



Appeal Decision

Site visit made on 27 March 2023

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

an Inspector appointed by the Secretary of State

Decision date: 06 April 2023

Appeal Ref: APP/A0665/X/22/3304154

Brownhills, Brownhills Road, Rushton, Tarporley CW6 9BQ

- 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 H Laws against the decision of Cheshire West and Chester Council.
 - The application Ref 21/03836/LDC, dated 13 September 2021, was refused by notice dated 9 March 2022.
 - 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 the use as two separate dwellinghouses of a building previously used as a single dwellinghouse.
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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 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. For the avoidance of doubt, the planning merits are not relevant to an appeal under Section 195 of the 1990 Act.
3. 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. The application sought to establish that the building known as Brownhills has been used as two separate dwellinghouses for a continuous period in excess of "four years" and, as such, no enforcement action can be taken in respect of the breach of planning control. It is explained that planning permission was granted for a two-storey extension (Ref 07-0308-FUL), which was completed in 2008. It is stated that the extension was constructed as a self-contained dwelling and has been used and occupied as such since it was built. This would have been in breach of condition 4 of the planning permission which sought to ensure occupation of the extension would be ancillary to the main dwelling.
4. The time limits for taking enforcement action are provided by Section 171B of the 1990 Act. I appreciate that the Council and the appellant have applied s171B(2). This applies to the change of use of a building, which may include part of a building, to a single dwelling and to breach of a condition which prevents a change of use of a building to a single dwelling. However, if a building, or part of a building, is erected unlawfully and used as a

dwellinghouse from the outset, meaning that no change of use occurs, the time limit for enforcement action against the use is then ten years.

5. In this case, the unauthorised development as described would have been a material change of use of a building previously used as a single dwellinghouse to use as two separate dwellinghouses. The relevant time period for taking enforcement action would be ten years beginning with the date of the breach, under Section 171B(3). I have determined the appeal on this basis.

Main Issue

6. The main issue is whether the Council's refusal to grant an LDC was well-founded. What I must consider is whether the appellant has shown, on the balance of probabilities, that a material change of use of a building previously used as a single dwellinghouse to use as two separate dwellinghouses, occurred ten 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.

Reasons

Evidence

7. I saw that the original building has been extended and divided into two units. The units are accessed independently, and each contains the facilities required for day-to-day private domestic existence. There are separate tanks for heating oil, separate post boxes and utilities meters. The access, driveway and garden are shared. I note that the official address of the property is unchanged, and the property is one dwelling for Council Tax purposes.
8. The appellant has provided an Affidavit which states the extension was completed in early 2008 and leased to the Howarth family who remain there to date (2021). The original property was leased to Mr Hickson until June 2016, and then to Mr Murphy. Further Affidavits confirm the units were self-contained. Mr Howarth says that he has lived at Brownhills (extension) with his family since 2009. Mr Hickson says he lived at Brownhills between June 2008 and June 2016, and it was self-contained throughout his residence. Mr Murphy has resided at Brownhills since June 2016 and remained there in 2021. The evidence includes an email from the Council's Building Control Surveyor, dated 6 April 2009, which confirms the extension was constructed as a self-contained dwelling.
9. The Affidavits have all been properly signed and witnessed and carry significant weight. This evidence states Brownhills was used and occupied as two separate dwellinghouses for a continuous period in excess of ten years prior to the date of the application. There is further corroborative evidence consisting of letting agreements, utility bills and other documents which support the appellant's version of events.

Analysis

10. The Council draws my attention to an enforcement investigation in 2020 into the use of the property as two separate dwellinghouses. It concluded a material change of use had not occurred, apparently due to the shared use of the kitchen in the original dwelling. The Council maintains there is a degree of fluidity between the living arrangements of the occupiers of the individual

units. It is accepted there is physical separation but argued there is functional interdependence and, consequently, the property remains as a single planning unit in residential use.

11. The concept of a material change of use is not defined in statute. The basic approach is that, for a material change of use to have occurred, there must be some significant difference in the character of activities from what has gone on previously. The starting point is to define the planning unit, which 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 occupied for different and unrelated purposes.
12. As explained, both the original dwelling and the extension contain all the facilities required for day-to-day living. The units are physically separate and are occupied by different families. Crucially, the occupants of the extension are not functionally dependent on the original dwelling. The shared use of kitchen facilities is an arrangement of convenience. This level of family interaction does not imply shared living as a single household, nor does it show the extension is functioning solely as an annexe. Similarly, the shared access and lack of demarcation of the garden area is not determinative. The relationship is one of convenience and stems from good neighbourliness. There is no functional dependence, which would occur if the occupants of the extension relied on the primary accommodation provided in the original house. On the facts before me, the extension cannot be considered to be part and parcel of the use of the original dwellinghouse.
13. I consider the extension comprises a separate planning unit, as a matter of fact and degree. It is used and occupied such that it functions as a self-contained unit of residential accommodation, as opposed to being part and parcel of the use of the main dwellinghouse. The use of the extension as a self-contained unit of residential accommodation has a very different character to how the property was used previously. A new planning unit has been created and a material change of use has occurred for which planning permission would have been required.
14. I find that the appellant has shown, on the balance of probabilities, that a material change of use to a two separate dwellinghouses occurred ten 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 use of the building as two separate dwellinghouses is lawful, therefore.

Conclusion

15. 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 the use as two separate dwellinghouses of a building previously used as a single dwellinghouse 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



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:

The appellant has shown, on the balance of probabilities, that a material change of use to a two separate dwellinghouses occurred ten 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 use of the building as two separate dwellinghouses is lawful, therefore.

Signed

Debbie Moore

Inspector

Date: 06 April 2023

Reference: APP/A0665/X/22/3304154

First Schedule

Use as two separate dwellinghouses of a building previously used as a single dwellinghouse

Second Schedule

Land at Brownhills, Brownhills Road, Rushton, Tarporley CW6 9BQ

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:06 April 2023

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

Land at Brownhills, Brownhills Road, Rushton, Tarporley CW6 9BQ

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Scale: NTS

