



Appeal Decision

Site visit made on 1 August 2022

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 August 2022

Appeal Ref: APP/D1780/X/22/3291477

51 Westridge Road, Southampton SO17 2HP

- 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 Ali Khan against the decision of Southampton City Council.
 - The application Ref 21/00895/PLDC, dated 10 June 2021, was refused by notice dated 30 July 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 conversion to 2 no. studio flats.
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Summary of Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant, or a representative on his behalf, did not attend my scheduled site visit. On his appeal form, the appellant only considered it necessary for me to enter the site because building work was completed 12 months ago. However, as this is a legal determination, and that works have taken place is not in dispute between the parties, injustice does not arise from an internal site inspection having not been undertaken.
3. As my assessment concerns a legal determination, planning policy considerations or the planning merits of the use of the building are not relevant matters before me.

Main Issue

4. The main issue is whether the Council's decision to refuse a certificate of lawfulness for the proposed conversion of the building to two studio flats is well founded.

Reasons

5. The site consists of a small parcel of land containing a single-storey building, taking up the majority of the plot.
6. The appeal application relates to the proposed conversion of what the appellant contends was a building used for storage (use class B8) into two studio flats.

7. For the development to be certified for the purposes of s192 of the Act, it would have to be prospective in nature. However, on the appeal application form it has been declared that the proposal has already been started. Accordingly, I am unable to certify for the purposes of s192 of the Act.
8. I do however have powers to then certify under s191 of the Act, for an existing use or development. The appellant contends that the building was previously in a storage use and is now relying upon the prior approval process for the conversion to be a form of permitted development.
9. However, the only evidence before me is that previous prior approval applications were refused. Accordingly, for the proposal to benefit from permitted development rights, a successful prior approval process¹ must first be followed. In the absence of this, I am unable to certify the development. In light of this, for the purposes of my assessment I then do not need to consider whether the building was previously in a storage use.
10. There is then very little evidence that a residential use has subsisted for a continuous period of 4 years such that the Council could have taken enforcement action. During my site visit, I could see that the site was considerably overgrown with vegetation such that it could not be accessed, and it therefore appeared to not be in any form of active use, let alone residential occupation.
11. As a matter of fact and degree, based upon the evidence before me, the appellant has therefore not discharged the necessary burden of proof to demonstrate his case on the balance of probabilities.

Conclusion

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed conversion of the building to two studio flats 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.

Formal Decision

13. The appeal is dismissed.

Paul T Hocking

INSPECTOR

¹ Pursuant to Schedule 2, Part 3, Class P of the Town and Country Planning (General Permitted Development) (England) Order 2015