



Appeal Decision

Site visit made on 7 December 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2022

Appeal Ref: APP/X2410/X/21/3276191

6 Pulteney Avenue, Loughborough LE11 2NA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr R Patel against the decision of Charnwood Borough Council.
 - The application ref P/19/1153/2, dated 31 May 2019, was refused by notice dated 17 September 2019.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the erection of a single dwellinghouse.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by appellant against the Council. This is the subject of a separate decision.

Main Issue

3. The main issue is whether the Council's decision to refuse an LDC was well-founded.

Reasons

4. An application under S191(1)(b) of the Act seeks to establish whether any operations which have been carried out in, on, over or under land are lawful at the time of the application. S191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force.
5. The main thrust of the appellant's case is that the building was constructed as a dwellinghouse and is immune from enforcement action by virtue of the passage of time. In an LDC, the burden of proof is on the appellant, on the balance of probabilities. As established in *Gabbitts v SSE & Newham LBC* [1985] JPL 630, an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
6. This site has been the subject of a number of appeal decisions, including reference APP/X2410/X/18/3215604, which was an appeal against a refusal to

- grant a certificate of lawful use or development. The development for which a LDC was sought in that case, was the erection of a single dwellinghouse.
7. The appellant has sought, through this appeal, to address the previous Inspector's concern, that it had not been demonstrated the building was constructed as a single dwellinghouse. Statutory declarations have been provided by the previous occupants of No.8 Pulteney Avenue and No.10 Pulteney Road, as well as Council Tax band details, various photographs and sale documentation.
 8. The former occupant of No 8 Pulteney Avenue states that the building was laid out internally as a house and was not used for any other purpose but does not state when construction of the building took place, when it was completed, or on what dates they went into the building. It is not clear how often the witness would have seen the building, or exactly what they mean by 'laid out as a house'.
 9. Although the statement provided by the former occupant of No.10 Pulteney Road identifies that there is a kitchen and bathroom in the building, it also does not state when construction of the building took place, when it was completed or on what dates they went into the building. The statements provided are therefore of limited use in demonstrating that the building was constructed as a dwellinghouse.
 10. The 2009 photographs provided by the appellant demonstrate that at some point in 2009, the building was likely to be in the process of being constructed. However, while building materials can be seen in the front garden, it cannot be determined from the photograph how those building materials were actually used. Though later photographs and sales documentation show the building with a front door and windows, they do little to assist in determining whether the building was initially constructed as a dwellinghouse.
 11. The Council Tax band details provided by the appellant show that the building has been separately banded for Council Tax. However, the fact that the building was used as a dwelling is not in dispute. Indeed, an enforcement notice, dated 5 May 2011, alleged without planning permission, the unauthorised change of use of the building from an outbuilding/workshop to use as an independent self-contained residential dwelling.
 12. As pointed out by the previous Inspector, section 285 of the Act sets out that the validity of an enforcement notice shall not, except by way of an appeal under Part VII, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought. If the building had been constructed as a single dwellinghouse from the outset, rather than an outbuilding/workshop, it would have been open to the recipient/s of the notice to appeal under ground (b), which is the matters have not occurred. It is now too late to challenge the notice.
 13. Furthermore, the requirements of an enforcement notice have an enduring effect. Section 181(3) of the Act provides that where a building or works are altered or removed in compliance with an enforcement notice, and development is then carried out to reinstate or restore the buildings, the enforcement notice is deemed to apply to the building or works as it applied before they were reinstated or restored.

14. The enforcement notice does not attack the construction of the building. However, the appellant is seeking confirmation that the erection of a single dwellinghouse is lawful. Without kitchen facilities, the building would not afford occupants the facilities required for day-to-day private domestic existence, which, as held in *Gravesham BC v SSE & O'Brien* [1983] JPL 306 are the distinctive characteristics of a dwellinghouse. Consequently, even if the building had been originally constructed as a dwellinghouse, the retention or reinstatement of kitchen facilities is in contravention of the notice. It has therefore not become lawful through immunity from enforcement due to the passage of time under section 171B.
15. Thus, I find, on the balance of probability, the erection of a single-dwellinghouse had not become lawful through the passage of time at the date of the LDC application.

Conclusion

16. 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 erection of a single dwellinghouse was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

M Savage

INSPECTOR