



Appeal Decision

Site visit made on 26 July 2022

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 October 2022

Appeal Ref: APP/R5510/X/21/3283141

Copse Cottage, Rickmansworth Road, Northwood HA6 2QN

- 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 R Rajeev against the decision of London Borough of Hillingdon.
- The application ref 70467/APP/2021/1223, dated 25 March 2021, was refused by notice dated 27 May 2021.
- The application was initially made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought was initially described as *'change of garage doors to windows, provision of internal insulation and alterations to internal layout'*.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use and operations which are found to be lawful.

Preliminary Matters

2. The application was originally made with a description in the terms set out above, made under section 192 of the Town and Country Planning Act 1990 (as amended) (the Act). Section 192(1)(a) refers to applications to ascertain whether any proposed use of buildings or other land would be lawful, whilst section 192(1)(b) refers to any operations proposed to be carried out and whether they would be lawful. In order for an LDC to be granted under s192 it is necessary for the appellant to demonstrate, on the balance of probabilities, that the development would be lawful at the date of the application.
3. Notwithstanding the description as initially set out, the decision notice and subsequent appeal documentation refer to the application as being for *'conversion of garage to habitable use for use as an annex with alterations to elevations'*. Thus, originally made under the scope of s192(1)(b), the subsequent decision considers matters under both s192(1)(a) and (b), with the content of the decision notice making it clear that the Council considered the matter against the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the Order).
4. I have considered the appeal both in terms of the proposed use of the building and proposed alterations to it. I have revised the development description accordingly on the certificate of lawful use or development attached to this decision.

Main Issue

5. The main issue to consider is whether the Council's decision to refuse the LDC was well-founded. In terms of whether the proposed use and works would be lawful, the onus of proof rests with the appellant, with the standard of proof being the balance of probabilities.

Reasons

The manner of occupation of the appeal building

6. The appeal property is an extended semi-detached dwelling located on the inside of the junction of Copse Wood Way with Rickmansworth Road. As such, its side / rear garden shares a reasonably lengthy boundary with Copse Wood Way.
7. At the foot of the garden and abutting Copse Wood Way lies a flat-roofed detached outbuilding with two externally mounted roller shutter garage doors facing onto Copse Wood Way. Internally within the residential plot, two glazed panel doors open out onto the rear garden and directly face the rear elevation of Copse Cottage. A timber panel fence renders the rear garden's interior largely hidden from view from Copse Wood Way.
8. The appeal proposal before me sought initially to establish the lawfulness of external and internal alterations to the existing building to facilitate its occupation as a residential annex to Copse Cottage. The external works to which the application related were the proposed replacement of the existing externally mounted roller-shutter garage doors with windows, with masonry infill around the window openings. Internally, the existing garage space would be divided into two rooms comprised of a smaller bathroom and a larger living area.
9. The Council's refusal reason states that the proposal, by this point referred to as the '*conversion of garage to habitable use for use as an annex with alterations to elevations*' did not constitute permitted development by virtue of Schedule 2, Part 1, Class E of the Order as it 'would be tantamount to the creation of a self-contained separate dwelling'. It could not therefore, the Council's decision notice states, be considered a purpose incidental to the enjoyment of the dwelling house as such.
10. Section 55(1) of the Act includes in the definition of 'development' the making of any material change in use of any buildings or land. Where an outbuilding within the same planning unit as the dwellinghouse is used for the provision of additional living space, as is proposed in this instance, it will not be in incidental use. Rather, it will be used for residential purposes that are integral to the residential use of the house, or there will have been a material change of use through sub-division of the planning unit and the creation of a separate dwelling, and not a use incidental to that residential use.
11. Central to this is the matter of the planning unit as it is against this which the question of a material change of use is judged. The planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and / or occupied for different and unrelated purposes. The concept of physical and functional separation is key.

12. The proposed layout of the existing garage shows a building capable of independent day-to-day living with a bathroom and larger open-plan living room / bedroom. Although not expressly described as such on the submitted plans, the Council also describe the open-plan living area as providing a 'potential kitchen', thus enabling the building to be occupied independently of Copse Cottage.
13. However, the appellant has drawn my attention to the conclusions set out in the *Uttlesford*¹ case. In that instance, Mr Lionel Read QC sitting as Deputy Judge, considered that even if the accommodation provided facilities for independent day-to-day living, it would not necessarily become a separate planning unit from the main dwelling. Rather, it would be a matter of fact and degree as to whether a separate planning unit would be created.
14. There is no dispute between the parties that the appeal building lies within the curtilage of Copse Cottage, whilst the appellant has confirmed that the annex would share access and egress, outdoor amenity space and car parking provision with Copse Cottage. Additionally, it is also stated that occupiers of the annex would be dependent upon the main property, separated from it by only a small, open garden area, for full kitchen and laundry facilities as well as for services.
15. The Council have not presented any evidence to challenge the appellant's statement in these respects. Reference is made to a 'potential kitchen' but no further justification for, or challenge to, the appellant's submissions regarding the pattern of occupancy that the annex would provide has been made. On the balance of probabilities therefore, I am satisfied that there would be a significant degree of functional interconnectedness between the annex and the main house in terms of services and facilities.
16. Furthermore, the rear garden at Copse Cottage, whilst not particularly small, is nevertheless modestly proportioned and reasonably confined by high garden fences and the rear of Copse Cottage itself. As such, the relationship of the two buildings across the shared amenity space, and thus the resulting intervisibility between them, would be such that there would also be a significant degree of physical interconnectedness between the two. Given the degree of interconnectedness, both functional and physical, and the submissions set out by the appellant, on the balance of probability the two buildings would be occupied as a single household, the annex as part of the primary residential use of the site.
17. For these reasons, the residential use of the building as an annex in connection with occupation of the main house would not result in the creation of a separate planning unit. Rather, the proposed use of the existing building would provide additional primary living accommodation with a close physical and functional relationship to that of the main house. Whilst that use would not be incidental due to the provision of primary living accommodation, and thus the provisions of Part 1, Class E of the Order not applicable, it would not, as a matter of fact and degree, result in a material change of use. As such, its proposed occupation as an annex in connection with occupation of the main house would not amount to development requiring planning permission and in this respect there would be no breach of planning control.

¹ *Uttlesford DC v SSE & White* [1992] JPL 171

Physical alterations to the appeal building

18. Section 55(2)(a)(i) and (ii) of the Act state that the carrying out for the maintenance, improvement or other alteration of any building of works which affect only the interior of the building, or which do not materially affect the external appearance of the building, respectively, should not be taken for the purposes of the Act to involve development of the land. The application was initially described in the terms set out in the banner heading, the appellant seeking an LDC for the replacement of the garage doors with windows, and internal works relating to layout and insulation of the building. These were matters that the Council did not address in their consideration of the application, or subsequently at the appeal stage.
19. I agree with the appellant's proposition that the internal works set out in the proposal to sub-divide the existing detached building's interior are works which affect only the interior of the building. As such, they would not amount to development under the provisions of s55(2)(a)(i) of the Act.
20. Externally, the existing roller shutter doors on the elevation fronting Copse Wood Way would be removed and replaced by two windows set within new masonry surrounds. These would infill the former garage door openings and would not, the appellant contends, materially affect the external appearance of the building and would not therefore amount to development under s55(2)(a)(ii).
21. The detached outbuilding would remain otherwise unaltered externally however, would not be enlarged and would retain its current roof structure. In very broad terms, there would be no material effect on the appearance of the building. The infilling of the existing garage door openings with masonry to match the rest of the Copse Wood Way-facing elevation and the insertion of two windows within the remaining openings would be minor alterations to the building which would retain its appearance, and character, as a modest detached building at the foot of the appeal property's garden. These works would not, I conclude, have a material effect on the appearance of the building and would not therefore, as set out by s55(2)(a)(ii) of the Act, amount to development.

Conclusion

22. For the reasons set out, and having considered all other matters, I conclude that the Council's refusal to grant an LDC 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.

G Robbie

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 25 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The habitable use of the appeal building as an annex in connection with the main dwelling would not involve development as described by Section 55 of the Town and Country Planning Act 1990 (as amended). The operations proposed would affect only the interior, and would not have a material effect on the external appearance of, the appeal building as set out by Section 55(2)(a)(i) and (ii) of the Town and Country Planning Act 1990 (as amended). These matters are lawful as they do not involve development or require planning permission.

Signed
G Robbie
Inspector

Date: 24 October 2022
Reference: APP/R5510/X/21/3283141

First Schedule

Conversion of garage to habitable use for use as an annex in connection with the main dwelling and change of garage doors to windows, provision of internal insulation and alterations to internal layout as illustrated on the following drawings: A1-113_B (Existing Plan – Roof Level); A1-110_B (Existing Plan – First Floor); A1-110_B (Existing Plan – Ground Floor); A0-100_B (Site Plan / Location Plan); A2-211_B Proposed Elevations / Section); A2-210_B (Proposed Elevations); A2-113_B (Proposed Plan – Roof Level); A2-110_C (Proposed Plan – Ground Floor); A1-211_B (Existing Elevations / Section) and A1-210_B (Existing Elevations).

Second Schedule

Land at Copse Cottage, Rickmansworth Road, Northwood HA6 2QN

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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 24 October 2022

by **G Robbie BA(Hons) BPI MRTPI**

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Scale: Not to Scale

