



Appeal Decision

by Ms Watson BA(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 March 2023

Appeal Ref: APP/J3015/X/22/3300684

17 Templar Road, Beeston, Nottingham, NG9 2DX

- 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 Mr D Yue (Y&Q Deyi Hang Ltd) against the decision of Broxtowe Borough Council.
 - The application ref 22/00236/CLUP, dated 16 March 2022, was refused by notice dated 16 May 2022.
 - 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 C3 to C4.
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Decision

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

Costs

2. An application for costs has been made by Mr D Yue (Y&Q Deyi Hang Limited) against Broxtowe Borough Council. This is subject of a separate decision.

Reasons

3. The main issue is whether the Council's decision to refuse the LDC was well founded. This turns on whether, at the time of the application, the proposed works would have constituted permitted development and therefore granted planning permission by Article 3 and Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO). The planning merits of the proposal are not relevant.
4. Class L permits development of a change of use of a building from a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order, to a use falling within Class C4 (houses in multiple occupation) of that Schedule.
5. There is no dispute between the parties that the property was Class C3 at the time of the application and there is no dispute that the proposed use was Class C4.
6. Under s192(2), if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. This means that the relevant date is the date that the application was made.

7. The Article 4 Direction removing permitted development under Class L for a change of use from C3 to C4 did not come into effect until 26 March 2022. Therefore, the change of use, as described by the appellant, would have been lawful on the day that the application was made, i.e. on 16th March 2022 as the right under Class L still existed on that date.
8. This does not necessarily mean that a change of use would have been lawful if it occurred on or after the 26 March 2022. My consideration in this matter is not whether the development would be lawful now. My consideration is whether it would have been lawful on the date the application was made.
9. I note the Council's point that the appellant did not provide evidence that the change of use occurred before the Article 4 Direction came into effect. However, there was no need for the appellant to do so because the consideration of the proposed use only relates to the date the application was made and a certificate would only confirm that the proposed change of use would have been lawful on that date.

Conclusion

10. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development was not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended and grant a certificate as applied for.

Ms Watson

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 16 March 2022 the use 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development would have complied with Class L of Part 3 of Schedule 2, of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Ms Watson

Inspector

Date: [29 March 2023]

Reference: APP/J3015/X/22/3300684

First Schedule

Change of use from C3 to C4

Second Schedule

Land at 17 Templar Road, Beeston, Nottingham, NG9 2DX

IMPORTANT NOTES – SEE OVER

Plan

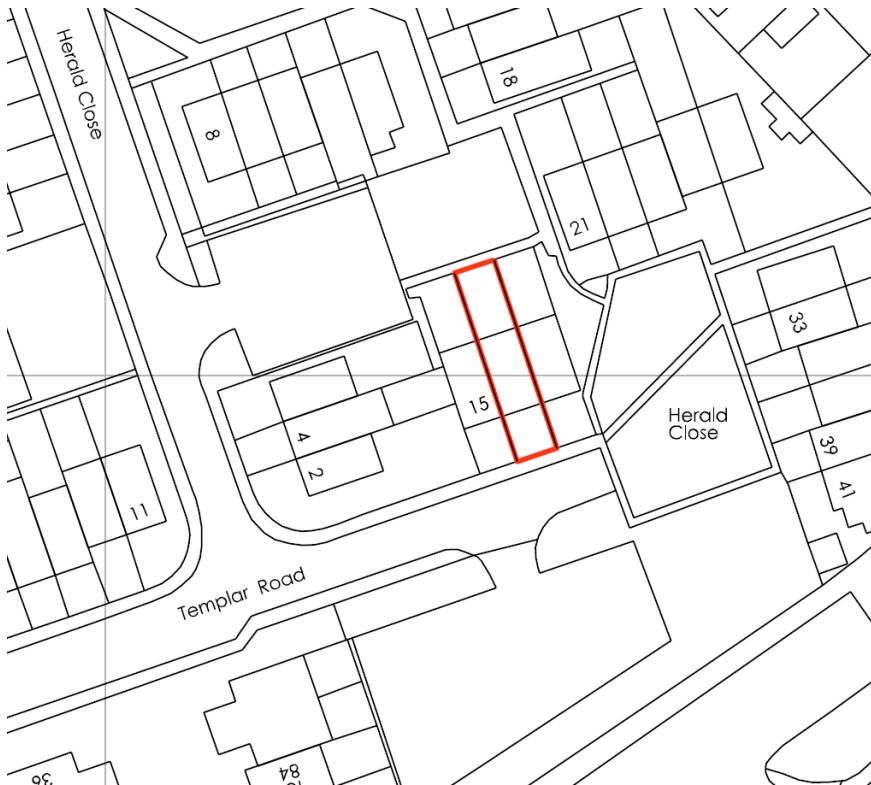
This is the plan referred to in the Lawful Development Certificate dated: [29 March 2023]

by Ms Watson BA(Hons), MCD, MRTPI

Land at: 17 Templar Road, Beeston, NOTTINGHAM, NG9 2DX

Reference: APP/J3015/X/22/3300684

Scale: Not to Scale



IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 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 would have been 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.