

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/L5240/X/22/3302273

Betts Mead Parade, Old Lodge Lane, Kenley CR8 5EW

- 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 C Ellis against the decision of the Council of the London Borough of Croydon.
 - The application Ref 22/01402/LE, dated 1 April 2022, was refused by notice dated 10 May 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 use as car park for occupants and visitors of the property.
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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 existing use which is considered to be lawful.

Procedural Matter

2. It was not necessary for me to conduct a site inspection to determine the appeal, with a decision made upon the evidence in the papers.

Main Issue

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

Reasons

4. Section 191(2) of the Act provides that a use is lawful if no enforcement action may be taken in respect of it. Section 171B(3) provides that no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.
5. The application for the LDC was made on 1 April 2022. Accordingly, for a certificate to be issued, the burden of proof is upon the appellant to demonstrate on the balance of probabilities that the use of the land as a car park for occupants and visitors occurred continuously since at least 1 April 2012.
6. Statutory declarations have been made by the owners of Betts Mead Parade which state unambiguously that the application land to the rear has been used for car parking facilities for a continuous period of at least 10 years – since the 1970s, it is solemnly declared.

7. The 3 consistent statutory declarations represent sworn first-hand evidence made under the provisions of the Statutory Declarations Act 1835 and witnessed by and signed in the presence of a solicitor. Accordingly, I give their contents significant weight – particularly as I find it entirely credible that the land would be used for parking given the undisputed statement within the appeal papers that there are limited parking opportunities for the occupants of the 8 flats to the front of Betts Mead Parade. Indeed, the correspondence submitted from the letting agents for the flats confirms that use was occurring in 2007 (with a photograph in evidence) and I am further satisfied from all the photographic evidence I have seen (Google Earth images as well as those taken by Council officers) that the use was continuous for at least 10 years leading up to the application for the LDC.
8. The officer report on the application is critical that none of the images show 8 cars parked. However, it is a false assumption that use for parking for occupiers and visitors of the 8 flats must result 8 cars on the land at any one time when photographed. The images, almost entirely invariably¹, show cars parked on the land in the informal manner described by the appellant and this is consistent with the stated use of the land for which the LDC is sought.
9. For the above reasons, I am satisfied on the balance of probabilities that at the time of the LDC application it was too late for the Council to take enforcement action. Accordingly, it has acquired lawfulness.

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 in respect of use as car park for occupants and visitors of the property 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.

Andrew Walker

INSPECTOR

¹ I note that the Council's enforcement photograph taken late morning of the day on 1 July 2021 appears to show no cars parked, but that does not in itself mean that the use of the land was not for parking. No other use is obvious, and in my judgement there are signs of parking from the way the grass has grown around the apparently informal parking bays.

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 April 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended) (the Act), for the following reason:

No enforcement action may be taken in respect of it, as the time for action had expired under the provisions of section 171B(3) of the Act.

Signed

Andrew Walker

Inspector

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First Schedule

Use as car park for occupants and visitors of the property.

Second Schedule

Land at Betts Mead Parade, Old Lodge Lane, Kenley CR8 5EW

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: 9th June 2023

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Scale: Do not scale

