



Appeal Decision

Site visit made on 19 December 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2024

Appeal Ref: APP/M5450/X/23/3324188

62 Hutton Lane, Harrow HA3 6RD

- 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 Sanjay Perera against the decision of the Council of the London Borough of Harrow.
 - The application ref P/4386/22, dated 25 December 2022, was refused by notice dated 9 May 2023.
 - 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 'outbuilding with use of a kitchen'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development from the application form, which is given as 'outbuilding with use of a kitchen'. The appellant confirmed in their application form that they are applying for an existing use and states that the kitchen inside the outbuilding has been 'in use' for the last four years. In their grounds for application for a LDC, the appellant also ticked 'The building works (for instance, building or engineering works) were substantially completed more than four years before the date of this application'.
3. The Council refers to the application as 'addition of kitchen to detached outbuilding at rear to create self-contained unit.' on its decision notice. Section 191(4) of the Act allows the local planning authority to modify the description of the existing use, operation or other matter. However, the power is discretionary and does not empower the grant of an LDC for something totally different to what is applied for.
4. I raised with the parties whether the appellant had agreed to a change in the description of the proposal and sought clarity as to whether the description used by the Council reflects the existing use, operations or other matter which the appellant wishes to ascertain is lawful. While I have received no response from the Council, the appellant advises they did not 'acknowledge any change aligning with the Council's portrayal of the outbuilding as a self-contained unit' and that 'the outbuilding's function is supplementary to the main household's needs'. I have therefore dealt with the appeal on this basis.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

6. An application under section 191(1)(a) of the Act¹ seeks to establish whether any existing use of buildings or other land is lawful. Section 191(2) sets out that 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.
7. Planning merits form no part of the assessment of an application for a LDC which must be considered in the light of the facts and the law. In an application for a LDC, the onus is firmly on the applicant to demonstrate, on the balance of probabilities, that the development is lawful. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
8. The appellant states that an application for a LDC was granted on 12 September 2019, reference P/2850/16 for 'outbuilding at rear for use ancillary to main dwellinghouse'. While this matter is not disputed, I have been provided with no substantive details regarding the LDC that has been granted. Given its position to the rear of the main dwelling, it seems likely the LDC for the outbuilding was issued because it was considered to fall under Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO), which permits buildings etc incidental to the enjoyment of a dwellinghouse.
9. The Permitted development rights for householders: Technical Guidance (2019) advises a purpose incidental to a house would not cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen. The appellant has provided me with floor plans of the outbuilding, showing a kitchen, toilet and bedroom. The plan is dated 9 December 2022 and, given the provision of primary living accommodation, is therefore unlikely to represent the plans submitted in support of the LDC reference P/2850/16.
10. During my visit I saw that the outbuilding is laid out with a bedroom, kitchen and bathroom and has all the facilities required for day to day living. It therefore seems unlikely that the outbuilding has been constructed under permitted development rights. However, this appeal is concerned with whether the use of the kitchen (and therefore the use of the outbuilding), at the date of the LDC application is lawful, rather than whether the construction of the outbuilding is lawful.
11. A material change of use can arise when a residential planning unit is subdivided to form separate planning units. Whether there are two separate planning units will be a matter of fact and degree. If the use of the outbuilding

¹ Town and Country Planning Act 1990 (as amended)

would be part and parcel of the use of the dwellinghouse, such that the dwellinghouse and the outbuilding remain part of the same planning unit, then no material change of use will have occurred and no planning permission for the use is required.

12. I have been provided with a letter, signed by a neighbour, which advises the appellant occasionally uses the outbuilding for sleeping purposes. However, there is very little other evidence to show how the outbuilding, of which the kitchen forms part, has been used since its construction. Furthermore, there is no explanation as to why the building is equipped with cooking facilities, if it is only used for occasional sleeping. It has therefore not been shown, on the balance of probabilities, that the occupant's use of the outbuilding remains part and parcel of the residential use of the main dwelling and is therefore within the same planning unit.
13. I am obliged to issue an LDC for any use or development that is shown to be lawful on the facts and evidence. Section 171B of the Act sets out time limits for taking enforcement action. The relevant period for the change of use of any building to use as a single dwellinghouse is 4 years beginning with the date of the breach and the relevant period for other material changes of use is 10 years. When considering when a material change of use occurred, the physical state of the premises is very important but is not decisive and actual or intended or attempted use is important but not decisive.
14. A photograph dated 21 December 2018 shows the kitchen was not fully fitted, with the electrics incomplete and the cooker hood not yet installed. A domestic electrical installation certificate for the 'rewire of outbuilding and new consumer unit' is dated 4 January 2019², suggesting the electrical work was finished after 25 December 2018 and a building control certificate, certifying the erection of a detached habitable outbuilding as complete, is dated 9 January 2019, which is also after 25 December 2018.
15. The evidence provided points towards the outbuilding not being substantially completed by 25 December 2018³. Consequently, if a material change of use of the outbuilding has occurred, it is unlikely to have occurred by 25 December 2018, because a building without cooking facilities is unlikely to meet the day to day requirements of its occupants.
16. Moreover, given the kitchen was installed around the time the building is certified to have been completed in the building control certificate, it seems likely it was constructed with the facilities required for day to day living from the outset. Where a building was constructed unlawfully and used as a single dwellinghouse from the outset, meaning that there was no change of use, 10 years is the relevant immunity period for the use.
17. Thus, I find the appellant's evidence is not sufficiently precise and unambiguous to show, on the balance of probabilities, that at the date of the LDC application the use of the outbuilding was lawful and so the appeal must fail.

² Also supported by a signed letter from the electrical installation company.

³ Namely 4 years prior to the date of the LDC application.

Conclusion

18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of 'outbuilding with use of a kitchen' 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.

M Savage

INSPECTOR