Appeal Decision

Site visit made on 12 October 2021

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 November 2021

Appeal Ref: APP/W2465/X/21/3271543
176 Welford Road, Leicester LE2 6BD

- 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 Muslim Welfare House against the decision of Leicester City Council.
- The application Ref 20200059, dated 17 December 2019, was refused by notice dated 19 March 2021.
- 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 described as 'Class D1 - Place of Worship'.

Decision

1. The appeal is dismissed.

Preliminary matter

2. Since the application was made, the D1 planning use class has been replaced[1] with the new class F1 insofar as uses for or in connection with public worship or religious instruction are concerned. This, however, has no bearing on the substance of the matter before me.

Main Issue

3. The main issue is whether the council's decision to refuse an LDC was well-founded. This turns on whether, on the balance of probability, the use applied for had taken place for a 10 year period prior to the date of the application.

Reasons

General approach to LDCs

4. Advice relating to LDCs is provided by the Government's *Planning Practice Guidance* (PPG). This establishes that the applicant is responsible for providing sufficient information to support an application. In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the

[1] As a result of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

grant of a certificate on the balance of probability. A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. The planning merits of the use are not relevant.

The relevant time period

5. The appellant's case here is that the use has become lawful due to the passage of time. Section 191(2) of the Act indicates that uses may become lawful when the time for enforcement action has expired. The time periods for taking enforcement action are set out in s171B of the Act. In accordance with s171B(3), the relevant period in this case is 10 years, and it is clear that both parties have approached the matter with that in mind. Any 10 year period prior to the date of the application would be sufficient to establish lawfulness, provided the use was not subsequently changed or abandoned before the application was made.

The use claimed

6. The appeal property was constructed as a semi-detached house. The claim is that the property is used as a place of worship (Mosque). When I visited it, ground floor rooms had been combined and extended to form a space for worship. Various items such as notices, a sound system and TV screens added to the impression of use for that purpose. A simple lean-to structure to the side of the house provided a further area apparently also used as a worship space. There is also a kitchen on the ground floor. Upstairs, the building appeared to retain its original layout, with 3 rooms plus a bathroom and toilet. The rooms were simply furnished. In email exchanges with the Council, the appellant has advised that the rooms on the first floor are used as multi-purpose spaces, the use of which includes providing temporary accommodation from time to time.

The appellant's evidence

7. The appellant advises that the Muslim Welfare House is a registered charity and that it has been established for 20 years or more. A number of documents have been provided in support of this, as discussed below.

8. Spreadsheets have been provided showing gas bills paid from August 2008 to January 2020 and the electricity payments from May 2002 to January 2020. These both have the words 'Muslim Welfare House' on them, but it is evident from the email exchange supplied with them that this was only added at the appellant's request in 2020. However, a single bill dated 22 April 2018 is addressed to Muslim Welfare House, indicating that the property was connected with the organisation at that time. A letter from the same energy provider dated 12 December 2019 supports this.

9. The Council Tax bills cover the period 2000/2001 until 2019/2020. The bills include the words 'Muslim Welfare House' in the heading. In each case the date of issue is 20 November 2019, so they are plainly not documents issued at the time that payment was due and appear to have been provided recently from the Council's records.

10. The bills include various notes about exemptions that have been applied. For 2005/6, there is a note stating 'Exemption (Class N – All Occupiers Students)'. This suggests that the property was, at least in part, occupied as accommodation at that time. From 2006/7 there is a note stating, 'Disregard (Religious Community Members and Religious Community Member)'. This

continues for a period, but in the 2014/15 bill it no longer appears and is replaced with the note about student occupiers again, which remains up to and including the most recent bill, for 2019/20

11. The appellant has provided a letter from Leicester City Council which is addressed to Muslim Welfare House at the appeal property. The letter indicates that the Council is creating a database of religious and religion-related organisations and invites the recipient to provide details of their organisation. The letter is undated and the Council has not provided any indication of when it was sent. The appellant has provided a copy of a response dated 19 September 2000. This letter states that the property belongs to a registered charity, Muslim Welfare House – London, and that it is mainly used for religious and social gathering and activities. It also states, 'we have spare rooms we usually rent for temporary bases'.

12. A screen shot from the Companies House web site is provided. This shows that a company named 'Muslim Welfare House' was incorporated in 2000. It also shows that it was known as 'Muslim Welfare Trust' until November 2012. However, the record makes no mention of the appeal property, giving a London address for the registered office.

13. A Statutory Declaration, dated 27 May 2020, has been provided by the Imam (responsible person) at 176 Welford Road. This states that, at the time of the declaration:

- The property had not been used as a residential dwelling since 1988
- The property had been in continuous use for religious functions since 1988
- The property had been in the ownership of the Muslim Welfare House for over 19 years
- The ground floor of the property had been in continuous use as a prayer hall for over 10 years
- The property had been promoted as a place of worship over a 30 year period.

The Council's evidence

14. The Council advises that in each of 3 applications relating to planning matters made between 2008 and 2015, the property is referred to as a house within Class C3 of the *Town and Country Planning (Use Classes) Order 1987* (as amended). I understand that the 2015 application concerned a prior notification which applies only to householder applications. The application related to a 'single storey extension to rear of dwellinghouse'. This suggests that the property was a residential dwelling at that time.

15. The Council advises that a website relating to the property states that, 'The upper floor has two bathrooms and toilets as well as three rooms rented, on discounted rated, to full-time students. The rents collected makes the Masjid income to maintain the building, pay the bills and spend on various functions and services of the Masjid". This is indicative of a significant residential element to the use of the property.

16. The Council also considers that the Council Tax records indicate a residential use at certain times.

Assessment

17. Taken together, the utility bills, Council Tax bills and Companies House information indicate that the building has been used in connection with the Muslim Welfare House (or Trust) since around 2000. However, other than the notes on the Council Tax bills, they give little indication of how the building was actually used during that time.

18. The Statutory Declaration is made in the proper form and is an important piece of evidence. It indicates that the building has been used for religious function and worship since 1988, and the correspondence with the Council regarding the database is a further indication of religious use. Overall, it appears probable that an element of religious worship and related activity has taken place at the property over an extended period, quite possibly since 1988.

19. However, use for religious purposes does not necessarily mean that the residential use ceased for any relevant 10 year period prior to the LDC application. While the Statutory Declaration indicates that the property has not been in residential use since 1988, that needs to be considered in the context of the other evidence available. In particular, it is significantly undermined by the claim, in applications to the Council as recently as 2015, that the property was in C3 dwellinghouse use. The suggestion of a C3 use is further supported by the notes on the Council Tax bills, including the most recent ones available to me, indicating that the use of the property included providing accommodation for students. Consequently, the appellant's claim of a single use as a place of worship has not been demonstrated.

20. I have considered the possibility that the use for religious worship and functions is the primary use of the property and that any use as accommodation is ancillary to that use. I have also borne in mind that rooms may be used flexibly and have noted the suggestion that temporary accommodation has been provided specifically in connection with the property's use as a place of religious worship. However, the evidence before me does not show that any residential use is merely ancillary. Indeed, the suggestion of a C3 dwelling use in the 2015 application suggests otherwise. It is perhaps possible that the building is in a mixed use including elements of religious and residential use, but that is not the case made out and the evidence before me does not demonstrate it to be the case.

21. Considering the evidence as a whole, I conclude that it has not been demonstrated, on the balance of probability, that the building was in lawful use as a Class D1 (now F1) place of worship on the date of the application. Accordingly, the appeal cannot succeed.

Peter Willows

INSPECTOR