as well as remind someone what they did on certain days of each year. Apart from raising this query, there is no counter evidence from the Council to dispute the diary details. The diary extracts confirm the installation of dwellinghouse facilities such as a kitchen, bathroom (bath, toilet, and sink), lounge, water heater and log burner. The various photographs supplied may not be dated, but they show the various facilities referred to and the Council does not challenge that these are there.
9. The diary entries also tally with other people who state that they met the person helping to convert the building at the site around that time, and another individual states they also helped the person carrying out most of the works and the appellant to do paintwork and odd jobs to help get the place finished at the end of April 2014. In the absence of anything to the contrary, it is probably the case that the building was converted into a dwelling with the means of self-contained living by about the end of April 2014.
10. Other statements made verify this timeline of events and in those are persons who say they have regularly stayed with the appellant in the converted building since he moved in and lived there independently. In these is a statement from the appellant's wife who further confirms when her husband moved out and that he has lived there ever since. I acknowledge that the water and electricity supply to the building still comes via 'The Firs' and that the appellant pays his wife to cover these bills most weeks. Post sent to 'The Firs' for the appellant is also re-posted by the appellant's wife into his own post box. However, there does not appear to be any other link between the husband and wife with each of them living independent lives separate from each other since May 2014 with the situation between them still apparently very difficult. The services and post

are minor practical arrangements that do not demonstrate the appeal building is occupied ancillary to 'The Firs'. The evidence points strongly to the appeal building being a dwellinghouse separate from 'The Firs'.

11. I accept that the various statements are not made under the Statutory Declarations Act 1835. However, they do refer to the persons being aware that false declarations could leave them liable to prosecution. To my mind, this shows that the persons were aware of the importance of telling the truth. Also, the statements tell a consistent record of when the building was converted, when it was first occupied and the way it has been lived in since. Therefore, the lack of a formal declaration under the 1835 Act does not in this case mean the statements made have only limited weight. Council tax or utility bills can lend support to a LDC application for an existing use, but they are not always telling evidence one way or the other. Their absence in this appeal does not undermine the case for the appellant.
12. In this case, whilst the Council questions some of the evidence, its own counter evidence does not directly contradict or otherwise make the appellant's version of events less than probable. The appellant's case is sufficiently precise and unambiguous to show that the appeal building is a separate planning unit that has had a material change of use to a C3 dwellinghouse which has been lived in as such for a substantially uninterrupted basis since from around May 2014, thus exceeding the required four years by the material date. Consequently, under s191(2)(a) of the 1990 Act, the use as a C3 dwellinghouse is lawful.
13. No other matters raised, including an objection from Headley Parish Council, persuade me from finding otherwise.

Conclusion

14. 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 C3 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.

G Symons

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 10 February 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:

The appeal building is a separate planning unit that has been converted to and lived in as a self-contained C3 dwellinghouse for at least four years prior to the date of the application for a lawful development certificate.

Signed

G Symons
Inspector

Date: 7 January 2022

Reference: APP/M1710/X/21/3268002

First Schedule

C3 dwellinghouse

Second Schedule

Land between 37 and 41 Fairview Road, Headley Down, Bordon, GU35 8EJ

IMPORTANT NOTES – SEE OVER

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations 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: 7 January 2022

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Land at: Land between 37 and 41 Fairview Road, Headley Down, Bordon GU35 8EJ

Reference: APP/M1710/X/21/3268002

Scale: Not to Scale

