The Planning Inspectorate

Appeal Decision

Site visit made on 30 May 2022

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29 June 2022

Appeal Ref: APP/V1260/X/21/3285738
62 Cranbrook Road, Poole, BH12 3BT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Simon Collison against the decision of the Bournemouth Christchurch and Poole Council.
- The application Ref. APP/20/01468/J, dated 13 December 2020, was refused by notice dated 15 February 2021.
- The application was made under section 191(1)(a) of the Act.
- The development for which a LDC is sought is for existing use of an annexe as an independent unit of accommodation.

Summary Decision: The appeal is allowed and a certificate of lawful use or development is issued in the terms set out below in the Formal Decision.

Application for Costs

1. An application for an award of costs was made by the appellant against the Council. The application for costs is subject of a separate decision.

Appeal Site and Background

2. No. 62 Cranbrook Road is a two storey semi-detached dwellinghouse with front forecourt and a driveway which runs down the side of the house to the rear. It has a modest rear garden enclosed by tall fencing, beyond which is a detached single storey building ("the annexe"), the building subject of the appeal.

Main Issue

3. This is whether the Council's decision to refuse a LDC was well founded.

Reasons

4. The provisions of s191(2) of the Act include (a) that a use is lawful at any time if no enforcement action can be taken in respect of it, whether because it did not involve development or require planning permission, or because the time for enforcement action has expired, or for any other reason, and (b) it does not constitute a contravention of any of the requirements of any enforcement notice then in force. Since no enforcement notice was in force at the date of the application it is clear that s191(2)(b) is satisfied.

5. The burden of proof in satisfying the requirement of s192(a) falls to the appellant to establish that the residential use of the annexe as an independent unit of accommodation commenced at least 4 years before the date of the application, hence on or before 13 December 2016 ("the relevant date") and

continued without any significant interruption thereafter. The appropriate standard for testing the evidence is made on the balance of probabilities, that is to say whether something is more likely than not. I note however that the Council has mis-directed itself here by applying a higher test of "beyond all reasonable doubt"[1].

6. The PPG[2] guidance reflects earlier Court judgments. It sets out that an appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or 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, provided the appellant's evidence alone is sufficiently precise and unambiguous.

7. I saw during my visit to the appeal site that the annexe has all of the facilities necessary for day to day living such as cooking, washing, toilet and sleeping facilities, sufficient for use as a "dwellinghouse" consistent with the judgment in Gravesham[3]. The Council does not argue otherwise, but maintains that the annexe is not truly independent from No. 62.

8. The appellant's evidence includes a signed statement from the current tenants, Silinevics and Stecenco, which sets out they have continuously lived in the annexe since 26 September 2015, hence since before the relevant date, and that they have no connection with the occupants of No. 62 other than to make the monthly payments for metered water and electricity, or to collect parcels that may have been taken in for them. I saw the meters at the annexe during my visit and also a separate post box located at the front porch of the house.

9. The evidence also includes an assured shorthold tenancy agreement (TA). It relates to a 6 month period from 25 September 2015, hence to 25 March 2016, although it incorrectly gives an expiry date of 25 March 2015. However, it is signed and dated by the above named tenants on 26 September 2015. Conditions of the TA include that water and electricity supplied to the annexe are to be paid for monthly based on meter readings.

10. A signed statement from the appellant describes his construction of the annexe building in 2015 followed by its letting to the above tenants on 26 September 2015. It goes on to state the tenants have lived there ever since as their permanent full time residence.

11. There are no significant inconsistencies in the documentary evidence submitted in support of allowing the appeal. I find it to be sufficiently precise and unambiguous overall.

12. Against the totality of the appellant's evidence the Council state there is no evidence of Council tax having been paid. While that may be so, it does not conflict with or contradict the appellant's evidence in relation to the occupation and use of the annexe.

13. The Council also places some significance upon the appellant's own description of the building as an "annexe". However, it is the actual use to which the building has been put that is relevant to lawfulness, not the word that has been loosely used to identify the building.

[1] Officer Report
[2] Planning Practice Guidance Reference ID: 17c-006-20140306 (MHCLG)
[3] *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

14. Although water and electricity services are supplied via No. 62, the separately metered and purchased services have always been available for the tenants of the annexe. There is no reason why wholly separate supplies of utility services should be considered to be a necessary condition for a separate dwellinghouse to exist.

15. The question of whether the vehicular access onto Cranbrook Road required planning permission is not relevant to my decision.

16. Overall, the Council's evidence relies on the content of the report which considered the information in the LDC application submitted to them. However, for the reasons set out above I find there to be no conflicting or contradictory evidence which makes the appellant's evidence less than probable.

Conclusion

17. I conclude on the evidence now available, on the balance of probabilities, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the annexe building to the rear of No. 62 Cranbrook Road as a separate residential dwellinghouse was not well-founded, and that the appeal should succeed. I exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act.

Formal Decision

18. The appeal is allowed and attached to this decision is a LDC describing the existing use which is found to be lawful.

Thomas Shields

INSPECTOR

The Planning Inspectorate

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 13 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:

No enforcement action could have been taken in respect of the use because the time for enforcement action had expired and it did not constitute a contravention of any of the requirements of any enforcement notice then in force.

Signed

Thomas Shields

INSPECTOR

Date: 29 June 2022
Reference: APP/V1260/X/21/3285738

First Schedule

Use as a separate independent dwellinghouse.

Second Schedule

Building at rear of 62 Cranbrook Road, Poole, BH12 3BT

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 described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, 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 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.

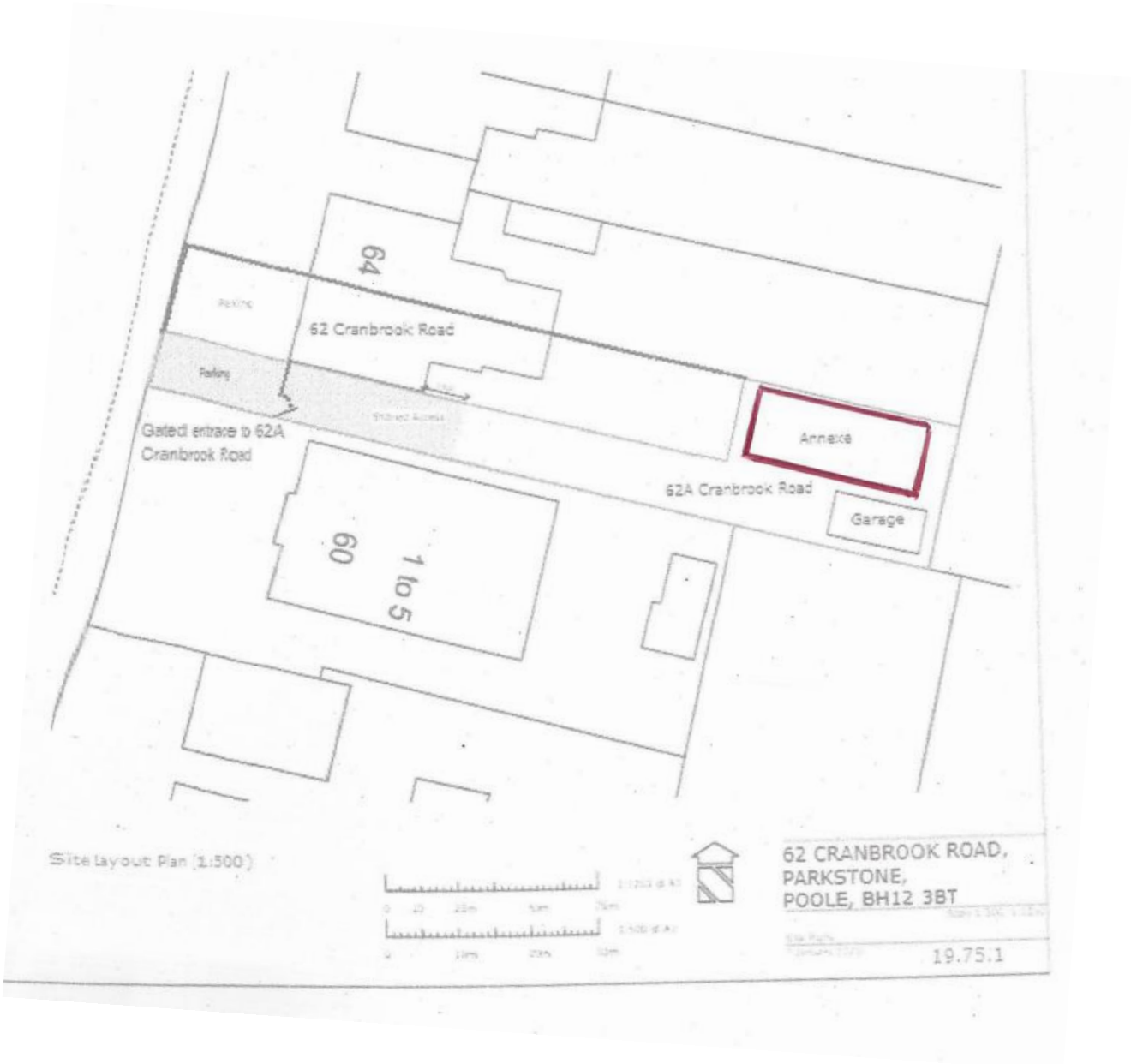
The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated:

by Thomas Shields DipURP MA MRTPI

Land at: 62 Cranbrook Road, Poole, BH12 3BT

Reference: APP/V1260/X/21/3285738

DO NOT SCALE