



Appeal Decision

by **Richard S Jones BA(Hons), BTP, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 January 2022

Appeal Ref: APP/X5990/X/21/3273246

14 Little Newport Street, London, WC2H 7JJ

- 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 Sean Xu against the decision of City of Westminster Council.
 - The application ref 21/00869/CLOPUD, dated 13 February 2021, was refused by notice dated 16 April 2021.
 - The application was made under section 192(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 use of the first and second floor offices (Use Class E) as a retail shop (Use Class E).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I wrote to the parties to advise that, having reviewed the evidence, I was satisfied that I did not need to see the appeal site in order to reach a decision. The appellant confirmed agreement. No response was received from the Council.

Background and Main Issue

3. An application under s192(1)(a) of the 1990 Act¹ seeks to establish whether the proposed use (or operation) would be lawful if instigated or begun at the time of the application.
4. The LDC is sought for the use of the first and second floor offices at No 14 Little Newport Street as a retail shop. The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) groups both shops and offices into Use Class E (commercial, business and service)². Subject to the provisions of the UCO, movement from one primary use to another within the same use class is not development and does not require planning permission.
5. However, in this case, it is first necessary to establish whether, at the time of the application, there was a lawful Class E office use of the first and second floors of the appeal premises, so as to allow movement to another use within Class E.

¹ Town and Country Planning Act 1990 as amended (the 1990 Act)

² The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020, amending the Town and Country Planning (Use Classes) Order 1987. The amendments to the Use Class Order created a new commercial, business and service use class (Class E), revoking former Class A (shops) and Class B (offices).

6. Consequently, the main issue is whether the use of the first and second floors of No 14 as offices, falling within Use Class E of the UCO, took place without material interruption for a period of at least ten years prior to the date of the LDC application, and not since extinguished, thereby obtaining immunity from enforcement action through the passage of time³.
7. I've noted the submissions made in the appellant's Design and Access Statement but planning merits form no part of the assessment of an application for a LDC, which must be considered in the light of the facts and the law. The burden of proof lies with the appellant to make his case and the relevant test is 'the balance of probabilities' (that it is more probable than not). If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, that is enough. Evidence should not be rejected simply because it is uncorroborated.

Reasons

8. In support of the application the appellant has submitted business rate notices for the period between 1 April 2010 to 30 April 2019. Whilst addressed to Sun Luen Trading Co Ltd at the appeal site, the property description is 'café and premises' rather than offices. Reference is made to 'BST-4TH FLRS', which presumably means basement to fourth floor, but that is not clarified. In any case, the business rate notices do not specifically refer to, or differentiate, the first or second floor of the premises for any particular purpose.
9. Moreover, the total period of invoices only covers eight years and 30 days, thereby falling short of the required 10 year period. Although the appellant states that he has received a business rates notice for the new business year, that has not been provided. Whilst that may address the required 10 year period, the other identified ambiguities would remain.
10. A water services statement is provided but that only covers a period of 92 days in 2017, and, in any case, refers to the ground floor of No 14. Similarly, the energy supplier quote provided is from a single date in the same year, and, does not specifically refer to the first or second floor.
11. Reference is made in the application form to a lease for offices obtained in 2007, but no evidence is provided to that effect. The appellant also refers to the first and second floor operating as 'the back office for the ground floor retail shop'. That suggests that any office use which has taken place is ancillary to the ground floor retail use, rather than a primary use and planning unit in its own right.
12. Having regard to the above, I do not find the appellant's evidence to be sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that the first and second floor of No 14 has been used as a Class E office without material interruption for a period of at least ten years prior to the date of the LDC application. It follows that it has not been shown that using the first and second floors for any other use within Class E (including retail shop) is not development requiring planning permission.

³ S171B(3) of the 1990 Act

Other Matters

13. The appellant has expressed frustration over communication issues with the Council and raised concern regarding advice received. However, those are not matters for this appeal which I have determined afresh and on the basis of the evidence before me.
14. The appellant has also queried whether he should 'hold the bill' (the business rates notice) but that again is beyond the remit of this appeal and is a matter for the Council.

Conclusion

15. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in s195(3) of the 1990 Act as amended.

Richard S Jones

INSPECTOR