The Planning Inspectorate

Appeal Decision

Site visit made on 12 July 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2022

Appeal Ref: APP/N1920/X/20/3264182
131 Ashwood Road, Potters Bar, Hertfordshire, EN6 2QD

- 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 Mrs Natalia Cunik against the decision of Hertsmere Borough Council.
- The application ref 20/0055/CLE, dated 21 January 2020, was refused by notice dated 7 September 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 'habitable self-contained garden house'.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant set out in her application form that she is seeking a Lawful Development Certificate in relation to the use of a log cabin as a habitable self-contained garden house/unit. She also stated that the use began more than 10 years before the date of the application, but she refers to a rolling time limit of 4 years in response to the question regarding when the LDC should be granted.

3. In its decision notice the Council describes the development as 'retention of self-contained outbuilding to rear garden'. The Council's description does not reflect the appellant's position that the outbuilding is a self-contained residential unit. However, it is clear from the reasons set out on the decision notice that the Council has considered the use of the building as a self-contained dwelling.

4. For the avoidance of doubt, the planning merits of the existing use are not relevant, and they are not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 (the Act), as amended, which relates to an application for an LDC. My decision rests on the facts of the case and on relevant planning law and judicial authority. The onus is on the appellant to make out her case to the standard of the balance of probabilities.

Main Issue

5. The main issue is whether or not the Council's decision to refuse the application was well-founded.

Reasons

6. The appellant seeks to establish that the use of the appeal site as a self-contained residential unit is lawful. The Act establishes that uses are lawful at any time if no enforcement action may then be taken in respect of them. The appellant is not seeking to establish that the use of the appeal site does not involve development nor that it does not require planning permission. Her contention is that the time for enforcement action has expired.

7. Under s171B(2) of the Act, where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

8. The appellant says that she purchased 131 Ashwood Road (No. 131) in July 2007 and that prior to that date the cabin was occupied as living accommodation. The implication is that the cabin was occupied separately from the house but there is no evidence of this. The copy of the sales particulars provided by the appellant state that there was a log cabin in the rear garden, but this is described as an 'additional reception room'.

9. After purchasing No.131 the appellant says that she rented the cabin to Mr P and that he lived there until Summer 2013. The tenancy agreement between Mr P and the appellant refers to sole use of the cabin with shared use of common areas such as the garden, sitting room and kitchen in No.131. During this period the cabin was not in use as a single dwellinghouse because the occupant was using part of the main house and providing childcare and maintenance demonstrating a functional link to the main dwelling.

10. The cabin was then occupied by Mr T between Summer 2013 and the end of 2016. Mr T refers to the cabin being self-contained and his paying rent but there is no evidence that unlike Mr P he was not also using facilities in the main house. Even if this was not to be the case Mr T's occupation does not cover a four year period.

11. Furthermore, it is not clear that Mr T was the only occupier during this time as the appellant refers to him renting the cabin 'on and off' and in October 2013 she entered into another agreement with Mr S. That agreement refers to shared use of the kitchen, bathroom/toilet, living room and garden.

12. The appellant says that she had other tenants but there is limited information about how the cabin was used by them.

13. In February 2019 the appellant entered into an Assured Shorthold Tenancy Agreement with Mr C. The tenancy is described as a sporadic/occasional tenancy from which it is reasonable to infer that Mr C does not occupy the unit all of the time. There is no reference to sharing facilities in the house for example the kitchen. However, even if the cabin was occupied independently from the house Mr C's occupancy does not extend to four years.

14. Drawing all of these strands together there is a degree of ambiguity regarding whether or not the occupier of the cabin also uses the facilities in the main house. When the tenant was also using the main house, the council would not have been able to take enforcement action against the use of the cabin as a dwelling house. This is supported by the evidence from the council in which it

states that following a site visit by the enforcement officer before January 2020 it was determined that the cabin was ancillary to the main house.

15. In this case it appears that there were times during the four year period running up to the application of the LDC when the Council could not have taken enforcement action against the use of the building as a single dwelling house, even if it was available for use, because it was not actually occupied or used as a single dwelling house.

16. Caselaw has shown that the critical question is whether the use was continuous, not whether the building was continuously fitted out or intended for residential use. In this case, I observed that the cabin has limited facilities for example a small electric hob and microwave which could be used for warming food but no cooking facilities or facilities for washing clothes. Thus, while some facilities are available, in terms of convenience and suitability, occupiers of the cabin would be likely to use the main house. Such use has been allowed for in the agreements reached with tenants over the years and actively encouraged by the appellant in terms of child care and maintenance.

17. The evidence provided by the appellant is not sufficiently precise and unambiguous so as to meet the test of the balance of probabilities that the cabin has been used as a habitable self-contained garden house for a continuous period of four years.

Conclusion

18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of a log cabin as a habitable self-contained garden house at 131 Ashwood Road, Potters Bar, Hertfordshire EN6 2QD 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.

Sarah Dyer

Inspector