The Planning Inspectorate

Appeal Decision

Site visit made on 1 June 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 June 2023

Appeal Ref: APP/H5390/X/22/3296736
2 Emlyn Road, London W12 9TD

- 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 Dr A Ismail (Stablegold Ltd) against the Council of the London Borough of Hammersmith and Fulham.
- The application ref 2021/02789/CLP is dated 25 August 2021.
- 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 or development is sought is described as the use of the single-storey outbuilding in the rear garden as a self-contained annexe flat ancillary to the single-family dwellinghouse.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development (LDC) describing the proposed use which is found to be lawful.

Application for costs

2. An application for costs was made by Dr A Ismail against the Council of the London Borough of Hammersmith and Fulham. This application is the subject of a separate decision.

Preliminary Matters

3. I have taken the description of the proposed use from the appeal form as it more accurately describes the proposal for which the certificate is sought.

4. The appeal is made against the Council's failure to give notice within the prescribed period of a decision on the application for a certificate of lawful use or development (LDC). The Council has confirmed in its statement of case that had they retained jurisdiction to determine the application, they would have refused it. However, since the Council has not issued a decision, the application is deemed to have been refused.

Main Issue

5. The main issue is therefore whether that deemed refusal was well-founded. This turns on whether the proposed use of the existing outbuilding as a self-contained annexe would be lawful.

Reasons

6. The Council in its statement of case says that the proposed development does not constitute permitted development by virtue of the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) as it would amount to the creation of an outbuilding which would not be incidental to the enjoyment of the dwelling house.

7. However, the proposal is not for a new building to be constructed under permitted development rights. The building already exists. I saw at my visit that, due to its weathered condition, it has clearly been in existence for a considerable period of time and was currently being used as a domestic workshop. The appellant is not seeking confirmation of any rights under Class E of the GPDO. I have no evidence that the building is not lawful.

8. S55(1) of the Act sets out that "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

9. It is not disputed that the primary use of No 2 is that of a single dwellinghouse. The proposal is to convert the existing outbuilding to a self-contained annexe which would contain facilities for day to day living. However, as confirmed in *Uttlesford*[1] this does not necessarily result in the outbuilding becoming a separate planning unit from the main dwelling. The appellant has stated that the proposed annexe would be occupied by elderly family members, and the building would not be rented out or the ownership of the site split. The overall planning unit would therefore continue to be occupied by a single family.

10. Furthermore, the annexe would have no separate curtilage and the modestly sized rear garden would be shared. Access would be via the existing single access point to the dwelling. The annexe would therefore be physically and functionally linked to the main dwelling and, as a consequence, would be a use which is already taking place within the planning unit, as a matter of fact and degree. Thus, there would be no formation of a separate planning unit.

11. The appellant's evidence is precise and unambiguous. Overall, the totality of the evidence presented in support of the appellant's claim shows that the proposal would not amount to a material change of use within the meaning of s55(1) and, as such, it would be lawful.

Other Matters

12. One third party representation has been received from a neighbour who raised concerns regarding the proposed use of the outbuilding as living accommodation, including the potential impact of noise on nearby residents and that the building could be fenced off and/or rented out in the future. The planning merits of the matters applied for however do not fall to be considered, with the decision based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case. If circumstances concerning the occupation of the building were different from the details provided with the application in the future, and a material change of use of the building did occur, that would be a matter for the Council to consider at that time.

[1] Uttlesford DC v SSE & White [1992] JPL 171

Conclusion

13. 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 or development was not well-founded and the appeal succeeds. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

David Jones

INSPECTOR

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 25 August 2021 the development 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, 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 proposed use of the existing single-storey outbuilding as a self-contained annexe flat (not used independently from the main house) would be functionally connected to and form part and parcel of the primary use of the land as a single dwellinghouse. It would therefore not amount to a material change of use within the meaning of s55(1) of the Act.

Signed

David Jones
INSPECTOR

Date: 23 June 2023
Reference: APP/H5390/X/22/3296736

First Schedule
The use of the single-storey outbuilding in the rear garden as a self-contained annexe flat ancillary to the single-family dwellinghouse.

Second Schedule

Land at: 2 Emlyn Road, London W12 9TD

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 described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, were 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.

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: 23 June 2023

by David Jones BSc (Hons) MPlan MRTPI

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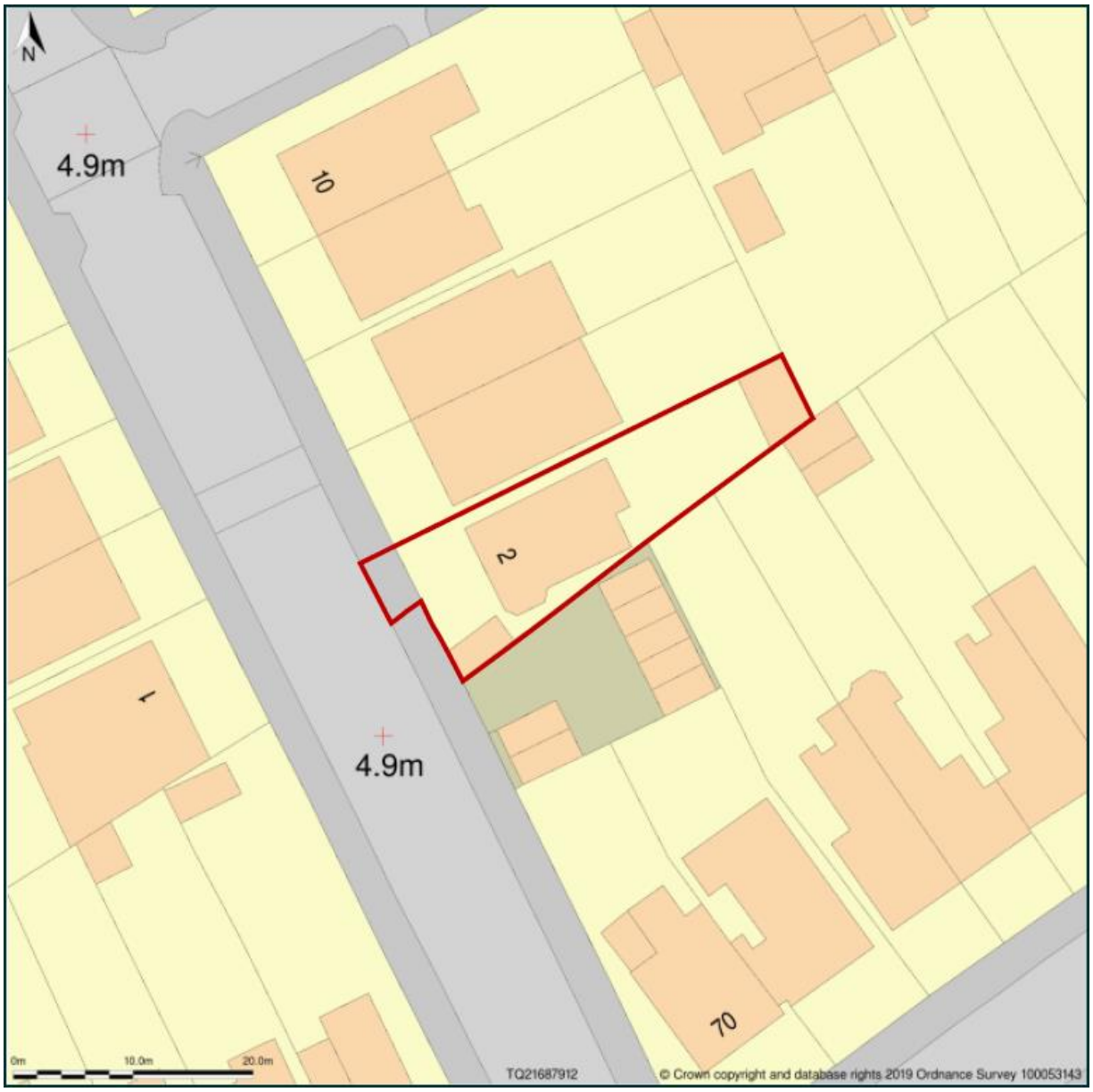
Reference: APP/H5390/X/22/3296736

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