



Appeal Decision

by **L Perkins BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 02 July 2020

Appeal Ref: APP/H5390/X/19/3243239
31A North End Road, London W14 8SZ

- 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 Zul Karim against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 2019/01864/CLE, dated 9 April 2018, was refused by notice dated 14 August 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 has been described as: "Existing Takeaway with limited seating use as restaurant".
-

Decision

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

Application for Costs

2. An application for costs was made by Mr Zul Karim against the Council of the London Borough of Hammersmith & Fulham. This application is the subject of a separate Decision.

Preliminary Matters

3. In response to travel restrictions which have been in place due to the COVID-19 pandemic I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the information already available, supplemented by additional information supplied by the appellant. Both the appellant and the Council were given an opportunity to provide comments on this approach and I have taken any responses into account.
4. The description of the use in the heading above has been taken from the application form and indicates the use for which a certificate is sought is in effect part takeaway, part restaurant. The Council's decision notice describes the use as: "Continued use as a takeaway and restaurant (Class A5 and A3)." The appellant's statement indicates the application is for "the lawful continuation of an A3/A5 usage". This is broadly consistent with the description on the Council's decision notice and wording used in a Statutory Declaration provided by the appellant so I have determined the appeal on this basis.
5. However, neither "A5 and A3" nor "A3/A5" are Use Classes recognised under The Town and Country Planning (Use Classes) Order 1987 and so I have

omitted these terms, and other unnecessary wording, from the description of development in the attached certificate.

Main Issue

6. The main issue is whether the Council's decision to refuse the certificate was well-founded or not.

Reasons

7. If any person wishes to ascertain whether any existing use of a building is lawful they may make an application to the local planning authority specifying the land and describing the use. For the purposes of the above Act, in general terms, a use is lawful at any time if the time for enforcement action has expired. Where there has been a breach of planning control consisting in the change of use of any building (or part of a building), it is usually the case that no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.
8. If, on an application under section 191, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use described in the application, (or that description as modified by the local planning authority or a description substituted by them), they shall issue a certificate to that effect, and in any other case they shall refuse the application.
9. The applicant is responsible for providing sufficient information to support an application. In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise 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.
10. It is common ground between the main parties in this case that the appeal premises were in use as a restaurant/takeaway during the period 26 November 1998 to 29 September 2013. The appellant has provided a statutory declaration pursuant to The Statutory Declarations Act 1835. In summary, this declares that the appeal premises have been in continuous use as a restaurant and takeaway (with different business names), since at least 15 February 1993 until 2013, a period of around 20 years. The declaration goes on to state that since the last tenant ceased occupation the property has remained configured as a takeaway restaurant.
11. With effect from 30 September 2013 to 31 February 2015, a business rates listing records the appeal premises as 'shops and premises'. The Council considers this suggests the appeal premises would have been Use Class A1 during this timeframe, rather than the takeaway and restaurant use described by the appellant. Business rates records then appear to show the appeal premises reverted back to the former use with effect from 1 April 2015.
12. The Council also refers to letters dated 2 September 2017 and 2 October 2017 from the appellant's agent, referring to works to retrofit and reinstate a restaurant at the appeal premises. In light of the above, the Council considers the evidence is not clear or unambiguous with regard to demonstrating

continuous usage of the appeal premises, as described by the appellant, for 10 years prior to the date of the application.

13. However, the appellant has explained that the change to 'shops and premises' in business rates records was an error, and, in his statutory declaration the appellant says the premises have never been used as an A1 shop, it has always been used as a takeaway restaurant. I am satisfied that the photographs provided, dated 26 April 2020, confirm that the property has remained configured as a takeaway restaurant, and, the appellant's explanation is supported by business rates information including bills for 2013/14, 2014/15 and 2018/19.
14. In light of the above, I am satisfied in this case that the appeal premises have not been used other than as described by the appellant, and, that what is reflected in business rates records does not mean there has been any intervening use as a shop. Whilst the premises may be vacant and this appears to have been the case for some time, I have no reason to consider the use of the appeal premises as anything other than as described by the appellant. Moreover, I am satisfied that the applicant's evidence is sufficiently precise and unambiguous in this regard.

Other Matters

15. Third party representations have been received in respect of the use which is the subject of this appeal. These include concerns about the effect of the use on the residential nature of the area and concerns about parking and highway safety. However, Planning Practice Guidance¹ is clear that planning merits are not relevant at any stage in a lawful development certificate application or the appeal process for such an application.

Conclusion

16. 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 a takeaway and restaurant, at 31A North End Road, London W14 8SZ 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.

L Perkins

INSPECTOR

¹ Lawful development certificates, paragraph: 009 Reference ID: 17c-009-20140306

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 9 April 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red and shaded pink on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The premises have been used as a takeaway and restaurant for 10 years continuously prior to the date of the application and so the use is lawful under section 171B(3) of the above Act.

Signed:

L Perkins
INSPECTOR

Date: 02 July 2020

Reference: APP/H5390/X/19/3243239

First Schedule

Takeaway and restaurant

Second Schedule

Land at 31A North End Road, London W14 8SZ

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: 02 July 2020

By L Perkins BSc (Hons) DipTP MRTPI

Land at: 31A North End Road, London W14 8SZ

Reference: APP/H5390/X/19/3243239

Scale: Not to scale

