
Appeal Decisions

Site visit made on 23 January 2023

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2023

Appeal A Ref: APP/T3725/X/21/3281454

Garages/Store to the rear of 22 and 24 St Mary's Terrace, Leamington Spa, Warwickshire CV8 1JT

- 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 Steven White against the decision of Warwick District Council.
 - The application Ref W/20/2100, dated 26 November 2020, was refused by a notice dated 25 March 2021.
 - 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 a store (Class B8).
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Appeal B Ref: APP/T3725/X/21/3290818

Garages/Store to the rear of 22 and 24 St Mary's Terrace, Leamington Spa, Warwickshire CV8 1JT

- 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 Steven White against the decision of Warwick District Council.
 - The application Ref W/21/1736, dated 13 September 2021, was refused by a notice dated 14 January 2022.
 - 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 a store (Class B8).
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

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

Background and Main Issue (Appeal A and Appeal B)

3. Appeal A and Appeal B have been made in relation to two separate applications made to the Council for a certificate of lawful use or development (LDC) for the

use of two detached single storey buildings constructed as garages and claimed to have been in use for storage (B8 Use Class) since 1990. The application the subject of Appeal B was a resubmission following the Council's initial refusal to grant an LDC (Appeal A) and provides some additional information to support that application.

4. Section 191 (4) of the Town and Country Planning Act 1990 as amended (the Act) indicates 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, operations or other matter described in the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the development are not relevant in these appeals and the main issue is whether the Council's decision to refuse to grant a LDC was well founded.

Appeal A

Reasons

5. Section 171B (3) of the Act advises that in the case of a breach of planning control consisting of the material change of use of land and/or buildings, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. It is therefore necessary for the appellant to demonstrate, on the balance of probability, that the material change of use of the buildings took place on or before the 26 November 2010 with the use continuing for at least 10 years after.
6. The appellant's original application form indicated that permission had been granted for two garages in 1989 and that they had been in use for storage since their construction and since 1 November 1990. The application was accompanied by a letter from the builder who originally owned the land and constructed the garages. He states that the houses were let privately and that he retained the garages which he used for the storage of building materials, sand and restoration furniture, etc. This was the only information originally submitted with the application. However, the previous owner followed this up with an email dated 27 January 2021 whereby he confirmed that he constructed the garages in about 1990 and used them for approximately 30 years thereafter to store surplus building materials.
7. Although there is no evidence from the Council or indeed other parties that would cast doubt on the correspondence provided to support the application, the declaration from the previous owner and email correspondence was not sworn in the presence of a solicitor. Furthermore, there is a lack of detail and/or information to support the appellant's claim. I do not consider that the information is sufficiently precise to demonstrate, on the balance of probability, that the garages have been used continually as stores for a 10 year period commencing on or before 26 November 2010.

Conclusion

8. For the reasons given above I conclude that the Council's decision to refuse 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.

Appeal B

Reasons

9. In the case of Appeal B it is necessary for the appellant to demonstrate, on the balance of probability, that the material change of use of the buildings took place on or before 13 September 2011 with the use continuing for at least 10 years after.
10. The application the subject of Appeal B was supported by additional information which the appellant had been requested to supply. He provided a sworn affidavit from the previous owner/builder which stated that he completed the construction of the garages in June 1990 and that they have been used in connection with his building and furniture restoration enterprises, namely the storage of building materials, storage of furniture for restoration, storage of funeral caskets and the drying of sand, with an uninterrupted use for the duration of their existence. He states the buildings have never been used to park or store vehicles but used in connection with his work as a residential builder. In addition, the previous owner has provided some copies of invoices for building materials and completion certificates in relation to works he has undertaken, and undated photographs have been provided of the interior of the garage which show building materials stored, including furniture, tiling tools, windows and doors, Acro props, railings and insulation. Copies of tenancy agreements for the neighbouring residential properties have also been provided to demonstrate that the rental of those properties does not include the garages/stores, and separate title deeds for the stores/garages and those neighbouring properties. An affidavit (sworn) has also been provided by the appellant stating that since his purchase of the buildings in 2019 he has continued to use them to store building materials.
11. I appreciate that the invoices and completion certificates do not provide any evidence that the buildings were utilised as a store. However, the previous owner has sought to provide additional detail setting out how he utilised the buildings, including stating that that use was uninterrupted for the 30 years he occupied them. Furthermore, that additional information is in the form of an Affidavit sworn in the presence of a solicitor. The tenancy agreements and title deeds also support his statement and from my observations on my site visit I see no reason to believe that the photographs provided do not show the interior of the buildings in question. However, I appreciate that the photographs do not provide evidence of continuity of use.
12. It is established case law that an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict the appellant's version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
13. The previous owner's affidavit is precise and unambiguous. It sets out clearly when he built the garages and what they have been utilised for since they were completed. In the absence of any evidence to contradict the details set out in the affidavit, then that evidence should be taken at face value.

Conclusion

14. Having regard to all the evidence submitted and bearing in mind the relevant test of the evidence is the balance of probability, with no evidence from the Council that would contradict or otherwise made the appellant's version of events less than probable, I consider that the appellant has made his case.
15. Thus, for the reasons given above, I conclude on the evidence now available, that the Council's reason for refusal to grant a LDC in respect of the use of the buildings to the rear of Nos 22 and 24 St Mary's Terrace, Leamington Spa 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.

Elizabeth Pleasant

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 13 September 2021 the use described in the First Schedule hereto in respect of the buildings 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 use of the buildings to store building materials, furniture for restoration, funeral caskets and the drying of sand is lawful because the time for enforcement action has expired.

Signed

Elizabeth Pleasant

Inspector

Date 20 February 2023

Reference: APP/T3725/X/21/3290818

First Schedule

The use of the buildings to store building materials, furniture for restoration, funeral caskets and the drying of sand.

Second Schedule

Garages/Store to the rear of Number 22 and 24 St Mary's Terrace, Leamington Spa, Warwickshire CV8 1JT.

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: 20 February 2023

by **E Pleasant DipTP MRTPI**

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Reference: APP/T3725/X/21/3290818

Scale: Not to Scale

