



Appeal Decision

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 13 October 2021

Appeal Ref: APP/N5660/X/20/3259254

Ground Floor, 56 Clapham Park Road, London SW4 7BG

- 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 Mr Premtim Zucolli against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 20/00569/LDCE, dated 10 February 2020, was refused by notice dated 1 July 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 A4 drinking establishment.
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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 Matter

2. It was not necessary for me to conduct a site visit to determine the appeal. The main parties were consulted on my intention, and did not object.

Main Issue

3. The main issue in this appeal is whether or not the Council's decision to refuse the LDC was well-founded.

Reasons

4. Section 191(2) of the Act provides that a use was lawful at the time of a LDC application if no enforcement action could be taken in respect of it (whether because it did not involve development or require planning permission, or because the time for enforcement action had expired, or for any other reason).
5. The appellant says that the appeal property has been used as a wine bar/bistro continuously since 1987, with planning permission granted for that change of use on 15 March 1988¹. Further he says that permission for a subsequent change of use to a community centre in December 1991² was never implemented. In effect therefore, as confirmed in his application, he is saying that there has been no breach of planning control against which enforcement could take place since the property has been continuously in use as permitted in 1988. Were he to satisfy me of this on the balance of probabilities, with sufficiently precise and unambiguous evidence, the appeal must succeed.

¹ 87/01402/PLANAP Change of use of the ground floor to a wine bar/bistro

² 91/00772/PLANAP Change of use to a Portuguese Community Centre

Evidence from the appellant

The statutory declarations

6. The appellant has submitted 20 statutory declarations from local businesses and residents all solemnly declaring that, since their local occupation, (a) they have always known the premises to have been used continuously as a drinking establishment (where hot, cold, alcoholic and non-alcoholic drinks were sold) and that to their knowledge the primary use of the premises at all times has been that of a drinking establishment; and (b) at all times they have known the premises to be open to members of the public. 4 of these declare such knowledge as far back as the year of the 1988 planning permission. 15 of these declare such knowledge in excess of 10 years before the LDC application. Even were I not persuaded of the appellant's principal argument, this is significant since section 171B of the Act provides that, even had there been a break in use as a drinking establishment after the 1998 planning permission (for example, use as a community centre), no enforcement action could be taken after a period of 10 years following its reversion to use as a drinking establishment as a new, unauthorised, material change of use.
7. A Statutory Declaration is a formal statement made under the Statutory Declarations Act 1835 to affirm that something is true to the best knowledge of the person making the declaration. A Statutory Declaration must be witnessed by and signed in the presence of a solicitor, commissioner for oaths or notary public – as appears to have been the case with the submitted documents. Accordingly, they represent sworn first-hand evidence. When this factor is taken together with the large number and contents (highly pertinent to the appeal, sufficiently precise and unambiguous) I give them substantial weight.

Premises licence

8. The appellant submits in his statement that the appeal property has held an active alcohol licence since 1987, and this hasn't been challenged by the Council despite an opportunity to do so during the appeal procedure. The Council's Licensing records from 2014 appear to show that at that time a license was awarded to supersede the previous owner's licence. While a premises licence does not itself entirely substantiate use as a drinking establishment for the purposes of planning (a place where the primary purpose is the sale and consumption of alcoholic drink on the premises), it is consistent with the appellant's case and I give this consideration moderate weight.

Estate agent sales sheet

9. While undated, this document says, "Since 1990, the business has been operating as a busy sports bar....". Its weight is tempered by the nature of the document which would not necessarily be concerned with details relevant to the nuances of planning law (such as whether a significant break in use as a drinking establishment had occurred at any time). Nether the less, on the face of it, it broadly corroborates the appellant's case and despite the above tempering I give it moderate weight.

On-line screen shots (Zomato)

10. These are undated and give no evidence as to use over any period. Accordingly, I give them no weight.

Lease

11. The appellant has submitted a Land Registered Lease dating from 13 October 2016 for a term of 10 years from 25 March 2018.
12. The lease does not detail how the property is to be used, and the term in question covers less than 2 years before the LDC application date. Accordingly, I give it limited weight.

Floor plans and OS Map

13. These do not substantiate use for a drinking establishment over any period, and I do not give them any weight in my decision.

Google streetview images and YouTube video

14. The appellant has submitted a series of Google Streetview images. Those taken in 2015, 2017 and 2019 show the property with "Alliance Sports Lounge" fascia signage, and with outdoor tables and a customer in the later photographs. An image from 2014 shows no fascia signage in place but the front door open and an 'A board' referring to "Alianca Sports Bar" and advertising a range of alcoholic and soft drinks, together with bar snacks, a pool table and sport on TV. A 2012 image likewise shows no fascia signage in place, but with the property open and people apparently consuming drinks at an outside table. A 2008 image shows no outside tables and with a large fascia sign which says "Alianca Portuguese Community Centre".
15. I place significant weight on the 2012 to 2019 images as evidence of a drinking establishment due to that being the apparent character of the use, with or without the present of fascia signage.
16. The appellant has explained that the 2008 image shows the fascia signage of a community centre since it enabled the owner to pay lower rates, but that the character of the use was as a drinking establishment (as attested by the statutory declarations). From the image alone, I am not able to make any conclusion as to what the character of the use was in fact at that time. However, when taken together with the YouTube video from 26 December 2008 (which the Council agrees shows the inside of the premises in use as a "drinking bar") I give this evidence in combination significant weight.

Evidence from the Council

Business Rates

17. The Council has said that the appeal property has been described as a "shop and premises" in its business rates valuation records from 1 April 2010 to date, with a valuation at the site in 2017 describing the unit as a shop. However, this information appears to contradict both the evidence submitted by the appellant and the Google Street View images referred to by the Council in its Officer Report (although it did not submit the photographs as evidence in this appeal). For instance, the Officer Report says that the images show that the appeal property as operating as A4 between November 2015 and July 2019 as Alliance Sports Bar. This undermines what it has said about the evidential value of its business rates records and the on-site valuation as a 'shop' for 2017. I therefore give this evidence limited weight.

Planning Records

18. There was a planning application approved in 2006 for window replacement to the upper floors of the appeal building. I note that, within the application, the Council has said there was no reference to the use of the premises at ground floor level. The Council says that the case officer at the time described the ground floor unit as a shop. However, it has not submitted the Officer Report in evidence to this appeal so I cannot make a first-hand assessment of the context in which that word was used. It is also reasonable to expect that the officer's focus would have been professionally centred upon the operational development to the upper floors rather than the planning use of the ground floor. For these reasons, I give this evidence limited weight.

Conclusion

19. Therefore, for the above reasons, I find that the Council has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable and that the appellant's evidence is sufficiently precise and unambiguous to persuade me on the balance of probabilities that the lawful use of the appeal property at the time of the application was as an A4 drinking establishment.
20. I conclude accordingly, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of use as an A4 drinking establishment 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.

Andrew Walker

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 10 February 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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:

No enforcement action could be taken in respect of it because the use was lawful by reason of being authorised by planning permission 87/01402/PLANAP, and had occurred since the date of that permission without significant interruption.

Signed

Andrew Walker

Inspector

Date 13 October 2021

Reference: APP/N5660/X/20/3259254

First Schedule

Use as an A4 drinking establishment

Second Schedule

Land at Ground Floor, 56 Clapham Park Road, London SW4 7BG

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: 13 October 2021

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Scale: Do not scale

