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# Appeal Decision

Site visit made on 5 April 2022

**by Sarah Dyer BA BTP MRTPI MCMI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19<sup>th</sup> April 2022**

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**Appeal Ref: APP/N1540/X/21/3279756**

**14 School Lane, HARLOW, CM20 2QD**

- 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 Barry Foley against Harlow District Council.
  - The application ref HW/LDCE/20/00199 is dated 30 April 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 the use as a residential property (Class C3) of an independent garage and land to south side of 14 School Lane, Harlow Essex, CM20 2QD.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

### *Validity of the appeal*

2. The Council considers that the appeal is not valid because it was submitted more than six months after the date when the Council should have made its decision. However, the Procedural Guide - Certificate of lawful use or development appeals- England February 2022 sets out that there is currently no time limit within which an appeal against the local planning authority's refusal of (or its failure to decide) an LDC application has to be received.
3. Therefore, whilst it is normally expected that an appeal would be made within 6 months of the expected decision date, the appeal is not invalid in this case.

### *Other matters*

4. For the avoidance of doubt, the planning merits of the existing use are not relevant, and they are not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 (the Act), as amended, which relates to an application for an LDC. My decision rests on the facts of the case and on relevant planning law and judicial authority. The onus is on the appellant to make out his case to the standard of the balance of probabilities.
5. The appellant is concerned that if his appeal is unsuccessful, he could be made homeless. However, rights under the Human Rights Act 1998 which include the right to respect for private and family life and the Public Sector Equality Duty are not engaged in the context of an LDC appeal.

## **Main Issue**

6. The appeal has been submitted against the failure of the Council to determine the application for an LDC within the prescribed period. The main issue is therefore if the Council had refused the application whether or not their refusal would have been well-founded.

## **Reasons**

7. The appellant seeks to establish that the use of the appeal site as a dwelling house is lawful. The Act establishes that uses are lawful at any time if no enforcement action may then be taken in respect of them. The appellant is not seeking to establish that the use of the appeal site does not involve development nor that it does not require planning permission. His contention is that the time for enforcement action has expired.
8. The Council applied to the Magistrates Court for a Planning Enforcement Order (PEO) on the basis that the Council considered that the appellant had deliberately concealed a breach of planning control.
9. A magistrates' court may make a planning enforcement order in relation to an apparent breach of planning control only if: -
  - (a) the court is satisfied, on the balance of probabilities, that the apparent breach, or any of the matters constituting the apparent breach, has (to any extent) been deliberately concealed by any person or persons, and
  - (b) the court considers it just to make the order having regard to all the circumstances.
10. The Order was made on 2 July 2021. In accordance with s171BA of the Act the Council may take enforcement action in respect of the apparent breach at any time in the 'enforcement year' being a year that begins 22 days after the date of the court's decision. The appellant has not instigated proceedings in respect of the court's decision. Therefore, the Council is able to take enforcement action before and including 24 July 2022.
11. For the purposes of LDC appeals, s191(3A) states that the time for taking enforcement action will not have expired if, for amongst other reasons, a PEO in relation to the matter has been made and not rescinded, and the enforcement year has not expired. In this case, as a consequence of the PEO, the time for enforcement action has not expired.
12. The appellant confirms that he obtained planning permission for a detached garage and office/store in 2002 and that this was a second garage to the main house of 14 School Lane. He says that the land on which the garage was built was registered separately to the house. Between 2004 and 2007 the appellant says that he used the garage for the purposes for which it was designed. In 2007 he moved from the house to live in the garage. This was intended to be on a temporary basis but for a number of reasons he has continued to occupy the garage to the present day.
13. The appellant has produced evidence to support his contention that he has used the garage as a dwelling since 2007 including information relating to bathroom and kitchen fitting and witness statements confirming how the building has been used. He has also submitted a number of photographs

although the majority of these are undated and consequently of limited evidential value.

14. The Council is in part critical of the evidence provided by the appellant. It accepts that the appellant's marital situation could have led to his occupation of the building as his residence and that there are records of works being carried out relating to the conversion of the garage into living accommodation. But the Council does not consider the witness statements as evidence robust enough to prove the use of the building as a dwelling.
15. The witness statements do not have the weight of statutory declarations, but some are witnessed by a third party. The witness statements are personal to the individuals and explain their relationship to the appellant and their visits to the building for a number of different reasons.
16. The Council also highlights that there is no evidence of planning permission being sought for the use or changes being made to Council Tax. This is in the context of the Council's view that the use of the building was being concealed from it. However, from the appellant's perspective the absence of such records does not in itself demonstrate that the building was not in use for the purposes set out in the application for the LDC.
17. The appellant is critical of the statements made by the Council in connection with the PEO. For example, reference was made to changes to the building some of which had been agreed by the Council as amendments to the approved plans. The appellant does not accept that positive deception exists, that the deception was not intended to undermine the planning process or that it did undermine the process or that he would profit from any wrongdoing.
18. The 'as built' plans which were submitted by the appellant show the ground floor as an open area accessed by two sets of double doors in the side of the building with internal access to the stairs to the first floor. External doors separately serve a toilet and the stairs to the first floor. The first floor is also shown as an open space and marked 'study'. The appellant has also shown the layout of the building 'as converted' and this was how the building was laid out and in use when I carried out my site visit.
19. Access to the building is now via a pedestrian door facing the garden to the rear. There are also doors in the opposite end of the building facing School Lane which give out onto a patio area screened by a high fence. On the first floor there are two bedrooms, a bathroom, and a cupboard. The bedrooms receive natural light from windows in the upper gable ends of the building and from rooflights. At the site visit, the appellant described the main bedroom as partly in use as an office.
20. Externally there is a fence which contains an extensive rear garden and separates it from the garden serving the house at 14 School Lane. Alongside the building and between it and the road there is an open parking area and front garden laid to lawn. Double doors have been retained on the side of the building, such that when viewed from School Road it looks like a garage. The patio doors and patio furniture are also screened from views from the road by a high fence. The only indication that the building is in use as a separate dwelling is the presence of what appears to be a letter box on the appellant's photograph. However, it is conceivable that anyone seeing it would assume it

was for post associated with the appellant's business which he says he was running from the building prior to the change of use.

21. Drawing all of these strands together, the evidence which the appellant has provided does, on the balance of probability show that the appeal site has been used as a residential property for at least four years prior to the submission of the application for the LDC.
22. Turning to the PEO, the appellant considers that the information which the Council placed before the Court should not have been relied on for a variety of reasons. However, he did not challenge the Court's decision, citing the cost of doing so as a key factor. The appellant asks me to consider whether the PEO is satisfactory in view of what he regards as false statements being made.
23. Justification for the PEO is set out in the Council's complaint to the Magistrates Court and supported by documents such as a statement from a council officer and photographs.
24. The Council cites the failure to register for Council Tax and the electoral roll, to seek to create a new postal address and to obtain Building Regulations approval. As I have said above a failure to register for Council Tax is not determinative of the use of the building. However, had the appellant carried out these actions it would have drawn the Council's attention to a residential property having been established. Failing to do so, particularly by someone who has some knowledge of property and planning matters, could show an intention to conceal what was happening at the appeal site.
25. The appellants argument that Council Tax was not reduced in response to the single occupancy of 14 School Road does not equate to the two buildings being assessed for Council Tax separately.
26. The other key point made by the Council was that the changed nature of the property was not apparent from outside the site. I have also found this to be the case. Notwithstanding whether the fence at the front of the site formed part of the original garage scheme, the effect of the fence is to screen the patio from public view and to allow activities in this area to go unnoticed.
27. Whilst there may be errors in the detail of the Council's witness statement, the appellant has not produced any further evidence to demonstrate that his intention was not to conceal the development, albeit that he states that it was not. The court had to establish whether there was deliberate concealment to any extent.
28. Given the knowledge of planning the appellant had, albeit restricted by his employment of architects and other professionals, there is evidence of his intention to conceal the development even if it is only to a limited extent. Consequently, setting aside that I do not have any power to overrule the decision of the Court to confirm the PEO, I have not found the decision of the Court to be incorrect as suggested by the appellant.
29. The appellant also contends that he can demonstrate four years continuous use of the building before legislation was introduced to allow local planning authorities to seek a PEO. However, there is nothing in the Act to suggest that it only applies to development which took place after the introduction of paragraphs 171BA, 171BB and 171BC. Therefore, even if the appellant could establish the use of the building over the four year period, this would not

necessarily impact on the courts finding of deliberate concealment or the conclusions which I have reached.

30. Drawing all of these strands together, I am persuaded on the information before me that, on the basis of the PEO, the Council is able to take enforcement action up to and including 24 July 2022. For that reason, the development is not lawful.
31. For the reasons given above I conclude, on the evidence now available, that if the Council had refused the application their refusal would have been well-founded and that the appeal should fail. I will exercise the powers transferred to me under section 195(3) of the 1990 Act as amended.
32. The appellant has asked me to answer a number of questions relating to the future use of the building in the light of a certificate not being granted. These are matters which fall to be resolved between the appellant and the Council.

*Sarah Dyer*

Inspector