



Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 21st July 2021

Appeal Ref: APP/W0340/X/21/3266253

14 Mulberry House, Whitchurch Road, Pangbourne, Reading, RG8 7BP

- 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 James Cawthorne against the decision of West Berkshire Council.
 - The application Ref 20/01801/CERTE, dated 6 August 2020, was refused by notice dated 4 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 ("LDC") is sought is for use of the second floor attic flat above 4 Whitchurch Road 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.

Procedural Issues

2. Some of the confusion in this application seems to have arisen from the various names and addresses used to describe the property, and which the appellant wishes to rectify to prevent future problems. The appellant wants the flat to have a separate and distinct address which is "14 Mulberry House, Whitchurch Road". This address was used in both the planning application and appeal.
3. The flat is located on the second floor in the block of properties known collectively as 2 – 10 Whitchurch Road. It has been recorded on Council Tax records as 4 – 6 Whitchurch Road (up to and including 2019/2020). This was specifically confirmed by the Council's Corporate Gazetteer Officer (in an email dated 24 September 2020), who also referred to it as "the former flat above the Chinese restaurant". The restaurant was located at 2 – 6 Whitchurch Road.
4. For clarity, I will refer to the appeal property as Second Floor Flat, 4 – 6 Whitchurch Road (AKA 14 Mulberry House, Whitchurch Road), Pangbourne, Reading, RG8 7BP.
5. The Application Form described the use as a 'C3 Dwellinghouse' and the Appeal Form described it as 'Dwelling (flat)'. The refusal notice issued by the Council referred to the use sought as a 'single residential dwelling'. I will describe the use sought as a 'single dwellinghouse' for the purposes of precision.

Main issue

6. 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 force.¹ No evidence was submitted regarding an enforcement notice relating to this property at the time of the application during the appeal.
7. In order to succeed in this appeal the appellant must show that the site has been used as a single residential dwelling for a continuous (i.e. substantially uninterrupted) period of 4 years prior to the date of the LDC application (6 August 2020). The 4 year period does not need to immediately precede that date. If a local planning authority has no 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.

Reasons

8. The appellant's case is that he purchased the flat in 2019 and there was not a material change of use at that time as it has been used as a residential dwelling for many years, dating back to the 1960s at the least. The appellant has provided a ground floor plan for the block dated July 1964 which shows the entrance to a flat which is in the same location as the entrance shown on the 'Existing Floor Plan' submitted with the LDC application. Council Tax records show that it has been listed with them since 1st April 1993 when such records began and up to and including 2019/2020. In addition the appellant has provided a signed letter from a local person who has knowledge of the premises dating back to the 1960s who confirms that the property has been used throughout that time as a 'staff flat' and has never been used commercially, which I take to mean has not been used for purposes other than residential.
9. The appellant accepts that, to his knowledge, he is the first owner of the flat who does not also own one of the businesses on the ground floor of the block and that the flat may have been previously used by people connected to those businesses. However, his argument is that the flat was not ancillary or part of those business uses but has been an independent dwelling separate from the commercial units on the ground floor, irrespective of ownership. In support of this argument the appellant states that the flat is physically separate with an unrelated residential floor between it and the commercial use on the ground floor and with its own entrance, and electricity and water supplies.
10. The Council's case, as set out in its Case Officer Report, is that based on the evidence submitted by the applicant, and the evidence found by the case officer, there is not sufficiently precise and unambiguous evidence to justifying the granting of the application based on the balance of probability. The Council's view is that there is evidence to suggest that the site was last in use in connection with a restaurant, either as an ancillary use or as a single planning unit in a mixed use, and they consider that the evidence provided is not sufficiently precise and unambiguous to justify granting a certificate.

¹ Section 191(2) of the 1990 Act

11. The Council has provided evidence of references to a 'self-contained residential two bedroom flat on the second floor' in various planning applications submitted since 2012. The Council does not dispute that the property has been used for residential purposes for a period of more than 4 years prior to the making of the application but state that there is a strong possibility that the lawful planning use of the site is as part of a single planning unit with the former restaurant and that the flat provided ancillary living accommodation.
12. The Council also states that the Council Tax registration for 4 - 6 Whitchurch Road does not apply to the second floor flat but this is contrary to the information provided by their Corporate Gazetteer Officer (as set out above). The Council have not provided information about the alternative location of 4 - 6 Whitchurch Road if it is not the appeal property. In addition, until the conversion of the offices (after 2015) the second floor flat was the only residential unit located within the wider block known as 2 - 10 Whitchurch Road (as is shown on the 'Existing Floor Plans' for 2 - 10 Whitchurch Road dated 18 December 2015 which were submitted as part of planning application 15-03500-FULD). The Council Tax registration for 4 - 6 Whitchurch Road which began in 1993 and it seems that it must therefore be in relation to the appeal property (as the rest of that building was commercial and not in residential use until after 2015).
13. The matter to be determined in this appeal is therefore whether the flat, before its sale to the current owner, was its own planning unit or formed part of a larger planning unit with the restaurant at 4 Whitchurch Road. Caselaw² shows that where the unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes, each area that has a different primary use ought to be considered as a separate planning unit. This will be a matter of planning judgement.
14. In this case the flat is physically separated from the restaurant premises by an intervening floor of other residential accommodation. It is totally self-contained with its own entrance and has all the facilities required for day-to-day private domestic existence. The Council Tax records show that it has been registered as residential accommodation since 1993, albeit under the confusing name of 4 - 6 Whitchurch Road, and the Council has not disputed that Council Tax was in fact paid. There has been no evidence submitted to suggest that any commercial use associated with the restaurant or other business has taken place in the flat, and the Council's case is simply that it was used for residential purposes in association with the business and therefore functionally connected.
15. As a matter of fact and degree, the physical separation is such that I find that the flat was a separate planning unit to the restaurant, notwithstanding that there may have been some functional connection in that it was occupied by staff or other people associated with the business. There was no condition limiting the use in such a way and, whilst it may have been convenient for members of staff to live so close to the restaurant, it was not functionally necessary. It is also rare for residential use to be regarded as incidental to some other use. The degree of physical separation was such that the flat was as separate planning unit in its own right with its own primary residential use.

² Burdle & Williams v SSE & New Forest DC [1972] 1 WLR 1207

16. As the flat was a single planning unit, and the Council have not disputed that it was occupied for many years for residential purposes as stated by the appellant, the appeal should be allowed and the LDC granted.
17. 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 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 Frank

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 August 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 Frank

Inspector

Date 21st July 2021

Reference: **APP/W0340/X/21/3266253**

First Schedule

Use as a single dwellinghouse.

Second Schedule

Land at Second Floor Flat, 4 – 6 Whitchurch Road (AKA 14 Mulberry House, Whitchurch Road), Pangbourne, Reading, RG8 7BP.

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 /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:

by Zoë Franks Solicitor

Land at: Second Floor Flat, 4 – 6 Whitchurch Road (AKA 14 Mulberry House, Whitchurch Road), Pangbourne, Reading, RG8 7BP

Reference: APP/W0340/X/21/3266253

Scale: Not to scale



