



Appeal Decision

Site visit made on 10 October 2023

by Ms S Watson BA(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 December 2023

Appeal Ref: APP/C1950/X/22/3299554

41 Ayot Green, Ayot St Peter, Welwyn, AL6 9AB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Giles Pattison against the decision of Welwyn Hatfield Council.
 - The application ref 6/2021/3279/LAWE, dated 21 December 2021, was refused by notice dated 23 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 "Development and use of the garage/annex as a second home (C3) with overnight accommodation, cooking, shelter and washing for personal use and family members."
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by Mr Giles Pattison against Welwyn Hatfield Council. This is subject of a separate decision.

Preliminary Matters

3. I have used the description of development as stated on the application form. The Council changed the description of development to "Certificate of lawfulness for the existing garage/annex as a second home" and this description appears on the decision notice. It is clear from the evidence before me that the certificate is sought to use the building for holiday accommodation for the appellant and his family separately to the main house., i.e. as a separate planning unit. Nevertheless, this is a C3 use.
4. In his evidence, the appellant has referred to a number of items of operational development which he says benefits from the 4-year rule. However, these have not been specifically applied for in the application form. Section 4 of the application form is clear that only a use is applied for. Therefore, I shall not deal with the lawfulness of any operational development as part of this appeal.

Main Issue

5. The main issue is whether the Council's decision to refuse to issue a Lawful Development Certificate (LDC) was well-founded. This turns on whether the use for which a certificate is sought was lawful on the date the application was made.

Reasons

1. For the purposes of the Act, uses and operations are lawful at any time if—
(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
2. Thus, failure on either (a) or (b) means that the use and/or operations were not lawful on the date of the application and a certificate cannot be issued. The burden of proof falls on the appellant and the standard of proof is the balance of probability.
3. My attention has not been drawn to any enforcement notice served in relation to the developments.
4. Section 171B of the Act gives the time limits for enforcement which includes:
 - *Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.*
6. For the use of the building to be lawful, it must have been used for a 4-year period as a dwelling/second home before the certificate was applied for, i.e. a four year period before 21 December 2021. The appellant says that the 4-year period started on 16th November 2015.
7. The building was constructed, with planning permission, as a garage incidental to the bungalow known as 41 Ayot Green. At that time the garage was in the same planning unit as No 41.
8. The physical works are relevant to the question of whether there has been a material change of use¹. The appellant says he undertook the works of conversion to make the building habitable in 2015. The works include fitting a kitchen and a shower room, and a tiled space inside the building is a living and sleeping area. *Gravesham*² determined that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence and that it did not lose that characteristic if it was occupied for only part of the year, or at infrequent intervals or by a series of different persons.
9. In relation to when the physical works to the annex occurred, receipts have been submitted which include for kitchen fittings and sanitary fittings for the shower room. I note the Council's comments that some of the multiple receipts submitted may have been in connection with the main house. It may be the case that not all of the receipts relate to the appeal building. However, I have also been supplied with emails discussing the works in 2015 which indicate the work having taken place then. The delivery note/receipt for the kitchen is consistent with the kitchen that has been installed in the appeal building because I saw that the number of drawers and cupboard doors in the delivery

¹ The appellant has referred to appeal decisions APP/P4605/X/21/3268431 and APP/Z4310/X/21/3289727 in this respect.

² *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

note matches those in the kitchen which has been fitted. Statutory Declarations also confirm that the works to make the appeal building habitable were completed in 2015. On the balance of probabilities, I find that the conversion works were substantially completed in 2015 and that the conversion works resulted in a building with facilities for day-to-day private domestic existence, i.e., a dwellinghouse.

10. The appeal building has been separated off from the garden area of No 41 by the erection of fencing. The fencing and gate receipts, dated 16 September 2016, appear to reflect what has been erected around the annex. This boundary treatment and the erection of gates to the parking area of the appeal building physically separate it off from the bungalow.
11. Tenancy agreements (ASTs) say that the appeal building can be used with permission of the owner, but it is clearly not part of the unit of occupation of the bungalow as it has been specifically excluded. The Council say that the electricity comes from the bungalow. However, I understand that there is a separate meter for the appeal building, so that the appellant knows how much to pay the occupant of the bungalow. This shows some division between the two buildings. There is no reliance of those occupying the appeal building for any facilities at No 41, as all facilities are contained within the appeal building.
12. Overall, I consider that a separate planning unit has been created as there is a functional and physical separation between the bungalow and the appeal building.
13. I now turn to how the appeal building was utilised since the conversion works were undertaken. The appellant says that his family stay in the building when they visit from Australia. He also says that his mother stays in it when visiting family and friends in the area. In the appellant's statutory declaration, he says that he returns to the UK twice a year as a minimum and stays for up to 2 or 3 months at a time. He also says that he last visited the UK in August and September 2019 and has been prevented from visiting again during 2020/2021 due to the covid travel restrictions in Australia. This statutory declaration does not show a continuous use as it only describes the time periods of occupation, in vague terms, for up to 6 months in total per year. Similarly, the statutory declaration of the appellant's mother, who stays in the annex when visiting friends and family in the area, does not describe the length or frequency of her visits in any detail.
14. A statutory declaration dated 10 November 2021 from tenants of the bungalow covers the period from 24 August 2019, which is towards the end of the appellant's claimed period. It says that the appellant's mother stays regularly when covid restrictions have allowed. However, there are no clear details about the frequency or duration of these stays.
15. It appears that the building is not continuously occupied. Whilst it is not necessary to demonstrate continuous occupation, it is necessary to demonstrate a continuous use. Therefore, what happens during non-occupation is relevant. The tenant's statutory declaration says that when the annex/garage is not being occupied the appellant's vehicles are sometimes parked inside the building but the fixtures remain in situ. The appellant says that the tenant has only witnessed this parking outside of the 4-year period, however, the statutory declaration does not clarify this.

16. It is unclear from the evidence submitted whether cars were parked in the appeal building during the 4-year period. I have had regard to the contents of the Planning Contravention Notice (PCN) which was completed by the appellant. In it he states that the use of the garage is for the storage of two cars and furniture storage.
17. I appreciate that the PCN response was submitted outside of the relevant period, and I also recognise that a lawful use would not necessarily be extinguished by a later use. However, this information is relevant to activities during the claimed 4-year period. This is because there is no information about when the storage use commenced. Crucially, it shows that the building has remained capable of accommodating cars and has, according to the tenant's statutory declaration and the PCN, been used for the storage of cars when no residential occupation was taking place.
18. Parking vehicles in the building is a use which can be ancillary to a residential use but is not in itself, a residential use. If a car is stored because the owner is out of the country, that is not residential parking but is a storage use. This is regardless of whether a kitchen and bathroom remain in the building. I do not accept the appellant's argument that parking cars inside a house is the same as storing a bicycle because, unlike storing a bicycle, cars take up a lot of space and the furniture would have to be moved.
19. If there were periods of storage use, as opposed to residential use during the relevant period, this would interrupt the continuity of the residential use. The physical conversion works are relevant but they are not enough if another use has taken place during the relevant period. I acknowledge that the appellant says in his statutory declaration that *"at the time of sending the PCN I also sent photographs which showed the cars in the garage/annex, as these were the only pictures I had to hand at the time. These were taken by me when I was staying at the garage/annex in 2017 and the cars were in the space as I was working on them during the day and then moved them out when I had finished."* However, in spite of his claim that the cars were taken out at night on the date of the photos, this shows the availability of the building for garaging or a workshop within the relevant period.
20. When the PCN is considered in combination with the imprecise details about the periods of occupation of the building; the tenant's statutory declaration that cars are sometimes stored in the building; the fact that the garage doors remain and there is no evidence that they were ever removed as part of the conversion works, the evidence lacks the necessary precision to demonstrate on the balance of probabilities that the building has been continuously in use as a dwellinghouse.
21. Neither the statutory declarations nor the submitted ASTs unambiguously confirm a continuous residential use of the annex for the claimed 2015-2019 period or any other 4-year period up to the date of the application. The evidence states the building has at times been used for the storage of cars and is unclear about whether or not that storage use took place between 2015 and 2019.
22. I note comments from the appellant that a Council Officer visited on 11 October 2019. He says this is evidence of a complaint being made about the use of the building as a dwelling – indicating it was used as such. I accept that use of the building as a dwellinghouse has taken place. However, I am not satisfied that

such a use has been demonstrated in an unambiguous and precise way to have been a continuous use or the only use of the building during the relevant period.

23. The onus of proof is firmly on the appellant to provide evidence which is sufficiently precise and unambiguous to justify the grant of a certificate. Overall, I find that the appellant's evidence, on the balance of probabilities, does not meet this requirement. As with all LDC applications, it is open for fresh applications to be made if, for example, other evidence comes to light.

Conclusion

24. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of "development and use of the garage/annex as a second home (C3) with overnight accommodation, cooking, shelter and washing for personal use and family members" 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.

Siobhan Watson

INSPECTOR