
Appeal Decision

Site visit made on 26 September 2024

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 29th October 2024

Appeal Ref: APP/W3005/X/23/3330359
79D Outram Street, Sutton in Ashfield, Notts NG17 4BG

- The appeal is made by Sarkis Mehseredjian under section 195 of the Town and Country Planning Act 1990 against a refusal by Ashfield District Council to grant a lawful development certificate.
 - The application Ref: V/2023/0410, dated 7 July 2023, was refused by notice dated 6 September 2023.
 - The application was made under section 191(1)(a).
 - The development for which the certificate is sought is the use of an outbuilding to the rear of 79 Outram Street as a dwelling (known as flat 79D Outram Street).
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use relating to the existing use, which I consider to be lawful at the time of the application.

Reasons for the decision

2. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on the lawfulness of the use at the time of the application. The planning merits of the use are not relevant to the appeal and there is no planning application before me.
3. The Council refused the application for the following reason: -

"The outbuilding which is the subject of this application forms part of a larger planning unit. The conversion of the outbuilding to a dwelling is considered to not be lawful as it is in breach of condition 5 of planning application V/2019/0160. Application V/2019/0160 granted consent for a change of use of ground floor from A5 hot food takeaway to residential to create 1 studio and 1 flat. The application has been implemented. Condition 5 required that prior to occupation of the approved ground floor flats, the amenity space and bin and bike storage shall be provided in accordance with Drawing No.SM-002 (Existing and Proposed Ground Floor Plans). This storage was shown within the outbuilding that is the subject of this application therefore the conversion of the outbuilding is in breach of condition 5 and a Certificate of Lawfulness cannot be granted."

4. The Council's case is based on their assertion that the 'ten-year rule' applies to the application for the certificate. The factual information provided by the appellant is not in dispute to a significant extent. At the time of the application V/2019/0160 the existing use of both floors of the outbuilding was for storage. The approved Drawing No.SM-002 shows that the use of the upper floor would continue as storage and the ground floor would be converted to a facility for bins and bike storage. Condition 5 of permission V/2019/0160 required this facility to be provided before the two dwellings approved by V/2019/0160 were occupied. This did not happen. Instead, the outbuilding was converted into an additional, two-storey, self-contained flat. By the time application V/2023/0410 was made for the lawful development certificate the evidence available to me indicates that on the balance of probabilities the outbuilding had been used as a two-storey self-contained flat continuously since August 2018.
5. Section 191 stipulates that uses and failures to comply with planning conditions are lawful if the time for taking enforcement action against them has expired. Under section 171B(2) (as it applies in this appeal), where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. The Court of Appeal held in the case of *First Secretary of State v Arun DC & Brown* [2006] EWCA Civ 1172 that section 171B(2) applies where a building is being used as a dwellinghouse in breach of a condition which serves to prevent that use.
6. The 'four-year rule' therefore applies to the application under consideration in this appeal and the Council's assertion that the 'ten-year rule' applies is not well-founded. The appeal has therefore been allowed and, as required by section 195(2), a certificate of lawful use has been granted.

D.A.Hainsworth

INSPECTOR