
Appeal Decisions

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 21 February 2020

Appeal A: APP/R5510/X/19/3225198

Watercress Beds, Bungalow, Springwell Lane, Harefield, WD3 8UX

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Andrew Travers against the Council of the London Borough of Hillingdon.
 - The application (Ref. 24597/APP/2019/263) is dated 23 January 2019.
 - The application was made under section 191(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 a residential dwelling.
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Appeal B: APP/R5510/X/19/3226599

Studio at Watercress Beds, Springwell Lane, Harefield, WD3 8UX

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Andrew Travers against the Council of the London Borough of Hillingdon.
 - The application (Ref. 74576/APP/2019/435) is dated 5 February 2019.
 - The application was made under section 191(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 a residential unit for holiday/short term let.
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Decisions

Appeal A: APP/R5510/X/19/3225198

1. The appeal is dismissed and the application for a LDC for a residential dwelling is refused.

Appeal B: APP/R5510/X/19/3226599

2. The appeal is dismissed and the application for a LDC for a residential unit for holiday/short term let is refused.

Preliminary Matters

3. Although both appeals are against non-determination by the local planning authority of the LDC applications, a decision notice has since been issued by the Council in relation to the application under Appeal B. I also have copies of officer reports related to the applications under both appeals, albeit I am not aware that a decision has been issued under Appeal A. Nevertheless, once an appeal has been accepted against non-determination, the jurisdiction to determine the application transfers to the Secretary of State. I have though had due regard to the 'decision' notice and officer reports as material considerations.

Background and Main Issue

4. Under s191(1)(a) of the 1990 Act, any person who wishes to ascertain whether any existing use of buildings or other land is lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use. S191(2) of the 1990 Act specifies that for the purposes of the Act, uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any requirements of any enforcement notice in force. I have not been made aware that there is any such enforcement notice in force for either case. There is, however, an enforcement history which I shall come to below.
5. Under s171B(2) of the 1990 Act, where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. Despite how the existing uses in each LDC application are differently described, in both cases the ground under which both certificates are sought is that the use as a single dwellinghouse began more than four years before the date of each application. Each application also states that the use falls within Use Class C3 Dwellinghouses of the Town and Country Planning (Use Classes) Order 1987.
6. The whole site was granted planning permission in August 1990 for "change of use of watercress beds to garden nursery; erection of associated shop and office building; erection of a bungalow and ancillary parking." The approved drawings show the bungalow which is the subject of the application under Appeal A as "shop/office building." For the application under Appeal B the building is shown as a garage. There were then a series of applications covering either the site or the buildings.
7. In July 2017 the Council issued an Enforcement Notice (EN) alleging various unauthorised changes of use of buildings to residential and commercial (mixed use). This notice was withdrawn and a new EN was issued on 15 August 2017 alleging the same unauthorised uses. The EN alleged the material change of use of the land to a mixed use including "the use of the building marked C on the attached plan as a dwellinghouse" and "the use of the building marked A on the attached plan as a self-contained residential unit". Building C is the same one the subject of current Appeal A and building A is the one in Appeal B. There was an appeal against that EN.

8. I have read the Inspector's decision (Ref: APP/R5510/C/17/3184266) and note that the EN issued on 15 August 2017 was quashed under S174(2)(b) of the 1990 Act because the Inspector found that the matters alleged in the notice had not occurred. This finding was based on the view that the land and buildings had not been put to a mixed use, as alleged in the notice, but that several independent and unrelated uses had been created, resulting in the formation of multiple planning units. I acknowledge the appellant's point that any future enforcement action against the use of the buildings would therefore need to be against the buildings and not the wider site.
9. Nevertheless, it is clear to me that realistically the breaches of planning control the EN was attacking were the same as the residential uses of the buildings in this appeal and that its requirements sought to cease the uses of the buildings as either a self-contained residential unit or as a dwellinghouse. As such, the reality of reading the EN as a whole means that under the provision of s171B(4)(b) of the 1990 Act, the Council had purported to take enforcement action in respect of the stated uses of the buildings in the LDC appeals. To take a more restricted view would defeat the purpose of s171B(4) which is to provide a further opportunity to take enforcement action where a previous notice does not run its course for some reason.
10. I do not agree with the appellant that because the quashed EN was the second notice issued there is now no opportunity for what is known as the 'second bite provision'. S171B(4) only refers to not being prevented from (b) 'taking further enforcement action.....'. I have not been provided with any authority which would lead away from a plain on the face reading of what S171B(4)(b) says. Consequently, the second EN stopped the immunity clock ticking for both buildings because there is a further four years opportunity to issue another EN. Four years from 15 August 2017 up to when each LDC application was made has not elapsed and so the Council could still take enforcement action.
11. With the above in mind, the appellant needs to show, on the balance of probability, that the uses as single dwellinghouses had existed on a substantially uninterrupted basis for at least four years by the date when the second EN was issued. For both appeals that means the evidence of use needs to go back to at least before 15 August 2013, hereafter referred to as the material date. The burden to make out the cases rests with the appellant.
12. The determination of the appeals is based solely on considering whether the existing use is lawful. There is no place for considering what may be the consequences of my decisions on issues such as the appellant's daughter and her family's continued occupation of the building in Appeal A.

Reasons

APPEAL A

13. A lot of the detailed evidence about the occupation of the property by the appellant's daughter and her family starts from when they moved into it on 25 November 2013, which is also when the appellant purchased the overall site. Whilst not irrelevant, it does not show how the property was being occupied from at least the material date.
14. The estate agent appointed to sell the site around June 2013 refers to inspecting the site several times prior to this date. He describes that the

slightly larger of the two dwellings was the primary residence of the previous owner, but due to the recent separation from his wife, the second building (the appeal building) showed clear indications of habitation. There was apparently a kitchen clearly in use and there were soft furnishings throughout and beds in the upstairs rooms. The appellant's daughter also refers to visiting the site during the summer of 2013 and describes the property as having 3 bedrooms and it was already set up as a family home.

15. I note that the agent for this appeal refers to the vendor in 2013, Mr Stocker, living in one property and his wife, pending divorce, living in the other and refers to the estate agent's letter submitted with this appeal for corroboration of that. However, despite how the property looked, the estate agent does not confirm that the property was being lived in and nor does the appellant's daughter. I note that the appellant apparently undertook one more visit to the site between June 2013 and November 2013 and on that occasion both properties were being lived in. However, it is not clear when that visit occurred.
16. Moreover, the estate agent from 2013 refers to the property as being formerly a "rather elaborate home study". On an application dated 18 October 2013, submitted to the Council for prior approval for the change of use of the building to residential, under the Town and Country Planning (General Permitted Development) Order 1995, the applicant, who is the appellant in this appeal, stated that the proposal was for the change of use from office to residential C3. This statement could have been given in the belief that was the appropriate answer because the office use was the permitted use, but on its face, what was declared casts some doubt on the claimed residential use.
17. Also, on the prior approval application form the appellant stated "*at present the office is vacant due to previous owners of the site going into administration*". It may be the case that as the previous owners had filed for insolvency in August 2012 the building was not being used as an office, but referring to the office being vacant in October 2013 does not fit with other claims that the building was being occupied as a dwellinghouse from around June 2013 up to the vacation and sale of the site over mid to the end of November 2013. I also note that the plan submitted with the prior approval application denotes the appeal building as "offices". I appreciate that the prior approval application was made after the material date, but the statements made about the use of the building cover time when it is claimed the building was being lived in.
18. I accept what the previous Inspector said about the building being a separate planning unit taking account of how the building was being occupied by the appellant's daughter and her family. Whilst they were relatives of the appellant, the Inspector found that they clearly had their own lives meaning that the occupation of the house by the family took place independently of the other uses taking place on the land. However, whilst that may have been the case then and since the appellant's daughter and her family have occupied the building, that finding by the Inspector did not cover the use of the building before those occupants moved in and the Inspector gave no view on any immunity from enforcement action due to the passage of time.
19. Unlike those circumstances, there is no clear and detailed evidence about when the former owners were allegedly living in the two buildings that this led to the creation of a separate planning unit for the appeal property by the time of the

material date. There is nothing, for example, to show whether the occupiers lived independently from each other or the other uses on the site thus meaning that the occupation of the appeal building represented a separate dwellinghouse leading to the creation of a new planning unit. I also note that the prior approval application was refused by the Council in part because it considered the last use of the building appeared to be as ancillary accommodation related to the use of part of the site as a garden centre. That would indicate that at that time the appeal building was not a separate C3 use.

20. In the above context, even if the appeal building was being lived in by one of the previous owners, I cannot reasonably conclude that from 15 August 2013 until the appellant's daughter and her family moved in, a significant period of around four months, that the use claimed in the LDC application was occurring.
21. Taking all of the above in the round, the appellant's evidence is not, as a matter of fact and degree, sufficiently precise and unambiguous to show, on the balance of probability, that the use as a single dwellinghouse had existed on a substantially uninterrupted basis for at least four years by the date when the second EN was issued. Therefore, I cannot conclude that the existing use is lawful. Consequently, a LDC cannot be issued.

APPEAL B

22. On the LDC application form the appellant asserts that the dwellinghouse use started on 5 September 2014. Bearing in mind what I have set out above under 'Background and Main Issue', the necessary four years of immunity from enforcement action has not been accrued. The use applied for is therefore not lawful. Consequently, I cannot issue a LDC.

Conclusions

23. For the above reasons, I conclude that the appeals should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Gareth Symons

INSPECTOR