



Appeal Decision

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 13 January 2021

Appeal Ref: APP/Q5300/X/20/3255001
185 Town Road, Edmonton N9 0HL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Atif Mahmood against the decision of the Council of the London Borough of Enfield.
 - The application Ref 20/00530/CEU, dated 13 February 2020, was refused by notice dated 8 April 2020.
 - The application was made under section 191(1)(a) of the 1990 Act as amended.
 - The use for which a certificate of lawful use or development is sought is B1(a)¹ - office.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Preliminary Matters

2. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
3. For the avoidance of doubt, the planning merits of the use are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended.
4. Uses are lawful at any time if no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason)². The time limits are set out in section 171B of the 1990 Act. In this case, the material change of use would fall within subsection (3) – any other breach of planning control, and so no enforcement action may be taken after the end of a period of ten years beginning with the date of the breach.

¹ This refers to Use Class B1(a) of the Schedule to the Town and Country Planning (Use Classes) Order 1987.

² Section 191(2)(a) of the 1990 Act.

5. It is necessary to consider whether the use continued after the date of change without significant interruption, since during these periods the Council would have been unable to take enforcement action.
6. Therefore, what I must determine is whether the appellant has shown that a material change to use as a B1(a) office took place on or before 13 February 2010³, and that the use continued after the date of change without any significant interruption, such that it would have been too late for the Council to take enforcement action.

Main Issue

7. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

Evidence

8. The site comprises part of the ground floor of a three-storey property. There is a relevant planning history for the site and, given the matters at issue, I have summarised this below.
9. In 2014 it seems that the Council refused prior approval for a proposed change of use of 185A Town Road, which lies to the rear of the appeal site, from offices to flats⁴. The site identified on the plan included parts of the appeal site; the forecourt and the rear wing. The plans indicate that the rear wing was laid out for storage use. In 2019, prior approval was refused for a change of use of 185 Town Road from office - B1(a) to self-contained flats⁵. The site relevant to that application incorporated the appeal site in its entirety.
10. Planning permission was granted in 2015 for extensions and alterations, including creating additional office space at ground floor level, at 185 Town Road⁶. The site plan submitted with the application included the appeal site. The part of the building to which this appeal relates was shown on the plans as being laid out as existing offices with storage space and a reception area. This suggests that the use of the area as offices, as sought through the LDC, has planning permission. However, the information before me on that matter is incomplete and I am unable to find that an office use would be lawful on that basis alone. I have, therefore, gone on to consider the other evidence relied upon by the appellant.
11. The appellant states that the appeal site has been in continuous use as offices since at least 1986 and is currently occupied and used as such. An affidavit has been supplied, which states that the ground floor of No 185 has been used throughout the period from before 2009 as B1(a) office use. The appellant says that he has personally occupied the office space since 1999 through his company, Fita Ventures Ltd. This statement carries moderate weight as sworn evidence.

³ Ten years prior to the date of application.

⁴ Ref P14-00668PRJ dated 23 April 2014.

⁵ Ref 19/03757/PRJ.

⁶ Ref P13-03874PLA Demolition of existing buildings within courtyard and construction of second floor to create 2 x 3-bed self-contained residential units with new pitched roof over, 2-storey rear extension to provide additional office space at ground floor and enlargement of existing first floor residential units and new vehicular access to Town Road, dated 5 March 2015.

12. In addition, a copy of a 'Companies House' confirmation of registered office addressed to Fita Ventures Ltd at 185 Town Road, dated 11 October 2010 has been submitted.
13. I have also been supplied with commercial invoices in connection with "MyChickenShop.Com" and/or Fita Ventures at Nos 185 and 185C, dated 2010 or 2011, invoices for office furniture and repairs to equipment dated 2011 and an invoice concerning redecoration at an unspecified address.
14. The information submitted with the application includes further invoices, a screenshot from the VOA agency indicating a rateable value as offices (ground floor left of No 185) effective from April 2010; a VOA notice of alteration 2017; business rates demands 2010/11 to 2019; invoices from Virgin Media Business 2011, 2012; undated photographs; utilities bills 2014, 2016, 2017; and a commercial valuation report, dated August 2019, which describes the ground floor as offices.

Analysis

15. The appellant has provided a number of documents which indicate a business use was operating from the site. Some of documentary evidence is of limited value as it does not show how the premises was used and occupied as an office as opposed to a trading address. However, the sworn evidence carries moderate weight, not least due to the penalties that can result from making a false statement⁷.
16. The Council points to the planning history as contradictory evidence. It is suggested that application ref P14-00668PRJ showed a mixed use was operating on the site because the plans show storage use in the rear wing. While the plans indicate a storage area, they do not necessarily show a mixed use, which is two primary uses operating within the same planning unit. The storage could equally be ancillary to a primary office use. It would be a matter of fact and degree based on an analysis of how the building was being used at the time. There is insufficient information to enable such an assessment to be made. Moreover, this matter only concerns part of the appeal site and would be unlikely to be determinative in any event.
17. The later application ref 19/03757/PRJ, which sought prior approval for a change of use from office to flats, incorporated the entire appeal site within a larger area. This simply means that the applicant sought prior approval over a larger area, not that the appeal site was part of a separate planning unit in a different use, as the Council suggests.
18. The Council also cites different addresses, which it claims indicate conflict with the evidence submitted. Again, the addresses, where relevant to the planning history, do not affect the use of the appeal premises. The planning applications are clear as the relevant land is shown on the plans submitted with each application. Some of the invoices submitted in support of this appeal relate to different addresses, however, I have afforded these limited weight.
19. Crucially, the Council has not explained why it has not considered the sworn evidence nor has it provided substantive evidence to contradict or otherwise make the appellant's version of events less than probable. Overall, I consider that the appellant's evidence is sufficiently precise and unambiguous.

⁷ Section 194 of the 1990 Act as amended.

20. I find that the appellant has shown that a material change to use as B1(a) office took place on or before 13 February 2010, and that the use continued after the date of change without any significant interruption such that it would have been too late for the Council to take enforcement action.

Conclusion

21. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of B1(a) – office was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Debbie Moore

Inspector



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 13 February 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The appellant has shown that a material change to use as a B1(a) office took place on or before 13 February 2010, and that the use continued after the date of change without any significant interruption, such that it would have been too late for the Council to take enforcement action.

Signed

Debbie Moore

Inspector

Date: 13 January 2021

Reference: APP/Q5300/X/20/3255001

First Schedule

B1(a) office

Second Schedule

Land at Ground Floor, 185 Town Road, Edmonton N9 0HL

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 13 January 2021

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Land at: Ground Floor, 185 Town Road, Edmonton N9 0HL

Reference: APP/Q5300/X/20/3255001

Scale: NTS

