



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: 13th June 2023

Appeal Ref: APP/Z5630/X/22/3297251

Rear of 2 Cranes Park Avenue, Surbiton KT5 8BX

- 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 Mrs Bayan Karim against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 21/01717/CEU, dated 13 July 2020, was refused by notice dated 13 October 2021.
 - The application was made under section 191(1)(c) 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 of the land without complying with condition 3 of planning permission reference 7306.
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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 matter constituting a failure to comply with a condition/limitation which is considered to be lawful.

Procedural Matter

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

Main Issue

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

Reasons

4. Planning application reference 7306 was granted on 19 November 1970 for the conversion of 2 Cranes Park Avenue into 5 flats. An approved plan, forming part of the permission, showed the provision of a parking area to serve the flats. That drawing precisely detailed the size and location of 5 parking spaces, together with a forecourt with space for manoeuvring and turning, to be accessed from Surbiton Hill Road.
5. In granting permission, condition 3 was imposed which states:
"The car parking accommodation shown on the drawings accompanying the application shall be provided with a hard dust free surface adequately drained before the building is occupied for the purposes hereby permitted and shall thereafter be kept available for parking purposes and free from obstruction at all times."

6. 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, where there has been a breach of planning control consisting of a failure to comply with any condition or limitation subject to which planning permission has been granted, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.
7. The Council's officer report on the application says that the land has in fact been used for parking, as shown in Google 'Streetview' images from 2012 and 2014¹. It further refers to the land's accessibility in respect of the flatted development, email correspondence sent on behalf of the owner confirming the absence of parking restrictions² and a recent planning enforcement investigation which found that 'there was no evidence that the occupiers of the flats were prevented from parking in the area in principle'.
8. However, the issue is not simply whether there has been any parking on the land – but whether there has been a breach of condition 3 and whether it is now too late for the Council to take enforcement action in respect of it.
9. Statutory declarations have been made by the appellant, as owner of the land since January 2010. They state precisely and unambiguously that the land to her knowledge has never had a hard surface in respect of the car parking spaces, and forecourt area for manoeuvring and turning, which were proposed in the approved drawing. Further, that the land under her ownership has not been 'kept available for parking' with details of the steps that she has taken throughout her ownership to prevent parking and to achieve the removal of cars which had been parked by local residents without permission despite the installation of a gate and signage. These 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 what is declared in them significant weight particularly as they are supported by photographs evidencing grassed areas instead of the hard surfacing required by the condition as well as copies of correspondence evidencing steps taken to keep the land free from parking.
10. For the above reasons, I find on the balance of probabilities that the breach of condition has occurred continuously in excess of 10 years before the date of application for the LDC. It is therefore too late for the Council to take enforcement action in respect of it.

Conclusion

11. 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 of the land without complying with condition 3 of planning permission reference 7306 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 Although the images have not been submitted into the appeal.

² Not submitted into the appeal, and I accordingly afford it very limited weight.

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 July 2020 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 to it because the time for action has expired under section 171B(3) of the Act.

Signed

Andrew Walker

Inspector

Date: 13th June 2023

Reference: APP/Z5630/X/22/3297251

First Schedule

Use of the land without complying with condition 3 of planning permission reference 7306

Second Schedule

Land at Rear of 2 Cranes Park Avenue, Surbiton KT5 8BX

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: 13th June 2023

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Scale: Do not scale

