



Appeal Decision

Site visit made on 8 September 2020

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th October 2020

Appeal Ref: APP/X4725/X/20/3252776

31 Warwick Street, Wakefield WF1 5BJ

- 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 Talat Ashraf against the decision of City of Wakefield Metropolitan District Council.
 - The application Ref 19/02337/CPE, dated 10 October 2019, was refused by notice dated 4 December 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 a garage for car and vehicle repairs.
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Decision

1. The appeal is dismissed.

Reasons

2. S191(2)(b) of the Act¹ states "For the purposes of this Act uses and operations are lawful at any time if – (b) they do not constitute a contravention of any requirements of any enforcement notice then in force". S285(1) goes on to state that "the validity of an enforcement notice shall not, except by way of an appeal under Part VII, be questioned in any proceedings whatsoever on any grounds which such an appeal may be brought".
3. An enforcement notice was issued on 8 September 2016 relating to an unauthorised change of use from a joiner's workshop, use class B1, to a vehicles repair garage, use class B2. An appeal against the enforcement notice was dismissed on 18 January 2017 and the notice was upheld.
4. The LDC application was made on 10 October 2019 and there was an enforcement notice in force at the time the application was made. The Land identified in the notice is that identified in this appeal and the notice requires the "use of the land for the unauthorised vehicle repair garage (B2) use" to cease. This is the same development to which the LDC relates. The use could not therefore be lawful on the date of the application by reference to s191(2)(b).
5. An LDC cannot therefore be issued. Accordingly, it is not necessary to consider whether there is sufficient evidence to establish immunity from enforcement through the passage of time, as argued by the appellant.

¹ Town and Country Planning Act 1990 as amended

6. 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 as a garage for car and vehicle repairs 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.

M Madge

INSPECTOR