

Appeal Decision

Site visit made on 25 October 2016

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 27 October 2016

Appeal Ref: APP/V5570/X/16/3144045

Basement and Ground Floors, 49 Rawstorne Street, London EC1V 7NQ

- 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 Simon Fox against the decision of the London Borough of Islington
 - The application Ref P2014/5096/COL dated 15 December 2014 was refused by notice dated 4 June 2015.
 - 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 the use of the ground floor and basement for the operations centre of Cheapside Carriage Co Ltd for a chauffeur company licenced by PCO/TfL as a private hire operator.
-

Decision

1. The appeal is dismissed.

Reasons

2. An appeal relating to a Certificate of Lawful Use or Development (LDC) is confined to the narrow remit of reviewing the local planning authority's reason for refusal and then deciding whether or not the reasons are well founded. The planning merits of the case do not fall to be considered. In relation to any LDC the burden of proof is firmly on the applicant and in this case the Local Planning Authority (LPA) must be supplied with sufficient information to satisfy them that the use of the premises as existing is lawful. An applicant's evidence needs to be sufficiently precise and unambiguous to justify the grant of a certificate '*on the balance of probability*'.
3. In relation to this LDC the application was made on the basis that the use of the premises (ground floor and basement) is lawful for a Class B1 use. Such a use includes a business office use and the appellant contends that these two floors of the building are lawful for the use of an administrative (office) centre relating to the (Cheapside Carriage Co Ltd) car chauffeur company.
4. It is stressed that the company does not operate from the premises as a 'Minicab Office' or 'Taxi' office; that cars are not parked at the office and that customers and drivers do not attend the office. Following my reading of the submissions and my inspection of the premises; I accept that this is the case. It seems clear to me that the premises are indeed used by the company as a B1 office (administrative) use only. The appellant indicates that this has been the case since January 2010.
5. However, to be lawful for that a use, the ground floor and basement of No 49 Rawstorne Street must have been primarily in a B1 use for a continuous ten year

period prior to the date of the LDC application. Thus it must be shown that the premises have been primarily in B1 use since on or before 15 December 2004.

6. The only submitted planning history of the premises indicates that an application was granted on 24 March 1986 for a change of use of the ground floor and basement from retail (Class A1) to office (Class B1), showroom and retail (Class A1). This would be a mixed use of Class A1 and Class B1, as opposed to a straightforward office only Class B1 use. As indicated by the LPA the 1986 permission does not show that the ground floor and basement was granted permission solely for a Class B1 use.

7. There are no other submissions to conclusively indicate that the premises have been used solely for a Class B1 use, rather than as a mixed Class A1 and Class B1 use for a ten year period. Thus, in the absence of any other evidence to indicate that the premises have been used solely for a Class B1 use for the requisite 10 year period, I consider that it has not been shown, on the balance of probability, that the current Class B1 use is lawful. A LDC, therefore, cannot be issued.

8. The LPA refused the application on the basis that it had not been shown that the premises had been operating as a B1 use, although it did not specifically relate to the 10 year period. It does refer to a taxi-business which is specifically excluded from any Use Class by reason of Article 3(6)(f) of the Use Class Order 1987 and that such a use is '*sui generis*'. This is indeed the case but this would not preclude a taxi or chauffeur firm (or any other business) from using the premises purely as an administrative office centre rather than as a *sui generis* premises from which the taxis or chauffeur driven cars were operated and which were used by customers and drivers.

9. I am only empowered to deal with the LDC appeal and if the appellant wishes to establish a lawful use of the two floors as a Class B1 office use only, then it would require a planning application for a change of use to be submitted and allowed. This is a matter between the appellant and the LPA.

10. I have considered all of the other matters raised by both parties including the copies of the PCO/TfL documentation and the letters of contract from one of the customers. However, none of these carries sufficient weight to change my conclusion that, at the time of the LDC application, the use of the appeal premises for a Class B1 use could not have been lawful because the use had not been continuous for a ten year period. The appeal, therefore, must fail.

Anthony J Wharton

Inspector