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# 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: 24 November 2021**

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**Appeal Ref: APP/W5780/X/21/3272862**

**47 Hawthorn Road, Buckhurst Hill IG9 6JF**

- 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 Ms Rachel Stein against the decision of the Council of the London Borough of Redbridge.
  - The application Ref 4238/20, dated 11 December 2020, was refused by notice dated 11 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 'small scale tutoring business being run from single family dwellinghouse'.
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## Decision

1. The appeal is dismissed.

## Reasons

2. 47 Hawthorn Road is a semi-detached dwelling and is the home of the Appellant and her family. In the rear garden of the property is an outbuilding which was presumably erected under permitted development rights.
3. The use for which an LDC is sought as set out above is taken from the application form. The use was described by the Council, in a delegated report and in the decision notice, as 'use of detached rear outbuilding to provide tutoring classes'. The Council's description more accurately describes the use for which an LDC is sought because it is the use of the outbuilding, rather than the dwellinghouse, that is for consideration. The planning unit in this case is the residential property that encompasses the dwelling and the outbuilding.
4. The Appellant is a tutor and operates a child tutoring centre from a church building. She has also been using the outbuilding for, as stated in the application, tutoring sessions on weekdays. The application statement indicated that these are at 0930 to 1115 hours on Mondays, 0930 to 1230 hours on Wednesdays, and 1245 to 1315 hours on Thursdays. The classes are for no more than five pre-school age children and two of the children are the Appellant's.
5. The National Planning Practice Guidance (NPPG) advises that an application for an LDC "...needs to describe precisely what is being applied for (not simply the use class)...". This advice is referred to in the relevant recent High Court judgement in the case of *Ricki Sage v SoS for HCLG and LB of Bromley [2021] EWHC 2885 (Admin)*, in which Sir Duncan Ouseley states, in discussing the form of an application for an LDC, that "Applications...require detail and specificity".

6. The application specifically sought an LDC for a 'small scale tutoring business being run from single family dwellinghouse' and it was not unreasonable, given that it is the outbuilding rather than the dwelling that is being used for such a purpose, for the Council to amend the description to be 'use of detached rear outbuilding to provide tutoring classes'. However, it is stated in the Statement of Case for the Appellant that "This appeal would like to point out that the initial description of the activities in connection with the outbuilding was incorrect. The Appellant seeks to correct the description of the activities associated with the outbuilding as under 5 years play group. This appeal would therefore reiterate that the Appellant does not run or use the outbuilding for pre-school classes".

7. The Appellant's case is confused, imprecise and ambiguous. It is a fundamental principle that an LDC can only be granted for the existing use specified in the application. If that specified use was incorrect then the use cannot have occurred from the date it was claimed the use commenced, 3 August 2020. The proper course of action should have been for the Appellant, having decided that the application was incorrect, to make another application to the Council for the correct existing use of the outbuilding.

8. On the evidence now available the Council's refusal to grant an LDC in respect of 'use of detached rear outbuilding to provide tutoring classes' at 47 Hawthorn Road, Buckhurst Hill 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