



Appeal Decision

Site visit made on 24 February 2022

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2022

Appeal Ref: APP/Z5060/X/20/3256796

19 Donne Road, Dagenham RM8 2JG

- 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 Mr F Ahmed against the decision of the Council of the London Borough of Barking & Dagenham.
 - The application Ref 19/01697/CLU_E, dated 1 November 2019, was refused by notice dated 27 October 2020.
 - 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: "Retention of outbuilding as single dwelling house residential use for over 4 years."
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Preliminary Matters

2. The description in the heading above is taken from section 5 of the application form. But it contains superfluous wording. So drawing on the powers available to me under section 191(4) of the 1990 Act, I have modified the description in the attached certificate to more succinctly describe the use. I am satisfied the modified description is consistent with the original application and the description used by the Council.
3. By a letter dated 11 February 2022, arrangements were made for me to inspect the site, accompanied by a representative of the Council and the appellant. No one attended to represent the Council. Given the nature of the dispute in this case I determined the most suitable course of action was to proceed with my visit.

Main Issue

4. The main issue is whether the Council's decision to refuse the certificate was well-founded or not.

Reasons

5. Under section 191(1) of the 1990 Act, if any person wishes to ascertain whether any existing use of buildings or other land is lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use.

6. Section 191(2) of the same Act states that for the purposes of this Act uses are lawful at any time if (a) no enforcement action may then 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 (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
7. Section 191(4) provides that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
8. The Planning Practice Guidance states that the applicant is responsible for providing sufficient information to support an application¹. In the case of applications for existing use, it states that 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 grant of a certificate on the balance of probability.
9. Section 171B(2) of the 1990 Act states that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.
10. So based on the evidence provided, I must consider whether the outbuilding on the appeal site changed use to a single dwellinghouse and continued to be so used for 4 years after the date of the change and before the date of the application, such that the Council could have taken enforcement action at any time during that 4 year period.
11. According to the appellant, the use began on 16 December 2011. The appellant has provided Council Tax bills, an electrical installation condition report, energy performance certificates, an environmental report, gas safety records, an invoice for solar panels, an installation certificate for solar panels, tenancy agreements, bank statements, water bills, and a drainage and water search.
12. But it seems to me that, with the exception of 2 of the 4 gas safety records provided, all of the above documents relate to the terraced house at 19 Donne Road. As such, on the balance of probability I am not satisfied that any of them are evidence of use of the outbuilding as a single dwellinghouse for 4 years.
13. Two of the gas safety records refer to 19A Donne Road rather than No 19. Based on the consistent non-consecutive numbering of the houses on the street that I saw on my site visit, I consider it more likely than not that reference to No 19A on gas safety records means the outbuilding in the rear garden of No 19. This is consistent with the Council's statement that these are addressed to what officers consider to be the outbuilding. Nevertheless, on the balance of probability these records alone are not necessarily evidence of the use of the outbuilding as a single dwellinghouse for 4 years.

¹ Lawful development certificates, Paragraph: 006 Reference ID: 17c-006-20140306

14. The appellant has provided 5 documents, each from a different party and each referred to as a general affidavit. An affidavit is a sworn written statement of fact. Each of those provided is dated either 1 or 2 November 2019 and states that the outbuilding at the rear of the premises of 19 Donne Road has been used as a residential dwelling for over 4 years and that the use has been continuous.
15. The Council states that these do not constitute sufficient evidence to support the use of the outbuilding as a single dwellinghouse for a period of at least 4 years but without saying why. Moreover, no evidence has been provided to contradict what has been said in the 5 documents and so on the balance of probability I have no reason to doubt what has been said in them.
16. My attention has been drawn to a breach of condition notice (BCN), issued on 10 July 2020. This requires that the outbuilding only be used as a residential annexe or outbuilding in conjunction with the residential use at 19 Donne Road and not for any other purpose and that the outbuilding shall not be occupied independently of the main house. But as the BCN postdates the date of the LDC application it does not affect what was lawful on the date of the LDC application and so has no bearing on the appeal before me.
17. In light of a lack of evidence to contradict or otherwise make the appellant's version of events less than probable, taking into account all of the above points, I am satisfied on the basis of the appellant's evidence, which is sufficiently precise and unambiguous, that on the balance of probability the outbuilding has been used as a single dwellinghouse for 4 years prior to the date of the application.

Conclusion

18. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the outbuilding as a single dwellinghouse, was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

L Perkins

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 1 November 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The outbuilding has been used as a single dwellinghouse for 4 years prior to the date of the application.

Signed

L Perkins

INSPECTOR

Date: 22 March 2022

Reference: APP/Z5060/X/20/3256796

First Schedule

Use of outbuilding as single dwellinghouse

Second Schedule

Land at 19 Donne Road, Dagenham RM8 2JG

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 22 March 2022

by **L Perkins BSc (Hons) DipTP MRTPI**

Land at: 19 Donne Road, Dagenham RM8 2JG

Reference: APP/Z5060/X/20/3256796

Scale: Not to scale

