



Appeal Decisions

Site visit made on 13 November 2023

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2023

Appeal A Ref: APP/U5360/X/21/3284222

Unit C, 22 Rossendale Street, London E5 8TA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Isaac Leibowitz against London Borough of Hackney.
 - The application ref 2021/1425 is dated 8 May 2021.
 - The application was made under section 191(1)(a) and 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The use/development for which an LDC is sought is described in the application to be 'The building at the rear of 22 Rossendale Street, formerly known as Unit C, is an old building that needed rebuilding to some parts of two walls and to the roof. The roof was replaced and the repairs to parts of the walls were completed. The use was light industrial use and storage in a residential area (Class B1(c)) now Class E and B8. The storage use is now focused on Covid 19'.
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Appeal B Ref: APP/U5360/W/22/3290874

22 Rossendale Street, London E5 8TA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Isaac Leibowitz against London Borough of Hackney.
 - The application, Ref 2021/2096, is dated 11 August 2021.
 - The development proposed is outbuilding at the rear of 22 Rossendale St for use as an indoor play area and mikvah (ritual pool) for the residents of the square.
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Decisions

Appeal A Ref: APP/U5360/X/21/3284222

1. The appeal is dismissed.

Appeal B Ref: APP/U5360/W/22/3290874

2. The appeal is dismissed.

Reasons

Appeal A Ref: APP/U5360/X/21/3284222

3. An LDC application can be made, under Section 191(1) of the Act, to ascertain whether an existing use of a building or any operations which have been carried out are lawful. An existing use of a building is covered by Section 191(1)(a) and existing operations are covered by Section 191(1)(b). In his application, at section 6, the Appellant indicated that he was seeking to ascertain

whether an existing use of a building and operations which have been carried out are lawful. The hybrid application should not have been accepted by the Council.

4. As indicated at section 6 of the application form the use of land or a building becomes immune from enforcement action after ten years and building works become immune from such action four years after they are substantially complete. This is the main reason why an application is made for either a use or operations. But in his answer to the question "Please state why an LDC should be granted" the Appellant stated that "The building was built more than ten years ago..." and he does not give any reason why an LDC should be granted for the use of the building.

5. The use of the building could not have been lawful on the date of the application if the building itself was not lawful on that date. Given also that the Appellant has given no reason why an LDC should be granted for the use this decision will consider whether the building was lawful on the date of the application. The onus of proof is on the Appellant who must provide sufficient precise and unambiguous evidence to justify a conclusion, made on the balance of probability, that the building was substantially complete on 8 May 2017.

6. The Appellant maintains that works carried out in late 2020 to the single storey building were works of repair. The building that he maintains was repaired was mostly demolished in 2008; an aerial photograph of that year clearly shows the building to have been demolished leaving only one side wall on the boundary to a neighbouring property. The building was most probably demolished along with other structures on the wider site to make way for the construction of Interdam House and Ramue House following the grant of planning permission in 2003/4.

7. Aerial photographs of 2013, 2015 and 2016 clearly show there not to be a building where there was one in 2008; the land is covered by artificial grass along with other parts of Beirach Moshe Square that is bounded on two sides by Interdam House and Ramue House. The boundary wall is clearly identifiable in these photographs as is a building on neighbouring land which abutted the former building and which shared part of that building's end wall. No other parts or elements of the former building are visible in the aerial photographs.

8. The foundations of the former building may have been preserved under the artificial grass. But foundations, one side wall and part of one end wall does not constitute a building. A building, by definition, is a structure with a roof and walls that enclose internal space. What remained on the land after the demolition works in 2008 was not, as a matter of fact, a building. The works that were carried out in 2020 were works of reconstruction, not repair, and the building that now stands on the land was not substantially complete until, probably, early 2021.

9. The use of a former inspection chamber as a mikvah, a rainwater pool that is used for ritual cleansing that is now within the reconstructed building, is not a relevant factor. Nor are any other matters mentioned by the Appellant including the history of use of the former and existing buildings, the description of the residential development that now occupies the wider site on the application form, the use of the land for cleaning and repair of bikes, knife sharpening and the storage of sukka panels, or the fire that damaged the former building in 2008.

10. The building is uninsulated, has many other defects, such as boarded up windows, and the larger room is not yet anywhere close to being fit for use. If Building Regulations Approval has been sought then the building is far from the condition it would need to be in for a Completion Certificate to be issued. The

building has not yet reached substantial completion. For this reason and on the evidence now available the Council's deemed refusal to grant an LDC was well-founded and the appeal therefore fails. The powers transferred in section 195(3) of the 1990 Act as amended have been exercised accordingly.

Appeal B Ref: APP/U5360/W/22/3290874

11. The main issue is the design of the building and its effect on the character and appearance of the area.

12. The building has two rooms; one small room off a short corridor where the mikvah is located, and a larger room accessed from the outside which would be used as a playroom by children of the residential development that is Interdam House and Ramue House. The Council accepts the principal of the building in its current location and regards the mikvah and playroom uses to be acceptable. There is clearly a demand for the mikvah, and children of the development, some of whom live in cramped conditions, would benefit from the playroom.

13. The external walls that have been erected to create the building are a single skin of blockwork with brick buttresses, rendered externally but unfinished internally except in the mikvah where some building fabric has been applied. The shallow pitched roof is covered with roofing felt. The building works are of extremely poor quality and do not come anywhere close to satisfying the Building Regulations. The internal environment of the unheated and uninsulated building is, currently, wholly unacceptable, particularly for children.

14. The building is, furthermore, unsafe. For instance, there is a 13 amp wall mounted double socket in a room used for bathing. This is contrary to the Building Regulations and to the Electricity Safety, Quality and Continuity Regulations 2002. The roof timbers are wholly inadequate in size and the roof would not support any significant snow loadings. There is a step down into the larger room at the door threshold of about 300 mm and both external doors open inwards and not in the direction of travel in the event of a fire incident.

15. The render on the two exposed outer walls has been inexpertly applied. It is thin, rough and a dull brown colour. The building is ugly. The Appellant has accepted that the walls should be taken down and rebuilt in brickwork and he has agreed to the imposition of a condition to this effect. But to rebuild the walls the roof would have to be removed and if the two walls and the roof are taken down the site would be returned, largely, to the condition it was in before the building reconstruction works were commenced in 2020.

16. The building, to be acceptable, must be comprehensively redesigned and rebuilt. This cannot be achieved by imposition of planning conditions and a redesigned building should be the subject of a planning application to be considered, in the first instance, by the Council. The Appellant should seek professional assistance to secure the provision of a building that would be acceptable in planning terms, that would satisfy the Building Regulations, and that would ensure the health and safety of the residents who would use it.

17. Other matters, such as hours of use of the building and a limit on the number of residents using the building at any one time, to alleviate concerns for neighbouring residential amenity, can be adequately dealt with by imposition of conditions. But the design and appearance of the building cannot be.

18. The building is of poor quality, seriously harms the character and appearance of the area, and conflicts with policy LP1 of the Hackney Local Plan 2033 and with policy D4 of the London Plan. In these circumstances planning permission must be withheld and the appeal has therefore been dismissed.

John Braithwaite

Inspector