



Appeal Decision

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd March 2024

Appeal Ref: APP/C4235/X/23/3320102

3 Milton Crescent, Cheadle, Stockport SK8 1NT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Rabbi Peretz Chein against the decision of Stockport Metropolitan Borough Council.
 - The application ref DC/073539, dated 23 May 2019, was refused by notice dated 25 January 2023.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which a LDC is sought is change of use from single dwellinghouse to mixed use as a dwellinghouse and community centre.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Rabbi Peretz Chein against Stockport Metropolitan Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. I consider it has not been necessary to carry out a site visit in this case, as the appeal involves consideration of relevant planning law and the facts, and I have been able to reach a decision based on the documentary evidence submitted. The views of both parties were sought and there was no dissent, accordingly I have not visited the site.
4. The description of existing use sought on the application form which accompanied the LDC application is '*change of use from single dwellinghouse to mixed use as a dwellinghouse and community centre*'. The application form also states the use relates to a D1-Non-residential institution¹. The appeal form at Section E, sets out a different description of existing use sought as '*Change of use from single dwellinghouse to mixed use as a dwellinghouse and community centre (Chabad House – Sui Generis)*'. The appellant has suggested a further amendment to include the wording of '*Chabad house*'. From the evidence submitted the main parties have agreed that the use would fall under a Sui-Generis Use, and I agree with the Council that it would be unnecessary to change the description further. I have therefore considered the appeal on this basis.

¹ The Town and Country Use Classes Order 1987 (as amended).

Main Issue

5. The main issue is whether the Council's refusal to grant a LDC was well founded.

Reasons

6. S191(2) of the Act states that uses and operations are lawful at any time if, (a) 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, (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
7. S191(4) of the Act, indicates that 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, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
8. The PPG² advises that, if a local planning authority has no evidence itself, or any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
9. For the appeal to succeed, the onus is on the appellant to demonstrate their case on the balance of probabilities. As set out in the LDC application, the grounds being sought are that the use began more than 10 years before the date of the application.
10. Accordingly, it must be demonstrated that the material change of use of the dwellinghouse to mixed use as a dwellinghouse and community centre took place on or before 23 May 2009, and the use subsisted without interruption for 10 years thereafter. The assessment is therefore made on the specific facts and based upon the evidence before me. For the avoidance of doubt, planning merits in the case of a LDC are not relevant at any stage.
11. The appeal site comprises a 7-bedroom semi-detached residential dwelling with a driveway and garden as shown on the site location plan. It is located within a predominantly residential area, off Gateley Road (A560) within Cheadle, Stockport. The appellant resides at the property with their family, and states that they moved to the appeal property in 2008.
12. The appellant alleges that the use or activity began on 26 March 2008, and that the use relates to The Chabad of Cheadle – Chai Network. The network was originally established at their previous property since 2000 and was developed and expanded to provide a programme of events and groups to support the local Jewish Community. These events have included various youth activities, adult education, women's programs, and general and ongoing religious events such as Shabbat and Festival dinners. The appellant contends,

² Planning Practice Guidance: Paragraph 006 Reference ID:17c-006-20140306, Revision date: 06 03 2014

these have been hosted at the appeal property including that the size, nature and number of events has not changed since 2008.

13. There is no dispute between the main parties that the lawful use of the property is a Class C3 dwellinghouse. The issue is whether, on the balance of probability, the mixed use as a community centre is lawful. It is the Council's view that the appellant has not demonstrated that it has been in a continuous use across the 10-year period. The Council allege that the use of the site has intensified over time, to a level in more recent years which has led to a change of use due to the likely pattern of activities and planning enforcement history of the site. Therefore, resulting in the change of use occurring less than 10-years before the date of the LDC application.
14. The planning enforcement history at the site dates back from 2012/2013. Most notable are alleged changes of use in 2014 and in 2018. In 2014 the Council alleged there was a material change of use relating to the use of a ritual pool 'Mikvah'. A planning contravention notice was served and received, which resulted in the case being closed as at that time the use was incidental to the normal enjoyment of the dwellinghouse and was for private use of the family / close friends.
15. A further allegation of change of use of the dwellinghouse to a community centre was investigated in 2018 which included a site visit with the owners on 2 July 2019. The Council concluded that a material change of use had taken place. They noted that the house was laid out as a dwelling by a large family but there was also a large ground floor room used for functions, Mikvah and a permanent marquee in the garden. The use of these was for frequent monthly and yearly occasions and events for various groups, functions, and other religious celebrations. As the Council concluded that a material change of use had taken place an application for planning permission was invited, but the appellant sought alternatively a LDC in 2019 which is the subject of this appeal.
16. However, this enforcement investigation was closed in 2021, due to the marquee being removed, damage to the Mikvah due to flooding in 2019, and the fact that Covid-19 in 2000 had prevented gatherings of people. The appellant does not dispute the planning history. The marquee had been destroyed in 2019, removed and the appellant states another subsequent marquee was purchased in September 2022.
17. The Council's evidence³ includes witness statements signed and dated 1 July 2019 from the occupiers at the adjoining property at No.1 Milton Crescent who confirm they moved into their property in April 2007. These set out that it is considered the appeal property was used as a home with activities being ancillary to the normal enjoyment of the property by a large family when the appellant moved there in 2008. They consider the use changed in or around late 2012/ early 2013 coinciding with the ritual bath and after January 2012 when a marquee was erected. They note that since 2012/2013 there has been a marked increase in activity, with events growing larger and being more visible including noise, frequent comings and goings and traffic congestion particularly for an event in May 2019.

³ Statement of Case Appendices 7.1, 7.2, 7.3, 7.4, 7.6

18. At Appendix 7.5, the evidence includes representations that were received signed and dated 6 July 2019 from the occupiers of No.2 Milton Crescent, who confirm they have lived at the property since 2005. They say that there is no definitive evidence that the site has been used as a community centre since March 2008, whereas problems have arisen of parking and coming and goings over the last 6 years and prior to this period, such events appeared relatively infrequent. The occupiers have also included representations relating to planning merits which are not relevant matters in applications for an LDC.

Appellants Evidence

19. The appellant's supporting evidence includes Annex 1(1) - several event invites / flyers which have been submitted with a range of dates in 2008, 2009, 2010 and 2011. An email dated 24 April 2008 does not confirm any address of the event or that the use commenced. The email dated 28 March 2008 only confirms the appellant is moving property. The other invitations are sporadically dated between 26 May 2008 and 15 June 2011. Several of those in 2008 and 2009 have the appeal property address on, whilst the 2 flyers relating to events in June 2010 do not have a venue address. There are no flyers after 2011 that would continue to cover the 10-year period.
20. Annex 1 (2) - there are several press cuttings, these are dated August 2010, March, July and December 2011. Although these show events that have taken place, including at a South Manchester venue these do not precisely set out that any of those events took place at the appeal site. In addition, these do not continue to cover the 10-year period.
21. Annex 1 (3) - the appellant has provided a series of financial accounts; these identify the registered address for the Chai Network being the appeal property from 2008. However, the appellant's own evidence acknowledges that the accounts outline achievements, performance and key programmes that have been delivered by the network, and that they do not specifically outline that the events took place at the appeal site.
22. Annex 1 (4) - there are 5 supporting correspondences, 4 emails and a printed letter which have been provided from members of the Chai Network. Although these confirm they have known the appellant and they are part of the network they are contemporaneous documents dated between 21 May 2019 and 22 May 2019. The contents of these are vague and are not precise in confirming dates of events or activities.
23. It is asserted that commercial insurance was in place at the property since 2008, however there was no supporting documentary evidence supplied, and it is uncertain over what period insurance may or may not have been in place or for exactly what purpose.
24. The appellant has submitted additional information which was not before the Council at the time of the application, included at Final Comments Appendix 1 relating to the marquee. These include several emails between the company 'Cheshire Marquees' and the appellant dated between 2009 and 2018 with 1 email from 18 April 2023 stating that the company have been providing a marquee once, if not twice a year, every year since 2009. However, there are no other emails after 2018 showing any activity between the appellant and the company for a marquee. The email of 2018 relates to servicing a marquee rather than any installation. However, the emails relate to quotes and invoicing

and do not clarify dates of events or a specific location where a marquee was delivered, installed or serviced for such events. Moreover, the LDC application is not for existing operational development.

25. In addition, I have had due regard to the Statements of Truth⁴ and further correspondences and flyers including support from the Chai Network Youth workers. However, these appear to focus on dates and information that were prior to the date of when the appellant claimed the use commenced, and there are several references to the use starting at the appellant's previous address rather than the appeal site. However, the weight I can give to these is limited as they are unsworn letters.
26. I acknowledge that events and activities have taken place for the Jewish community since the network was established in 2000. Nevertheless, for the LDC to succeed it must be shown on the balance of probabilities that the appeal site has had a mixed use as a dwellinghouse and community centre on or before the relevant date 23 May 2009, and that the mixed use was then continuous for 10 years thereafter.
27. Established case law⁵ held that, for the purposes of determining whether a material change of use has taken place, it is important to identify the planning unit. A material change of use is not defined in any statute or statutory instrument and is a question of fact and degree⁶ to the circumstances of the individual case. In judging whether there has been a material change of use in any given case there must be a significant difference in character of any activity from what has taken place previously. Any off-site impacts of any new activity may also be relevant to the considerations in making such a judgement⁷, including the impact on residential amenity, highway safety and parking. These are not determinative by themselves and should not be considered in isolation but whether the increase in scale of use has reached the point where it gives rise to materially different planning circumstances.
28. In this case there is no dispute that the large dwellinghouse together with its gardens at 3 Milton Crescent, and as indicated by the red line on the plan attached to the LDC application is the relevant planning unit for comparing former and present uses.
29. The Council's enforcement allegations have continued at the appeal site since 2012/2013 and in January 2014 they investigated a material change of use including the use of a Mikvah. Although they found it was incidental in 2014, from the evidence before me by around 2018 the house was laid out for functions with the Mikvah now in use by not just the family but others once a month. A permanent marquee had been erected covering the rear garden for larger events. In addition, since 2012/2013 the observations and witness statements of the occupiers of No.1 and No.2 noted a significant change in the comings and goings at the property, in the last 6 years increasing from when the Mikvah and permanent marquee was erected, including the number of vehicles at the site, parking congestion and visible security.

⁴ Rabbi Chein; Robert Cohen; Jeremy Rubin; Linda Saleh

⁵ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

⁶ *Moore v SSCLG* [2012] EWCA Civ 1202

⁷ *Hertfordshire CC v SSCLG & Metal and Waste Recycling Limited* [2012] EWCA Civ 1473; *Lewis v SSE* [1971] 23 P&CR 125

30. Taking account of all these factors, the property around 2018 became significantly different in character from just residential use and resulted in off-site impacts as a consequence of the significant comings and goings by the network, including vehicles, parking and security presence. It thereby amounted to a material change of use which required planning permission. A community centre is significantly different in character to the lawful residential property use. Even if the flooding in 2019 resulted in damage to the Mikvah and removal of the marquee, and in March 2020 Covid-19 restricted gatherings, I consider the mixed use had already taken place prior to these happening, and those combined factors have likely resulted in some cessation of the mixed use.
31. Nevertheless, as a matter of fact, and degree and on the balance of probability there was a material change of use of the dwellinghouse to the mixed use alleged, in or about 2018. A change of use may well have occurred soon after the appellant moved there. However, I consider it became material in 2018 and in any event if the material change of use did not take place until shortly before then, it would not affect the overall position as regards the need for the material change of use to be a continued use over 10-years.
32. Having regard to the whole of the evidence submitted by the appellant it does not demonstrate on the balance of probability that a change of use of the premises became materially different in character from its use as a dwellinghouse until around 2018.
33. Therefore, I find that the appellant has provided insufficient evidence to demonstrate on the balance of probability that the material change of use to a mixed use continued without interruption for 10-years prior to the date of the LDC application, and that it was therefore not too late for the Council to take enforcement action as set out in the time limits of s17B(1) of the Act.
34. I have had regard to the personal circumstances of the appellant and the Chabad of Cheadle – Chai Network relating to Articles 8, 9 and 14 of the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty (PSED), and whether dismissal of the appeal is proportionate. Whilst it may be that the appellant, the family and others who intend to use the appeal site have protected characteristics for the purposes of PSED the rights under HRA or PSED are not engaged in the determination of an application for an LDC⁸.

Conclusion

35. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the change of use from single dwellinghouse to mixed use as a dwellinghouse and community centre 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.

KA Taylor

INSPECTOR

⁸ *Massingham v SSTLR & Havant BC* [2002] EWHC 1578 (Admin)