



Appeal Decision

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 July 2020

Appeal Ref: APP/T5150/X/19/3225282

Garages rear of 25 - 27 Ranelagh Road, Wembley HA0 4TW

- 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 Irruthayanathan Annasingham against the decision of the Council of the London Borough of Brent.
 - The application Ref 18/4679, dated 7 December 2018, was refused by notice dated 29 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 "5 existing storage units (Use Class B8) in rear garden of ground floor flat."
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Decision

1. The appeal is dismissed insofar as it relates to the land immediately to the rear of the storage units. The appeal is allowed insofar as it relates to the storage units themselves, and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Procedural Matters

2. Due to the ongoing public health emergency it was necessary for me to cancel the scheduled site visit. However I consider that a site visit is not essential in this case, considering the matters in dispute and the evidence that has been presented, including additional photographic evidence from the appellant. Neither the appellant nor the Council have objected to the appeal proceeding on this basis.
3. I have taken the site address and description of development from the Council's decision notice, which appears to accurately depict the location and development for which a lawful development certificate (LDC) is sought.
4. It is undisputed between the parties that the appeal site includes an area of land immediately to the rear of the storage units.

Reasons

5. Uses and operations are lawful at any time if no enforcement action may 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 (s191(2)). In this case, the appellant seeks to rely on the passage of time.
6. It is necessary to consider whether, on the balance of probability, the land within the appeal site has continued to be used for storage purposes for a period of ten years or more prior to the date of the application, that is from at least 7 December 2008, so as to be immune from enforcement. The onus is on the appellant to demonstrate that, on the balance of probability, the use has continued for the aforementioned ten-year period.
 7. I am mindful that planning practice guidance states *"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."*
 8. The appeal site comprises a terrace of 5 single garages, together with adjoining land to the rear, which seemingly used to form part of the rear gardens of Nos 25 and 27 Ranelagh Road. Various evidence has been submitted in support of the application. This includes a sworn affidavit from the appellant regarding his use of the garages. It also includes tenancy agreements, completed in 2004 and 2012 respectively, each covering 10-year periods.
 9. There is no dispute between the parties that the garage buildings themselves have been in continuous storage use for the requisite immunity period. Specifically, the appellant's sworn statement says that the garages have been used as a store room and in connection with his business since his occupation in July 2004, and that the occupation has been continuous without interruption. Given that any person who lies about the information contained therein could be prosecuted for the crime of perjury, and if convicted may have to pay significant fines or be sentenced to time in prison, I give the affidavit significant weight.
 10. However, although the tenancies in question encompass land adjoining the garages, that is included as part of the appeal site, none of the documentation provided contains information to demonstrate, on the balance of probability, that this adjoining land has been physically used for storage purposes for the requisite immunity period.
 11. The Council has submitted aerial photographs, claimed to be dated from 2008, 2010 and 2012. Although the images lack clarity, they indicate the land to the rear of the garages being characterised by green space, with the presence of a tree. To my mind these images do not show that the storage of goods was taking place on the land. A further aerial image, said to be dated 2013, shows what appears to be the green space replaced by the presence of miscellaneous items. The Council therefore take the view that the storage use on this land commenced after 2012.
 12. The appellant, in response, has expressed doubt regarding the date of the photographs provided by the Council; considers that the presence of the tree is obscuring stored items on the site and has provided his own photographs said to date from March 2009. In these photographs, various items can be seen scattered or loosely stacked on the site.

13. It seems to me that no information has been made available to officially corroborate the date of the various photographs provided by either party. However, even if the 2009 date of the appellant's photographs was correct, this would not demonstrate, on the balance of probability, continuous use of the land behind the garages, for storage over the entire immunity period.
14. The appellant has submitted photographic evidence showing the presence of timber doors in the rear elevation of each of the garages, connecting and allowing pedestrian access between the garage units and the parcel of land to the rear. He says that the presence of the doors demonstrates that the site was built with this connection, in order to allow for storage on the rear land, as per the contract between the client and his landlord.
15. I have given careful consideration to the photographs provided. However there is no information before me to rule out that the main purpose of the rear garage doors, was to meet a requirement to facilitate a safe alternative means of escape from the units, for example in the event of fire. Even if this was not the main purpose of the doors, and they simply allowed connectivity with the rear land, as set out above, there is no evidence to persuade me, on the balance of probability, that storage has taken place continuously on the rear land, and that it has formed a single planning unit with the garages, for the requisite immunity period.
16. I conclude that the appellant has failed to discharge the aforementioned duty to provide sufficiently precise and unambiguous evidence to justify the grant of a certificate, on the balance of probability.
17. S.191(4) of the Act allows the local planning authority to modify the terms of the application, giving a certificate in somewhat different terms so as to accord with the facts and evidence, rather than an outright refusal. The Secretary of State or Inspector can exercise the same power in s.191(4), on appeal, as the local planning authority has on the application.
18. Therefore for the reasons given above, and having considered all of the documentation provided by the appellant, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of 5 existing storage units (Use Class B8) in rear garden of ground floor flat, was well-founded, insofar as it relates to the adjoining rear area.
19. However, insofar as it relates to the storage units themselves, I conclude that the Council's refusal to grant a certificate of lawful use or development was not well-founded. The appeal succeeds to that extent. I will exercise, accordingly, the powers transferred to me under section 195(2) of the 1990 Act as amended, and grant a certificate relating to that part.

Roy Merrett

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 7 December 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and shaded in blue on the plan attached to this certificate, (and for the avoidance of doubt excluding the land denoted as 'Existing storage units rear area') was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The garage units have, on the balance of probability, been used continuously for storage purposes for at least 10 years prior to 7 December 2018.

Signed

Roy Merrett
Inspector

Date 03 July 2020
Reference: APP/T5150/X/19/3225282

First Schedule

5 existing storage units (Use Class B8).

Second Schedule

Land at Garages rear of 25 - 27 Ranelagh Road, Wembley HA0 4TW (for the avoidance of doubt excluding the land denoted as 'Existing storage units rear area' on the plan attached to this certificate).

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 described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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: 03 July 2020

by **Roy Merrett Bsc(Hons) DipTP MRTPI**

Land at: Garages rear of 25 - 27 Ranelagh Road, Wembley HA0 4TW

Reference: APP/T5150/X/19/3225282

Scale: Not to scale

