The Planning Inspectorate

Appeal Decision

Site visit made on 4 January 2023

by Debbie Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 26 January 2023

Appeal Ref: APP/Y3615/X/21/3289365
The Studio, Vines Farm, Mill Lane, Pirbright, Woking GU24 0BS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Ms A Freeman against the decision of Guildford Borough Council.
- The application Ref 20/P/02063, dated 2 December 2020, was refused by notice dated 2 March 2021.
- The application was made under section 191(1)(a) of the 1990 Act as amended.
- The use for which a certificate of lawful use or development is sought is "independent residential use of the building with ancillary photographic studio".

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Preliminary Matters

2. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The planning merits are not relevant to an appeal under Section 195 of the 1990 Act.

3. The Council comments that further evidence has been submitted as part of the appeal that was not provided with the application. It is open to me to consider any such evidence because Section 195 of the 1990 Act refers to the 'refusal' being well-founded, which means the Local Planning Authority's decision, not the reasons for the decision. I have, therefore, taken account of the further evidence.

4. Section 191(2) of the 1990 Act provides that uses and operations are lawful at any time if no enforcement action may be taken in respect of them because the time for enforcement action has expired. Under Section 171B(2) - where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse "no enforcement action may be taken after the end of the period of four years beginning with the date of the breach". The application sought confirmation that the use of the former outbuilding, known as The Studio, as a single dwellinghouse was lawful as it had been used and occupied as such for a period in excess of four years. The Council considers that insufficient evidence has been submitted. This is based on the premise that the appeal building is in a mixed use as a dwelling and a photographic studio. The compliance period relevant to a material change to a mixed use is ten years beginning with the date of the breach (Section 171B(3)). Ten years had not elapsed and so the Council concluded the development was not lawful.

5. I am aware that The Studio is a former detached outbuilding associated with Vines Farm. It has been converted pursuant to planning permission for a change of use to a photographic studio, workspace and games room. It seems there was a planning condition that required the building to be used for purposes incidental to the main dwelling. For the avoidance of doubt, Section 171B(2) also applies where a building is being used as a dwellinghouse in breach of a condition which serves to prevent that use.

6. What I must consider is whether the appellant has shown, on the balance of probabilities, that a material change of use to a single dwellinghouse, with an ancillary photographic studio, occurred four or more years prior to the date of the application, and that use continued after the date of change without significant interruption such that it is now too late to take enforcement action.

Main Issue

7. The main issue is whether the Council’s refusal to grant an LDC was well-founded.

Reasons

Evidence

8. I saw that the building contains a fully equipped kitchen, a cloakroom and WC, a living area, workspace and a bedroom with an open plan bathroom. It contains all the facilities required for day-to-day private domestic existence, along with space for the photographic studio.

9. The appellant explains that she moved into The Studio and used it as her sole and primary residence from 16 July 2014 to 29 July 2019. She has hosted a number of social events at the premises. It is maintained that the photographic studio is ancillary to the primary residential use. Since July 2019, the appellant has lived elsewhere but continued to use The Studio for occasional overnight stays.

10. Statutory Declarations[1] have been provided by the appellant and Mr T Freeman, as joint owners of the wider Vines Farm property. These state that Ms A Freeman occupied the studio during the dates specific above and was not dependent on the facilities within the main farmhouse. It is further stated that the premises was used for professional photographic purposes but this accounted for less than five percent of the appellant’s company income during that period, because the professional work was almost exclusively location based. Further Statutory Declarations have been provided by R Freeman, G Jackson, N Williams, P Robotham, F Robotham and M Loveridge which corroborate the statements provided by Mr and Ms Freeman.

11. Company invoices detailing descriptions of commissions have been submitted, which show that some photoshoots took place in The Studio while many others were at various other locations. Further evidence includes copies of utility bills, submitted to show the property has a separate business energy account; letters from BT regarding a new phone line; Vodaphone invoices; TV licence direct debit payments; and objection letters dated April and May 2016 from neighbours and Pirbright Parish Council in response to application 16/P/00628, referring to the independent use of The Studio.

[1] Under the Statutory Declaration Act 1835.

Analysis

12. The Statutory Declarations have all been properly signed and witnessed and carry significant weight as sworn evidence. The sworn evidence states The Studio was used and occupied as a dwellinghouse for a continuous period in excess of four years. There is further corroborative evidence consisting of utility bills and other documents which support the appellant's version of events.

13. The Council draws my attention to the responses to its Planning Contravention Notice, dated 12 December 2016. This suggests the appeal building was used as part and parcel of Vines Farm as a whole, as opposed to being a separate planning unit in its own right. It is explained that the appellant was seeking to show the appeal building was not occupied independently from Vines Farm because the wider property remained in joint ownership. I understand a Council officer visited the premises and saw the internal layout. At that time, the Council concluded that a separate planning unit had not been created. However, the evidence before me strongly suggests otherwise. The occupant of The Studio was not reliant on the main dwelling at Vines Farm and she lived independently. The premises was physically and functionally separate having its own address, utilities and self-contained accommodation. The appellant and Mr Freeman were not living as a single household. The evidence submitted is precise and non-ambiguous and I am satisfied that The Studio was occupied as an independent unit from July 2014. At that time a material change of use occurred.

14. The Council maintains that the use is a mixed use, which is two primary uses existing within the same planning unit. In contrast, the appellant argues that the photographic studio is incidental to the primary residential use. Section 55(2)(d) of the 1990 Act provides that the use of land or buildings within the curtilage of the dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such is not development. Whether or not a use is incidental for the purposes of s55(2)(d) must be considered with regard to the primary residential use and the type and size of the dwellinghouse and its curtilage, as well as the scale and nature of the claimed incidental activity.

15. The carrying out of some hobby and/or working from home may be incidental, but it is always vital that there is a normal functional relationship between the incidental and the residential use. The key is reasonableness. Even if a use may be incidental to the enjoyment of a dwelling, it might not be so if it is carried out on such a scale or in such a way as to cause some material change to the character of the overall use of the planning unit. That may be the case if, for example, a business run from home generates significant comings and goings by customers.

16. Post production editing occurred at the desk in The Studio but this was carried out by the appellant and can be considered equivalent to home working. In addition, the invoices demonstrate the majority of the appellant's photographic work occurred on location. I note that around eight invoices out of a total of 131 involved clients visiting The Studio. The appellant also hosted a small number of events connected with her work. Nonetheless, there is no suggestion of significant numbers of people attending the premises for business purposes, such that it would have resulted in a change in character to the planning unit.

17. I am aware that the space within the unit that could be used for photographic purposes is relatively large and I saw that the form and layout operates to take advantage of daylight. However, there is also evidence that the space has a dual purpose. There are shutters over the large windows to provide privacy, fixtures are mobile and the premises is largely open plan. It is clear that the photographic space also functions as part of the dwelling when not in use, for example, for entertaining and other recreational purposes such as music and dance. Overall, it is apparent that the appellant ran her business from her home, which is reasonable. There is a normal functional relationship between the studio and the residential use, and the photographic studio remained incidental in scale and character.

18. I note that the appellant no longer occupies the premises as her main residence. However, the lawfulness of the use would have been established by the time she moved elsewhere. It is not necessary to show continuous use up until the date of the application. There is no suggestion that the lawful use had been lost through, for example, abandonment or a further change of use. I also note the suggestions of concealment. However, it is apparent that the Council conducted a site visit and inspected the interior of the property.

19. I find that the appellant has shown, on the balance of probabilities, that a material change of use to a single dwellinghouse occurred four or more years prior to the date of the application, and that use continued after the date of change without significant interruption such that it is now too late to take enforcement action. The residential use of the building with an ancillary photographic studio is lawful, therefore.

Conclusion

20. 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 in respect of independent residential use of the building with ancillary photographic studio 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.

Debbie Moore

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 2 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:

A material change of use to a single dwellinghouse occurred four or more years prior to the date of the application, and that use continued after the date of change without significant interruption such that it is now too late to take enforcement action. The residential use of the building with an ancillary photographic studio is lawful, therefore.

Signed

Debbie Moore

Inspector

Date 26 January 2023

Reference: APP/Y3615/X/21/3289365

First Schedule

Independent residential use of the building with ancillary photographic studio

Second Schedule

Land at The Studio, Vines Farm, Mill Lane, Pirbright, Woking GU24 0BS

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 was lawful, on the certified date and, thus, was 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 26 January 2023

by Debbie Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

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Scale: NTS