



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 February 2024

Appeal Ref: APP/N5090/X/23/3317302

1 Elmbank Avenue, Arkley, Barnet EN5 3DU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr John Fairbairn against the decision of the Council of the London Borough of Barnet.
 - The application ref 22/3345/192, dated 27 June 2022, was refused by notice dated 4 October 2022.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is *Internal alterations to an outbuilding providing amenity space ancillary to the residential use of 1 Elmbank Avenue with the removal of kitchen cooking appliances and central worktop island, retention of re-purpose of old kitchen units into storage units. Retention of toilet, WC and sink facility.*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description in the banner heading above is taken from the original application form. Whilst I note it is different to that used by the Council in their decision notice, there is no implied power under s.192 to modify the description of the proposed development and there is no evidence that the appellant agreed to the amended description.
3. The application sought is a certificate of lawfulness for a proposed development. The purpose of an application made under s.192 of the Act is to find out whether proposed development, as described in the application form and shown on the drawings, would be lawful if instituted or begun at the time of the application, it is not the equivalent, in law, of a planning permission. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.
4. The planning merits of the proposed development are not relevant to this appeal. My decision rests on the facts of the case and the interpretation of any relevant planning law. As such, matters raised in respect of planning policy and the impact on the character and appearance of the area have no bearing on my decision.
5. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the parties have submitted sufficient evidence to understand the nature of the site and the proposed development given the points in dispute.

Main Issue

6. Whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

7. Section 191(2) of the 1990 Act states that uses are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and, *they do not constitute a contravention of any of the requirements of any enforcement notice then in force* [my emphasis].
8. An enforcement notice was issued on 19 February 2021 in respect of the material change of use of the outbuilding to a self-contained residential dwelling. An appeal was made and subsequently dismissed on 11 February 2022¹, when the notice came into effect (in force).
9. The enforcement notice required the use to cease and all cooking facilities including the kitchen units, sinks, cookers and food preparation areas, all bathroom facilities, including the toilet, basin, and shower to be permanently removed from the outbuilding.
10. The matter of whether the facilities already existed within the outbuilding was considered by the previous Inspector under the appeal on ground (f) and who found that the bathroom and kitchen were installed to facilitate the material change of use. It is not for me in the context of this appeal to consider this further.
11. Since the proposed development includes the retention of the kitchen units, and the toilet, WC, and sink facility (bathroom facilities), in contravention of the requirements of an enforcement notice that is in force, it would not be lawful.

Conclusion

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of *Internal alterations to an outbuilding providing amenity space ancillary to the residential use of 1 Elmbank Avenue with the removal of kitchen cooking appliances and central worktop island, retention of re-purpose of old kitchen units into storage units. Retention of toilet, WC and sink facility*, 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.

Felicity Thompson

INSPECTOR

¹ APP/N5090/C/21/3272586