

Appeal Decision

Site visit made on 18 September 2024

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 September 2024

Appeal Ref: APP/N5090/X/23/3323444

56 St Marys Crescent, Hendon, Barnet, London, NW4 4LH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Alexandru Sirghi against the Council of the London Borough of Barnet.
 - The application ref 23/0982/191 is dated 7 March 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 described as 'The building has been used as guest house, play room for the use of my family and guests to the house. it is used on a daily basis without any interaptions [sic] since 2011 when we purchased the property'.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use and operations which are found to be lawful.

Preliminary Matters

2. An application under S191(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act) seeks to establish whether, at the time of the application, any existing use of buildings or other land is lawful.
3. S191(2) of the 1990 Act explains that uses and operations are lawful if no enforcement action may be taken in respect of them because they did not involve development or require planning permission or because the time for enforcement action has expired, and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
4. The burden of proof lies with the appellant to make his case on the balance of probabilities. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, that is enough. Evidence should not be rejected simply because it is uncorroborated.

5. I note the submission from an interested party who sets out an objection to the use of 'garden bungalows' for commercial rental. I also note that the Council's case refers to its development plan policies and to the National Planning Policy Framework. However, a LDC is determined on the basis of fact and law. Consequently, matters relating to planning merits can form no part of my assessment as to whether a LDC should be granted.

Main Issue

6. The appeal follows the failure of the Council to give notice within the prescribed period of its decision on the LDC application. The Council has subsequently clarified its view that the appellant's evidence is not sufficiently precise and unambiguous to justify the grant of a LDC on the balance of probabilities.
7. The main issue therefore is whether refusal of an LDC would have been well-founded.

Reasons

8. The appeal relates to a building situated in the rear garden of the residential property at No 56 St Marys Crescent. Although the application was made in respect of its use, the appellant seeks to highlight that the building was constructed in 2009 by the previous owner. The Council similarly confirm that it has been in situ for more than 10 years and, based on the evidence before me, I find no reason to disagree.
9. The building is therefore immune from enforcement action by virtue of the time limits of s171(B)(1) of the 1990 Act, having been substantially completed more than four years prior to the date of the application, on the balance of probabilities.
10. The appellant states that the building has been used solely by family and friends as an office, playroom and spare bedroom/ guest house, on a daily basis and without interruption since he purchased the property in August 2011. He says the building has been part of the main house and that the LDC is required 'to make the use of the outer-house legitimate'.
11. The Council observed during its site visit in April 2023, that the building contained a bedroom, small bathroom and kitchenette. Officers noted a double bed with bed linen, some furniture, a television, kitchen units, a small sink, fridge and wall power sockets, but no cooking facilities. The Council also observed that the rooms were clear of personal possessions and that the building had a lockable front door.
12. Those observations are largely consistent with the appellant's description and his explanation that the building contains no cooking facilities or a washing machine, with those facilities being provided in the main house.
13. S55(2)(d) of the 1990 Act provides that the use of land or buildings within the curtilage of the dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such is not development. However, it is implicit in the requirement for there to be some functional relationship that an incidental use will not be the same as the primary use.

14. The use of the outbuilding as a home office by family members may be considered incidental to the primary residential use of the dwelling, being a functional relationship that is normally found. However, where an outbuilding within the curtilage of a dwellinghouse provides all the facilities necessary for independent day-to-day living, that points to a residential use, rather than for a purpose incidental to the enjoyment of the dwellinghouse.
15. In such cases, the residential use of the outbuilding may be regarded as part and parcel of (rather than incidental to) the use of the dwellinghouse, even if the outbuilding contains the facilities required for use as a self-contained dwelling. However, a material change of use would arise if the main dwelling and outbuilding are sub-divided to form separate planning units. In such cases it is necessary to assess the physical and functional links between the use of the outbuilding and main dwelling and consider whether a separate planning unit has been created as a matter of fact and degree.
16. The appellant asserts that the building has been used without any alterations by his family, whereas the Council state that it is apparent from Google [Earth] that it has been upgraded under the ownership of the appellant within the last ten years. In that context the Council seeks to highlight that 'the basis of occupation may be critical to the determination – if for example, the previous play room and office uses gave way to a guest house at that time [presumably after the works took place] and it was akin to a hostel-type operation'.
17. However, the internal configuration of the building is broadly the same in the appeal floor plans and the layout depicted in the sales particulars from 2011. Moreover, I have nothing before me which suggests a guesthouse type use and it is unlikely that the appellant would run a hostel type arrangement in the back garden of his family home.
18. Nevertheless, I agree that the appellant's reference to use of the building as a 'guest house' could be interpreted in a number of ways and as such is ambiguous. However, he also refers to the use as a spare bedroom and guest bedroom for family and friends and there is no evidence, or indeed suggestion of a commercial type arrangement, applying the everyday connotations of the term 'guesthouse'. Nevertheless, it would not be appropriate to use such an ambiguous description for any LDC granted in this case.
19. The Council seeks to highlight that no further evidence is provided of the use of the outbuilding under the ownership of the appellant and that although a general statement about the use is given in the covering letter, no further details are given to elaborate. For example, the Council says there is no indication of the time periods of any former uses and there are no other photographs or formal statutory declaration(s).
20. I could understand those expectations if an LDC was being sought for an independent unit of residential accommodation, but that isn't the case. Although the description of the building in the 2011 sales particulars describes it as a separate studio flat detached from the house with an ensuite shower room, the 2011 mortgage valuation form describes the outbuilding as a non-self contained brick and tile au pair/granny flat in the rear garden.

21. Moreover, the appellant says the building has been used in the same way since he bought the property in 2011. That is some 12 years prior to the date of the application, so even if it was previously used as a separate unit of residential accommodation, that use will have been supplanted by the use described in the application.
22. The Council refer to a statement made by a complainant raising concern over the use of the building by various long (presumably term) residents and that merited further investigation. However, I have no details of that complaint and, whilst it may have been reiterated in response to consultation by the Council, no evidence has been provided to that effect. The reference is therefore ambiguous and unsubstantiated, and it may be that any long-term occupation was by a family member as part and parcel of the residential use of the main dwelling, rather than being used independently of it.
23. In any case, I have no evidence that the outbuilding has ever been let to a tenant or similar, and no other evidence is before me which points to a use of the building as a separate self-contained residential unit.
24. The explanation that the building is used as a playroom, spare/guest bedroom and office in connection with the main house is sufficiently precise and unambiguous for the purposes of this case. Indeed, such usage is unsurprising given that the building and its facilities were likely in place when the appellant purchased the property. Moreover, the Council has provided no evidence itself, nor from any others, to contradict or otherwise make the appellant's version of events less than probable.
25. It is therefore likely that the building was used for either incidental or ancillary purposes in connection with the residential use of the main dwelling - which is not development, and for residential purposes that were integral to the residential use of the main dwelling, such that both formed part of the same planning unit, functionally occupied as a single household - which did not result in a material change of use requiring planning permission.
26. As no development has taken place the uses described are lawful, regardless of whether they subsisted, without material interruption for a period of 10 years or more, prior to the date of the application.
27. Under s191(4) of the 1990 Act, any LDC granted must describe the existing use or development found to be lawful. That may not be exactly what was written on the application form, and so s191(5) enables a local planning authority to modify the description. An Inspector may exercise that power on appeal and is indeed obliged to issue a LDC for any existing use or development that is shown to be lawful on the facts and evidence.
28. In the event that I am minded to allow the appeal, the Council has suggested that the description of the use of the outbuilding should be refined to better reflect the perceived ancillary nature of the building, for example, 'retention of outbuilding for use as ancillary guest accommodation'. The appellant has also agreed to that description.
29. Notwithstanding that 'retention' is not an act of development, as explained, the building has likely been used for residential purposes as well as ancillary or incidental purposes. The description should therefore be modified to the

erection of an outbuilding and its use for incidental, ancillary and residential purposes, namely home office, playroom and guest bedroom, in connection with the main dwelling, forming part of the same planning unit and functionally occupied as a single household.

Conclusion

30. For the reasons given above I conclude that it would not have been well-founded had the Council refused to grant a LDC, and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Richard S Jones

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191

(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)

ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 7 March 2023 the use and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended) (the 1990 Act), for the following reasons:

On the balance of probabilities the outbuilding operations were substantially completed more than four years before the date of the application so the time for taking enforcement action has expired by virtue of s171B(1) of the 1990 Act.

By virtue of s55(2)(d) of the 1990 Act the use of the outbuilding for purposes incidental to the enjoyment of the main dwellinghouse, such as a home office or playroom, does not amount to development requiring planning permission.

The residential use of the outbuilding was part and parcel of the use of the main dwellinghouse, forming part of the same planning unit, functionally occupied as a single household. Consequently, a material change of use and the creation of a separate planning unit requiring planning permission has not occurred.

Signed

Richard S Jones

INSPECTOR

Date: [26 September 2024]

Reference: APP/N5090/X/23/3323444

First Schedule

The erection of an outbuilding and its use for incidental, ancillary and residential purposes, namely home office, playroom and guest bedroom, in connection with

the main dwelling, forming part of the same planning unit and functionally occupied as a single household.

Second Schedule

56 St Marys Crescent, Hendon, Barnet, London, NW4 4LH

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use and operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: [26 September 2024]

by Richard S Jones BA(Hons), BTP, MRTPI

Land at: 56 St Marys Crescent, Hendon, Barnet, London, NW4 4LH

Reference: APP/N5090/X/23/3323444

Scale: Not to Scale

56 St Marys Crescent , NW4 4LH



0 50
Metres



Plan Produced for: Alexandru Sirghi
Date Produced: 07 Mar 2023
Plan Reference Number: TQRCM23066152443652
Scale: 1:1250 @ A4

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