



Appeal Decision

Site visit made on 15 February 2022

by M Madge DIPTP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2022

Appeal Ref: APP/W2465/X/21/3282943

37 Bruce Street, LEICESTER, LE3 0AF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Kullar against Leicester City Council.
 - The application ref 20218049A is dated 26 May 2021.
 - 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 a single storey outbuilding to rear; used to support the businesses and residential use of the site.
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Decision

1. The appeal is dismissed.

Reasons

2. This is an appeal against the Council's failure to issue a decision. S195(5) of the 1990 Act as amended states that where the Council has failed to issue its decision, it shall be assumed that the Council decided to refuse the application in question. I shall proceed on that basis.
3. S191(2)(b) of the 1990 Act¹ states '*For the purposes of this Act uses and operations are lawful at any time if – (b) they do not constitute a contravention of any requirements of any enforcement notice then in force*'. An enforcement notice was issued on 8 May 2019 relating to the 'construction of a single storey detached building'. An appeal against the enforcement notice was dismissed in March 2020 and the notice was upheld.
4. The enforcement notice affects the land identified in this appeal. The notice came into force following the dismissal of the enforcement appeal. As the LDC application was made on 26 May 2021, after the notice took effect, the notice was in force at the time the application was made. There is no dispute that the unauthorised outbuilding referred to in the notice is the same single storey outbuilding to which the LDC relates. Any confirmation that the single storey outbuilding is lawful would contravene the requirements of the notice, which include its demolition.
5. For this reason, the single storey outbuilding could not be lawful on the date of the application and an LDC could not be issued. Accordingly, it is not necessary to consider whether there is sufficient evidence to establish immunity from enforcement through the passage of time, as argued by the appellant.

¹ Town and Country Planning Act 1990 as amended

6. I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of a single storey outbuilding to the rear; used to support the businesses and residential use of the site 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 Madge

INSPECTOR