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# Appeal Decision

Site visit made on 4 June 2014

**by A U Ghafoor BSc (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 18 June 2014**

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**Appeal Ref: APP/F5540/X/13/2208455**  
**30 Spencer Road Isleworth TW7 4BH**

- 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 Pradeep Gupta against the decision of the Council of the London Borough of Hounslow.
  - The application Ref 01044/30/LAW3, dated 28 June 2013, was refused by notice dated 14 October 2013.
  - The application was made under section 192 (1) (a) of the Town and Country Planning Act 1990 as amended.
  - The use for which a certificate of lawful use or development is sought is described as follows: *'The use of the existing outbuilding as a granny annexe for use by family members of 30 Spencer Road only'*.
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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.

## Reasons

2. The main issue to consider is whether the Council's decision to refuse the LDC was well-founded. In this appeal, the onus is firmly upon the appellant to make his own case out and the legal test is on the balance of probabilities.
3. It is down to the applicant to describe exactly what is proposed with sufficient clarity and precision<sup>1</sup>. The application for the LDC is imprecise as to what is proposed. From the written representations, it is apparent that the proposal relates to the conversion of the existing outbuilding to a 'granny' annexe. For greater precision, the proposal is better described as: *'The use of the existing outbuilding as a granny annexe for use by family members of 30 Spencer Road'*. In this appeal, planning merits are not relevant at any stage and the assessment involves a discussion of the relevant facts and planning law.
4. The outbuilding straddles the residential curtilages of nos. 28 and 30 Spencer Road. It is rectangular in shape and drawing no. 1022/LD2 A, which was submitted with the LDC application, shows the proposed layout. Internally, the study would be subdivided to form the granny annexe on no. 30's side. The building work would not affect the outbuilding's external appearance.

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<sup>1</sup> The Planning Practice Guidance gives specific advice on LDC applications and determinations.

5. The Council's reason to refuse the LDC states: '*...the proposal for the use of the existing outbuilding as a granny annexe for use by family members of 30 Spencer Road only was not lawful by way of Section 55 (3) (a) of the Town and Country Planning Act 1990*'. In their opinion, the residential use of the outbuilding would result in the creation of a self-contained dwelling because it would contain facilities for independent day-to-day living. I will next set out the relevant legislative provisions, principles and case law.
6. Section 55 (1) of the Town and Country Planning Act 1990 as amended ('the Act') includes in the definition of the word '*development*' the making of any material change of use (MCU) of any buildings or other land. Section 55 (2) (d) states that the following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land: *The use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such*. Section 55 (3) (a) states: '*For the avoidance of doubt it is hereby declared that for the purposes of this section 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*' [emphasis added by me].
7. The concept of a MCU of land is not defined in any statute or statutory instrument; it is a question of fact and degree in each individual case. Relevant to the discussion is the concept of the planning unit. This principle has evolved as a means of determining the most appropriate physical area against which to assess the materiality of change in the use of land or building. The tests for determining the planning unit are well established, and starting with the unit of occupation turn on the concept of physical and functional separation. As a useful working rule, it should be assumed that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.
8. For planning purposes, it is well established that the right to use land for some primary purpose includes the right to use it for any purpose which is ancillary to that dominant purpose. The essential feature of an ancillary use is that there should be some functional relationship with the primary use of the planning unit. That functional relationship should be one that is normally found; it is not founded on the personal choice of the person carrying out both activities together.
9. In the case of *Uttlesford DC v SSE & White* [1992] JPL 171 in the High Court, Mr Lionel Read QC, sitting as Deputy Judge, considered that, even if the accommodation provided facilities for independent day-to-day living, it would not necessarily become a separate planning unit from the main dwelling; it would be a matter of fact and degree. The accommodation gave the occupant the facilities of a self-contained unit although it was intended to function as an annexe only with the occupant sharing her living activity in company with the family in the main dwelling. There was no reason in law why such accommodation should consequently become a separate planning unit from the main dwelling. On the specific circumstance of the case, the key issue is whether a separate planning unit has been created. If an outbuilding with its living accommodation was part of the same planning unit as the dwellinghouse, and provided that the planning unit remains in single family occupation and continues to function as a single household, no material change of use is involved.

10. No. 30 Spencer Road is a two-storey semi-detached dwelling. Given the single unit of occupation, I concur with the appeal parties that the property, including the area closely associated with the building, constitutes a single planning unit. The planning unit is primarily used for residential purposes. No. 30 and the subdivided outbuilding are outlined in red on the LDC site plan.
11. The outbuilding would be physically disconnected from the main dwelling given its detached positioning. Nevertheless, there would be no separate utilities and it could be accessed from the shared driveway and garden via the rear shower room. The appellant's argument is that the outbuilding would be occupied by his dependent 77 year old mother who needs care. The mother's living activities would be shared with the family, for instance, she would consume food during the evenings and on the weekends with the family. There is no evidence to make these assertions less than credible. Given the type and scale of the outbuilding's residential use and the significant degree of interconnectedness, I find that no. 30 and the outbuilding would be occupied by people functioning as a single household.
12. While it would include facilities for cooking, washing and sleeping, in all probability, the nature of the outbuilding's residential use would be functionally linked to the main dwelling. In my judgement, as a fact and degree, the residential use of the outbuilding would not result in the creation of a separate planning unit and its use would be ancillary to the dominant or primary residential use of the land.
13. The appellant focuses upon the terms of S55 (2) (d) of the Act. The words '*incidental*' and '*ancillary*' have become interchangeable in their use, but S55 (2) (d) and the GPDO<sup>2</sup> specifically uses the word '*incidental*'. Activities which are not integral to the use as a dwellinghouse but which are incidental to it and within its curtilage are lawful by virtue of S55 (2) (d). In this case, however, the use of the existing outbuilding as a granny annexe would be ancillary or connected to the primary residential use of the planning unit.
14. I have reviewed the case of *Wakelin v Secretary of State for the Environment* [1978] JPL 769. However, *Wakelin* involved a large house with a lodge, which was converted into two flats and used as guest suites. That proposal involved the conversion of the lodge into a separate dwelling and to sell it off separately. It was held that the house, lodge and grounds constituted one planning unit and to sever the lodge would constitute a MCU by virtue of S55 (3) (a) of the Act. On the particular circumstances of this case, there is no evidence to indicate that the outbuilding would not be used for an ancillary residential purpose.
15. For the reasons given above and having considered all other matters, I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of the use of the existing outbuilding as a granny annexe for use by a family member of 30 Spencer Road was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195 (2) of the Act as amended.

*A U Ghafoor*

INSPECTOR

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<sup>2</sup> See Article 3, Schedule 2, Part 1 Class E of the Town and Country Planning (General Permitted Development) Order 1995 as amended ('the GPDO').

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# 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 2010: ARTICLE 35

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**IT IS HEREBY CERTIFIED** that on 28 June 2013 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 S191 of the Act for the following reason. For the purposes of the Act, the use of the existing outbuilding as a granny annexe for use by a family member of 30 Spencer Road is lawful because no enforcement action may be taken in respect of the use as it would not involve development or require planning permission.

Signed

*A U Ghafoor*

Inspector

Date: 18 June 2014

Reference: APP/F5540/X/13/2208455

## **First Schedule**

The use of the existing outbuilding as a granny annexe for use by a family member of 30 Spencer Road as illustrated on drawing number 1022/LD2 A, dated September 2013, described as proposed ground floor plan at a scale of 1:100 @ A3.

## **Second Schedule**

Land at 30 Spencer Road Isleworth TW7 4BH.

## NOTES

This certificate is issued solely for the purpose of Section 192 of the Act. 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, were not liable to enforcement action, under S172 of the 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 S192 (4) of the Act, as amended, which state that the lawfulness of a specified use is only conclusively presumed where there has been no material change, before the use is instituted, 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: 18 June 2014

by **A U Ghafoor BSc (Hons) MA MRTPI**

**Land at 30 Spencer Road Isleworth TW7 4BH**

**Reference: APP/F5540/X/13/2208455**

Scale: Not to scale

