The Planning Inspectorate

Appeal Decision

Site visit made on 15 August 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2023

Appeal Ref: APP/E0345/X/22/3310197
551B Oxford Road, Reading RG30 1HJ

- 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 Mr William Darlow against the decision of Reading Borough Council.
- The application Ref 200036, dated 16 October 2019, was refused by notice dated 6 May 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 described as 'The existing outbuilding at the rear of the address has been used as a separate dwelling house for more than 6 years (circa 20 years).'

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 found to be lawful.

Preliminary Matters

2. The description in the banner heading above of the use for which an LDC is sought is taken from the application form. In the interests of succinctness, I have used the description on the appeal questionnaire for the Certificate. The Council used a similar description on their decision notice.

3. The appellant referred to a potential application for an award of their costs, but none has been forthcoming. Since there is little before me which might indicate that the Council has behaved unreasonably during the appeal and that the appellant incurred unnecessary expense as a result, I do not intend to consider whether an award of costs should be made.

Main Issue

4. The main issue in this appeal is whether the Council's refusal to grant an LDC was well-founded. This turns on whether the appellant has been able to show that, on the balance of probability, the use of the building as a self-contained dwelling was lawful at the date of the application.

Reasons

5. The appeal concerns a single storey building located at the rear of a 2½ storey mid-terraced property. The building contains a combined living, dining and kitchen area with a double bedroom and shower room. Pedestrian access to the building is obtained from an adjacent street.

6. An LDC is sought on the basis that the unauthorised use of the building as a self-contained dwelling began more than four years before the application date. At s171B (2), the Act provides that no enforcement action may be taken in respect of a breach of planning control consisting in the change of use of a building to use as a single dwelling after the end of the period of four years beginning with the date of the breach. The effect of s191 (2) of the Act is that the use as a dwelling would be lawful if no enforcement action can be taken because the time for taking such action has expired.

7. The onus is on the appellant to demonstrate that the use applied for is immune from enforcement action and consequently, lawful. This is qualified by the Planning Practice Guidance, which advises that in the case of applications for existing use, if a Council has no evidence itself, nor any from others, to contradict or otherwise make an 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 in order to justify the grant of a certificate on the balance of probability[1]. In *Gabbitas v SSE & Newham LBC* [1985] JPL 630, the Court held that an applicant's evidence should not be rejected simply because it is not corroborated by independent evidence.

8. Witness evidence supporting the appellant's claim is set out in Statutory Declarations (SDs) made by their spouse. In summary, the witness stated that the building had been used as a self-contained dwelling since at least 2 March 2000, having separate electricity, water and drainage connections, separate billing and a separate Council Tax rating. The witness supplied names of persons whom they stated had occupied the building under Assured Shorthold Tenancy Agreements (ASTs) between the following dates: 5 April 2002 to 6 September 2004, 3 December 2004 to 5 April 2006, 26 May 2006 to 3 November 2009, 25 March to 26 June 2010, 2 July 2010 to 26 February 2011, 28 February to 30 July 2011, 14 September 2011 to 26 April 2017, 2 June 2017 to 17 August 2019 and from 24 September 2019.

9. Exhibited with the latest SD is documentary evidence in the form of extracts from the appellant's financial records. The records show income received and outgoings in relation to the building in the period beginning on 5 April 2002 and continuing up to and beyond the application date. The records show monthly rental payments made by tenants which correspond with the periods when the witness stated that those tenants had occupied the building. Also provided are example copies of other contemporaneous documents relating to the building, including signed ASTs dated between 5 April 2002 and 3 December 2004, Council Tax bills dating from 26 April 2002 to 18 May 2006 and correspondence from the Council dated from 8 April 2004 to 12 April 2006 concerning tenants in receipt of Housing Benefit.

[1] Paragraph: 006 Reference ID: 17c-006-20140306.

10. When assessing whether the time for taking enforcement action has expired any four-year period is relevant, not just the four years immediately preceding the application date. It is therefore a mistake to focus solely on evidence concerning the use of the building as a dwelling in the four years prior to the application. According to the appellant's evidence, namely the latest SD and the financial records showing monthly rent paid, the building was in residential occupation continuously between 14 September 2011 and 26 April 2017. In that eventuality, even if the evidence of the use as a dwelling prior to 2011 is set aside, such use would in all likelihood have become immune from enforcement action by no later than 14 September 2015.

11. I attach considerable weight to the sum of the appellant's evidence. It is sufficiently detailed, precise and unambiguous. The SDs are signed, dated and witnessed by a solicitor. The SDs are largely consistent with one another. Minor differences in the description of the building and an erroneous reference to payment of business rates are highly likely to reflect the drafting of the SDs and do not represent significant inaccuracies in their contents. As my understanding is that Housing Benefit can be paid directly into a tenant's bank account, it is entirely possible that the appellant received some of the rental payments in cash. There is no lack of clarity in terms of the overall account of events provided on behalf of the appellant.

12. Since the appellant's financial records are an exhibit to the latest SD, they form part of that document. It is not unreasonable to give those records similar weight, in the absence of any sound reason for not doing so. The details of income and outgoings in relation to the building are clearly set out in detail and are in chronological order. The manner in which the records have been compiled is not especially remarkable for a proprietor letting one or perhaps a few properties. This is distinct from a business involved in letting a larger number of properties, where more formalised record keeping might possibly be expected. The appellant's records are likely to have been sufficient for drawing up annual accounts and submitting tax returns. There is little indication that the records are not genuine. It would be unusual for a proprietor and tenants to countersign such records. Although a rating for Council Tax does not necessarily equate to occupation, confirmation by the Council that the building had been rated in Band A since June 2001 provides a further measure of support for the appellant's claim. The Council did not produce any factual evidence of its own which might have contradicted or otherwise cast doubt on the accuracy of the information provided on the appellant's behalf.

13. In *Panton & Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461, the Court confirmed that lawful use rights can only be lost by evidence of abandonment, by the formation of a new planning unit or by being superseded by a further change of use. A use which was merely dormant or inactive would still be considered as 'existing' so long as it had already become lawful and not been extinguished in one of those three ways. Following the Court's approach, once the time for taking enforcement action expired the building did not have to be continuously occupied to lawfully remain in use as a dwelling. There is no evidence of the dwellinghouse use being abandoned, of a new planning unit having been created or of a further change of use occurring. Therefore, although the building might well have been vacant at times during 2017 and 2019, the continuity of the use as a dwelling was unaffected.

14. In *Swale BC v FSS & Lee* [2005] EWCA Civ 1568 the Court was primarily concerned with the question of the continuity of an unlawful dwelling use where there are periods of vacancy during the four-year period. That was also the case in *Islington LBC V SSHCLG & Maxwell Estates Lt*d [2019] EWHC 2691 (Admin). However, the circumstances are different in this appeal; the available evidence shows that the time for taking enforcement action in relation to the use of the building as a dwelling expired prior to it becoming vacant. Similarly, *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 22 concerned the continuity of an unlawful use and whether enforcement action could have been taken at any time before such use gained immunity. The approach in *Panton* continues to apply where, as in the appeal before me, lawful use rights have already been accrued.

15. Consequently, the appellant's evidence is sufficiently precise and unambiguous to demonstrate that, on the balance of probability, the building has been in continuous use as a self-contained dwelling for a period of more than four years prior to the application. The matters raised by the Council do not materially affect the weight that should be given to the appellant's evidence, taken as a whole; those matters do not contradict the account given by the witness or make their version of events less than probable. It follows that on the date of the application it was too late for the Council to take enforcement action in respect of the use of the building as a self-contained dwelling.

Conclusion

16. 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 of the building as a self-contained dwelling 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.

Stephen Hawkins

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 16 October 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto, hatched in black within the area edged in black 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:

On the balance of probability, the available evidence demonstrates that the use of the building as a self-contained dwelling has been continuous for a period of more than four years prior to the date of the application, so that the time for taking enforcement action in s171B (2) of the Act has expired.

Signed

Stephen Hawkins

Inspector

Date 25 August 2023
Reference: APP/E0345/X/22/3310197

First Schedule

Self-contained dwelling (Use Class C3)

Second Schedule

Land at 551b Oxford Road, Reading RG30 1HA

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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: 25 August 2023

by Stephen Hawkins MA, MRTPI

Land at: 551b Oxford Road, Reading RG30 1HA

Reference: APP/E0345/X/22/3310197

Scale: Not to scale