
Appeal Decision

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 01 November 2021

Appeal Ref: APP/W5780/X/21/3268209

239 to 241 Clayhall Avenue, Clayhall, Ilford IG5 0NY

- 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 made by Mr S Singh against the decision of the Council of the London Borough of Redbridge.
 - The application Ref 3716/20, dated 6 November 2020, was refused by notice dated 2 February 2021.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which an LDC is sought is 'B8 – storage or distribution'.
-

Decision

1. The appeal is dismissed.

Reasons

2. The appeal land is to the rear of frontage development on the north side of Clayhall Avenue. The Appellant purchased the land in August 2020 and it is now in use for storage associated with a builders merchants. He maintains that the land is in Class B8 'Storage and distribution' use as defined in the Town and Country Planning (Use Classes) Order 1987 as amended, and that this use continued the same use of the land that previously existed for a period in excess of ten years. He therefore maintains, in effect and with regard to Section 171B(3) of the Act, that the use of the land is immune from enforcement action.

3. The main issue is whether the land has been in Class B8 'Storage and Distribution' use for a period of more than ten years prior to the date of the application. The critical date is therefore 6 November 2010. The onus of proof is on the Appellant but his evidence does not need to be corroborated by independent evidence. Furthermore, provided the Appellant's evidence is sufficiently precise and unambiguous there shall be no reason to withhold an LDC.

4. Photographs in a survey report dated 26 May 2011 show the land to be occupied by domestic garages. In 2015 and 2016 planning applications were submitted for the demolition of existing garages and the erection of residential development. It is clear from evidence submitted that the land was occupied by domestic garages probably until 2020 when it was purchased by the Appellant. Use of the land for domestic garages is not a Class B8 'Storage and Distribution' use and is materially different to the use of land for storage associated with a builders merchant. The land has not been, as a matter of fact, in Class B8 use since before 6 November 2010.

5. On the evidence now available the Council's refusal to grant an LDC in respect of 'B8 Storage or Distribution' at 239 to 241 Clayhall Avenue, Clayhall, Ilford was well-founded and the appeal fails. The powers transferred in section 195(3) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector