



Appeal Decision

Site visit made on 17 April 2024

by M P Howell BA (Hons) PG Dip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th May 2024

Appeal Ref: APP/G5180/X/22/3298744

8 Austin Avenue, Bromley BR2 8AJ

- 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 Les Baker against the decision of the Council of the London Borough of Bromley.
 - The application ref 22/00338, dated 17 January 2022, was refused by notice dated 29 April 2022.
 - The application was made under section 192(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 proposed use of an existing outbuilding as a granny annex.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Les Baker against the Council of the London Borough of Bromley to refuse the certificate of lawful use. This application is the subject of a separate decision.

Preliminary Matters

3. In cases such as this, the onus rests with the appellant to make their case. The evidence does not need to be corroborated by independent evidence to be accepted, provided the evidence alone is sufficiently precise and unambiguous on the balance of probability. Matters such as planning policies and the effect of the development on the character and appearance of the area and neighbour's living conditions are not relevant. My determination is made solely on matters of fact, planning law, and application of judicial authority.
4. The appellant has submitted a Supporting Statement as well as a site and block plans with the application. It is claimed that the linked extension that forms part of the existing outbuilding is lawful in dimension and position, complying with the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The proposed use involves the appellant's mother in law using the existing outbuilding as a granny annex. It would be a swap with the appellant's daughter (and her family) who lived in the annex at the time of the application. It is indicated that the appellant's mother in law is disabled and wholly reliant upon her family who live in the main dwelling at 8 Austin Avenue. It is also indicated that the existing kitchen in the outbuilding would be removed.

5. The appeal submissions also include 13 witness statements from the appellant, neighbours, friends and family, signed and dated between 29 September 2021 and 29 October 2021. A copy of the Council's Decision Notice, a copy of an Enforcement Notice dated 31 May as well as correspondence between the appellant and the Council between March and April 2022. A copy of a legal judgement, *Uttlesford DC v SOS and White [1991] 2 PLR 76*, has also been provided.

Main Issue

6. The main issue is whether the Council's decision to refuse to grant the LDC for the proposed use of the existing outbuilding as a granny annex was well founded.

Reasons

7. An application under section 192(1)(a) of the Town and Country Planning Act (1990 Act) seeks to establish whether any proposed use of buildings or other land would be lawful at the time of the application. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: a) No enforcement action may 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 enforcement notice then in force.
8. Historical appeal decisions and an enforcement notice served on the outbuilding are referred to in the submissions and are material to the determination of this appeal. These include a planning application refusal and subsequent dismissed appeal for the existing building¹. Appeals were also made against the Enforcement Notice (Notice) served on 31 May 2019². The initial appeal decision against the Notice was challenged in High Court under Section 289 of the 1990 Act. The decision was quashed, and the matter was remitted to the Secretary of State for re-hearing and determination in accordance with the opinion of the court. In redetermining, the Inspector dismissed the most recent enforcement appeals and upheld the Notice with variations.
9. Although the appellant has set out that the most recent appeal decision on the Notice was being challenged, I have no information that indicates if the challenge was successful, and the decision has been quashed. As such, based on the evidence before me, the Notice was upheld and remains in force. In brief, the varied Notice requires the removal of the linked extension, the reinstatement of the two former outbuildings to their previous condition and a return to their previous use as annexes to the main dwelling. With the benefit of my site visit, it was clear that the existing outbuilding remains in place and no works have been carried out to remove the linked extension and reinstate the two outbuildings to their previous condition. Accordingly, the existing outbuilding is currently in contravention of the requirements of the Notice served on 31 May 2019.
10. The appellant has not claimed that the requirements of the Notice have been complied with but contends that an application for an LDC proposed under section 192 is not subject to the requirements of section 191 (2)(b) of the 1990 Act. The appellant considers that section 191(2) is phrased in the present tense and is only relevant to LDC applications for existing operations and uses. Accordingly, the appeal turns on whether a proposed use under section 192 of

¹ Council reference DC/17/03134/FULL6 and subsequent Appeal reference APP/G5180/D/17/3189698

² Appeals references APP/G5180/C/19/3231907 and APP/G5180/C/19/3231908

the 1990 Act is prohibited by an active enforcement notice that is in force on the building.

11. I have had regard to the appellant's position, but section 191(2) sets out the circumstances in which 'uses and operations are lawful at any time' for the purposes of the 1990 Act. This is setting out the parameters when development can be lawful, whether existing or proposed. This is supported by the advice and guidance set out in the Planning Practice Guidance (PPG), which confirms the 'statutory framework covering "lawfulness" for lawful development certificates is set out in section 191(2) of the 1990 Act.'³ Hence, the specific reference to section 191 of the 1990 Act on any LDC issued in respect of proposed uses and operations. Consequently, section 191(2) of the 1990 Act applies to section 192 as well as section 191 applications and appeals.
12. I acknowledge that there are situations where building operations equivalent to the linked extension and existing outbuilding can be 'permitted development' under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015. However, the previous Inspector found that the linked extension was part and parcel of and facilitated the material change of use of the outbuilding to a self-contained residential unit. As such, the linked extension, or the existing outbuilding (including the linked extension) cannot be permitted by Class E, especially when it facilitated the unlawful use of the existing outbuilding and contravenes the requirements of the Notice in force.

Conclusion

13. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the proposed use of the existing outbuilding as a granny annex was well-founded and that the appeal should fail. Accordingly, I will exercise the powers transferred to me in section 195(3) of the 1990 Act (as amended).

M. P. Howell

INSPECTOR

³ Paragraph: 003 Reference ID: 17c-003-20140306