



Appeal Decision

Site visit made on 23 January 2024

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 16 February 2024

Appeal Ref: APP/B1605/X/23/3328676

1 Michaelmas Lodge, Lypiatt Terrace, Cheltenham GL50 2SX

- 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.
 - The appeal is made by Mr Adam Teper against the decision of Cheltenham Borough Council.
 - The application ref 23/00262/CLEUD, dated 14 July 2023, was refused by notice dated 15 August 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
 - The use for which a certificate of lawful use or development is sought is described as a change of use.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Preliminary Matters

2. The application form described the use for which a certificate of lawful use or development (LDC) was sought as "a change of use". The Council's decision notice describes the development as "use of area of land for vehicle parking on land adjacent to 1 Michaelmas Lodge". It is clear from the appellant's case that this is what they sought, and s191(4) of the 1990 Act allows the description to be modified accordingly.
3. An application under Section 191(1)(a) of the 1990 Act seeks to establish whether any existing use of buildings or other land is lawful at the time of the application, that is 14 July 2023. Section 191(2) sets out that uses and operations are lawful at any time if: a) no enforcement action may 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 b) they do not constitute a contravention of any enforcement notice then in force.
4. If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use..., they shall issue a certificate to that effect; and in any other case they shall refuse the application. An LDC is not an application for planning permission and the planning merits of the matter applied for do not fall to be considered. The decision is based strictly on the facts and on relevant planning law. The standard for the evidence is one of a balance of probabilities.

Main Issue

5. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. As there is no enforcement notice in force, this turns on whether or not the use involves development or requires planning permission, and if it does require planning permission, whether the time for enforcement action has expired.

Reasons

6. The appeal relates to an area of land at the northern end of Lypiatt Terrace adjacent to 1 Michaelmas Lodge. The site is grassed and is surrounded by mature vegetation being mostly hidden from the adjacent land. It is accessed from the driveway which runs along the front of the long terrace of Grade II* listed properties. At the entrance to the appeal site, there is an area set aside for the storage of bins. The area is not formally laid out for parking and has the appearance of maintained amenity land.
7. The gist of the appellant's case is that the appeal site has been used to park vehicles for a period of more than 10 years leading up to the time of the LDC application. While the Council does not dispute that the land may have been used for parking, it considered that the evidence submitted was not sufficient to demonstrate that the land was used for the parking of vehicles for a continuous 10-year period. Rather, it described the use of the land for parking as ad hoc.
8. From the evidence presented, 1 Michaelmas Lodge is divided into apartments and in the ownership of the appellant. In these circumstances, each apartment is a single planning unit, and the building as a whole, has a primary residential use. While not provided as evidence for this appeal, information supplied previously to the Council included copies of ten assured shorthold tenancy agreements covering a 10-year period. These tenancy agreements included plans that highlighted the appeal land as a 'parking area' available for use by the tenants.
9. Four statutory declarations (SDs), one unsworn, have been provided by the appellant as evidence. They state that the appeal site has been used by people visiting Michaelmas Lodge for 20 years prior to the appellant's purchase of the land in 2009 and in the years since. The land is said to have been used by "tenants, housing officers, maintenance employees and contractors". Accompanying three of the SDs is the same aerial image which shows two vehicles parked on the appeal site. Cleaners are said to attend the property between 2 and 4 hours each week and the letting agent is said to visit about once a week or sometimes more.
10. The evidence strongly suggests that the area has been available for the purpose of parking by tenants and various individuals who visit the property for purposes such as maintenance, cleaning and letting. This indicates that the appeal land to the side, although physically divided from the apartments, retains a functional connection with each apartment and the residential use of the building as a whole.
11. Drawing together the evidence, it seems to me that, on the balance of probabilities, the appeal land has been used in an incidental manner in association with the primary residential use of 1 Michaelmas Lodge. The

evidence provides that those using the area for parking are, except for a few incidents of unauthorised parking by unknowns which is considered de minimis, involved with the residential use of the building, whether that is maintenance or cleaning, repair work or as a tenant.

12. Incidental uses may be changed, expanded or decreased without giving rise to a material change of use, so long as they remain subsidiary to the primary use as a whole. If an incidental use alters or expands to a point where it has ceased to be functionally related to the extant primary use and become a primary use on its own, either within a new planning unit or so as to put the original planning unit into a new mixed use, then it is likely that there will have been a material change of use.
13. In these circumstances I consider that there has not been a material change of use of the land because it did not involve "development" by reference to s55¹ of the 1990 Act. The appeal land is used in an incidental manner to the residential use of 1 Michaelmas Lodge and the individual planning units within it, as described by the appellant in their submissions. Therefore, planning permission would not be required for its use as such.
14. Consequently, I will exercise my powers under s191(4) of the Act to issue an LDC for the use that is shown to be lawful on the facts and evidence presented and amend the description of the use sought to "Use of the land for incidental vehicle parking in connection with the use and occupation of 1 Michaelmas Lodge".

Conclusion

15. For the reasons given above and having regard to all other matters raised, I conclude that the Council's refusal to grant an LDC was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in s195(2) of the 1990 Act as amended.

S A Hanson

INSPECTOR

¹ The carrying out of "development" includes the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use of land.



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 14 July 2023 the development described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use of the land for vehicle parking in connection with the occupation of 1 Michaelmas Lodge would be incidental to the primary residential use of the site. As such, the use would not involve development by reference to s55 of the Town and Country Planning Act 1990 (as amended).

Signed

S A Hanson

INSPECTOR

Date 16 February 2024

Reference: APP/B1605/X/23/3328676

First Schedule

Use of the land for incidental vehicle parking in connection with the use and occupation of 1 Michaelmas Lodge

Second Schedule

Land at: 1 Michaelmas Lodge, Lypiatt Terrace, Cheltenham GL50 2SX

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated 16 February 2024

by S A Hanson BA(Hons) BTP MRTPI

Land at: 1 Michaelmas Lodge, Lypiatt Terrace, Cheltenham GL50 2SX

Reference: APP/B1605/X/23/3328676

Scale: Not to scale

