



Appeal Decision

Site visit made on 29 June 2022

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 August 2022

Appeal Ref: APP/W2465/X/21/3284033

40-42 Cavendish Road, Leicester LE2 7PH

- 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 Sonatex Ltd against the decision of Leicester City Council.
 - The application ref 20202137, dated 18 February 2021, was refused by notice dated 13 April 2021.
 - The application was made under section 191(1) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as: 'Two storey and single storey rear extension, erection of two dormers to the front elevation and rear outbuilding and internal subdivision to seven flats'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. There are different descriptions of the development in the documents before me. The description on the application form is as set out in the header above. The Council's decision notice additionally makes reference to a rear dormer, which is also shown on the submitted plans. The appeal form makes reference to the rear dormer as well, but does not mention the outbuilding referred to in the application form. The submitted plans do not show any existing outbuilding.
3. Having considered all the information provided, it appears to me that the appellant seeks a certificate for the construction of 2 front dormers, 1 rear dormer, single storey and two storey rear extensions and use of the property as 7 flats (Class C3). I have considered the appeal on that basis.
4. The declaration on the planning application form is dated 27 May 2021. This is evidently wrong, since the Council determined the application in April 2021. The Council's decision notice and the appeal form both state that the application was dated 18 February 2021, and I have treated that as the correct date.

Main Issue

5. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether the use and operations for which a certificate is sought were lawful on the date the application was made.

Reasons

The requirements to establish lawfulness

6. Section 191(2) of the Act states that:

For the purposes of this Act uses and operations 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. Thus, failure on either (a) or (b) means that the use and/or operations were not lawful on the date of the application and a certificate cannot be issued. The burden of proof falls on the appellant and the standard of proof is the balance of probability. Advice on considering LDCs is set out in the Government's *Planning Practice Guidance*.

8. In this case an important consideration is an enforcement notice relating to the property. This was issued on 13 October 2020 (before the date of the LDC application) and alleged 'Without planning permission, the unauthorised change of use from house to 7 self-contained flats (7x1 bed) (Class C3); Unauthorised construction of two storey and single storey extension to rear, unauthorised construction of dormer extensions to the front and rear of the Property'. The notice was appealed but upheld with minor changes on 24 August 2021 (after the date of the LDC application). The notice plainly concerns this same development and is relevant to the question of lawfulness, as set out below.

Section 191(2)(a)

9. It is clear that the works and change of use were development requiring planning permission, but the appellant argues that the time for taking enforcement action had expired when the LDC application was made. A range of evidence has been submitted in support of this, both in relation to the physical works and the use of the property. The time limits for taking enforcement action are set out in section 171B of the Act. The relevant periods in this case are 4 years from the substantial completion of building operations (171B(1)) and 4 years from the commencement of the change of use (171B(2)).

10. However, those time limits need to be considered in the context that the Council had issued an enforcement notice targeted at this development (both the change of use and the physical works) on 13 October 2020. Section 171B(4) provides that the time limits outlined above do not prevent taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach. In other words, issuing the notice had the effect of suspending the time limits such that the time for taking enforcement action had not expired on the date of the LDC application.

11. I have had regard to the evidence submitted by the appellant relating to when the works and change of use took place, but that cannot change the question of whether the time for enforcement action had expired on the date of the application, given the enforcement notice the Council had issued. That notice was subsequently upheld following an appeal. There is nothing before me to suggest any other reason why enforcement action could not be taken.
12. For these reasons I conclude that section 191(2)(a) is not met, and the development was not lawful on the date of the application. Accordingly, the appeal cannot succeed. In these circumstances it is not necessary to consider section 191(2)(b), since failure on either limb of section 191(2) means that the development is not lawful. Since the enforcement notice relates to both the change of use and the operational development, no part of the development was lawful when the application was made and there is no possibility of issuing a 'split' decision allowing any part of the appeal.

Conclusion

13. 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 section 195(3) of the 1990 Act as amended and dismiss the appeal.

Peter Willows

INSPECTOR