



Appeal Decision

Site visit made on 9 January 2024

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th January 2024

Appeal Ref: APP/Y3425/X/22/3308583

The Lock House, Trent Lane, Great Haywood, Staffordshire, ST18 0ST

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use (an LDC).
 - The appeal is made by Mr Mark Edwards against Stafford Borough Council.
 - The application ref 22/35688/LDC is dated 2 March 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 is sought is as a single dwellinghouse.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Mark Edwards against the decision of Stafford Borough Council. This application is the subject of a separate decision.

Procedural Matters and Main Issue

3. Under s191(2)(a) of the 1990 Act, 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 relevant time limit in the change of use of any building/s to use as a single dwellinghouse is four years beginning with the date of the breach as set out under s171B(2) of the 1990 Act.
4. The appeal relates to an application for an LDC that was not determined by the Council within the prescribed period. The Council have subsequently issued a statement for the purposes of this appeal highlighting that it would have refused the application on the basis of the evidence submitted. I have had regard to this statement in coming to my Decision.
5. Pursuant to the provisions of s195(2) and (3) of the 1990 Act, the main issue is whether or not a refusal of the application by the Council would have been well founded.

Reasons

6. The appeal relates to a group of buildings formerly in a mixed use consisting of a dwellinghouse and restaurant/café. The burden of proof in satisfying the requirement of s191(a) falls to the appellant to establish that the use of the buildings as a single dwelling commenced at least 4 years before the date of the application, hence on or before 2 March 2018 ('the relevant date'), and continued without any significant interruption thereafter. The appropriate

standard for testing the evidence is made on the balance of probabilities, that is to say, whether something is more likely than not.

7. The Planning Practice Guidance reflects prior Court judgments. It sets out that an 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 the appellant's evidence alone is sufficiently precise and unambiguous.
8. Between the appellant's application form submitted to the Council, the supporting statement, and the appeal documentation, there are a number of discrepancies in the dates when the commercial uses taking place on the site are said to have ceased. Additionally, the dates when an appeal inquiry¹ relating to the site took place are mis-stated as February 2018 rather than May 2018.
9. The appellant asserts that the residential use of the former restaurant and café areas of the site followed directly from the cessation of those commercial uses. The application form indicates that the residential use commenced on 1 December 2017 following closure of the restaurant on 31 November 2017 (not a valid date). The planning statement supporting the application stated that the business closed on 31 October 2017.
10. A signed statement of 28 February 2022 confirms the date of the closure of the restaurant as 30 November 2017. A Council Tax record for the business was shown as 'void' as of April 2018, indicating its closure by that time.
11. However, the cessation of one element of a dual mixed use does not automatically default to a single use. Only once actively supplanted by the residential use in the relevant areas of the buildings would that situation arise. As an element of a mixed-use site may lie dormant to be reinstated later, the essential matter in this case is when the residential use of the former commercial areas began and that it persisted continuously for 4 years thereafter.
12. Although any date for commencement in 2017 would provide for a 4-year period prior to the date of the LDC application, the appellant's signed statement sheds significant doubt as to when the residential use started. The statement advises 'In the light of the Inspectors findings, I was advised that I was safe from Enforcement proceedings in not reopening the business. The premises had no other authorised business use.' It continues – 'I therefore reincorporated the accommodation into my home, and it has been used for such purposes since that time and continuously up until the present day'.
13. To my mind, in the absence of reference as to the exact date the residential use commenced, this suggests that the residential use of the commercial parts of the building did not take place until after the Inspector's decision. This was issued on 4 May 2018. If the reference to 'time' in the final paragraph was to when the advice was provided to the appellant, this is confirmed as also after the appeal decision². Accordingly, the 4-year period could not have accrued on the date of the LDC application.

¹ APP/Y3425/W/17/3190637

² Paragraph 5 of the Appellant's Response to the Council's Planning Appeal Statement

14. It is the appellant's position that representation was made at the appeal proceedings in 2018. A copied extract of his appeal statement advises that 'Since this statement was drafted the premises have closed.' However, no dates are provided to clarify that statement, nor the date of the statement itself.
15. The appellant's representative advises that it was evident from the appeal site visit attended by him, the Council and the Inspector, that residential use was taking place at that time. This was on account of sofas placed in the dining room area.
16. However, notwithstanding that the date of the site visit was 1 May 2018, there is little evidence provided in support of that claim, either in the Inspector's decision, Council records, or by the appellant himself. Indeed, at paragraph 6 of the Inspector's Decision Letter, the Inspector states that 'the most recent use of the appeal site was a commercial use'. This appears to contradict the appellant's position.
17. Moreover, given the Council's request for clarification of that claim following confirmation it was unable to corroborate it from its own records, it was open to the appellant to provide additional evidence either at the time of the LDC application, or for the purpose of this appeal. Despite that request, there is little before me to substantiate it.
18. It is the appellant's assertion that the continued use of the shared kitchen formerly serving both the commercial and residential uses for only residential purposes was determinative. However, pursuant to the preceding considerations, the continuity of use in that part of the building does not adequately demonstrate that the remainder of the commercial areas were used for residential purposes, or when that might have commenced.
19. In support of the appeal, the appellant highlights that the Council has provided little evidence to challenge that provided by the appellant. It is contended the balance of evidence should justify the issuing of an LDC. However, that is not the test. In demonstrating the balance of probability there is a necessity to provide precise and unambiguous evidence. In LDC cases, the burden of proof remains squarely with the appellant.
20. Although little has been provided by the Council to contest the evidence of the appellant, I find that evidence lacks precision. It is not without ambiguity and, to my mind, is insufficient to demonstrate the date of commencement of the breach and any continuous use thereafter.
21. The appellant relies heavily on the evidence of his signed statement. Notwithstanding my finding that it has a significant degree of ambiguity, it is neither submitted as 'sworn truth', as a statutory declaration³, sworn on oath, or submitted as a witness verified affidavit. As a statement to which no sanctions necessarily apply, the weight to its content must therefore be limited.
22. For those reasons, I find the appellant's evidence to be imprecise and ambiguous. It is insufficient, on the balance of probability, to demonstrate when the residential use of the former commercial areas of the site commenced, or that it has continuously persisted since first commencement.

³ By provision of the Statutory Declarations Act 1835

Accordingly, I cannot reasonably conclude that it had taken place for 4 years or more prior to the date of the application for an LDC on 2 March 2022.

Other Matters

23. I note the frustrations of the appellant with regard to the extent of communication from the Council and its ultimate failure to issue a decision on the application. However, these are not matters for the determination of this appeal. A suggestion that the Council may have withheld relevant evidence is also a matter outside the scope of my considerations.

Conclusion

24. For the reasons given above, I conclude that the Council's deemed refusal to grant a certificate of lawful use in respect of the use of the site as a single dwellinghouse 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.

R Hitchcock

INSPECTOR