



Appeal Decision

Site visit made on 15 February 2023

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 April 2023

Appeal Ref: APP/Z5630/X/21/3284544

9A Beaufort Road, Kingston Upon Thames KT1 2TH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 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 Mrs Samantha Milne against the decision of the Council of the Royal Borough of Kingston Upon Thames.
 - The application Ref 21/02537/CEU, dated 5 August 2021, was refused by notice dated 6 October 2021.
 - 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: The property comprised of a detached, one bedroom residential dwelling with kitchen, lounge and bathroom, and benefits from a surrounding garden, entrance driveway and parking, accessed through secure electric gates, is used as an independent dwelling.
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Decision

1. The appeal is dismissed

Preliminary Matters

2. Comments by the appellant refer to section 192 of the 1990 Act. But it is clear from the submitted information that the application has been made under section 191 and so I have dealt with the appeal on this basis.
3. Planning Practice Guidance (PPG)¹ is clear that planning merits are not relevant at any stage in a lawful development certificate application or the appeal process for such an application. Therefore I cannot take them into account.
4. Planning merits include matters such as planning policies, the principle of creating residential units within a predominantly residential area, whether a development is sustainable or not, residential space standards and the size of a dwelling's garden.

Main Issue

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

¹ Lawful development certificates, paragraph: 009 Reference ID: 17c-009-20140306

Reasons

6. Under section 191(1) of the 1990 Act, if any person wishes to ascertain whether any existing use of buildings or other land is lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use.
7. Section 191(2) of the same Act states that for the purposes of this Act uses are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
8. Section 191(4) provides that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
9. The PPG is clear that the applicant is responsible for providing sufficient information to support an application². Whilst a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the **planning** status of the land, this does not necessarily extend to information not held by a local planning authority, such as housing benefits information or Council tax information.
10. In the case of applications for existing use, the PPG states that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability³.
11. Section 171B(2) of the 1990 Act states that 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 4 years beginning with the date of the breach.
12. It has been established in case law that a use can only become lawful if it continued throughout the relevant immunity period, such that the local planning authority could have taken enforcement action at any time.
13. So based on the evidence provided, I must consider whether the appeal building changed to use as a single dwellinghouse and was used as such continuously for at least 4 years after the date of the change and before the date of the application.
14. The appeal building is a single storey residential building at the rear of 18 Geneva Road. Planning records indicate that the appeal building was granted planning permission on 14 April 1993, subject to conditions including a

² Lawful development certificates, Paragraph: 006 Reference ID: 17c-006-20140306

³ Lawful development certificates, Paragraph: 006 Reference ID: 17c-006-20140306

- restriction on its use for a purpose incidental to the enjoyment of the main dwellinghouse and not as a separate unit of residential accommodation.
15. In a covering letter, the appellant states that the dwelling has been in use as a single person, one-bedroom residential dwelling since 2007. But in section 7 of their application form the appellant declares that the use began on 3 October 2016.
 16. The appellant further states that 'the period under review for the purpose of this appeal' is the 4 years between 5 December 2017 and 5 December 2021. But this cannot be correct given that this period runs beyond the date of the LDC application and does not include a 4 year period prior to the date of the application.
 17. In light of the above, for the purposes of this appeal, the date of the change is imprecise and ambiguous.
 18. Nevertheless, I have considered each of the occupants of the appeal building, referred to by the appellant. Georgina Moody's occupation pre-dates the 2016 date declared on the application form as the date the use is said to have begun and the alternative 'period under review', given by the appellant.
 19. In respect of Sheila Milne's occupation, the Council's records indicate that she used the appeal building as a granny annexe, rather than an independent dwelling.
 20. In respect of Andrew Milne's occupation, the information provided indicates that an earlier enforcement case was closed on 24 September 2018. This was during the period he is said to have occupied the building. The case was closed as it was said at that time to be being used by a friend of the family. In my judgement, the Council would not have closed the enforcement case then if it was not satisfied that the appeal building was only being used for a purpose incidental to the enjoyment of the main dwellinghouse and not as an independent dwelling.
 21. The above points contradict the appellant's case and I am not satisfied that any of them can now simply be explained away by the appellant as 'incorrect'.
 22. I appreciate that an affidavit and an assured shorthold tenancy agreement have been provided to support the appellant's case in respect of Andrew Milne. But in this case, I ascribe more weight to the contemporaneous record of the closure of the enforcement case in 2018 than to the documents provided to support Andrew Milne's independent occupation.
 23. Consequently, even when combining the tenure of the other occupants referred to by the appellant, 4 years' continuous use after the date the use began (declared in section 7 of the application form) has not been demonstrated.
 24. Whilst evidence to demonstrate compliance with regulatory standards for letting the appeal building may have been provided, this makes no difference to my overall conclusion.
 25. Taking all of the above into account, I am not satisfied that the appellant's evidence is sufficiently precise and unambiguous to demonstrate on the balance of probability that the appeal building changed to use as a single

dwellinghouse and was used as such continuously for at least 4 years after the date of the change and before the date of the application.

Conclusion

26. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of: *"The property comprised of a detached, one bedroom residential dwelling with kitchen, lounge and bathroom, and benefits from a surrounding garden, entrance driveway and parking, accessed through secure electric gates, is used as an independent dwelling"*, 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.

L Perkins

INSPECTOR