



Appeal Decision

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2021

Appeal Ref: APP/U5360/X/20/3259840

299-303 Haggerston Road, Hackney, London E8 4EN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development.
 - The appeal is made by Mr Thomas Kibling against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2020/1865, dated 24 June 2020, was refused by notice dated 21 August 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the 'Act').
 - The use for which a certificate of lawful use or development is sought is for the ground floor and outside space of the property as Class C3 (Dwellinghouses).
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Decision

1. The appeal is allowed and attached to this decision is a Certificate of Lawful Use or Development (LDC) that describes the development which is considered to be lawful.

Procedural Matters

2. It has not been necessary to do a site visit, as I am able to proceed to a decision based on the submitted evidence from both parties.
3. The description in the banner heading is taken from the Council's decision notice. It is the same description the appellant has used on the appeal form and in doing so he has agreed to the Council's description as being the precise description of the existing use in respect of which the LDC is sought. It is shorter and more succinct than the description on the application form. I have the powers under s191(4) of the Act to modify the description. Therefore, for the avoidance of doubt and clarity, I have expanded the 'C3' reference, as it is clear from the evidence that this refers to 'Class C3 (Dwellinghouses)' of The Town and Country Planning (Use Classes) Order 1987 (as amended).
4. An appeal relating to an LDC is confined to the narrow remit of reviewing the Council's reason for refusal and then deciding whether the reasons are well founded. My decision rests on the facts of the case and on relevant planning law and judicial authority and therefore the planning merits of the case do not fall to be considered. The burden of proving relevant facts rests on the appellant and the test of evidence is made on the balance of probabilities.

Main Issue

5. The purpose of an LDC application is to determine whether the specified use or operations were lawful on the date the application was made. For the purposes of the Act, under s191(2) uses are lawful at any time if - no enforcement action may then 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); and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
6. Section 171(B)2 of the Act states that where there has been a breach of planning control consisting of the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.
7. In this case, the Council has refused to grant an LDC certificate because it considers the appellant has not sufficiently demonstrated that the 'ground floor and rear area of the building have been used as a self-contained residential unit' for a continuous period of not less than four years.
8. Having regard to s195(3) of the Act, the main issue is whether the Council's decision to refuse the application for an LDC was well-founded.

Reasons

9. The burden of proof rests with the appellant. He needs to show on the balance of probabilities that the residential use of the ground floor and outside space began more than 4 years before the date of the application and continued for a period of 4 years thereafter. The application was dated 24 June 2020 so the appellant needs to show that the use began no later than 24 June 2016, which is the relevant date, and continued without material interruption thereafter.
10. The Council describe the site as a 'former warehouse'. When the appellant bought the property in November 2013, he describes in his statutory declaration (SD) that the ground floor of the property was a Class B2 commercial property and that his wife intended to use it for a wine import business.
11. At the time of purchase, he describes the rest of the property being in residential use. This is corroborated by the planning history supplied by the Council that reveals consented residential use of the upper floors and a roof extension at second floor to accommodate a maisonette at first and second floors. There are no dates for when planning permissions were granted or any indication if the appellant was the applicant for these applications. Nonetheless, there is no dispute between the parties that the ground floor has not always had a residential use, but there has been residential use of the upper floors.
12. On deciding not to run the wine import business, the appellant renovated the ground floor as a family living, kitchen and dining area with small utility room. The ground floor layout as it is now is shown on submitted ground floor plan 1908_100 Rev X. In June 2014 the appellant's family moved into the

property. In his SD the appellant declares that all floors of the property have been continuously occupied as his domestic residence, and the outside area used as a garden by his children since moving in.

13. I concur with the Council that installation of a kitchen, evidenced by an email from Bulthaupt¹, and an undated ground floor plan do not prove residential occupation. However, there are other SDs from a neighbour, who has lived opposite the appeal property since 1985, and a friend who has known the appellant and his family for over 15 years. One recounts how on numerous occasions they have taken the appellant's dog for a walk and looked after the children. Both have regularly socialised with the appellant and his family and have visited inside the property on numerous occasions for meals and drinks from 2014 when the family moved in. One also states they have attended an annual Christmas gathering every year from December 2014 onwards. They confirm that the ground floor space has been the family's kitchen and living room and the outside space is used as garden and for the children to play in. One also confirms that the submitted plans show the existing layout of the ground floor as it has been for the last five years.
14. I acknowledge that the appellant's submitted photographs are not dated individually, but they have been attributed with dates in the appellant's SD. They show the ground floor in normal domestic use with a kitchen, a dining room table, and a piano in one photo. The photos are mainly of normal domestic situations, rather than special occasions, and show domestic paraphernalia redolent of family life, with adults and children playing and using the room, including a children's party. They also show the outside space landscaped and in use for play with a football goal net.
15. Neither the submitted plans, kitchen fitting or photographs in themselves prove continuous residential use of the ground floor and outside space. But when considered alongside the SDs from the appellant and two of his friends, they contribute to the evidence as a whole and show the ground floor in residential use, with a fitted kitchen and large dining area and patio doors opening onto a landscaped outside space. The SDs indicate that the residential use of the ground floor and outside space has occurred since June 2014 when the family moved in, which is more than 4 years.
16. The Council has not submitted a Statement of Case, but relies on its officer Delegated Report. This indicates to me that the use does not contravene the requirements of any enforcement notice in force. Nor has the Council submitted any documentation of its own to refute what the appellant says. If there is no evidence to contradict or make the appellant's version of events less than probable, and his evidence alone is sufficiently precise and unambiguous, a LDC should be granted.

Conclusion

17. For the reasons given above, on the evidence available and on the balance of probabilities, I conclude that the Council's refusal to grant a certificate of lawful development in respect of the residential use of the ground floor and outside space of the property as Class C3 (Dwellinghouses) was not

¹ Dated 9 September 2014

well-founded and the appeal succeeds. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

K Stephens
INSPECTOR



The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 24 June 2020 the development described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto shown edged red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

It has been demonstrated that the ground floor and outside space have been in residential use as Class C3 (Dwellinghouses) at 299-303 Haggerston Road, Hackney, London E8 4EN for in excess of 4 years. As such this use has become lawful under section 171B(2) of the above Act and does not contravene the requirements of any enforcement notice in force.

Signed

K Stephens
INSPECTOR

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First Schedule

The ground floor and outside space of the property as Class C3 (Dwellinghouses), as shown on the submitted Ground Floor Plan 1908_100 Rev X and at the property shown outlined in the red in the Block Plan below.

Second Schedule

299-303 Haggerston Road, Hackney, London E8 4EN

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 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

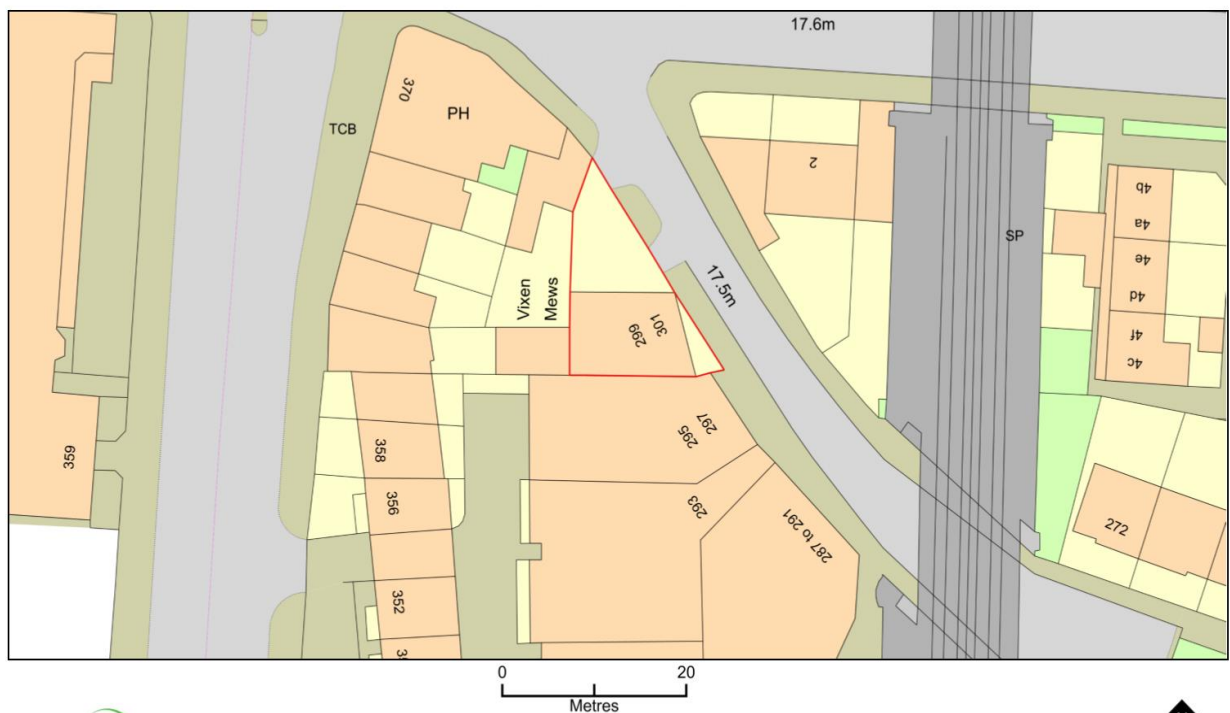
This is the plan referred to in the Lawful Development Certificate dated 26 February 2021

by **K Stephens BSc (Hons) MTP MRTPI**

Land at: 299-303 Haggerston Road, Hackney, London E8 4EN

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Block Plan



Not to scale