



Appeal Decision

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 13 August 2020

Appeal Ref: APP/X5990/X/20/3244490

15 Craven Terrace, London W2 3QD

- 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 Rami Al-hegel against the decision of City of Westminster Council.
 - The application Ref 19/08011/CLOPUD, dated 15 October 2019, was refused by notice dated 30 December 2019.
 - The application was made under section 192(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 use of office on second floor for private car hiring.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Planning Inspectorate initially made arrangements for this appeal to be determined following a site visit. That event could not take place given the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and related guidance.
3. The file has subsequently been reviewed to consider the optimal procedure for the appeal. It appeared that the appeal could be determined on the papers – that is, without a site visit – without causing prejudice to any party. This is because the case turns on legal points and the parties have submitted sufficient plans and documentary evidence to understand the nature of the site given the grounds of appeal and points in dispute. The parties were contacted on 23 April 2020, there was no response from either party. As the appointed Inspector I can proceed to a decision on this basis.
4. For the avoidance of doubt, the planning merits of the proposed use are not relevant, and they are not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 (the Act), as amended, which relates to an application for an LDC. My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proving relevant facts rests on the appellant and the test of evidence is made on the balance of probability.

Main Issue

5. The main issue is whether the Council's decision to refuse the application for an LDC was well-founded.

Reasons

6. The appellant has set out in his application form that he is seeking a certificate for a proposed use as an office for private car hiring. Notwithstanding the annotation of 'existing store' on the submitted plans, he says that the site has previously been used by the landlord of the flats in the building for his personal use as an office.
7. In order for a certificate to be granted the appellant would need to show that the use of the site in the way he intends either already has planning permission or that it does not need planning permission. There is no evidence of planning permission having been granted for the use proposed by the appellant.
8. Whilst the appellant states that the site has been used as a personal office there is no information before me to suggest that its use was as a commercial office as opposed to private space for work. Furthermore, notwithstanding that the appellant is not seeking a certificate for an existing use, there are no details of how long the site has been used in this way to establish that office use was the last lawful use of the site.
9. The use of this part of the building as an office for the private hiring of vehicles could fall into a Class B1 (Office) use or could be considered to be a taxi business or business for the hire of motor vehicles.
10. The appellant has not shown that the lawful use of this part of the building is an office. Therefore, there is no information to suggest that a change of use to an office would not occur. Planning permission is required for use as a taxi business or business for the hire of motor vehicles, unless the premises were previously used for such purposes, which has also not been shown to be the case here.
11. Save for the appellants address which is given on the appeal form as the same as the appeal site, there is no information to suggest that the appellant occupies a flat in the building on which to base an argument that the use would be operating as a 'business from home'.
12. In this case the change of use would constitute an act of development under Section 55(1) of the Planning Act 1990 for which planning permission would be required.
13. Regardless of whether the space has been used in association with other uses in the building or used independently, the appellant has not provided relevant facts to demonstrate that, on the balance of probability, planning permission is not required.

Conclusion

14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of an office on second floor for private car hiring was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Sarah Dyer

Inspector