
Appeal Decision

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 18 October 2021

Appeal Ref: APP/N5090/X/20/3249300

115 Cumbrian Gardens, Golders Green, London NW2 1EJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is by Dr Alireza Razi against the decision of the Council of the London Borough of Barnet.
 - The application ref. 20/0064/191, dated 1 November 2019, was refused by notice dated 16 March 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - A certificate of lawful use or development is sought for the use of a single-storey outbuilding as a studio flat (use class C3).
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Decision

1. The appeal is dismissed.

Preliminary matters

2. I note that the Council registered the LDC application on 20 January 2020, but that the application form is dated 1 November 2019. In a LDC application it is the date of application that is relevant to the start of the period for determining immunity from enforcement action. I have therefore used this application date as the baseline for my determination.

Reasons

3. For the avoidance of doubt, I should explain that in the context of an appeal made under section 195 of the Act, which relates to an application for a lawful development certificate, the planning merits of the proposed development are not relevant, and they are not therefore an issue for me to consider. My decision will rest on the facts of the case, and on relevant planning law and judicial authority.
4. In a LDC appeal the main issue is whether the Council's decision to refuse to grant a LDC was well-founded. Government guidance advises in cases of this type that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make an appellant's version of events less than probable, there is no good reason to refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability¹.

¹ Planning Practice Guidance – 'Lawful Development Certificates' Paragraph 006 Reference ID: 17c-006-20140306.

5. In this case the principal question in deciding upon the founding of the Council's decision is whether, at the time the LDC application was made, the use of the outbuilding as a studio flat is immune from enforcement action as a result of subsisting for a continuous period of four or more years prior to 1 November 2019. The burden of proof is firmly upon the appellant to show that this is the case on the balance of probabilities.
6. On 29 November 2019 the Council issued an enforcement notice alleging the use of the outbuilding in the rear garden as a separate residential dwelling, with requirements to cease that use, and remove features facilitating such use, including kitchen and bathroom fixtures. The appellant now claims that the reasons for issuing the notice demonstrate the breach occurred 4 years and 11 months after completion of the works to convert the outbuilding to residential accommodation. The enforcement notice may indeed be evidence of the existence of the outbuilding for over 4 years prior to the LDC application. However, it is not the existence of the outbuilding that is disputed, but the use to which it has been put.
7. S.191(2)(b) of the Act states that, for the purposes of the Act, uses and operations are lawful if they do not constitute a contravention of any enforcement notice then in force. The 2019 enforcement notice was not challenged by way of an appeal, and it is now long past the time when an appeal might be made. It therefore remains in force, and I understand the requirements of the notice have not been met.
8. I appreciate that the appellant may be unfamiliar with the detailed operation of the planning regime. However, the Council have referred to this defect in his case, both in their delegated report on the LDC application and the subsequent decision notice. This is not a matter that can be ignored or set aside, and the appellant cannot claim he was unaware of this provision of the Act.
9. The appellant has submitted a quantity of evidence in the form of tenancy agreements and water supply accounts to show the building has been in residential use for the required period. However, this is of no avail given that the use is precluded from becoming lawful through operation of s.191(2)(b) of the Act.

Conclusions

10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of a single-storey outbuilding as a studio flat (use class C3) at 115 Cumbrian Gardens, Golders Green, London NW2 1EJ was well-founded and that the appeal should fail. Accordingly, I will exercise the powers transferred to me by section 195(3) of the 1990 Act as amended.

Stephen Brown

INSPECTOR