



Appeal Decision

Site visit made on 10 March 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 18 May 2020

Appeal Ref: APP/L3625/X/19/3239590

1 Yewlands Close, Banstead, Surrey SM7 3DB

- 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.
 - The appeal is made by Mr James Jones against the decision of Reigate & Banstead Borough Council.
 - The application Ref 16/00261/CLE is dated 1 February 2016.
 - 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 described as *'1 bedroom granny flat which has been in use since 25/3/11. More than 4 years.'*
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Decision

1. The appeal is dismissed.

Background

2. The development involves the use of a building as a 1-bed granny flat which, on 1 February 2016, the date the application for a lawful development certificate (LDC) was made, the appellant considers was lawful due to immunity from enforcement action by way of the passage of time.
3. In May 2019 the Council issued an enforcement notice which alleged the unauthorised erection of a dwellinghouse and ancillary outbuilding within the said building on "Land to the rear and side of 1 & 2 and at 1 Yewlands Close, Banstead, Surrey SM7 3DB". The notice required for the cessation of use of residential accommodation and removal of "the buildings outlined in black on the attached plan".
4. I understand that the enforcement notice was not appealed and it thereby took effect on 29 June 2019 requiring compliance within six months, or by 29 December 2019.
5. In the interim, on 21 October 2019, subsequent to the enforcement notice taking effect, an appeal was lodged against the Council's decision not to issue the LDC applied for in 2016.

Main Issue

6. The main issue in this appeal is whether the Council's decision to refuse the LDC was well founded.

Reasons

Legal requirement

7. In an appeal under s195 of the Act against the refusal of a LDC the planning merits of the matter applied for do not fall to be considered. The decision is based strictly on the evidential facts and on relevant planning law. The burden of proof is on the appellant.
8. The relevant date for the determination of lawfulness is the date of the LDC application, i.e. 1 February 2016. The matter to be decided upon, therefore, is whether, under s191 of the 1990 Act, the use would have been lawful on this date as no enforcement action could have been taken in respect of it, and that the extent of the use did not constitute a contravention of the requirements of any enforcement notice then in force.
9. S191(2) of the 1990 Act says that uses and operations are lawful at any time if, under sub-section 2(b), *"they do not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force."*
10. A LDC cannot, therefore, be granted where it contravenes the requirements of a enforcement notice that has taken effect, and as the land and buildings the subject of the LDC application are identical to those the subject of the enforcement notice attached to the land, and in force, this development is a case in point.
11. At my site visit I noted that the building remains in situ.

Other matters

12. Although separate from the development at appeal, but referred to by the appellant, I note that in September 2019 a LDC application was made relating to a different outbuilding to the rear of No 2 which was also in use as an independent unit of residential accommodation. Its lawfulness was confirmed as the Council assessed that the applicant had provided sufficient evidence to show that the development was immune from planning enforcement action. Accordingly, the appropriate LDC was issued.
13. The important material difference here is that prior to the LDC being issued there was no enforcement notice in place against the development. Further, this decision cannot have any bearing on the current appeal as the buildings are separate and are situated on neighbouring sites.
14. I note that the appellant, in his representations, has indicated that the Council, in its LDC decision notice, mistakenly referred to s171B(3) of the 1990 Act, as amended, whereas he feels that s171B(1) is the appropriate paragraph in respect of the relevant time period for immunity in this instance. In effect, the Council considers the immunity period spans ten years whereas the appellant considers it to be only four.
15. Having examined the evidence I am satisfied that the Council, in correctly considering that where a building is erected as a dwelling the time period for taking enforcement action against the material change in the use of the land is ten years rather than four years, did not misdirect itself. Indeed, this is established in case law with the authority being *'Welwyn Hatfield BC v*

Secretary of State for Communities and Local Government' being the authority for such. This case is referred to by the Council.

16. Given that the application for the certificate of lawful use (LDC) was made on 1 February 2016, the appellant, under normal circumstances, would need to successfully demonstrate, on the balance of probability, that the breach of control commenced ten years before, ie prior to 1 February 2006 (the material date), and has continued since. The evidence submitted suggests, however, that the annex was only built between 2010 and 2011 and, as such, the legal requirement could not be met. Nonetheless, even if the lawfulness claim was finely balanced, the fact that there is an enforcement notice in effect becomes the overriding and determinant factor.

Conclusion

17. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a LDC was well founded, and the appeal does not succeed. I will exercise, accordingly, the powers transferred to me in section 195(3) of the 1990 Act, as amended.

Timothy C King

INSPECTOR