
Appeal Decision

Site visit made on 7 September 2020

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 September 2020

Appeal Ref: APP/N4205/X/20/3255134

510 Darwen Road, Bromley Cross, Bolton BL7 9DX

- 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 Mrs Shabnam Begum against the decision of Bolton Metropolitan Borough Council.
 - The application Ref 06301/19, dated 15 June 2019, was refused by notice dated 24 February 2020.
 - 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 the proposed reversion to A1 use after expiry of temporary A3 use.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mrs Shabnam Begum against Bolton Metropolitan Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 will come into force, amending the Town and Country Planning (Use Classes) Order 1987. These Regulations amend and simplify the system of Use Classes. One of the amendments is the revocation of Class A and the creation of a broader 'Commercial, business and service' use class (Class E) which incorporates, amongst other things, the previous shops (A1), restaurants and cafes (A3) and other business uses (B1) use classes.
4. Notwithstanding the above, the application for a certificate of lawful development under s192 of Town and Country Planning Act 1990 as amended (the Act) seeks to ascertain whether the use described in the application would be lawful if instituted or begun at the time of the application. Accordingly, I have determined the appeal based on the version of the Town and Country Planning (Use Classes) Order 1987 that was in force at the time the application was made, not on the recently amended version.

5. The Council determined the application on the basis of it being both a s192 and s191 application. However, the application form clearly identifies it as a s192 application and the appellant does not confirm that she wishes it to be considered otherwise. The crux of what is claimed in the application is that the lawful use of the property is A1 use. In this instance, whether it is considered as a s191 or s192 makes no difference as the outcome would be the same. Accordingly, I have determined the appeal on the basis of the s192 application as applied for.

Main Issue

6. The main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) is well-founded.

Reasons

7. The appellant argues that the lawful use of the property is A1 and therefore the use of the property as such, following the expiry of the temporary permission for its use as an A3 use¹, is lawful. In granting this temporary change of use of the building to an A3 use, the appellant contends that the Council must therefore have accepted that the lawful use of the building at the time was A1. However, as the Council confirm, the consideration of what the lawful use of the building was at the time was not necessary. Only the proposed A3 use and its effects were considered. Therefore, permitting the temporary A3 use in no way confirms the existing use at the time was an A1 use.
8. The appellant also relies on the comments made by the previous Inspector for the 2019 appeals². The Inspector noted that the appellant (at the time) stated that the previous use of the building was a shop, not offices as stated in the notice. It is also noted that the Council did not dispute this. However, the Inspector's conclusion on the matter was that it is not necessary to specify what the previous use was in the allegation. Consequently, she corrected the notice by deleting the reference to office use. I do not consider that the deletion of "from office use" confirms that the lawful use was an A1 use. More importantly, whilst the Inspector noted the previous use as a shop, she did not conclude that this use was lawful.
9. The purpose of the enforcement notice is to remedy the breach of planning control as alleged in the Notice, which is the "material change of use of the land to use as a restaurant/café", as corrected by the Inspector. The requirements of the Notice are: 1) Permanently cease to use the site as a restaurant/café; and, 2) Permanently remove from the premises all equipment associated with the use of the property as a restaurant/café. Neither of the requirements require the property to revert back to its lawful use, nor should they, contrary to the appellant's assertions that "the notice instructed the appellant to cease the use of an A3 and return it back to its original use". The purpose of the requirements of the Notice is simply to remedy the breach of planning control. They are clear and unambiguous and can simply be complied with.
10. Furthermore, the appeal decision for the enforcement notice sits alongside the enforcement notice itself and therefore it is not necessary for the Council to redraft the enforcement notice to reflect the corrections made by the Inspector.

¹ Council Ref: 94183/15

² Appeal Ref: APP/N4205/W/18/3204215 and APP/N4205/C/18/3204585

11. I note that there is no evidence before me to suggest what the A1 use alleged by the appellant comprised or how long it has operated for. The appellant refers to "sworn statements and invoices" that were submitted with the application. However, no such evidence has been presented to me. It is for the appellant to submit such details, not the Council.
12. The Council confirms that they have no records themselves of the property being in A1 use. In addition, they state that Google Streetview images indicate that the property was advertised for sale/let as an office/workshop in September-October 2009 and between May 2012 and August 2015 there was no shop front or any indication that it was in A1 use. Whilst I have not been presented with copies of these images, the appellant provides little justification as to why they support her argument that it was in A1 use.
13. Taking the above into account, there is insufficient evidence to demonstrate that, on the balance of probabilities, the lawful use of the property is A1 use and therefore the reversion to such a use following the expiration of the temporary A3 use would not be lawful.

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 reversion to A1 use after the expiry of the temporary A3 use 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.

Alexander Walker

INSPECTOR