
Appeal Decision

by P N Jarratt BA DipTP MRTPI

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

Decision date: 11 May 2020

Appeal Ref: APP/N5660/X/19/3227581

Units 4, 20, and 21 North Street Mews, rear of 93-99 North Street, London, SW4 0HF

- 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 Highlaw Limited against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 18/04288/LDCE, dated 5 October 2018, was refused by notice dated 11 December 2018.
 - 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 confirming the lawful use of Units 4 and 21 as Class B1(c) and of Unit 20 as Class B1(a).
 - **Summary of decision:** appeal allowed and LDC issued.
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Procedural Matters

1. For the avoidance of doubt, I should explain that the planning merits of the use are not relevant and they are not therefore issues for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
2. A site inspection was unnecessary in view of the determination of the case being dependent on the date sensitive evidence submitted.
3. I consider that the main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

The appeal site

4. The appeal relates to Units 4, 20 and 21 on a site known as North Street Mews, land at 93-99 North Street and land to the rear. The wider site consists of 16 Use Class B buildings and units arranged in a cul-de-sac fronting onto a communal courtyard area accessed via a gated vehicular entrance underneath 97 North Street. All units are now vacant. Unit 4 (c147 sqm) is on the ground floor with Unit 20 (c146 sqm) above it at first floor level, with Unit 21 (c119 sqm) adjacent, also at first floor level. There is no original planning permission for the site but applications have been made to alter or redevelop the site to

introduce residential use in 1992, 2013 and 2016. The 2013 application was refused and the other two were withdrawn.

Reasons

5. For this appeal to succeed it is necessary for the appellants to demonstrate that the respective units have been used for the claimed uses for a period of 10 years (the relevant period) prior to the date of the application and that the uses have been continuous, in order to achieve immunity from enforcement action through the passage of time. As the application was made on 5 October 2018, the relevant date is 5 October 2008. The onus of proof rests with the appellant and the standard of proof is on the balance of probability.
6. The evidence submitted by the appellants includes lease, plans and other documents together with two statutory declarations dated 24 May 2018. The first declaration by Timothy David Welch Glass states that he is a Director of Redwood Property and Trading Company Ltd since 1987 and has personal knowledge of how all the units were used from January 2001 to 31 October 2014 during their period of ownership of the site.
7. The second declaration by Mr Richard G J Spedding states that he is a Facilities Manager for CHP Management (the managing agents for Highlaw Ltd) and has personal knowledge of how the units were used from 1 November 2014 when Highlaw took control of the site.

Unit 4

8. Mr Glass confirms that Unit 4 was solely occupied by 'Sophie Stellar' for the design of fashion knitwear and the manufacturing of samples from 1 March 2006 to 27 October 2010; and, from 28 October 2010 until 31 October 2014 the unit was solely occupied by 'Loretta Liu' as a bakery. Mr Spedding confirms it continued as a bakery from 1 November 2014 until 22 October 2016 when it fell vacant. Both witnesses consider that its use should be described as a B1(c) use. The leasehold agreements indicate that the premises were let to Loretta Liu Wenying under B1 use class from 27 October 2010 to October 2016.
9. The Council identifies that the lease agreements do not extend a full 10 years back to the relevant date of 5 October 2008, necessary to demonstrate a continuous 10 year period in this use. Additionally, reference is made to Valuation Office records which lists the unit as workshop and premises on three dates including referring to the unit as 'vehicle repair and workshop and premises' prior to October 2010. As pointed out in the Planning Statement accompanying the LDC application, this recorded use was inaccurate and it was corrected in October 2010. Notwithstanding this, the Council express a view that it cannot be ascertained that such a use would fall within the B1(c) use class and refer to two recent appeal decisions which established that 'car repairs' would not fall within B1 use class as car repairs are likely to result in noise, and possibly smell and fumes. However, in the light of corrected Valuation Office records, reference to other decisions is not pertinent to this case.
10. The statutory declarations cover a ten year period between 1 March 2006 and 22 October 2016 and I attach considerable weight to them. Although the lease agreements covers a period from 27 October 2010, this does not contradict the statutory declarations or reduce the weight I attach to them. The evidence is

clear, precise and unambiguous and the failure of the Council to acknowledge the correction of the Valuation Office records is unfortunate as this has led to attention to a matter that was unwarranted.

11. I conclude that on the balance of probability the appellant has demonstrated that Unit 4 has been used within the B1(c) use class for a continuous 10 year period and is immune from enforcement action.

Unit 20

12. Mr Glass confirms that Unit 20 was solely occupied between 1 March 2006 and 31 October 2014 by 'Kippered' as an office within Class B1(a). Mr Spedding confirms it continued as an office as a B1(a) use from 1 November 2014 until 27 July 2017 when it became vacant.
13. Submitted copies of leases relate to a 3 year period from 28 July 2014 to 27 July 2017 with the use allowed being B1 and the tenant being A Wall and A Jarrett T/A Kippered. An earlier lease to the same parties is for a period of 5 years from 29 May 2009, also relating to a B1 use. Valuation Office records list the unit as a workshop on 1st April 2010 and 1st April 2017.
14. In the light of this the Council does not consider that the leases show that the claimed use of the premises has been in existence for 10 years continuously or that it shows the precise use class. Whilst this is a correct conclusion on the lease evidence alone, the Council appear to attach little weight to the statutory declarations which indicate a continuous 10 year period of use.
15. Case law establishes that an appellant's evidence does not need to be corroborated by independent evidence in order to be accepted if there is no evidence to contradict it and it is sufficiently precise and unambiguous¹. In this case the limited corroboration of the the statutory declarations does not undermine the value of those declarations.
16. I conclude that on the balance of probability the appellant has demonstrated that Unit 20 has been used within the B1(a) use class for a continuous 10 year period and is immune from enforcement action.

Unit 21

17. Mr Glass confirms that Unit 21 was solely occupied between 1 March 2006 and 31 October 2014 by 'Hilary Wili' as a theatrical costumer where products were made on site. Mr Spedding confirms it continued in this use from 1 November 2014 until 27 July 2017 when it became vacant. Both witnesses consider that its use should be described as a B1(c) use.
18. Submitted copies of leases relate to a 3 year period from 28 July 2014 to 27 July 2017 with the use allowed being B1 and the tenant being Hilary Wili. An earlier lease to the same parties is dated 15 May 2009 for a period of 5 years, also relating to a B1 use. Valuation Office records list the unit as a workshop on 1st April 2010 and 1st April 2017.
19. In a similar manner to their evaluation of the evidence for Unit 20, the Council does not consider that the leases show that the claimed use of the premises has been in existence for 10 years continuously without any significant break.

¹ F W Gabbittas v SSE and Newham LBC [1985] JPL 630

Again the Council appears to attach little weight to the statutory declarations which indicate a continuous 10 year period of use.

20. I conclude that on the balance of probability the appellant has demonstrated that Unit 20 has been used within the B1(c) use class for a continuous 10 year period and is immune from enforcement action.

Conclusion

21. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the lawful use of Units 4 and 21 as Class B1(c) and of Unit 20 as Class B1(a) was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Decision

22. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the existing use which is considered to be lawful.

P N Jarratt

Inspector

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 25 October 2018 the uses described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

That on the balance of probability Units 4 and 21 have been used within the B1(c) use class, and Unit 20 has been used within the B1(a) use class, for a continuous 10 year period and are immune from enforcement action.

Signed

P N Jarratt

Inspector

Date 11 May 2020

Reference

APP/N5660/X/19/3227581

First Schedule

Units 4 and 21 as Class B1(c) and of Unit 20 as Class B1(a) of the Town and Country Planning Use Classes Order 1987, as amended

Second Schedule

Units 4, 20, and 21 North Street Mews, rear of 93-99 North Street, London, SW4 0HF

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 11 May 2020

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Land at: Units 4, 20, and 21 North Street Mews, rear of 93-99 North Street, London, SW4 0HF

Reference: APP/N5660/X/19/3227581

Scale: Do not scale

