
Appeal Decision

Site visit made on 15 May 2018

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

an Inspector appointed by the Secretary of State

Decision date: 05 June 2018

Appeal Ref: APP/V5570/X/17/3179633

9 Blackstock Mews, London, N4 2BT

- 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 Ms Jo Chapman against the decision of the Council of the London Borough of Islington.
 - The application Ref P2016/5011/COL, dated 8 December 2016, was refused by notice dated 14 February 2017.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the use of the premises as a workshop and storage facility within the Use Class B8 (Storage & Distribution).
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Formal Decision

1. The appeal is dismissed.

Procedural matters and planning history

2. The Council states in its reasons for refusal that it is not satisfied that the appeal premises have been used as a store and/or warehousing (B8 use) for a continuous period of 10 years prior to the application, 8 December 2016.
 3. The main issue before me, taking account but ultimately irrespective, of the reasons given by the Council, is whether the refusal of the application is “well founded” under s195 (2) and (3) of the 1990 Act. The burden of proof lies with the appellant on the balance of probabilities.
 4. The identity of the appellant and the planning merits of the operation, use or activity are not relevant to the legal and factual issues in an LDC appeal.
 5. Advice in Planning Practice Guidance (PPG) is that if the Council has no evidence itself, nor from others, to contradict or 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.
 6. In 2014 a prior approval notification was made proposing to change the use from “an office use property currently vacant” to two dwellings, and a full application for permission, Ref P2014/4547/FUL for a similar change of use. The Council’s report on this application states that from the site inspection the property appeared to be currently in use for storage. A second prior approval
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notification is said to have been made in 2014 but I have not been given details. The prior approval notification Ref P2014/3426 which I have seen, states that the building was last used as an office on 1 June 2003. The forms were completed on behalf of the current appellant, Ms Joanna Chapman.

Reasons

The appellant's evidence

7. Plans submitted to the London Fire and Civil Defence Authority show that the appeal premises were the subject of a proposal to install a mezzanine floor for storage purposes in 1988. An open layout is shown on the ground and upper floors and it was recommended that the mezzanine/roof floor should be used for storage purposes only. Also in 1988 the Council's building control department approved the "erection of raised storage platform" and there is an invoice dated February 1988 about the construction of a raised storage area of some 10m x 9m for this unit. In addition a handwritten note dated 1988 refers to the cost of storage charges whilst works to the property are carried out, implying, as the appellant suggests, that stock stored within the premises had then to be stored off-site during the works. A quotation dated February 1989 contains details of storage racking for the appeal unit, refers to 'shelf loads' and that the racks can be adjusted to adapt to changes in carton sizes. Also submitted is an undated ground floor plan that suggests the ground floor was intended at some time to be largely taken up with a range of shelving units.
8. Reference is then made by the appellant to a notice of alteration of the rating list from the Valuation Office Agency (VOA) dated 4 March 1991. It describes the property as "workshop and premises" and gives the effective date of the alteration as 1 April 1990. The appellant accepts that this has no legal standing in establishing the lawful planning use of the property. She points out that if the property were used as a B1 or B2 Use during this period, it could have lawfully changed to a B8 use under permitted development legislation. That may be so, but clearly it is not to be inferred that such a change did take place without specific evidence.
9. Next the appellant refers to an extract from a website search that highlights the use of Units 8 and 10, Blackstock Mews by a computer firm whose primary business is said to be the storage and distribution of computers, suggesting that it is possible that the firm also used the unit in between, the appeal site, for similar purposes. Again there is a lack of specific evidence to this effect.
10. An email dated March 2002 provides a quotation for converting the premises, described as "currently 1 warehouse unit" to two live/work units.
11. A Schedule of Condition for the premises in November 2006 was prepared by a building surveyor. He describes the second floor as a store room and in relation to the first floor, rear area, he notes the presence of storage boxes that impede access. He also describes the main ground floor as "*painted fairfaced brickwork with painted exposed underside of floor roof joists above and floorboards forming ceiling with painted concrete floor. Area is partly hidden by stored materials as indicated in photos*". The appended photographs reveal the unit then to be a relatively dilapidated unit that it is said would not be of sufficient specification to have been used as office accommodation. Several photographs show storage of boxes throughout the premises.

12. Another email dated May 2012 in reply to a request for a valuation of the property, describes it as a live/work unit arranged over three floors, "currently used as a warehouse for storage purposes". Under the heading "Condition" the property is said to be "unmodernised being only used as storage" and it was not possible to easily see the building in its entirety "as it was fully stocked at the time".

Assessment

13. From the information provided it would appear that in or around 1988 the premises were used to a large degree, possibly primarily for storage purposes. However the "workshop and premises" designation in the VOA list in 1991 does not provide any evidence of continuity of such a use, although in 2002 the building was described as a warehouse. There is a significant gap in the information from 2002 until 2006 when a surveyor's report notes the storage of boxes in all parts of the building. Thereafter another significant gap exists until the 2012 quotation which makes it tolerably clear that the author is satisfied its then use was as a warehouse for storage purposes.
14. The Council claims that the earlier years for which some information exists are outside the relevant period, but any continuous period of ten years' use must be considered. If substantiated, this would constitute the necessary period of immunity provided the use subsisted at the time of the application and had not been subsequently lost, which in this case might be through abandonment or a supervening material change to some other use.
15. In my opinion based on the information provided it is entirely possible that the building was used for storage purposes for several years from 1988 when it was first identified as having a storage use. However there are significant gaps in the evidence which does not show precisely and unambiguously a continuous period of such use over ten years. Moreover the planning history contradicts the evidence in suggesting that the applicant for permission in 2014 regarded the current lawful use of the premises as an office use, albeit not in actual use. It also appears from the declarations made in the forms that the building did have an active office use immediately prior to June 2003.
16. In the appeal statement it is suggested that with regard to the 2014 application, there was no evidence that justified the lawful use of this property being a B1 office use. It adds: *"it is not clear what interest Mr Arnpoutis had in the property, but the nature of the application suggested that his intention was to convert the property into residential use (hence the need to establish use class B1 as the starting point in that change of use application)."*
17. The words in parentheses impliedly suggest that the declaration of existing use may have been improperly made. Given that the appellant appears to be the applicant at the time and Mr Arnpoutis was her agent in the application, such an improper motive might be imputed to the appellant herself. In any event however, there is no evidence to substantiate such a suggestion.
18. In summary the declarations made on behalf of the appellant in 2014 that the building had an office use, albeit that it was then vacant, undermine the claim that it now has a lawful B8 storage use. If the premises had remained vacant from 2003 until 2014 any established use may well be deemed to have been abandoned, however there is clearly information that some storage use was taking place at some point in the years 2006 and 2012. The difficulty for the

appellant however is the lack of firm information for the other years between 2006 and 2016 that would clearly overcome the presumption as to the existing use that in my view reasonably arises from the declarations made on behalf of the applicant in 2014.

19. To conclude, I am satisfied from what I have read and seen that at the time of the LDC application the appeal premises were used for storage purposes. However the evidence for any preceding continuous period of ten years is incomplete and overall is insufficiently precise and unambiguous to convince me on the balance of probabilities that a certificate should be granted.

Overall conclusion

20. For the reasons given above, I conclude that the Council's refusal to grant a LDC in respect of the use of the premises as a workshop and storage facility within the Use Class B8 (Storage & Distribution) was well founded and that the appeal should be dismissed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Grahame Kean

INSPECTOR