



Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 21st June 2021

Appeal Ref: APP/L5240/X/21/3267202

The Billiards, 32 Plough Lane, Purley, Surrey, CR8 3QA

- 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 Jeremy Barry against the decision of the Council of the London Borough of Croydon.
 - The application Ref 20/05754/LE, dated 6 November 2020, was refused by notice dated 31 December 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 as a single dwellinghouse.
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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.

Application for costs

2. An application for a full award of costs was made by the appellant against the Council. This application is the subject of a separate decision.

Reasons

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 force¹. Where there has been a breach of planning control consisting in the change of use of any building to a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.² No evidence was submitted regarding an enforcement notice relating to this property at the time of the application during the appeal.
4. In order to succeed in this appeal the appellant must show that the site has been used as a single dwellinghouse for a continuous (i.e. substantially uninterrupted) period of 4 years prior to the date of the LDC application. The burden of proof is on the appellant. If a local planning authority has no

¹ Section 191(2) of the 1990 Act.

² Section 171B(2) of the 1990 Act.

evidence itself, nor from others, to contradict or otherwise make the appellant's version of events less than probable, provided the appellant's evidence alone is sufficiently precise and unambiguous, the appeal should be allowed and the LDC granted. The test to be applied in weighing the evidence is on the balance of probabilities.

5. The appellant submitted three statutory declarations to support the application. The appellant's own statutory declaration stated that the appeal property was converted into a single dwellinghouse in 2011 and that from July 2015 the internal access door from the original host property was closed up leaving only the external access via the entrance lobby to the appeal property. The appellant's evidence is that the property was let and occupied between 24 July 2015 and 31 August 2019 and then from 6 September 2019 to the date of the declaration. The two other statutory declarations are from two of the tenants and confirm the dates of occupation given by the appellant and exhibit copies of the completed tenancy agreements (both for a 12 month term).
6. The Council's reason for refusal of the LDC application was that '*Insufficient evidence has been provided to satisfy the Local Planning Authority that the use applied for was begun more than four years before the date of this application.*' The Council's delegated report accepted that the appeal building includes all the internal spaces and facilities to facilitate a separate dwelling but stated that because the access was via a path that adjoins the driveway of 32 Plough Lane it was improbable that the building was being used independently. The Council's report also refers to some gas bills which were provided with the application (of which I have not been provided with copies) and states that the appeal property was not registered separately for the purposes of Council Tax (although that in itself is not definitive evidence regarding the actual use of the property).
7. The Council has not provided any information of its own to contradict the sworn evidence provided by the appellant and his tenants. It is commonplace for separate properties to share access arrangements and also for a 12 month tenancy agreement to continue after the initial term without being formally documented. The tenants' sworn evidence corroborates that of the appellant in that there had been a one week period since 24 July 2015 during which the property was not let. This does not constitute a substantial break which disrupted the period of continuous use, and the use began more than four years before the date of the application and continued thereafter. I am therefore satisfied that the appellant's evidence alone is sufficiently precise and unambiguous and has not been contradicted, so that on balance the LDC should be granted.
8. 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 the use of the property as a single dwellinghouse 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.

Zoë Franks

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 6 November 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 use as a single dwellinghouse began more than four years before the date of the application and continued thereafter; and

The use does not contravene the requirements of any enforcement notice in force.

Signed

Zoë Franks

Inspector

Date 21st June 2021

Reference: APP/L5240/X/21/3267202

First Schedule

Use as a single dwellinghouse.

Second Schedule

Land at The Billiards, 32 Plough Lane, Purley, Surrey, CR8 3QA.

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 or 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 my decision dated:

by Zoë Franks Solicitor

Land at: Land at The Billiards, 32 Plough Lane, Purley, Surrey, CR8 3QA

Reference: APP/L5240/X/21/3267202

Scale: not to scale



THE BILLIARDS 32 PLOUGH LANE, CR8 3QA 1:1250 @A3



10 50 m