

Appeal Decision

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 12 December 2022

Appeal Ref: APP/G5180/X/22/3303128

2A Birkbeck Road, Beckenham BR3 4SN

- 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 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 Roger Wood against the Council of the London Borough of Bromley.
 - The application is dated 9 November 2021.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the Act).
 - The use for which a certificate of lawful use or development is sought is residential.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. It was not necessary for me to conduct a site visit to determine this appeal, with a decision made based on the evidence before me.

Main Issue

3. The main issue is whether or not the Council's deemed refusal of the LDC application was well-founded.

Reasons

4. Section 191(2) of the Act provides that uses and operations are lawful at any time if no enforcement action may then be taken in respect of them, including because the time for enforcement has expired¹.
5. Section 171B(2) of the Act provides that, as regards 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.
6. Therefore, for this appeal to be successful, the burden of proof is upon the appellant to demonstrate on the balance and probabilities and with sufficiently precise and unambiguous evidence that the appeal property had been in continuous use as a dwelling since at least 9 November 2017.
7. The appellant has not done so, due to the nature and value of the very limited evidence submitted.

¹ And that they do not constitute a contravention of any of the requirements of any enforcement notice then in force. There is no evidence before me that this is the case in this appeal.

8. The undated drawings and photographs do not evidence continuity for the required period, but relate at most to a point in time when they were created. The utility bills relate only to 2017 and appear to correspond to business energy and water supply accounts, significantly undermining the appellant's case.
9. I afford very limited weight to the non-sworn 'statements' signed by neighbours, due to the brevity of their identical contents with no supporting detail from the signees as to how they knew it to be true that "Mr Wood has been living at 2a Birkbeck Road, Beckenham, BR3 4SN since July 2017". Indeed, that evidence (taken together with the appellant's claim that residential use began on 1 July 2017) is undermined by the planning application received by the Council on 11 July 2017 which declared that the change of use to residential had not yet occurred.
10. Accordingly, I am not satisfied on the balance of probabilities that residential use has acquired lawfulness over time.

Conclusion

11. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of residential use 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.

Andrew Walker

INSPECTOR