The Planning Inspectorate

Appeal Decision

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 19 April 2023

Appeal Ref: APP/F5540/X/22/3299185
115 West Way, HOUNSLOW, TW5 0JE

- 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 Bakshish Bahia against the decision of London Borough of Hounslow.
- The application ref 01193/115/LAW3, dated 5 March 2022, was refused by notice dated 1 April 2022.
- 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 the use of the rear outbuilding as a self-contained flat.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is for a LDC, not planning permission, which means that planning matters (such as compliance with national and local planning policies, to which extensive reference is made in the Appellant's Statement of Case) can have no bearing on my determination of this appeal. Rather, my assessment is confined to the narrow issue of deciding whether or not the existing use was lawful on the date of the LDC application.

3. The use would be lawful if the time for taking enforcement action against it (in this case, 4 years from the date on which the use began)[1] has expired. The standard of proof is the balance of probabilities, and the evidential burden rests with the Appellant. If there is no evidence to contradict an Appellant's version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

Reasons

4. The evidence of the Appellant is that he adapted the existing outbuilding in the rear garden of No.115 to provide self-contained living accommodation for his mother's carer, and that the carer has occupied this accommodation continuously from 1 May 2008 to the present date. This evidence is supported by Affidavits from the Appellant and the carer. The Appellant has also provided copies of Council Tax bills dating from 2009, addressed to "Annexe at R/O 115 West Way" and identifying the property as within valuation band B, along with photographs showing the interior and exterior of the outbuilding.

[1] S.171B(2) of the Town and Country Planning Act 1990 (as amended).

5. The two Affidavits, which were duly sworn and witnessed, are important evidential documents. They carry a lot of weight, which cannot lightly be set aside.

6. The Council contends that it has evidence which directly contradicts the Appellant's claim that the outbuilding has been occupied as a self-contained dwelling since 2008, in the form of photographs taken during a site visit made to the property on 10 March 2020. These photographs, taken in the course of determining an earlier planning application[2], show the same kitchen and bathroom as appear in the (undated) photographs provided by the Appellant, but also show other areas of the outbuilding being used as an office and for storage space. However, the Council has not stated whether or not the photographs taken in 2010 show the entirety of the outbuilding's interior; it may be that the bedroom was simply not photographed. I also note that the affidavit provided by the Appellant describes the provision of a bedroom, kitchen and shower room, but goes on to state "There was also room for an office/study and storage area."

7. In the absence of any further evidence from the Council as to whether or not the outbuilding appeared to be occupied as a residence when it visited on 10 March 2010 (for example information as to whether there was a place to sleep, clothes, food, or other items consistent with use as a dwelling), I am not persuaded that the photographs by themselves significantly undermine the evidence of the Appellant. They simply show that on that date, the accommodation provided in the outbuilding included a kitchen, bathroom, office and storage space; they neither confirm nor disprove the existence of a bedroom, or residential use of the building.

8. On the basis of the evidence currently provided, then, I find that the outbuilding appears to have provided all the facilities necessary for day to day living. However, while accommodation may be *capable* of use as a self-contained dwelling, it does not automatically follow that that is how it is being used. It is not unusual for houses to have in their gardens residential accommodation that is capable of functioning as a self-contained unit (such as a caravan or converted garage) which may be occupied by an elderly relative, or teenage child, or employee of the household. In some cases the occupiers of such accommodation regularly make use of facilities in the main house; for example taking their meals there, using the washing machine, or watching TV. In other cases the occupiers lead a more separate existence; for example paying their own Council tax and utility bills, and only rarely using the facilities of the main dwelling. In each case, distinguishing whether the living accommodation is being occupied either as a self-contained residence, or for purposes ancillary to the main residence, will be a question of fact and degree.

9. In this case, the outbuilding has been identified as a separate dwelling for Council Tax purposes, but as the Appellant rightly notes, the issue is "whether it has been in use as a separate entity from the host dwelling or not." The evidence of the Appellant is that the outbuilding is occupied by the carer who looks after his mother: no rent is charged, and the Appellant pays the Council Tax and all of the utility bills for the accommodation. No other relevant information has been provided – for example whether or not the carer has any other place of residence; whether their sole employment is with the Appellant's

[2] Ref: 01193/115/P5

mother or whether they undertake any other paid caring duties elsewhere; whether they would be able to continue living in the outbuilding if they ceased working as a carer for the Appellant's mother; the extent to which they use the facilities of the main house; etc. The carer appears to have no separate tenancy agreement, occupancy licence or any other formal rights in connection with the use of the outbuilding.

10. On the basis of the limited evidence that has been provided, I am not satisfied that the outbuilding has been used as a separate dwelling in its own right. The fact that the Appellant pays the Council tax, and all the other utility bills (which do not appear to be separated from those of the main dwelling), suggests instead that the living accommodation provided in the outbuilding is used in a similar manner to that provided by the main house. In the absence of any other information to the contrary, I conclude that the outbuilding has been used for ancillary residential accommodation, rather than as a separate self-contained flat.

11. The Appellant drew my attention to three examples from the local area of LDCs having been granted for the use of self-contained residential units in gardens. But as I have explained above, the question of how such a unit has been used will be a matter of fact and degree: just because an outbuilding in a garden in another part of the Borough was found to have been used as a self-contained flat does not mean that the same must inevitably be the case here. Each proposal must be determined on the basis of its own particular circumstances.

Conclusion

12. 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 use of the rear outbuilding as a self-contained flat 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.

Jessica Graham

INSPECTOR