



Appeal Decision

Site visit made on 17 December 2020

by Simon Hand MA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 08 January 2021

Appeal Ref: APP/K3605/X/20/3251199
254 Walton Road, West Molesey, KT8 2HT

- 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 Shahid Khan against the decision of Elmbridge Borough Council.
 - The application Ref 2019/3523, dated 9 January 2020, was refused by notice dated 5 March 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 to regularise the existing use as storage (B8) which has been continuous for more than 10 years.
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Decision

1. The appeal is dismissed.

Reasons

2. The site is the ground floor of No254 which was a dentist's surgery until the early 2000s. The appellant contends that since then it has been used for the storage of personal possessions. The upper floors of the building are in residential use. There is no dispute that the last lawful use of the premises was a D1 dental surgery. There are 7 ways that a lawful use can be extinguished, by a discontinuance order, a condition, implementation of an inconsistent planning permission, breach of a continuing requirement in a condition, following the issue of an enforcement notice, abandonment and by a material change of use to another use. Only the last two are relevant for this appeal.
3. The appellant does not argue the D1 use has been abandoned, although, as we shall see, it has lain dormant, and so I shall consider abandonment at a later stage. Setting this aside for the moment, the appellant will succeed if he can demonstrate there has been a material change of use to storage that has been substantially uninterrupted for 10 years.
4. The appellant's evidence is that in 2001 the dental surgery closed and there is no dispute that since the 2000s, or certainly in the last 10 years there has been no dentist practicing at the address. However, lack of evidence of a dentist is not the same as evidence for a material change of use to storage. This is what the Council meant when they noted the lack of registration by the Care Quality Commission as a dentist did not mean the use was not still subsisting. As a

matter of law, the D1 use continues, even if there is no-one actively practising there, unless the site is affected by one of the seven actions I outlined above.

5. Consequently, I need to see what evidence there is for a material change of use. The council tax records only show that no business rates were payable because the property was empty, not that the D1 use had ceased. I also note that if the property was empty then it could not be being used for storage purposes either. Other than that there are two photographs from 2008 and 2015. The former shows the ground floor with large refuse bins placed outside it, the second just shows the ground floor, looking rather dilapidated. The appellant argues the 2008 photograph shows the premises are clearly not in use, and I would agree, but in that case they are also not being used for storage purposes either.
6. The 2015 photograph is provided in connection with a disputed 2010 visit from the Council. The Council say they made a visit to the premises in November 2010 following an enforcement enquiry. The appellant denies this ever happened. However, the Council's record shows that the appellant was written to in July and October 2010 and a visit was undertaken by an officer (now no longer working for the Council) on 16th November. The Council system records that no unauthorised activity was taking place on that date. Despite the appellant not remembering this, the alternative explanation is that the Council have simply made it up – which is, to my mind, less likely. The appellant argues that the 2015 photograph suggests no refurbishments were made in 2010, which is true, but I cannot find any suggestion that refurbishments were made in 2010. The whole point of the 2010 visit saga is that nothing was happening and the D1 use remained in place.
7. Finally an application was made in 2018 to convert the ground floor into a dwelling and it was described as a proposed change of use from D1 to C3. So at that time the appellant was claiming the existing use was D1.
8. I am obliged to give great weight to the appellant's evidence if it is internally consistent and not contradicted by any other evidence. In this case there is no evidence at all, apart from the appellant's statement, that any storage use has taken place. All the evidence points to a dormant D1 use.
9. In this case therefore I need to consider abandonment. The courts have held that for abandonment to be demonstrated I should consider if there is a sufficient period of non-use, the physical condition of the building, whether there has been any intervening use and the owner's intentions whether to suspend the use or cease it permanently. In this case the building would seem to have remained capable of being used as a dental clinic and the appellant confirms that any recent works have merely been to update facilities that existed prior to the cessation of the D1 use in order to make it more attractive to a D1 tenant if such could be found. I note in 2018 the premises were marketed unsuccessfully for commercial uses. The appellant would therefore never seem to have intended to abandon the use, but always hoped it could be let out at some time. I also note the shop front remained unaltered suggesting it was a dental clinic. Finally, even if the use had been abandoned that does not mean a new use had replaced it, as there is no evidence for a storage use. In such a case the property is likely to have a nil use.
10. By the time of my site visit the situation had changed. The shop front had gone and the frontage looked rather like a dwelling. Inside it has been

refurbished and redecorated with a kitchen and bathroom, but the other rooms are empty except for a small pile of personal possessions on the floor of the front room. However, this is clearly a very recent change and does not affect my view of the longer term retention of the D1 use.

11. I do not consider the D1 use was ever abandoned, it merely lay dormant. There is no evidence for a material change of use to storage over any consecutive period of 10 years and the LDC cannot be issued as applied for.

Simon Hand

Inspector