



Delegated Report

Lawful Development Certificate (Existing)

Application No: 20220573

Location: La Clef, Valley Lane, Meopham, Gravesend, Kent, DA13 0DG

Description: Application for a Lawful Development Certificate in respect of the continued use of outbuilding as an annexe ancillary to the main dwelling

Applicant: Mr Harry Mulheran

Site Visit: 10th March 2022 / 5th May 2022

Submitted Documents/Plans

- Application Form - dated 23/05/2022;
- Supplementary Information - Signed Affidavit from Owner (dated 26/07/2022);
- Supplementary Information - Signed Affidavit from Neighbour (dated 26/07/2022);
- Supplementary Information - Evidence Statement - signed by Neighbour (dated 03/05/2022);
- Supplementary Information - Annexe Survey - DT Carpentry & Building Services (dated 23/05/2022);
- Supplementary Information - Annotated Google Earth Image (04/2015);
- Supplementary Information - Photograph of Outbuilding;
- Drawing no. 001 - Rev. A - Site Location Plan (scale - 1:1250);
- Drawing no. 004 - Rev. A - Annex Plans and Elevations.

Proposal

This application is made under section 191 of the Town and Country Planning Act (1990) (as amended) for a Certificate of Lawfulness to confirm the continued use of the outbuilding as an annexe ancillary to the main dwelling.

Relevant Planning History

Reference	Description	Decision	Decision Date
20210784	Erection of a single storey rear extension, alterations and increase in roof height to create space with useable head-height on the first floor, rear dormer, additional roof light windows to front and rear roof slopes and erection of a two storey porch.	PERMITTED	06.10.2021
20210640	Erection of a single storey rear extension, first floor extension over existing front porch, insertion of additional windows to side elevations, rooflight windows to rear and increase in overall roof height.	REFUSED	14.07.2021
20210101	Erection of a single storey rear extension, first floor extension over existing front porch, erection of front	REFUSED	23.04.2021

	dormers, insertion of additional windows to side elevations, rooflight windows to rear and increase in overall roof height.		
20120735	Erection of a detached double garage at the front.	PERMITTED	12.10.2012
19910551	Erection of a single storey detached dwelling with detached double garage at the front.	PERMITTED	05.11.1991

Consultations, Publicity and Representations

This is an application for a Lawful Development Certificate that is considered on its facts and relevant planning law. As confirmed in national planning guidance, views expressed by third parties on the planning merits of such cases are irrelevant. Accordingly, unlike planning applications, there is no statutory requirement to undertake publicity or consultation.

Legislation

The Town and Country Planning Act (1990) (as amended) Section 191: Certificate of Lawfulness of existing use or development.

Procedure for determination

This application seeks a determination by the LPA as to the whether the use of the outbuilding as an annexe ancillary to the main dwelling is a lawful use as it has been used for such a purpose for more than 4 years as set out under s.171B (1) of the Town and Country Planning Act 1990.

The outbuilding was granted permission in 2012 (ref. 20120735) as a garage and was condition for use as such:

3. *The garage hereby permitted shall be used for the accommodation of a private motor car (or cars) for the occupants of the existing dwelling as private dwelling house and for no other purpose and no development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (as amended), shall be carried out on the site in such a manner or in such a position as to preclude vehicular access into the garage.*

Reason *That the development without the provision for adequate accommodation for the parking or garaging of a private motor car or cars is likely to lead to car parking inconvenient to other road users and detrimental to amenity.*

National Planning Guidance on determining applications of Lawful Development Certificates for existing uses or development is clear in stating that the onus is on the applicant to provide sufficient information to demonstrate that the use of development is lawful beyond any reasonable doubt. Furthermore, in the case of an application for exiting uses, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicants evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

To confirm the lawful status of the extended property, the LPA need to be satisfied that the building was constructed as an annexe and never used as a garage.

Analysis

This application is for an LDC and not for a planning permission. As such, the planning merits of the case are not relevant. The determination must be based on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests with the applicant and the evidence submitted must be sufficiently precise and unambiguous to enable the local planning authority to understand exactly what is involved. The decision must be made on the balance of probability. The case officer has had regard to the advice contained in the National Planning Practice Guidance (the section relating to LDCs, paragraphs 005 to 009).

La Clef is a detached chalet style bungalow in use as a single family dwelling. The property is located on the eastern side of Valley Lane and is significantly set back from, and elevated above, the highway. The property was granted permission in 1991 (ref. 19910551) and was granted permission for alterations to the roof and a rear extension in 2021 (ref. 20210784), which is currently under construction. With the outbuilding permitted in 2012 (ref. 20120735).

The evidence provided to support this application consists of satellite imagery (2015), a signed affidavit from both the neighbour and owner, as well as an annexe survey produced by a carpenter. The survey was commissioned to identify the structural makeup of the outbuilding, to determine if it was constructed as an annexe or converted from a garage after construction. The survey concluded that there were four key parts of evidence, which are as follows:

1. Inoperable False Door - external double doors are inoperable as they are sealed closed with sealant and paint and the hinges are not attached // rot at the bottom indicates they are the original doors from when the structure was built in 2012.
2. Plastered Internal Finish behind door - internal wall directly behind the false door is plastered in keeping with the rest of the building.
3. Flooring - floor is laminate with underfloor heating which would not be appropriate to support the weight of a vehicle
4. Velux Windows - the external roof makeup it has been found the velux windows on the upper floor will have been installed at the same time as the roof was built.

The signed affidavit from the owner confirms that the findings of the annexe survey were accurate on purchase of the property. Further to the owners' sworn statement and the findings of the survey, the neighbour provided a signed affidavit that confirms that the outbuilding was never constructed as a garage, but was designed and finished as a residential annexe.

The Local Planning Authority undertook an investigation into the building by consulting STG Building Control Group and GBC Council Tax. Neither consultee had evidence of the building being constructed as an annexe. Although the garage would not necessarily require building control sign-off, an annexe would. In terms of Council Tax, a self-contained annexe would usually require a change in banding. Therefore, it could be expected for either consultee to be aware of the annexe. However, this application is providing evidence that the annexe was constructed without consent and as such it is reasonable to assume that there would be no record of it on either Building Control or Council Tax records. Both parties have requested confirmation of the outcome of this application and if granted would undertake their own checks on the annexe.

Therefore, notwithstanding the Local Planning Authorities investigation, the evidence provided in this case is considered to, on the balance of probabilities, prove that the outbuilding was constructed as an annexe after 2012, and would be lawful through the passage of time.

Conclusion

On the balance of probabilities and in the absence of any evidence to the contrary, it is considered that the annexe is lawful by reason of Section 171B (1) of the Town and Country Planning Act 1990, as amended.

The use is therefore lawful by reason of Section 191(2) (a) of the Act and Certificate of Existing Use is duly issued.

Recommendation: Grant Lawful Development Certificate			
Case Officer:	Mr Ethan Bonthron	Team Leader:	Miss Faye Hobbs
Signed:		Signed:	
Dated:	2 nd August 2022	Dated:	05 August 2022