Planning Inspectorate

Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th January 2025

Appeal Ref: APP/Z3825/X/24/3348498
Blackstone Gate Farmhouse, Henfield Road, Albourne, West Sussex BN6 9JJ

- 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 Mr Jeremy Ventham against the decision of Horsham District Council.
- The application ref DC/24/0106, dated 17 January 2024, was refused by notice dated 14 June 2024.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
- The use for which a certificate of lawful use or development is sought is described as "Renting out of residential annexe as a separate single dwelling".

Decision

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

Procedural Matters

2. No site visit has been carried out as the appeal can be decided purely on the basis of the technical and/or legal interpretation of the facts. All the information needed is included with the application and appeal documents and so a decision can be reached on the papers.[1] There are no objections from the parties to proceeding in this way.

3. The appellant has submitted additional evidence with the appeal and the Council has addressed this in their Statement of Case. If only evidence from the time of the application was to be considered as part of the appeal, it denies the purpose of the LDC procedure. This is to arrive at an objective decision based on the best facts and evidence available at the time the decision is taken. In any event, it would always be open to the applicant to re-apply and it would serve no useful purpose to refuse a LDC on the basis only of the evidence submitted with the application, if subsequent evidence had come to light proving the case, on the balance of probability.

Main Issue

4. The main issue is whether the Council's decision was well-founded.

Reasons

5. The appeal concerns the self-contained residential use of a converted detached double garage situated within the grounds of Blackstone Gate Farmhouse. The ground floor of the building comprises an open plan living area with a kitchen and

[1] Certificate of lawful use or development appeals- procedural guide, updated 12 September 2024, states at paragraph 8.2.10.5. "A site visit won't be needed for every appeal. It is for the Inspector to decide whether to conduct one."

the roof area is accessed via a staircase and comprises one bedroom with rooflights and an en suite bathroom.

6. Drawings showing these works dated March 2017 submitted by the appellant support his statement that the conversion was carried out in 2017. A copy of a Notification of Completion dated 17 May 2019 from County Building Control, which describes the works as "Garage conversion", shows that the works were substantially complete by mid 2019. The Council's records are in agreement with these dates. Although the address of the building is "The Annexe", it has all the facilities for day to day living and is therefore capable of being occupied on a self-contained basis.

7. Section 191(2) of the 1990 Act, indicates that uses and operational development are lawful at any time if (a) no enforcement action may then be taken in respect of them because, for instance, the time for enforcement action has expired and (b) they do not contravene the requirements of any enforcement notice or breach of condition notice in force. Subsection 191(2)(b) is met here as there is no enforcement notice or breach of condition notice in force. I shall now consider section 191(2)(a).

8. As soon as the building was capable of occupation, the appellant entered into an assured shorthold tenancy agreement on 16 June 2019 with Tenant 1. This was initially for 6 months with a monthly rent of £900 payable in advance. This occupation continued thereafter on a periodic basis. Extracts from the appellant's bank statements show varying amounts of rent being paid consistently from 28 June 2019 until the last payment on 23 August 2021.

9. Thereafter the appellant explains that Tenant 1 fell into financial difficulty. Rather than evict them he agreed that they could continue their residence in return for groom duties. As the site location plan shows and the Council confirm, the appellant has several stables and a large paddock, and in the absence of any information to contradict the appellant's version of events, I find this is more than likely. The varying amounts of rent that Tenant 1 was able to pay, as set out in the bank records, also supports the appellant's explanation as to what happened after August 2021.

10. The Council query the lack of any evidence to document the rent free period between September 2021 and March 2022 but it appears the work in lieu of rent arrangement between the appellant and Tenant 1 was a verbal agreement. The Council have no records to contradict the appellant as Tenant 1 paid no Council tax and was not registered to vote.

11. It seems to me that the appellant was giving Tenant 1 a chance to turn things around but when that did not work out, he then gave them a section 21 Notice under the Housing Act 1988 on 31 January 2022, which provided two months to vacate the property (copy enclosed with Statement of Case). Such a document would not have been necessary if Tenant 1 was not living in The Annexe. Tenant 1 would have taken some time to find somewhere else to live but even if they had moved out straight away, that would have been some time in February, which closes the gap between them and Tenant 2. As it was the appellant states they moved out on 23 March 2022.

12. Tenant 2 entered into a tenancy agreement with the appellant on 24 March 2022. As previously, the initial period was for six months with the rent due monthly and in

advance. The copies of the bank statements show the correct rent has been regularly paid since April 2022 with the last payment given November 2023 just before the LDC application was made. The appellant confirms in his Statement of Case that Tenant 2 remains in occupation.

13. I note that unlike the first tenancy agreement, Tenant 2 has a guarantor and was given the option to either pay a cash deposit or a reposit fee. These changes may have been introduced given the appellant's experience with Tenant 1. Again there is no information from the Council to contradict the occupation by Tenant 2 other than a general observation that from their aerial photographs there does not appear to be any external domestic paraphernalia that would indicate an associated residential use of The Annexe. However, it is not clear what the Council has in mind. A nearby parked car could be associated with stable staff and Tenants 1 and 2 may have shared waste disposal bins with the appellant given one person produces limited waste. External clothes airers may also not exist as The Annexe may be provided with a washer/dryer.

14. In arriving at my conclusion, I am conscious that the Council have concerns that the period between August 2021 and April 2022 is insufficiently evidenced. It is inevitable when seeking to document a residential use that not all of the individual pieces of evidence are as precise or exact as the Council would like. This is why the test for the evidence is "on the balance of probabilities", namely what is more likely than not. That balance of the evidence need only be slightly more than half in order to satisfy the test.

15. Having regard to the totality of the evidence, I find it does not make the appellant's version of events less than probable. In my view the appellant's evidence overall is sufficiently precise and unambiguous to support the claimed continuous residential use of The Annex. I therefore conclude that The Annexe has been used as a self-contained residential unit for more than four years before the date of the application. The development is therefore lawful.

Conclusion

16. 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 residential use of The Annexe as a separate single dwelling 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 and issue a Certificate.

D Fleming

INSPECTOR

Planning Inspectorate

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 18 January 2024 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The self-contained residential use of the detached Annexe building began 16 June 2019. It became lawful by continuing for a period of over four years prior to the date of submission of the application and does not contravene the requirements of any enforcement notice in force.

Signed

D Fleming

Inspector

Date: 10th January 2025
Reference: APP/Z3825/X/24/3348498

First Schedule

Residential use of The Annexe as a separate single dwelling

Second Schedule

Land at Blackstone Gate Farmhouse, Henfield Road, Albourne, West Sussex BN6 9JJ

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /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.

Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 10th January 2025

by D Fleming BA (Hons) MRTPI

Land at: Blackstone Gate Farmhouse, Henfield Road, Albourne, West Sussex BN6 9JJ

Reference: APP/Z3825/X/24/3348498

Scale: Not to Scale

