



# Appeal Decision

Site visit made on 6 June 2023

**by L Douglas BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14<sup>TH</sup> JULY 2023**

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**Appeal Ref: APP/B1415/X/22/3305027**

**2 Linton Road, Hastings, East Sussex TN34 1TN**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr Thomas Branczyk against the decision of Hastings Borough Council.
  - The application ref HS/EX/22/00135, dated 9 February 2022, was refused by notice dated 6 June 2022.
  - The application was made under section 191(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 described in the application form as: 'continued use of self-contained unit at 2 Linton Road for more than 4 years'.
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## Decision

1. The appeal is dismissed.

## Application for costs

2. An application for costs was made by the appellant against Hastings Borough Council. That application is the subject of a separate Decision.

## Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

## Reasons

4. Section 191(1)(a) of the Act sets out that if any person wishes to ascertain whether any existing use of a building is lawful, they may make an application for an LDC. For the purposes of the Act, uses are lawful if no enforcement action may be taken in respect of them and they do not constitute a contravention of any of the requirements of any enforcement notice then in force. No enforcement notice was in force at the date of the application in respect of the appeal building.
5. Section 171B(1) and (2) of the Act explains that where there has been a breach of planning control consisting in the carrying out without planning permission of operational development or the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operational development was substantially completed or the date of the change of use. Section 171B(3) states that in the case of any other breach of planning control,

no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.

6. The appellant's evidence indicates that the appeal building was constructed as a single dwellinghouse between July and October 2014 and was first rented out to tenants from 30 October 2014. The appellant has claimed that because the appeal building had been used as a single dwellinghouse for more than 4 continuous years at the time the application was made, that use is lawful under the provisions of section 171B(2) of the Act.
7. However, a breach of planning control consisting in the change of use of a building to use as a single dwellinghouse has not taken place. This is because no material change of use of a building took place when the use claimed to be lawful began. The evidence indicates the appeal building was erected as a dwellinghouse from the outset and that it has not been used for any other purposes before the use claimed to be lawful began. No unauthorised change of use of a building has taken place.
8. It is therefore necessary for me to have regard to section 171B(3) of the Act, and to consider whether the use claimed to be lawful began at least 10 years before the date the application was made. The use claimed to be lawful would have needed to have begun on or before 8 February 2012 to have been lawful on the date the application was made.
9. Based on the appellant's evidence, the erection of the appeal building did not commence until 2014. It is not therefore possible for the use claimed to be lawful to have been lawful on the date the application was made.

### **Conclusion**

10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the continued use of a self-contained unit at the appeal site 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.

*L Douglas*

INSPECTOR