
Appeal Decision

Site visit made on 10 December 2018

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 January 2019

Appeal Ref: APP/R5510/X/18/3206551

The Barns, 204 Northwood Road, Harefield, Uxbridge UB9 6PT

- 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 & Mrs P J Masterson against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 72792/APP/2017/4351, dated 02 December 2017, was refused by notice dated 07 February 2018.
 - The application was made under section 192(1)(b) 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 conversion of ancillary outbuilding to residential annex.
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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 proposed use which is considered to be lawful.

Main Issue

2. An application for an LDC is not an application for planning permission. Its purpose is to ascertain whether specified uses or operations would have been lawful on the date that application was made. As such, the planning merits of the development in question are not relevant in the determination of the appeal which must be made having regard to the facts of the case and any relevant judicial authority. The main issue in the determination of the appeal is whether the Council's decision to refuse the application was well-founded.

Reasons

3. The proposal, as described on the application form, is for the conversion of an existing outbuilding to form a residential annex to the dwellinghouse known as The Barns. Whilst that description is broadly accurate the plans show that only part of the outbuilding would be converted to residential use, with part being retained for storage purposes associated with the existing dwelling. Thus, a more accurate description would be the "conversion of part of an ancillary outbuilding to a residential annex".
4. The Barns, as the name suggests, was originally an agricultural building which was converted into a dwelling in the early 1990s following the grant of planning permission in 1988. The outbuilding in question sits in between the dwelling and Northwood Road and the sense of enclosure created by the structure essentially results in an open courtyard around the entrance to the house.

Little information has been provided about the origin of the outbuilding but judging by its design, means of construction and likely age, I suspect that it also had an agricultural origin and was converted to use as an outbuilding as part of the conversion of the main house.

5. Thus, the present position is one of a single dwellinghouse within a substantial garden, with an associated outbuilding that is used for storage. There is little doubt that the dwelling, the outbuilding and the land associated with the dwelling is currently a single planning unit.
6. The first part of the Council's stated reason for refusal states that the proposal would not amount to 'permitted development' under the provisions of Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). However, that part of the GPDO relates to the provision of new buildings within the curtilage of a dwellinghouse for a purpose incidental to the enjoyment of the dwellinghouse. What is proposed here is not the provision of a building because the outbuilding already exists.
7. The appellants do not seek an LDC on the basis that the development would be permitted under the provisions of the GPDO but on the basis that no material change of use would arise if the building was used for a purpose that would be ancillary to the existing dwellinghouse. In other words, their argument is that the use of the outbuilding as an annex would not amount to development as defined by the Town and Country Planning Act 1990 (the Act).
8. Section 55(1) sets out the meaning of development for the purposes of the Act and that includes the making of a material change of use in the use of any buildings or other land. Section 55(2) clarifies a number of operations or uses that "shall not be taken to involve development". As set out at paragraph (d) that includes the use of any buildings within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse.
9. It is commonly held that the term "incidental to the enjoyment of the dwellinghouse" implies that the intended use should be subordinate to the main residential use of the property. Primary accommodation such as bedrooms, kitchens or living rooms are generally regarded as forming part and parcel of the dwelling's normal facilities as opposed to being "incidental" to the enjoyment of the dwellinghouse in the way that a garage or summerhouse would be for example.
10. In this case, the proposal would involve the creation of an additional bedroom, a living area, a kitchen and a bathroom. That would amount to additional primary accommodation that could not be described as incidental to the enjoyment of the existing dwellinghouse. However, even though the use may not be "incidental" it does not automatically follow that a material change of use would occur if those facilities were provided.
11. The use of the land and buildings would still be residential and the key question to be considered is whether the creation of the annex would result in the formation of a separate dwellinghouse and a new planning unit. Under section 55(3)(a) of the Act the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used. Thus,

- where a house is divided into two or more houses it is likely that separate planning units will be created.
12. Similarly, if an outbuilding within the curtilage of a dwellinghouse was provided with all the facilities required for day to day living, including its own services, garden space and entrance door and subsequently occupied in a manner that was unconnected with the dwellinghouse it is likely that a separate planning unit would be created and planning permission would be required for the material change of use involved in the formation of a new dwellinghouse.
 13. However, whether the conversion of a building for use as an annex will involve the creation of a separate planning unit and independent unit of occupation will be a matter of fact and degree in any given case. In the Uttlesford¹ judgement referred to by the appellant it was held that there is no reason in law why the provision of an annex for an elderly relative containing all of the facilities for day to day living would automatically become a separate planning unit.
 14. The precise facts and circumstances of that case are not before me, other than as reported in the transcript of the judgement. It appears that a garage had been converted to provide a "granny annex" for the mother of the property owner but it was subsequently occupied by his mother-in-law. The transcript describes "some very small separate living accommodation" which is an indication that the size of the converted space was not large. The elderly relative was provided with her own bedroom, bathroom, a lavatory, small kitchen, somewhere to sit, and her own front door".
 15. The overall impression is of a modestly sized annex containing all of the facilities required for independent living, albeit of a small scale, but an elderly relative who was still reliant upon support and facilities in the main house, notwithstanding the facilities that were available within the annex.
 16. In the present case, the converted building would be occupied by the current owners of The Barns who are in their 70s. Their daughter and son-in-law would move into The Barns. The daughter is a registered nurse and it is said that regular meals would be cooked for the appellants in The Barns and that assistance would be provided in terms of cleaning the annex and in terms of on-going care as the appellants reach advanced years. The site would remain in the ownership of the appellants and their daughter and would not be split as separate titles, or let to tenants.
 17. In terms of layout, the single access onto Northwood Road would serve both the house and the annex and the proposed layout plan indicates that there would be no demarcation to separate the annex from the house in terms garden space or parking areas. The existing garden and hardstanding would be unaltered. I have already noted that the outbuilding sits to the north of the dwelling and the entrance doors of both would open onto the open courtyard, providing a close relationship in physical terms between annex and house. The statement suggests that there would be no separate postal address and water, gas and electricity would be provided from the main house with no separate billing.
 18. All of those factors would indicate that there is no intention to create a separate unit of occupation. The floor space dedicated to residential use within

¹ Uttlesford District Council v Secretary of State for the Environment & White [1991] 2 PLR 76

the annex would not be unduly large in comparison to the associated dwelling but the layout would provide comfortable accommodation that could easily be used without reliance on the adjacent house.

19. I am mindful that the building would be occupied by a couple and not a single person, at least in the first instance. In many cases, a granny annex is just that and will be utilised for a single relative who relies upon care and assistance from those living in the main house. Without wishing to generalise it strikes me that there is a greater chance that a couple in their 70s would live independently of the main dwelling than an older single person on the basis that they will be in a position to support one another, socialise together and share domestic tasks. There is no indication that the appellants have any health issues and most people in present times continue to lead active and independent lives into their 70s. There is nothing to indicate that the appellants need any assistance with running their household and the proposal appears to be driven primarily with a view to downsizing as opposed to meeting any current healthcare needs.
20. However, although the appellants would occupy the building as a couple I am of the view that need not be decisive in the question of whether a new planning unit would be formed. The specific circumstances indicate that the property as a whole, including The Barns and the annex, would be occupied by an extended family who would share domestic tasks including cooking, cleaning, putting out waste collections and maintaining the garden. I am also persuaded by the intimate physical relationship between the dwelling and the annex, the lack of any physical sub-division of the garden, driveway or parking areas, the fact that no separate address would be created and that utilities would be billed as a single property.
21. Therefore, on the balance of probability, I am satisfied that no separate planning unit would be created and, consequently, that no material change of use would occur. Accordingly, the proposal does not involve development for which planning permission is required and would have been lawful at the time the application was made.
22. The Council's reason for refusal alleges that the building would be "capable of independent occupation from the main dwelling". Whilst the building may be capable of occupation in a different manner, for the reasons given I am persuaded that use in the manner suggested by the appellants would not result in a separate planning unit. I have assessed the lawfulness of the proposal on that basis and have no reason to doubt that it is a true reflection of how they intend to use the property. My decision does not certify that the use of the property would be lawful if used in a different manner from that put forward or if circumstances were to change in future.
23. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the conversion of part of an ancillary outbuilding to a residential annex was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Chris Preston INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 02 December 2017 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use of part of the outbuilding as a residential annex associated with the primary residential use of The Barns, 204 Northwood Road, Harefield, Uxbridge, would not result in the formation of a separate planning unit or independent unit of occupation and no material change of use would occur, provided that the property was used in the manner set out in the application and the associated 'Statement of Evidence', dated December 2017, prepared by Paul Dickinson & Associates. Consequently, the use of the outbuilding as an annex does not involve development in the meaning of the Act.

Signed

Chris Preston

Inspector

Date 08 January 2019

Reference: APP/R5510/X/18/3206551

First Schedule

The conversion of part of an ancillary outbuilding to a residential annex, as shown on plans numbered 10789 105 revision P2 and 10789 103 Revision P1.

Second Schedule

The Barns, 204 Northwood Road, Harefield, Uxbridge UB9 6PT

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 08 January 2019

by **Chris Preston BA(Hons) BPI MRTPI**

Land at: The Barns, 204 Northwood Road, Harefield, Uxbridge UB9 6PT

Reference: APP/R5510/X/18/3206551

Scale: Not to scale

