

Appeal Decision

by **John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04 September 2023

Appeal Ref: APP/R5510/X/22/3309279

105 Cranborne Waye, Hayes, Middlesex UB4 0HR

- 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 Mrs Jenny Drummond against the decision of the London Borough of Hillingdon.
 - The application ref 38615/APP/2022/1543, dated 30 June 2022, was refused by notice dated 25 August 2022.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which an LDC is sought is existing use of annexe as a one-bedroom flat.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The description of the use for which an LDC is sought has been taken from the Council's refusal notice. It accurately describes the use.
3. A site visit has been deemed unnecessary in this case as the decision depends solely upon an assessment of documentary evidence.

Applications for costs

4. The Council has made an application for costs against Mrs Drummond. This application is the subject of a separate decision.

Reasons

5. 105 Cranborne Waye is an end-terraced two-storey dwelling with a side elevation to Quebec Road. At the rear of the dwelling is a detached single storey building, known as the annexe, which was converted to a gym/games room from a garage pursuant to planning permission 38615/APP/2006/833. Between the dwelling and the annexe is a garden area. The Appellant maintains that the annexe has been occupied as a separate flat following its conversion from a garage and that this use is immune from enforcement action and is thus lawful.

6. The onus of proof is on the Appellant who must provide sufficient precise and unambiguous evidence to justify a conclusion that, on the balance of probability, the use of the annexe as a one-bedroom flat has occurred uninterrupted for a four-year period. The four-year period can be, but does not have to be, the four years immediately prior to the date of the application. It can be any four-year period but the then established use, which would be immune from enforcement action, must not be subsequently abandoned.

7. A Tenancy Agreement for sole occupation of the flat was signed by the Appellant and the claimed then tenant, Mr Alex Robinson. It is dated 1 November 2013. Mr Robinson claims, in a letter "To Whom it May Concern", that he "...rented this flat for 6^{3/4} years between 1st November 2013 and 20th August 2020...". The letter cannot be considered to be a Statutory Declaration because it has not been sworn before a Commissioner for Oaths, does not indicate where and on what date it was signed, and does not include the solemn and sincere declaration that is a requirement of the Statutory Declarations Act 1835.

8. The Appellant has submitted a letter from herself also "To Whom it May Concern" and, though this was signed in the presence of a Commissioner for Oaths, it also does not include the solemn and sincere declaration required by the Statutory Declarations Act 1835. The letter, which cannot be considered to be a Statutory Declaration, does corroborate Mr Robinson's claimed period of occupation of the annexe and states that "The price agreed was to include all bills, utility bills and Council Tax". There are not, as a matter of fact, any utility bills to prove separate occupation of the annexe.

9. After refusal of the application the Council's Revenues and Benefits Service provided, to Mr Robinson, "...a summary of transactions and receipts, which have been applied to your account". There is no summary for either the latter part of 2013 or for 2014 and the summary for 2015 indicates that the only payment made was on 30 November for £387.16 and that there was an outstanding balance of £845.67 at the end of the year. The summary for 2016 indicates that the only payment made was on 11 May for £694.46 and that there was an outstanding balance of £513.09 at the end of the year.

10. A payment of £377.40 was made on 11 April 2017 after which regular monthly payments were made by direct debit. There is no evidence of direct debit payments after 25 March 2019. If, as indicated in the aforementioned Appellant's letter, rent for the flat included Council Tax then the payments made must have been made by the Appellant, but it is not known who made the payments. In any event the payment of Council Tax is not conclusive of residential occupation of a property and the Council records only indicate that payments were made between 30 November 2015 and 25 March 2019, which is not a four-year period.

11. The Appellant has provided bank statements which do indicate rent payments made by, or on behalf of, Mr Robinson. If Mr Robinson did occupy the annexe for 6^{3/4} years then there should be evidence of 81 monthly rent payments, which was, as included in the Tenancy Agreement, to be £750/month. Mr Robinson made a payment of £480 on 28 February 2014 and a first payment of £750 on 2 June 2014. The bank statements submitted show further payments of £750 on 1 December 2014, 5 January 2015, 16 June 2015, 13 November 2015, 15 March 2016, 15 June 2016, 15 December 2016, 15 February 2017, 26 June 2017, 27 November 2017 and 26 March 2018. The bank statements also purport to show that rent of £850 was paid on 1 June 2018 and 24 December 2018.

12. It must be repeated that the onus of proof is on the Appellant. There is evidence of only 15 rent payments during the claimed occupation of the annexe by Mr Robinson and Council Tax payments for a period of less than four years. Evidence therefore indicates, at best, intermittent occupation of the annexe between early 2014 and the end of 2018, and there is no evidence to indicate that the annexe was occupied after March 2019 up to the claimed termination of Mr Robinson's tenancy on 20 August 2020, a period of seventeen months.

13. Evidence indicates that the annexe has been occupied since Mr Robinson ceased his tenancy. But there is no evidence of Council Tax payments or of regular rent payments. Documentary evidence is imprecise, ambiguous, and inconclusive and there are no properly sworn Statutory Declarations to justify a conclusion other than that the annexe has not, on the balance of probability, been occupied for a continuous four-year period after which the established residential use has not been abandoned. Independent residential occupation of the annexe is not immune from enforcement action and is not therefore lawful.

Conclusion

14. For the reasons given above, and on the evidence now available, it is concluded that the Council's refusal to grant an LDC in respect of existing use of annexe as a one-bedroom flat was well-founded and that the appeal thus fails. The powers transferred in section 195(3) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector