



Appeal Decision

by **A Walker MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 December 2023

Appeal Ref: APP/N1920/X/22/3303067

Cottage within the grounds of New Grange, The High Ground, Blanche Lane, South Mimms, Hertfordshire EN6 3PA

- 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 Peter Ludlow against the decision of Hertsmere Borough Council.
 - The application ref 22/0142/CLE, dated 20 January 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 detached two storey cottage (C3 use) to include the subdivision of the existing plot, associated parking and access from Blanche Lane.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Based on the evidence submitted and the matters in dispute, a site visit has been deemed to be unnecessary as it would not provide any material benefit to my determination of the appeal. The parties have been given the opportunity to comment on the proposition that the appeal proceeds in this manner. As no comments were received, I have determined the appeal on this basis.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

4. The onus is on the appellant to demonstrate that, on the balance of probabilities, the use was lawful at the time of the LDC application. A development is lawful under the provisions of section 191(2)(a) and (b) of the Act if no enforcement action may be taken because it did not involve development requiring planning permission, or because the time for enforcement action against the use has expired; and, providing it does not constitute contravention of any requirement of any enforcement notice then in force. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided his evidence alone is sufficiently precise and unambiguous.
5. The application sought a Certificate of Lawful Use or Development (LDC) for the use of the appeal property as a separate dwelling to New Grange. There is no

extant enforcement notice preventing the lawful use of the building as a dwelling. Therefore, for the material change of use to be lawful through the passage of time, the appellant must show that the use of the property materially changed to a separate dwelling at least 10 years prior to the date of the application, namely by 20 January 2012, and that the use then continued for at least 10 years thereafter, without significant interruption.

6. The appeal building was granted planning permission in 2008¹ for its conversion into a granny annexe. The Council confirm a condition was imposed on the planning permission restricting the use of the building to only being occupied on the basis of it being ancillary to the primary residential use of the dwellinghouse known as New Grange and the accommodation to be created was not to be used as a separate residential unit. I have not been presented with a copy of the planning permission decision or the condition referred to. Nevertheless, the appellant does not dispute the condition was imposed on the planning permission.
7. The appellant contends the building was first occupied in 2011 by Mrs Campbell, for whom the conversion of the building into a granny annexe was intended. After Mrs Campbell's passing in February 2012, Mr and Mrs Ludlow, who were in attendance as carers, continued living in the property and state they have done so up until the time the application that is the subject of this appeal was made.
8. It is not clear what is meant by Mr and Mrs Ludlow being 'in attendance as carers.' This could mean they attended the property to care for Mrs Campbell but did not live in the building, or, it could mean they lived in the building whilst they also cared for Mrs Campbell. The email from Laurie Reynolds to the Council, dated 8 April 2022 makes reference to a previous appeal decision, which states 'Mrs Campbell moved into the annex in November 2011 when the outbuilding was granted permission for this purpose. At this point Mrs Campbell occupied the outbuilding and Mr and Mrs Ludlow (senior) and Mr and Mrs Ludlow (junior) with their two children lived together in the host dwelling.' This indicates the former, that Mr and Mrs Ludlow (junior) cared for Mrs Campbell whilst living in New Grange.
9. There is no argument made that during Mrs Campbell's occupation of the building it was not in use as ancillary accommodation connected to New Grange. The fact Mr and Mrs Ludlow were carers for Mrs Campbell whilst living in New Grange suggests it was ancillary accommodation.
10. Therefore, up until Mrs Campbell passed away, the building appears to have been ancillary accommodation. It was only when Mr and Mrs Ludlow (junior) first occupied the building that the apparent material change of use of the building from ancillary accommodation to a separate, C3 use dwelling to New Grange would likely have taken place. As Mrs Campbell passed away in February 2012, this was within the 10 year period prior to the date of the LDC application being made, ie 20 January 2022.
11. I acknowledge the copies of the electricity bills addressed to 'P J Ludlow, Garage & Office, Newgrange...' dated January 2012, April 2012, June 2012 and December 2012. However, these provide no indication that the use of the

¹ Council ref: TP/08/1792

building was at the time a separate dwelling to New Grange. In fact, the bill including the 'Details of readings and charges from 17 April 2012 to 26 June 2012' refers to the account being a 'Fixed Price Business Electricity Plan – 1 Year Nightsaver', suggesting that the building may have had a business use rather than residential at that time.

12. Council Tax has been paid on the appeal building since 2014. However, the copy of the Council Tax bill addressed to 'Mr P Ludlow, Cottage, Newgrange', dated 15/12/2014 refers to an 'Occupied Annexe Discount (50%)'. Therefore, it seems it was valued on the basis that the building was in occupation as an annexe building and not a separate dwelling. Moreover, the bill also refers to a 'Single Person Discount' suggesting that a single person occupied the building at the time, which conflicts with the appellant's contention that the Ludlow (junior) family has lived in the building continuously since 2011.
13. I also note the photographs submitted showing the kitchen, sewing area and children in the appeal building in 2012 and in 2022. However, these photographs do not show whether the building was occupied as ancillary accommodation in association with New Grange or whether it was occupied as a separate dwelling.
14. Consequently, I find the evidence in support of the use of the appeal building as a C3 use dwelling is not sufficiently precise and unambiguous. I find therefore that it fails to demonstrate that, on the balance of probabilities, the material change of use of the appeal property to a C3 use dwelling has occurred continuously for a ten-year period prior to the date of the application.

Conclusion

15. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development is 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.

A Walker

INSPECTOR