



Appeal Decision

No site visit

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17TH NOVEMBER 2023

Appeal Ref: APP/X1545/X/22/3313618

2 Oak Cottages, Maldon Road, Bradwell-On-Sea, Essex CM0 7HS

- 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 & Mrs Hollingsworth against the decision of Maldon District Council.
 - The application ref LDE/MAL/22/00916, dated 9 August 2022, was refused by notice dated 5 October 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 is sought is an independent dwelling.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use describing the existing use which is found to be lawful.

Background and Preliminary Matters

2. Due to the nature of this case, it was determined that it was not necessary for me to conduct a site visit. The main parties were made aware of this fact, and no further comments or objections were received. The appeal concerns the lawfulness or otherwise of the use of a workshop outbuilding as an independent dwelling. I will hereafter refer to the workshop outbuilding as simply the 'workshop'.
3. Having regard to the Statutory Declarations (SDs) submitted with the appeal, it was noted that exhibit KH1, referenced in Mr K Hollingsworth's SD, had not been provided. On request, the appellant confirmed that this was an error, and exhibit KH1 was not part of the submissions. The parties are also content that the appeal can proceed by the written representation procedure. I have no reason to disagree with the parties and so will proceed to determine the appeal based on the written evidence before me.
4. In cases such as this the onus is on the appellant to demonstrate, on the balance of probabilities, that the use of a workshop as an independent dwelling has continued without significant interruption for a period of 4 years prior to the submission of the certificate of lawfulness. Any 4 -year period before the material date is relevant. Matters such as planning policies and the effect of the development on matters such as neighbour's living conditions or the character and appearance of the area are not relevant. My determination is made solely on matters of fact, planning law, and application of judicial authority.
5. The site edged in red on the site location plan includes the workshop and surrounding garden land (subject of the appeal). It is stated in the Planning Statement that fencing divides the plots of 2 Oak Cottages and the workshop,

with their own separate gardens and outbuildings. The host dwelling has a separate garden area outlined in blue. The appellants have submitted a site plan as well as detailed floor and elevation plans of the workshop. The plans show the workshop as being approximately 11.39metres (m) in length x 5.26m wide, and 2.2m and 3.84m in height to the eaves and ridge respectively. The accommodation includes a kitchen dining and living area, a conservatory, two bedrooms, one with an ensuite and another with a WC.

Main Issue

6. The effect of s191(2) of the Town and Country Planning Act 1990 (the Act) is that such a use would be lawful if no enforcement action can be taken because the time for taking such action has expired. The relevant date is the date of the application, which in this case is 9 August 2022. The relevant 4-year date would be 9 August 2018. The relevant test is the balance of probability, not the more onerous test of beyond reasonable doubt.
7. The Planning Practice Guidance (PPG) advises that where the Council 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 probability¹.
8. The main issue is therefore whether the Council's refusal to issue a certificate of lawfulness in respect of the use of the workshop as an independent dwelling was well-founded. That turns on whether the available evidence demonstrates that the building has been used as a separate independent dwelling for a continuous period of more than four years before the date of the application.

Reasons

Evidence

9. In addition to plans, the appellants have submitted two SDs, one by the appellants' son, Mr K Hollingsworth and another by the appellant Mrs J Hollingsworth, both signed by them and witnessed by a solicitor, ensuring that they comply with the Statutory Declaration Act 1835. The SDs are dated 25 August 2021 and 28 September 2021 respectively.
10. Both SDs set out that Mr K Hollingsworth, his father (Mr S Hollingsworth) and a friend constructed the workshop (as a workshop) between 2007 and 2010. It is indicated that Mrs J Hollingsworth has mobility issues and was unable to access the first floor in the main dwelling. Following Mr K Hollingsworth and his wife moving into the main dwelling, the workshop was converted in 2011 by altering it internally. The two SDs go on to state that the appellants moved into the workshop in 2011 and have lived in it independently of the main property since that time. The workshop has been assigned a different address (2A, Oak Cottages).
11. Mr K Hollingsworth's SD specifically indicates that the appellants utilise their own access off Maldon Road, whereas he and his wife (occupants of the main house) park on the street to the front of 2 Oak Cottages. He goes on to add that the single storey nature of the workshop means his mother can be more mobile, he visits his parents for social occasions but lives independently of them. He states

¹ Lawful development certificates. Paragraph: 006 Reference ID: 17c-006-20140306.

that the appellants have their own waste bins, post box, tv aerial and internet connection as well as separate services, including electricity, gas and water supplies with associated meters. Mrs J Hollingsworth's SD is similar in content; however, she sets out that her mobility improved by using the single storey workshop as a dwelling. She also details having her own garden, access and utilities as well as conservatory and cattery.

12. The following exhibits are included with Mrs J Hollingsworth's SD; Energy Performance Certificate dated December 2014, Home Insurance Policy Schedule covering December 2015 to December 2016. Both exhibits detail the address 2A, Oak Cottages. A confirmation email from British Gas, dated 25 January 2015, outlining the installation of an electric meter for a Feed In Tariff payments at 2A Oak Cottages. Photographs of utility meters, waste bin facilities, a television aerial and address signage at the property are provided together with photographs of the workshop (following its conversion) being used as part of a social event.
13. Other information includes a letter from Maldon & District Citizens Advice to the Department of Work and Pensions (DWP) dated 21 June 2018. This letter is in response to a visit from the DWP and an assessment of Mrs J Hollingsworth's mobility at the property. The converted workshop is referred to as the 'bungalow' in the letter.
14. There are also ten statements submitted by a mixture of neighbours, friends and family members. The letters set out that they have known the appellants for varying periods of time (all more than 4 years) and have been to the property to visit them for social events, staying the night as well as house or dog sitting. The statements by neighbours, friends and family members are not co-signed by a solicitor or a Commissioner for Oath, meaning they would not comply with the Statutory Declaration Act 1835. However, they are still a form of evidence that must be considered, even if they cannot be afforded as much weight as factual details or SDs compliant with the Statutory Declaration Act 1835.

Independent Use

15. The Council accepts that the building was substantially completed more than four years before the date of the application. However, the Council contends that the family link means the workshop is in use as an annex to the host property, which is compounded by the fact that Mrs J Hollingsworth has mobility issues.
16. Based on the evidence before me, the workshop has all of the necessary facilities to live separately and is physically separate from the main dwelling by a reasonably large amount of garden space. The workshop has its own vehicle access and a boundary fence has been erected between the two garden areas. The layout of the site, the separate access and the defined boundary plots indicates two separate planning units. This is further compounded by facilities contained therein, allowing the occupants to live independently without any reliance on the main property in terms of access or facilities.
17. The SDs corroborate the above by stating that the appellants live independently of the main property and have done so since 2011. They also indicate that the workshop as an independent dwelling has its own access, garden and boundary. The appellants also have their own pets, bins, home insurance as well as there being independent services and utility meters, which all supports their claim of independent use. There is no indication that the appellants are reliant on their

son or the main house in their day-to-day activities. In fact, Mr K Hollingsworth's SD specifically outlines that he only visits his parents on social occasions. Also, due to the building being single storey as well as being fitted with facilities to help with mobility issues, the workshop provides his mother and father with independence.

18. I acknowledge that the land is owned by the appellants, that Mrs J Hollingsworth has health issues that restrict her mobility, and the occupants of the main property are closely related. Consequently, it is possible that the workshop could be utilised as an annex. However, all of the evidence with the appeal indicates that it is being used independently, and there is no contradictory evidence produced by the Council, or others, to indicate that the building has been, or is currently being used as an annex. In this respect, the Council's claim that the workshop is being used as an annex is not contradictory evidence in its own right, and does not make the appellants claims less than probable.
19. I note that independent evidence, such as, purchases of goods or materials during the conversion; separate utility bills as well as payment of separate Council tax over the requisite period would have supported the appellants claims more robustly. However, the SDs and the evidence provided is sufficiently precise and unambiguous. The fact that the missing information highlighted by the Council has not been provided does not contradict the appellants claims or make them less than probable. The Council has also not produced any evidence to show that enforcement action could not have been taken if they were to have investigated the breach during the requisite period of time.
20. Accordingly, on the balance of probabilities, the evidence produced is sufficiently precise and unambiguous in setting out the use of the building as an independent dwelling.

Continuous Use

21. The appellant must also demonstrate that for a period of 4 years or more prior to the date of the application, the independent use has been continuous. *Case law*² has also determined that the use can be established over a 4-year period prior to the date of the application, and once immunity is gained, the established use can only be lost via abandonment or a supervening event. If there are no matters concerning abandonment or a supervening event prior to the date of the application, then the use can be considered lawful.
22. The appellants SDs set out that the use has been ongoing since 2011 and has not changed since that time. The SDs do not state the exact date or month in 2011. However, even if the use commenced in December 2011, this is still an extended period of at least 10 years from the date of the application. The corroboratory evidence is dated between December 2014 and June 2018. The evidence shows that in 2014 a different address was being used and by 2015 separate home insurance had been obtained and separate utility meters had been installed. The letter to the DWP in 2018 demonstrates that the workshop was still being used as an independent dwelling at this time.
23. There is no further corroboratory evidence between June 2018 and the date of the application. However, the SDs are precise and match in respect of their claims, and there is no evidence to contradict the appellants claim that the use

² R (on the application of Ocado Retail Ltd) v Islington London Borough Council [2021] EWHC 1509 (Admin)

began in 2011 and has yet to cease. Even if I were to take the view that the independent use did not commence until the Energy Performance Certificate was certified (December 2014), this would still be a period more than 7 years from the date of the application. There is also no evidence of abandonment or a supervening event between June 2018 and the submission of the application on 9 August 2022. Accordingly, the SDs together with the corroboratory evidence set out a period of more than 4 years where the workshop was being used independently as a dwelling, prior to the date of the application.

24. The Council indicates the SDs produced are by the appellant and the appellant's son, and therefore cannot be afforded as much weight as independent evidence. It is also suggested that the photographs of the meters and waste bins do not provide sufficient evidence to show that these items belong to the building. They also contend that the photos of the social event are undated and do not prove the building has been continuously occupied for more than 4 years.
25. I appreciate that the appellants and their son have interest in the outcome of the application, but this is not a good reason to give the SDs less weight. Contrary to the Council's position, in my judgement, the appellants are the most relevant persons to provide detailed information on the use of their property, provided it is precise and unambiguous. Accordingly, I attach significant weight to the SDs, especially since they appear to have been properly declared and witnessed, with serious consequences if any of them were subsequently shown to be false.
26. The exhibits and photographs could have been annotated as suggested by the Council, however, the exhibits should be looked at together with the SDs, and not in isolation. If looked at in conjunction with Mrs J Hollingsworth's SD, in my judgement, it is sufficiently clear she is referring to the utility meters, bins and other items at the converted workshop.
27. Having regard to the whole of the evidence, it is sufficiently precise and unambiguous in setting out the use of the building as an independent dwelling for the requisite period of four years. There is no evidence to suggest that the use as an independent dwelling was interrupted or has been lost via abandonment or a supervening event following the lawful residential use being established. Consequently, the workshop has on the balance of probability, been in continuous use as a separate dwelling for more than four years prior to the date of the application.

Conclusion

28. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use in respect of the workshop being in use as an independent 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.

M. P. Howell

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 9 August 2022 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, would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use of the workshop building as an independent dwelling commenced more than four years prior to the date of the application for the Lawful Development Certificate and continued thereafter without material interruption.

Signed

M. P. Howell

INSPECTOR

Date: 17TH NOVEMBER 2023

Reference: APP/X1545/X/22/3313618

First Schedule

An independent dwelling

Second Schedule

2 Oak Cottages, Maldon Road, Bradwell-On-Sea, Essex CM0 7HS

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.



The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: **17th November 2023**

by M. P. Howell Dip TP MRTPI

Land at: 2 Oak Cottages, Maldon Road, Bradwell-On-Sea, Essex CM0 7HS

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