



Appeal Decision

Site visit made on 13 February 2024

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2024

Appeal Ref: APP/D5120/X/23/3325447 33a Bexley Road, Erith, Kent DA8 1SH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 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 Mrs Chris Ogedengbe of Praise Embassy, The Redeemed Christian Church of God against the Council of the London Borough of Bexley.
 - The application (Ref. 23/00891/LDCE) is dated 17 April 2023.
 - 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 or development is sought is existing use of the basement and ground floor levels of 33a Bexley Road as a place of worship, educational training/community centre and day nursery for more than 10 years.
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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.

Procedural Matters

2. Following the submission of the appeal the Council resolved that had it been in a position to determine the application, it would have refused the application for a lawful development certificate (LDC). The reasons would have related to the fact that on the date of the application the use was not lawful as it was operating in breach of condition 8. This condition was attached to a planning permission given in 2018 (Ref:18/00561/FUL) for the continued use of premises as a place of worship, non-residential education and training centre and children's day nursery with provision of an access ramp. The condition specified that the use should be discontinued by a certain date.

Background

3. The appeal relates to the basement and ground floor of premises known as 33a Bexley Road. This is one part of a large commercial block situated on the corner of Bexley Road and Pier Road, which is subdivided into various shop units with flats above overlooking Pier Road. The appeal premises are tucked away at the rear and are accessed from a small car park.
4. The nursery use takes place on the ground floor. There is a sign next to the entrance door which states the name of the business as Violet Day Care. There is only one entrance door into the ground floor that leads into a hallway where there is a kitchen and a cleaning/storage cupboard. To one side the hallway

leads into a very large playroom for the oldest children. This opens onto an external fenced play area in the car park. Part of this playroom also contains a mezzanine floor used as an office. On the other side of the hallway, there are two further playrooms for younger children and a sleeping area for babies.

5. The basement is accessed from a steep ramp situated between the nursery entrance door and the fenced play area. The sign above the ramp states the name of the occupier as "Praise Embassy, The Redeemed Christian Church of God". The basement entrance door opens into a hallway from where there are doors leading into various sized rooms used as the adult church, the youth church and the children's church. There is also an office and a kitchen. The ceiling slopes over part of the kitchen which is indicative of a former staircase. This linked the basement to the ground floor but has now been filled in.

Main Issue

6. The main issue is, if the Council had determined the application, whether their decision would have been well-founded. That turns on two requirements. The first is whether the appellant can show, on the balance of probabilities, that the change of use occurred before the relevant date. The second requirement is whether the appellant can show that the lawful use sought continued, without material interruption, until the date of the application so as to be immune from enforcement action.
7. Section 191(2) of the Town and Country Planning Act 1990 (the 1990 Act), indicates that uses and operational development are lawful at any time if (a) no enforcement action may then be taken in respect of them, for instance, the time for enforcement action has expired and (b) they do not contravene the requirements of any enforcement notice or breach of condition notice in force. Lawfulness in this case is to be decided at the time of the application, that is 17 April 2023.
8. The Council are concerned that the use as a place of worship and educational and training/community centre is operating in breach of condition 8 attached to planning permission Ref:18/00561/FUL. However, subsection 191(2)(b) is met here as there is no enforcement notice or breach of condition notice in force in respect of this use.
9. With regard to subsection 191(2)(a), section 171B of the 1990 Act deals with the time limits for enforcement action. This sets out three time periods for three different types of development. The appeal use falls within "any other breach of planning control", that no enforcement action may be taken after the end of the period of 10 years, beginning with the date of the breach. The development period for consideration in this appeal is 10 years which makes the relevant date 17 April 2013.

Reasons

The appellant's evidence

10. The appellant's evidence comprises:
 - drawings of the basement, ground floor and forecourt;
 - statutory declarations;
 - a Certificate of Place of Meeting for Religious Worship;

- decision letters and appeal decisions from the planning history of the site;
- Charity Commission Annual Returns and small company Reports and Accounts;
- certificates of contents insurance for the building and motor insurance for the church minibus;
- copies of church leaflets inviting the public to coffee mornings and a worship experience; and
- a contract to supply double glazing.

The Council's evidence

11. The Council states it has no records to dispute the appellant's evidence.

Assessment

12. The application was made under section 191(1)(a) of the 1990 Act, namely that an existing use is lawful. This use has various components namely a place of worship, an educational training/community centre and a day nursery. The application form states that the three uses began within the basement and on the ground floor on 1 April 2009. However, the four statutory declarations only attest to the use of the basement as a place of worship and a non-residential educational and training centre, beginning 1 April 2009. The Certificate of Place of Meeting for Religious Worship certified by the Registrar General on 25 August 2016 also only states that a church was registered within the basement of 33a Bexley Road.
13. There is a lengthy planning history associated with the site which begins in 2009 and which is set out in the table below:

Reference	Proposed development	Decision	Comment
09/00246/FUL	Continuation of use as a place of worship and non residential education and training centre	Refused 9 Jun 2009, decision notice states application was received 14 Apr 2009	Application made following complaints from adjacent residents of noise from the use, appellant states application made 19 Feb 2009
09/01221/FUL	Continuation of use as a place of worship and non residential education and training centre	Granted 26 Nov 2010 for a temporary period until 31 Dec 2011	Other conditions required implementation of sound insulation works

11/01958/FUL	Renewal of temporary permission for continuation of use as a place of worship and non residential education and training centre	Granted 27 Mar 2012 for a temporary period until 31 Mar 2014	
18/00561/FUL	Continued use of premises as a place of worship, non-residential education & training centre & children's day nursery	Granted 11 Sept 2018 for a temporary period until 11 Jan 2018	The Council recognise the 11 Jan 2018 date was a mistake and state it should have stipulated 2019.
19/00060/FUL	Continued use of premises as a place of worship & educational training/community centre & day nursery	Refused 26 Sept 2019	Appeal dismissed 8 Dec 2020 APP/D5120/W/20/3249665
19/02830/FUL	Use of the ground floor as a day nursery	Granted 14 Jan 2020	Application made by Ms V Temisan of Violet Day Care Ltd
20/00186/FUL	Continued use of premises as a place of worship & educational training/ community centre & day nursery	Refused 30 Mar 2022	Appeal dismissed 15 Mar 2023 APP/D5120/W/22/3298738

14. Having regard to the statutory declarations, the planning history and the current layout and use of the premises, I find that there are two distinct planning units, physically and functionally separate from each other. The nursery use appears to operate as a separate business unconnected with the church and a permanent planning permission was granted for this use in January 2020 after a temporary permission in 2018. There are no enforcement notices or breach of condition notices in force in respect of any of the conditions attached to the planning permission for the nursery use. As such, the nursery use of the ground floor is therefore lawful.
15. Turning now to the remaining components of the use, noise complaints were made to the Council in 2009, according to the officer's report on the application ref: 20/00186/FUL. I am therefore in no doubt that the church use began in 2009. The evidence is unclear as to an exact start date with 1 April 2009 being stated in the statutory declarations and the Registrar General's Certificate was

recorded on 23 June 2009. As with any new operation, sometimes the paperwork takes a while to catch up with events but given the submission of the first planning application at the start of the year, I would say, on balance the use as a church started in the first half of 2009. The statutory declarations state that the non-residential education and training centre use began at the same time and I accept this was the case as there is no contradictory information.

16. The appellant's first application was refused due to a lack of information but a second application was made later on in 2009 and granted in November 2010 for a temporary period, expiring 31 December 2011. The attached conditions indicate that a number of the Council's concerns were overcome such as the need for sound insulation. A copy of a leaflet dated 6 August 2010 advertising a regular coffee afternoon on Mondays 12.00-4.00pm shows the church was engaged with outreach work at this time.
17. Thereafter the church obtained two further grants of temporary planning permission on 27 March 2012, expiring 31 March 2014 and on 11 September 2018, expiring 11 January 2018. The first application was made prior to the expiry of application ref: 09/01221/FUL and then it appears the appellant recognised the Council's mistake on the January 2018 date as they made their next application on 11 January 2019.
18. Although two applications were refused and the subsequent appeals were dismissed, it appears the use of the basement continued as a church and a non-residential education and training centre. This is supported by the statutory declarations, in particular, Miss Elizabeth Ogedengbe states that she was a volunteer in different departments of her church as a worship leader and in pastoral care.
19. In addition, the church was registered as a charity and was therefore required to submit annual returns. The appellant includes copies of returns made between 2014-2017 to indicate that the use was continuing. These show, for example, that £32 800 was paid in rent in 2014, that the church had an income of £84 968 in 2016 but that this decreased in 2017.
20. At some point the church became a limited company (Praise Embassy Limited) and the Annual Report for the year ending 31 Oct 2020 shows the registered address of the church is still the appeal site. This evidence strongly supports my view that the church use continued over several years, notwithstanding the temporary uses permitted by the various decision notices.
21. The insurance evidence shows that from November 2012 until November 2013, a Mr Segun Ogedengbe, a Minister of Religion at Praise Embassy, 33a Bexley Road was insured to drive a 12 seater Ford Transit. A second insurance document is an invoice dated 12 October 2015 addressed to Pastor Chris Ogedengbe at RCCG Praise Embassy 33a Bexley Road to pay motor insurance. On 5 July 2016 Mr Peter Ogebengbe is insured to drive a Honda FR-V Sport. The attached cover note states the policyholder's line of business is "Religion" and the name and address of the policyholder is "RCCG Praise Embassy T/A Bright Steps Day Nursery". The final certificate of motor insurance was issued on 1 March 2021 and states the name of the policyholder is Praise Embassy.
22. There is also insurance evidence issued on 5 November 2013 which appears to be building and contents insurance including personal accident cover and

- employer's, public and products liability. I find the motor insurance evidence indirectly supports the use of the building as a church over several years but the building and contents insurance is more directly relevant, although it only covers one year.
23. The insurance section of the evidence mentions Bright Steps Day Nursery but there is no further information about this business. It may have begun in 2018 as this is when a day nursery use is first mentioned in the planning history but I make no further comment as I have found this use of the ground floor to be lawful.
24. With regard to the basement, it appears that this has been used since the first half of 2009 as a church, with associated activities. Although there have been several time limited planning permissions, it is more likely than not that the church use has continued to date and I note the Council do not disagree. For example, the appellant ordered new double glazed windows and doors at the end of October 2011 when the first planning permission was about to expire in December 2011. I believe this investment demonstrates the appellant's commitment to continuing the use and confidence that a further planning permission would be granted.
25. Similarly, in February 2014, just before the second temporary planning permission was about to expire, the appellant held a multicultural worship experience (as described on the flyer). This leaflet also advertised the times of Sunday worship and I believe indicates that the appellant was committed to continuing her work, notwithstanding she needed a further planning permission.
26. Having regard to the totality of the evidence and its overall consistency, I find it supports that there was a material change of use to a place of worship and educational training/community centre. The test for the evidence is, on the balance of probabilities, namely, what is more likely than not and that balance of the evidence need only be slightly more than half, in order to satisfy the test.
27. In an appeal relating to an LDC, the burden of proving relevant facts rests with the appellant. The appellant's own evidence does not have to be corroborated by "independent" evidence. If there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate. This is provided the evidence is sufficiently precise and unambiguous.
28. I conclude that a use as a place of worship and educational training/community centre began in the first half of 2009 and continued thereafter, becoming immune from enforcement action after 10 years by the first half of 2019. There were no other intervening uses between 2019 and the date of the application and the appellant's actions and intentions show that the use was not abandoned. The use is therefore lawful.

Conclusion

29. For the reasons given above I conclude, on the evidence now available, that the Council's deemed refusal to grant a certificate of lawful use or development in respect of the use of the ground floor as a day nursery and the use of the basement as a place of worship and educational training/community centre was

not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act.

D Fleming

INSPECTOR



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 17 April 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The existing use of the ground floor as a day nursery is lawful as planning permission ref:19/02830/FUL was granted for the use on 14 January 2020 and there is no enforcement notice or breach of condition notice in force with regard to any of the conditions attached to the permission.

The existing use of the basement as a place of worship and educational training/community centre began more than ten years before the date of the application and continued thereafter; and the use does not contravene the requirements of any enforcement notice or breach of condition notice in force.

Signed

D Fleming

Inspector

Date 27 February 2024

Reference: APP/D5120/X/23/3325447

First Schedule

Existing use of the basement as a place of worship and educational training/community centre and existing use of the ground floor as a day nursery

Second Schedule

Land at 33a Bexley Road, Erith, Kent DA8 1SH

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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: 27 February 2024

by D Fleming BA (Hons) MRTPI

Land at: 33a Bexley Road, Erith, Kent DA8 1SH

Reference: APP/D5120/X/23/3325447

Scale: not to scale

