



Appeal Decision

Site Visit made on 28 February 2023

by Debbie Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 March 2023

Appeal Ref: APP/F5540/X/22/3290106
279 London Road, Isleworth TW7 5XG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Miss Geraldine Lewis against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00707/279/LAW1, dated 1 June 2021, was refused by notice dated 22 July 2021.
 - The application was made under sections 191(1)(a) and (b) of the 1990 Act 1990 as amended.
 - The development for which an LDC is sought is existing use of the front garden area as a parking space. Building works to enable use as parking.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the existing use/operation which is considered to be lawful.

Preliminary Matters

2. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. Planning merits such as highway safety are not relevant and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended.
3. The application was seeking to establish the lawfulness of the use of the front garden as a parking space and building works to enable that use. I note the Council altered the description of development, prior to refusing to grant an LDC for a dropped kerb at the front of the house. While Section 191(4) of the 1990 Act allows the modification of the description of the existing use, operation or other matter, the description should not be modified to something completely different, as it was in this case. The Council acknowledges this was an error and suggests that the description should be changed to the creation of hardstanding. However, the application was clear about what was sought. It concerned the use of the garden and the formation of a hardstanding. The operational development facilitates that use but this does not necessitate an altered description.

Main Issue

4. The application sought confirmation that the existing use of the front garden area as a parking space was lawful on the date of the application. The main issue is whether the Council's refusal to grant an LDC was well-founded.

Reasons

5. Section 191(2) of the 1990 Act provides that uses and operations are lawful at any time if no enforcement action may 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).
6. Section 55(1) to the 1990 Act says that the word 'development' means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. The concept of a material change of use is not defined in statute or statutory instrument. The basic approach is that, for a material change of use to have occurred, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree.
7. In this case, the use of the planning unit, that is the property at No 279 London Road, is residential. Car parking within the garden for purposes incidental to the use of the dwellinghouse remains a residential use and so no material change of use has taken place. The use would have been lawful because it did not involve development. On the other hand, the laying of the hardstanding would constitute a building operation and would have been development within the meaning of s55(1). The appellant says that the works have been in place for more than 30 years. Section 171B(1) of the 1990 Act concerns time limits for enforcement action. This provides where there has been a breach of planning control consisting in the carrying out without planning permission of building operations "no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed".
8. The Council accepts the works to create the hardstanding have been substantially completed for more than four years. However, it is argued that the use as a car parking space is unlawful since there is no authorised vehicle crossover giving access to the space. I appreciate the Council's concerns but the LDC establishes lawfulness for planning purposes only. It does imply consents under other legislation where these are required. Therefore, while the value of the LDC is limited, there is no justified reason for me to refuse to grant a certificate for the matters sought.

Conclusion

9. The appellant has shown on the balance of probabilities that the use was lawful since it did not amount to a material change of use as a matter of fact and degree. The facilitating works to create the hardstanding were substantially completed four or more years prior to the date of the application. They are immune from enforcement action and thus lawful.
10. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of existing use of the front garden area as a parking space and building works to enable the use 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.

Debbie Moore

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 1 June 2021 the use/operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The appellant has shown on the balance of probabilities that the use was lawful since this did not amount to a material change of use as a matter of fact and degree. The facilitating works to create the hardstanding were substantially completed four or more years prior to the date of the application. They are immune from enforcement action and thus lawful.

Signed

Debbie Moore

Inspector

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First Schedule

Existing use of the front garden area as a parking space. Building works to enable use as parking.

Second Schedule

Land at 279 London Road, Isleworth TW7 5XG

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 were lawful, on the certified date and, thus, 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: 16 March 2023

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Scale: NTS

