
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: 9th June 2023

Appeal Ref: APP/N5660/X/22/3296216

100 Knight's Hill, London SE27 0JL

- 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 Manisha Patel against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 21/04425/LDCE, dated 13 November 2021, was refused by notice dated 27 January 2022.
 - 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 a single family dwelling.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Manisha Patel against the Council of the London Borough of Lambeth. This application is the subject of a separate Decision.

Procedural Matters

3. It was not necessary for me to undertake a site inspection to determine this appeal, with the Decision made on the written evidence before me.
4. The LDC application relates to part of the ground-floor of the property (identified as 'Flat A' in the appellant's statement) to the rear of a shop. There is no dispute between the parties that this is the 'unauthorised flat' which is the subject of the alleged breach of planning control targeted by the enforcement notice issued by the Council on 18 December 2020. No appeal was made against that notice, which required the unauthorised use to cease.

Main Issue

5. The main issue in the appeal is whether or not the Council's decision to refuse to grant the LDC was well-founded.

Reasons

6. Section 191(2) of the Act provides that a use cannot be lawful if it constitutes a contravention of any of the requirements of an enforcement notice then in force.

7. When the LDC application was made, there was an enforcement notice in force which plainly required the use as a self-contained residential flat to cease. Therefore, it is a very straight-forward application of the statute which leads me to the conclusion that the development upon which the LDC application is sought cannot be lawful.
8. The appellant says that the use had already acquired immunity from enforcement action before the notice was issued, but that does not affect the application of the above statutory provision. Further, it was open to the appellant to appeal against the notice on the basis of the stated immunity (ground (d))¹ but he did not do so. The effect of Section 285(1) of the Act is that the validity of an enforcement notice, except by way of an appeal against it, cannot be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought. Accordingly, the ground (d) argument is not one that can be considered under the appeal before me.

Conclusion

9. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a single family dwelling 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

¹ Section 174(2)(d)