



Appeal Decision

Site visit made on 8 December 2022

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2022

Appeal Ref: APP/T5150/X/22/3298534

34 Napier Road, Wembley HA0 4UA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Shalin Shah against the Council of the London Borough of Brent.
 - The application ref 22/0887 is dated 7 March 2022.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use is sought is the proposed use of existing outbuilding as a family annexe.
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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.

Applications for costs

2. An application for costs was made by Mr Shalin Shah against the Council for the London Borough of Brent. This application is the subject of a separate Decision.

Preliminary matter

3. The DMPO¹ sets out what documentation must accompany an application for an LDC. The application relates to a proposed use of an existing building, the only required plan is one identifying the land to a recognised scale. The land to which the application relates is identified on a plan purporting to be to a scale of 1:1250, 2 road names are also identified, and it has a north point. There is nothing before me to suggest that this plan does not meet the requirement.
4. The site location plan also shows the position of the existing outbuilding, the use of which it is proposed to change. It is clear from the plan that there is only one outbuilding on the land. No changes are proposed to the outbuilding's external appearance or internal layout. As such, there is no need for any other plan to be provided. Other documentation setting out the purpose and justification for the proposed use accompanied the submission. The application submission therefore complies with the requirements of Article 39 of the DMPO and was valid upon receipt.
5. A statement of case was not received from the Council within the specified timescale.

¹ Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015

Main Issue

6. Where the Council has failed to determine an application for a lawful development certificate (LDC), it is deemed that the certificate would have been refused. The main issue is therefore whether the Council's deemed refusal to issue an LDC would have been well founded.

Reasons

7. The existing outbuilding was erected without planning permission as a gym, incidental to the residential use of the host property. A Completion Certificate, issued under the Building Regulations, confirms that the outbuilding was erected on or before 11 July 2014. On the balance of probability, the appellant has shown that the outbuilding was erected over 11 years ago. The outbuilding is therefore immune from enforcement action.
8. The occupation of the dwelling by a single-family unit falls within Use Class C3(a)². The appellant's parents currently live in the host property but are having difficulty accessing accommodation above the ground floor. The family annexe would provide them with ground floor living, sleeping, and bathing facilities. They would however continue to take meals with their family and be involved with the day-to-day maintenance of the property and garden.
9. A level of dependency would be maintained by the various generations within this extended family. The provision of limited kitchen facilities would not, of itself, create a separate dwellinghouse and the property would remain a single planning unit.
10. The appellant has shown, on the balance of probability, that the proposed use of the outbuilding does not amount to development having regard to s55(3)(a) as a material change of use would not occur.

Conclusion

9. For the reasons given above I conclude, on the evidence now available, that the Council's deemed refusal to grant a certificate of lawful use in respect of the proposed use of existing outbuilding as a family annexe 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.

M Madge

INSPECTOR

² Town and Country Planning (Use Classes) Order 1987 as amended

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 7 March 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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 use of the existing domestic outbuilding as a family annexe would be ancillary to the occupation of the dwellinghouse. A material change of use would not occur.

Signed

M Madge

Inspector

Date: 19 December 2022

Reference: APP/T5150/X/22/3298534

First Schedule

Proposed use of existing outbuilding as a family annexe.

Second Schedule

34 Napier Road, Wembley NA0 4UA

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 be lawful, on the certified date and, thus, would not be 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: []

by **M Madge Dip TP MA MRTPI**

Land at: 34 Napier Road, Wembley NA0 4UA

Reference: APP/T5150/X/3298534

Scale: Not to Scale

