

SECTION '2' – Applications meriting special consideration

Application No : 19/00729/ELUD

Ward:
Darwin

Address : 287 Main Road Biggin Hill TN16 3JJ

Objections: Yes

OS Grid Ref: E: 542619 N: 158452

Applicant : Mr Simon Jones

Key designations:

Biggin Hill Safeguarding Area
Green Belt
London City Airport Safeguarding
Open Space Deficiency
Smoke Control SCA 24

Proposal

This Lawful Development application seeks to establish that the use of extensions (as identified as red, blue and green in Exhibit 1) to detached building and residential use ancillary to main dwellinghouse for more than four years before the date of the application (11.02.2019).

To accompany this application the following information was received:

- Covering letter
- Sworn affidavits from owner
- Signed letter from neighbour
- Building invoices

Location and Key Constraints

The application site is located on the northern side of Main Road, Biggin Hill. The host property is a detached bungalow. The site is located within the Green Belt; the host building is not listed nor located within a Conservation Area.

Comments from Local Residents and Groups

Nearby owners/occupiers were notified of the application and representations were received which can be summarised* as follows:

Objection:

- We have lived next door since late 2013 and there were previously large hedge which concealed the outbuilding. This was cut back in late 2018
- Noise from outbuilding and decking;

- When they moved in at the end of 2013 the son was not living there as he was travelling;
- The son has only been living in the outbuilding since 2018;
- The first time the partner of the son was seen was in 2018 when she was also living in the outbuilding;
- This was when the outbuilding started to be used as a functional dwelling, as that is when the noise nuisance started;
- They also have a dog and a baby;
- We are unable to enjoy our garden;
- They further extended the outbuilding and added decking in 2018 as shown on the aerial images;
- Owners of No. 287 have never approached us to discuss the building works which have gone on for 12-18m;
- They have grown hedging between the two properties to conceal what is going on;
- When neighbours have tried to cut back the overhanging hedging the owner has become aggressive;
- They are not considerate neighbours and do not trim the front hedge which could lead to a road traffic accident;
- They are dishonest, when asked about the building works Mr Jones said “bit of decking” and Mrs Jones did not know;
- They have done this work without planning permission or consideration for the neighbours;
- The outbuilding is not ancillary and is a complete breach of planning laws and should not even be considered a valid application;
- The exhibits showing receipts for building materials is not evidence as where is the proof they were used on the dwelling rather than his job as builder;
- The receipts do not prove he built the dwelling with them when they were purchased – where are the receipts for the kitchen and bathroom which are main areas of the house;
- Where are the utility bills;
- Only the latest google earth images show the development clearly the other images are so unclear they could be of anything;
- Strongly object to any certificate of lawfulness to be granted as what they have makes a mockery of the process;
- The actions of No. 287 have not only impacted on the health of the neighbours but spoilt their home and could have devalued their property;
- Impact on neighbouring human rights;
- Rights of legal homeowners have been violated by the owners of No. 287;
- Bromley Council have been neglectful in its duty to respect our Human Rights;
- Bromley Council were alerted in October 2018 and took them 7m to put in the application;
- Bromley Council were contacted several times and no action was taken;
- After making a formal complaint the next day the application was validated;
- 3 months after validating the application, the applicant was allowed to change the description which has forced further letters to be written;
- We are the neighbours most affected as the six windows and patio doors face our garden;

- No other neighbours have had their privacy stolen nor have to content with the continual noise and disturbance;
- There is not only the illegal building, but an illegal decking which runs up to the hedge boundary and given the garden at No.287 is much higher than the neighbours it leads to overshadowing;
- Bromley Council have a duty to protect the views, amenity and privacy from overlooking and visual impact of neighbouring properties. All of these have been breached;
- The scale, massing, density height, layout and material of this outbuilding means there is huge structure looming and overshadowing the neighbouring garden;
- This has resulted in loss of privacy and views;
- This outbuilding is a contravention to Bromley's planning and does not respect the local context;
- Impact from cooking smells from the outbuilding;
- The outbuilding is in no way similar to what was there before in look, size, scale and proportion and neither use. This is a completely different building with a completely different use and has a massive and completely unacceptable effect on us and continues to do so;
- The area around the outbuilding is disproportionate as there is not a proportionate amount of outdoor space;
- The development sets a very dangerous precedent on future developments and what other residents can expect to build in their gardens.

Support:

- I have visited the building subject to this application regularly and the occupiers for over 4 years; it is residential and has been for a long time. I know of at least a dozen people who have done the same;
- I have lived across the road since 2006 and the building in question was there, it is an attractive building and not an eyesore. Before Jonathan and Charlotte moved in Simon's mother was living there;
- Lived opposite since 2006 and Jonathan and Charlotte have been living there for as long as I can remember and prior to this Simon's mother resided there.

**Please note the above is summary of the objections/Support/Comments received and full text is available on the council's website.*

Planning Considerations

This Lawful Development application needs to be considered under Section 171B(2) of the Town and Country Planning Act 1990 which provides that 'where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of four years beginning with the date of the breach'.

Planning History

86/02274/FUL - Pitched roof in lieu of flat roof detached bungalow – Approved 13.10.1986

Considerations

Section 191 (2) of the Town and Country Planning Act states that uses and operations are lawful if no enforcement action is taken against them and they are not in contravention of any enforcement notice which is in force. Section 191 (1) of the act allows a person to make an application to determine whether a specified existing use, operation which has been carried out on land is lawful for planning purposes.

Planning Policy Guidance Published 6th March 2014 of the Town and Country Planning Act 1990 (as amended), it is the applicant is responsible for providing sufficient information to support an application. In the case of applications for existing use, 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 applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

In this instance applicant would need to prove that it is more likely than not that the use of the outbuilding has been in ancillary residential use to main dwellinghouse for more than 4 years prior the date of the application.

For clarification ancillary accommodation is where you can eat, sleep but does not function as a separate unit. Incidental is parasitic on the primary use, and used for hobby, storage etc. for the overall enjoyment of the host dwelling. Further guidance on what constitutes incidental use can be found in the General Permitted Development Order (GPDO) and gives examples such as the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse.

In support of the application the applicant has provided the following:

- Covering letter
- Sworn affidavits from owner
- Signed letter from neighbour
- Building invoices

This Certificate is only for the rear extension to the outbuilding (former garage) identified as red, blue and green in Exhibit 1 of the supporting documents in which is clearly shown from 2014. It is noted that the building has been further extended in the form of a single storey rear element and decking; however this certificate does not cover these elements and will require a further application and are subject to a separate enforcement investigation. There is no planning history or building control records for the outbuilding however from looking at the Council's aerial photographs the outbuilding as defined in Exhibit 1 has been there for over 4 years.

In support of the application to prove the lawful use of the outbuilding, the application has been accompanied with a statutory declaration from the owner; the statement includes details of the use and states that *“around 2007 my mother who was disabled and confined to a wheelchair moved in with us so that my wife and I could look after her. I added an extension to the garage and converted the garage and extension to provide self-contained accommodation for my mother. The accommodation comprised a kitchen, bedroom, bathroom and living spaces.”* The Council has no evidence to dispute this fact and sworn affidavits from the owner, together with letters from friends and neighbours confirming that the outbuilding had been used as an ancillary function to the main dwelling have been received in support of this application.

The evidence supplied shows the outbuilding has been used as an “ancillary” function to the main dwelling; it was still linked as the occupier of the accommodation was dependent on the occupiers of the main dwelling for help and care. Whilst the outbuilding contains a kitchen, bedroom, bathroom and living spaces there is no separate address point, no separate utility bills or curtilage the outbuilding. Whilst it has its own independent access the outbuilding is linked through the above. To establish a use the outbuilding need to have been used for 4 years without any gaps which could be seen as material, this date would be around 2011. Evidence supplied shows that the mother died in 2011 indicating a use of 4 years becomes lawful at about this time, and then subsequently the son moved in.

In response to neighbour consultation the Council has received objections stating that the building has not been there and was only completed in 2018 and has not been used for over 4 year’s ancillary to the main dwelling house. As outlined above the Council acknowledges that extensions have been added to the outbuilding, these are subject to a separate investigation and do not form part of the considerations of this application and will not become lawful under this Lawful Development Certificate.

The submissions summarised above are acknowledged. This case is subject to an investigation by the enforcement team and these comments have been forwarded to the team for completeness. The enforcement team have the opportunity to assess the property and how it is currently being used and to determine if a material change of use has occurred and whether formal enforcement action is required and is if expedient to do so.

As outlined above Government guidance states that Lawful Development Certificate should be determined on the evidence provided the onus of proof is on the applicant to provide sufficient evidence to confirm the established use and outbuilding has been there for over 4 years and if the Locally Planning Authority do not have any evidence to the contrary the proposal would be immune from enforcement action and therefore deemed lawful though passage of time.

From the information that has been submitted by the applicant in support of the application, it would indicate that the outbuilding has been continuously occupied by family members since 2007 as an ancillary function.

Conclusion

It is important to note that this Certificate is only for the rear extension to the outbuilding (former garage) identified as red, blue and green in Exhibit 1 of the supporting documents and does not authorise the use of the building as an independent dwelling. It is noted that the building has been further extended in the form of a single storey rear element and decking; however this certificate does not cover these elements and will require a further application and are subject to a separate enforcement investigation.

It is considered that on the basis of the evidence submitted that on the balance of probability, the extensions to detached building and residential use ancillary to main dwellinghouse would appear to have been in use for at least four years, and on the balance of probabilities it is recommended that the certificate be granted.

RECOMMENDATION: GRANT CERTIFICATE FOR EXISTING USE/DEVELOPMENT

On the balance of probabilities, the use of the site for the purposes stated has subsisted for at least 4 years continuously, and as such is considered to be lawful.

EXHIBIT 1

THIS IS THE EXHIBIT 1 REFERRED TO IN THE
STATUTORY DECLARATION OF SIMON JONES
DATED THIS 7TH DAY OF FEBRUARY 2019
BEFORE ME, B.N. SARNEY
SOLICITOR

B. N. SARNEY LL.B.
SOLICITOR

