



Appeal Decision

Site visit made on 13 September 2022

by Ms Watson BA(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2022

Appeal Ref: APP/R5510/X/21/3276327

82 Windsor Avenue, Hillingdon, UB10 9AY

- 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 Jessie Kane against the decision of the Council of the London Borough of Hillingdon.
 - The application ref 62190/APP/2021/865, dated 5 March 2021, was refused by notice dated 28 April 2021.
 - The application was made under section 192(1) 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 conversion of the existing incidental outbuilding into a residential annexe for an elderly relative.
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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 proposed use which is found to be lawful.

Main Issue

2. The main issue is whether the Council's decision to refuse the LDC was well founded. This turns on whether the proposed use of the existing outbuilding as a residential annexe would constitute development.

Reasons

3. In order for a LDC to be granted under s192 it is necessary for the appellant to show, on the balance of probabilities, that the development would be lawful.
4. The Council's reason for refusal says that the proposed development does not constitute permitted development by virtue of the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as it would amount to the creation of a self-contained dwelling. However, the proposal is not for a building to be constructed under permitted development rights. The building already exists. I could see at my visit that, due to the weathered condition of the roof and door and window frames, it has clearly been in existence for a considerable period of time and it is currently used for domestic storage. The appellant is not seeking confirmation of any rights under Class E. I have no evidence that the building is not lawful.
5. S55(1) of the Act sets out that "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. S55(2) sets out that certain operations or uses of land shall not be taken for

the purposes of the Act to involve development of the land, including (a) the carrying out for the maintenance, improvement or other alteration of any building of works which – (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building.

6. It is not disputed that the primary use of No 82 is that of a single dwellinghouse. The proposal is to convert the outbuilding to a residential annexe. The submitted plans show that the outbuilding would have one room and a toilet/shower room. The plans indicate that the living area would contain a bed, a sofa, a dining table and a kitchen area. Water and electricity would be taken from the main house. The modestly sized rear garden would be shared. The annexe would be occupied by an elderly relative and would not be rented out or be used by non-family members. The annexe would have no separate curtilage.
7. The overall planning unit would continue in occupation by the same family. Although the annexe would contain facilities for day-to-day living, it would be physically and functionally linked to the main dwelling and, as a consequence, would be a use which is already taking place within the planning unit, as a matter of fact and degree. Thus, there would be no material change of use. Although the Council suggests that the outbuilding could be used as a separate unit, independent to the main dwelling, that is clearly not what is proposed, the application referring specifically to a residential annexe for an elderly relative.
8. The internal works are not development as defined by the Act. The replacement of the windows and doors would not materially affect the external appearance of the building as they would use the same openings, be of the same dimensions, of a similar design and would not be visible from a public space. Therefore, they would not constitute development either.
9. Therefore, I conclude that the proposal does not amount to development as defined by section 55 of the Act. As such, planning permission is not required and the residential annexe is lawful for planning purposes.

Conclusion

10. 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 was not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Ms Watson

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 5 March 2021 the use and operations 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason: The proposed annexe (not used independently from the main house) would be part and parcel of the primary use of the land as a single dwellinghouse and would not give rise to a material change of use of the planning unit and the internal and external operations would not constitute development.

Signed

Ms S Watson

Inspector

Date: [27 September 2022]

Reference: APP/R5510/X/21/3276327

First Schedule

Conversion of the existing incidental outbuilding into a residential annexe for an elderly relative

Second Schedule

Land at 82 Windsor Avenue, Hillingdon, UB10 9AY

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 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 would have been 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.