



Appeal Decision

Site visit made on 8 September 2023

by D Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 19/09/2023

Appeal Ref: APP/C5690/X/22/3294164

Land to the rear of Bucklands Court, 4 Sydenham Hill, London SE26 6SJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Mohammad Ghafar of ATJ Engineering Design & Building Services Ltd against the decision of London Borough of Lewisham.
 - The application ref DC/21/123887, dated 14 October 2021, was refused by notice dated 8 December 2021.
 - The application was made under section 191(1)(a) of the 1990 Act as amended.
 - The use for which a certificate of lawful use or development is sought is a B1(a) Business Base (Office).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal relates to a single storey building sited within a plot of land to the rear of the residential development known as Bucklands Court. I have, therefore, taken the address from the Council's decision notice as it is more accurate that the address provided on the application or the appeal form.
3. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
4. For the avoidance of doubt, the planning merits of the development are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act.
5. The application sought to establish that the use of the building as a business base or office within Class B1(a) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 was lawful. Section 191(2)(a) of the 1990 Act states that uses are lawful at any time if no enforcement action may then be taken in respect of them because the time for enforcement action has expired. The time limits for enforcement action are set out in Section 171B(3)

of the 1990 Act. This provides that where there has been a breach of planning control that comprises a material change of use, other than a change to a use of any building as a single dwellinghouse, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.

6. The relevant time period in this case is 10 years. The appellant argues that the four year time limit pursuant to s171B(1) should be applied. However, this concerns building operations, not a change of use. The application was not seeking to establish the lawfulness of the building, but the use of that building. The Council has correctly assessed the application against the 10 year time limit, and I have determined the appeal on this basis.

Main Issue

7. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.
8. I must consider whether the appellant has shown, on the balance of probabilities, that the material change of use of the building to a business base (office) occurred 10 or more years prior to the date of the enforcement notice, and continued without significant interruption thereafter, such that it is now too late to take enforcement action.

Reasons

Evidence

9. The appellant claims the building was built approximately 50 years ago as a mast base and was rebuilt or converted for use as an office in the 1980s. Evidence includes a London County Council planning decision dated 9 July 1964, which refused permission for offices and for the development and testing of equipment. The appellant has also submitted a certificate of lawful use for an unmanned mobile radio base station, granted on 30 October 1970 (Ref LE/345/4/TP). It is stated that the building was later adapted for human habitation and now contains a toilet, a kitchen with an oven or microwave and a fridge. These facilities are shown on the floor plans provided.
10. The appellant maintains that the building has been used as a business base since its alteration and refers to an electrical installation certificate for a 'radio tower and ancillary building' for a new circuit board, and a power supply for the kitchen, room sockets and lighting, dated May 2017. A copy of the Business Rates valuation for 1 April 2010 to 31 March 2017 at "Arqiva Transmitter Mast, rear of Bucklands Court" is provided along with Land Registry Title documents and search documentation.

Analysis

11. The evidence submitted by the appellant is limited and lacks sufficient detail of the claimed business use. The planning decision from London Country Council was a refusal of permission and, moreover, it is not clear whether this relates to the appeal building or No 4 Sydenham Hill. The certificate of lawfulness for the mobile radio base station is similarly ambiguous as it concerns a 'semi-basement room and two radio masts' to the rear of No 4 Sydenham Hill, whereas the appeal building is a single-storey building. The business rates valuation concerns a mast not an office and does not show that the building was occupied in any event.

12. The existence of a toilet and kitchenette does not show how that building has been used and occupied as an office. The electrical installation certificate shows the building was equipped with services but does not show that it was in use throughout the relevant period. The Title documents are of limited value since they concern ownership as opposed to uses. The extracts from the Land Search do not show how the appeal building has been used as an office.
13. The appellant relies on a previous LDC appeal decision concerning the use of the appeal building as residential accommodation¹. In that decision, the Inspector states "it appears the appeal building is currently used as offices", but they were not commenting on the lawfulness or otherwise of the office use. Even if I were to accept the argument that the building was in use as an office on that date, this would not show its lawfulness as the decision was taken relatively recently in 2021.
14. As explained the documentation is limited. There is no evidence about the companies said to have used the building, such as rental agreements or payments, utilities bills, receipts, invoices or any other evidence concerning the claimed business use. In addition, there is contradictory evidence from local residents who dispute the appellant's account of events. Overall, the evidence concerning the claimed business use is ambiguous and imprecise.
15. I find that the appellant has not shown, on the balance of probabilities, that the material change of use of the building to a business base (office) occurred 10 or more years prior to the issue of the enforcement notice, and continued without significant interruption thereafter, such that it is now too late to take enforcement action.

Conclusion

16. 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 B1(a) Business Base (Office) 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.

D Moore

Inspector

¹ APP/C5690/X/21/3267776 dated 12 July 2021.