



Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 8 July 2021

Appeal Ref: APP/W1905/X/21/3268425

**Windyridge Nursery, Newgatestreet Road, Goffs Oak, Waltham Cross
EN7 5RU**

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Hahn against Broxbourne Borough Council.
 - The application (Ref. 07/20/0443/LDC) is dated 6 June 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 use of a former domestic garage and attached timber building and adjoining grassed amenity areas and access, as a single dwellinghouse and associated residential curtilage.
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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 found to be lawful.

Main Issue

2. Under s191(2)(a) of the 1990 Act, uses are lawful at any time if no enforcement action may then be taken in respect of them because the time for enforcement action has expired. The relevant time limit in the change of use of any building to use as a single dwellinghouse is four years beginning with the date of the breach as set out under s171B(2) of the 1990 Act. Therefore, the main issue is whether, on the balance of probability, the use applied for had subsisted for four years by the date of the LDC application. This is 6 June 2020 which is hereafter referred to as the material date.

Reasons

3. The only evidence that I have from the Council, apart from the Appeal Questionnaire, is a planning officer report which considers the appellant's application and supporting information and documentation. The report concludes "*The proposal, its submitted information and Council photographic evidence all confirm consistent use of the former garage building and associated land as residential use for a period of greater than four years. Therefore, the time for enforcement action has expired. There is no evidence to contradict the applicant's version of events and on the balance of probability*

the proposal is acceptable and no material reasons to refuse the application are evident. It is therefore considered that the case is lawful and has been satisfied under the terms of section 191(4) of the Town and Country Planning Act 1990 and that, a certificate should be issued".

4. I have no contradictory evidence from the Council or any other source. In light of this, and having reviewed the submitted material myself, I am satisfied that the evidence is sufficiently precise and unambiguous to show, as a matter of fact and degree, that the use applied for was lawful by the material date.

Conclusion

5. For the reasons given above I conclude, on the evidence available, that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Gareth Symons

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 June 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 applied for had subsisted for four years by the material date. Consequently, no enforcement action could be taken against it and under s191(2)(a) of the Town and Country Planning Act 1990 the use is lawful.

Signed

Gareth Symons

Inspector

Date 8 July 2021

Reference: APP/W1905/X/21/3268425

First Schedule

Use of a former domestic garage and attached timber building and adjoining grassed amenity areas and access, as a single dwellinghouse and associated residential curtilage.

Second Schedule

Land at Windyridge Nursery, Newgatestreet Road, Goffs Oak, Waltham Cross
EN7 5RU

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations 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: 8 July 2021

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Land at: Windyridge Nursery, Newgatestreet Road, Goffs Oak, Waltham Cross EN7 5RU

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Scale: Do not scale.

