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## Appeal Decision

Site visit made on 14 December 2020

**by Zoë Franks Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 4<sup>th</sup> January 2021**

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**Appeal Ref: APP/W5780/X/20/3255997**

**627F High Road, Seven Kings, Ilford, IG3 8RA**

- 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 Ian Bruce Gerecht (Avian Finance Limited) against the decision of the Council of the London Borough of Redbridge.
  - The application Ref 0568/20, dated 3 March 2020, was refused by notice dated 9 April 2020.
  - 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 B1 (a) – Office (other than A2).
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. The description of the use for which a certificate is sought, as set out above, is taken from the application. The Council's refusal notice described the use as 'Use as an ancillary office class (B1) (Summary)' and it was likewise described on the appeal form as 'Use as ancillary office class (B1)'. The appeal has been determined on the description from the application form as the use described by the appellant, and on the documents submitted in support of the application and during the course of the appeal.

### Main Issue

3. The main issue is whether the Council's refusal to issue a certificate of lawfulness was well-founded. The use is lawful if no enforcement action can be taken in respect of it and provided it does not contravene the requirements of any enforcement notice then in force (s.191 (2) of the 1990 Act). Section 171B(3) of the 1990 Act provides that where there has been a breach of planning control consisting of the change of use other than to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach. The parties have not informed me that an enforcement notice has been issued in relation to the appeal property. The matter in issue is therefore what was the existing or most recent use of the premises (the property was unoccupied during my site visit) and had it continued for more than 10 years.

### *Evidence*

4. In an appeal relating to a lawful development certificate, the burden of proof rest with the appellant on the balance of probabilities. If there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate provided that it is sufficiently precise and unambiguous.
5. The appellant submitted a sworn affidavit that the appeal property has been in continuous use for business purposes (storage with ancillary offices) for more than 50 years. The application form stated that the existing use at that time was as storage used by a company called Emma-Jane Limited (of which Mr Gerecht is also a director). Three letters have also been provided from neighbours which state that the appeal property 'has been in continuous use as a business and storage purposes' (*sic*), going back variously to 1999, 2009 and 2013. A table referencing documents was submitted by the appellant which lists six Business Rates Bills between the dates of 10 March 2014 and 10 March 2019 but I have not been provided with copies of these documents.
6. The evidence and case submitted by the appellant is therefore that the building had been used as 'storage for business purposes and part first floor as an ancillary office for record purposes.' This does not tally with the description of the existing use being applied for i.e. 'B1(a) – Office (other than A2)'. The appellant's own case is that it has most recently been used as storage. Such use falls within use class B8: 'Use for storage or as a distribution centre' (and not B1(a)). Any office use was ancillary to the primary storage use of the single planning unit. The appellant's evidence does not support the application for the whole of the unit as a B1(a) office use.
7. The Council are not disputing the veracity of the appellant's affidavit or the other evidence submitted and do not provide any other evidence to support the primary use as office. By accepting the appellant's evidence, which I have no reason to doubt, I cannot find that the primary use of the appeal property was as an office (B1 (a)), as the evidence and case submitted state that the main use was as storage with an ancillary office upstairs.

### *Conclusion*

8. 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 627F High Road as B1(a) office use (other than A2) was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*Zoë Franks*

INSPECTOR