



Appeal Decision

by H A Orr MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th June 2024

Appeal Ref: APP/E2205/X/23/3318847

24b Workshop, Bentley Road, Willesborough, TN24 0HP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Chris Brian against the decision of Ashford Borough Council.
 - The application Ref PA/2022/2517, dated 26 September 2022, was refused by notice dated 30 January 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 for the use of outbuilding as an independent dwelling. Based on continuous use of 4 years.
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Decision

1. The appeal is dismissed.

Procedural and background matters

2. Firstly, I should explain that the planning merits of the development are not relevant to this appeal, which relates to an application for a lawful development certificate (LDC). In an LDC appeal the burden of proof is on the appellant to show that, on the balance of probability, the development was lawful, at the time of the application. The relevant date for determining this appeal is 26 September 2018, with the appeal determined on the basis of the four-year rule.
3. It is necessary to clarify the exact nature of the proposal, as the description of the development was not set out concisely on the application form. It differs slightly from the more succinct description reflected on the Council's decision notice and the appellant's subsequent appeal form. S191(4) allows a discretionary power for an Inspector to modify the description of the existing use to clarify the development that is being applied for. Having regard to the evidence, the development applied for is more precisely described as, 'The use of the former workshop outbuilding as a separate dwelling house'.
4. Similarly, the address of the development differs between the various submitted documents. The appellant's application form and the Council's decision notice both refer to the building as '24b Workshop, Bentley Road, Willesborough, TN24 0HP'. Conversely, the appellant in his appeal form and statement, identifies the appeal building as '24C'. However, since both the application form and the Council's decision notice refer to 24b, for the purposes of determining this appeal, I shall do the same. I have considered the appeal on this basis and this is reflected in the above heading.

5. The parties are agreed that the appeal can be determined on the basis of the written evidence and that a site visit is not necessary. I have no reason to conclude otherwise. It is however, pertinent that evidence regarding matters of fact, such as the period and manner of occupation of the building carry lesser weight, than would apply if the evidence were tested under oath at an Inquiry.

Main issue

6. The main issue for determining this appeal is whether the Council's decision to refuse the LDC application was well founded or not, based on the available evidence.

Reasons

7. The application site forms part of the wider property at 24 Bentley Road. Planning permission was granted (07/00280/AS) to 'convert 24 Bentley Road into 2 no. self-contained 2 bed flats with 2 storey rear extension and external staircase to side' in 2007. It is understood that this development was implemented, although I have not been provided with plans, or details of the current layout of the building. The appeal building, which is understood to have been a former workshop, lies to the rear of this property.
8. From the submitted plans there is a narrow access from Bentley Road that leads to the appeal site. There are two buildings shown within the red lined area, with the appeal building being the larger of the two outbuildings, as identified on the photographs provided by the appellant.

The case for the appellant

9. From the evidence the building benefits from an open plan living room/kitchen, one bedroom and a bathroom. It also has its own garden, an outbuilding and a private access. It is not disputed by the Council that it contains all of the facilities reasonably required for day to day living. I have no reason to come to a different view.
10. It is the appellant's case that there is sufficient evidence to show that 4 years continuous use of this building has taken place. To support his claim, copies of tenancy agreements and bank statements have been submitted to demonstrate that the building has been continuously occupied and used as an independent residential dwelling for more than 6 years.

The case for the Council

11. It is the Council's case that the evidence submitted by the appellant is imprecise, in so far as, there are gaps in the tenancy agreements and insufficient information about how the building has been used throughout the relevant period. They submit that there is no clear address on the documents to link the appeal building to the submitted evidence.

Assessment

12. Planning Practice Guidance sets out that an appellant is responsible for providing sufficient information to support an application for a Lawful Development Certificate. Thus, the onus of proof lies with the appellant, with the relevant test of the evidence, being on the balance of probability.

13. I have already found that the building has all of the facilities required for day to day living, and I have nothing to suggest that this has not been the position throughout the relevant period. The main area of dispute is therefore, whether the appeal building has also been used as a separate dwelling, throughout the relevant period.
14. Looking first at the three tenancy agreements. The first is dated 3 January 2012 and refers to a named tenant. It is for an initial six months with an expiry date of 3 July 2012. It confirms that the appellant is the landlord and the subject property as the 'Studio apartment – 24 Bentley Road'. It also has a brief description of the property that is being let. This document has been annotated with a hand-written note, 'to planning officer' stating that it 'covers Jan 12 – to Nov 13'.
15. Similarly, the second tenancy document is dated 2 December 2013, with a second tenant for six months ending 2 May 2014. A similar hand-written note indicates that it 'covers Dec 13 – April 14'.
16. The third tenancy document is dated 2 May 2014 to a third tenant for six months, expiring 2 November 2014. The annotated note states that it 'covers May 14 – May 18'.
17. I acknowledge that the substantial gaps in the tenancy agreements, could be explained by an informal extension being granted to each tenant, until such time as they gave notice that vacant possession would be returned to the appellant. However, there is only the later, unsigned and unidentified hand-written note, to indicate that this was the case.
18. The agreements all relate to a property known as the 'Studio apartment – 24 Bentley Road'. This differs from the address on the application form, the appellant's statement and the Council's decision. Hence it is unclear whether this is another name for the appeal building, or whether it relates to one of the other units at No 24. Similarly, the property descriptions on the tenancy agreements provide little assistance, as they could also relate to any of the units being let at the property. This anomaly has not been adequately explained, nor is it clear from the evidence submitted.
19. Turning to the Bank Statements. These show monthly Bankers' Automated Clearing System (BACS) transactions, starting from 03/12/12 to 01/05/2018, from the same named tenants as appear on the tenancy agreements. However, the statements give no additional details about exactly what these transactions relate to. The copies of the Bank Statements appear to have been annotated later in red, to reflect when the use as a residential dwelling started and linking the names on the BACS credits to the relevant tenancy agreements.
20. I accept that the bank statements appear to demonstrate that monthly BACS payments have been made by the three tenants throughout the relevant period. However, they fall short of establishing, with any degree of confidence, that they relate directly to the appeal building, rather than any of the other units at No 24.
21. I acknowledge that evidence should not be rejected simply because it is not corroborated. However, the appellant's own evidence must be sufficiently precise and unambiguous to show that, it is more likely than not, that the use of the former workshop outbuilding as a separate dwelling house, has

continued throughout the relevant period. It is a striking feature of this appeal that the appellant's evidence is not supported by any statements, affidavits from tenants or third parties, to substantiate the dates the building was occupied, details of those tenants and the nature of their occupation.

22. For the above reasons and based on the evidence I have before me, I am not satisfied that the appellant's evidence is sufficiently precise and unambiguous, to demonstrate that on the balance of probability the use of the appeal building known as '24b Workshop, Bentley Road, Willesborough, TN24 0HP', has resulted in the creation of a separate dwelling throughout the relevant period. The decision of the Council was therefore, as a matter of fact and degree, well founded.

Conclusion

23. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of 'The use of the former workshop outbuilding as a separate dwelling house', 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.

Hilary Orr

INSPECTOR