



Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 25 March 2024

Appeal Ref: APP/Q1445/X/23/3323848

Garage to the rear of 39 St Aubyns, Hove, East Sussex BN3 2TH

- 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 Mrs Sara Crowe against the decision of Brighton & Hove City Council.
 - The application ref BH2022/02678, dated 9 September 2022, was refused by notice dated 11 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 described as "Charity Display/Facility Arts and Craft Club (Community)".
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I note correspondence between the Planning Inspectorate and the appellant's agent before I was appointed to determine the appeal about the possible submission of an affidavit. It seems there was a confusion about who had asked for further evidence to be submitted. It was not the Planning Inspectorate and by the time the correspondence was exchanged, the appeal timetable relating to the sending of evidence had expired. Nothing in these exchanges causes me to conclude that further evidence should have been allowed to be submitted.
3. An application for a LDC does not involve considering any matters of planning merit. It is restricted to considering whether, in this case, the use is, as a matter of fact and degree, lawful. Given this background and because the outcome of the appeal involves looking back at the history of use of the site, there was no benefit to either appeal party, or myself, in seeing the site as it is now. The submitted documentary details provided sufficient evidence to determine the appeal and neither side has been prejudiced by this approach.

Preliminary Matters

4. In the banner heading above, I have inserted the description of the use applied for as it appears on the application form. However, the application form also refers to the use as being "Shop (Charity). Storage (For Shop) and Storage", whilst the appeal form describes the use as "Arts and Crafts Facility. Charity" and the Council's decision notice refers to the use being a "Craft Club". The various descriptions paint a confused picture about how exactly the building has been used and therefore the basis on which the lawful use of it is now claimed. It is not for me to try and decipher what is being claimed.

Nevertheless, it seems that predominantly the claim of lawfulness is based broadly on a craft and arts facility/venue open for charity fund raising purposes. I shall consider the appeal evidence accordingly.

5. Under s191(2)(a) of the 1990 Act, uses and operations are lawful at any time if no enforcement action may then be taken against them, whether because they did not involve development or require planning permission or because the time for taking enforcement action has expired or for any other reason.
6. The relevant time limit for the uses of land under s171B(3) of the 1990 Act is the period of ten years beginning with the date of the breach. The appellant therefore needs to show that the use of the land must have started at least no later than 22 September 2012. Moreover, the use must have continued substantially uninterrupted over the ten years period.
7. The burden to make out the case rests firmly with the appellant and the test of the evidence is the balance of probability.

Main Issue

8. The main issue is whether the Council's decision was well founded.

Reasons

9. On the application form the appellant claims that the use started in 2008, albeit the exact date is not defined. However, in an email exchange with the Council it is stated that the use of the building has been operable since 2011, but again no precise date is confirmed. Nevertheless, the earliest documentary evidence relied upon is a newspaper article from The Argus, which I presume to be a newspaper circulating in the Brighton area, dated 25 May 2009. It details that the appellant was volunteering for a homeless person's charity raising funds by making gifts out of recycled and re-usable materials. The article describes how the appellant was opening her garage doors for exhibiting purposes to raise more money for the charity. The event is advertised as being open over a weekend for three hours in the afternoons. The indication from this article is that the exhibits were only available to view on very time limited occasions.
10. Another Argus article from 3 February 2011 refers to two exhibitions of a knitted woollen replica living room to again raise funds for the homeless persons charity. However, it does not refer to the appeal site as being a venue. A poster to go and see "The Amazing Knitted Garden", with the venue being opposite 12 Seafield Road does not have a year date. The event is also described as being for only two hours in the afternoons of two Sundays in August. Two other adverts, one for a Tableau Schmableau does not give any dates other than that the exhibition was very limited to between the hours of 2 – 5 Saturdays and Sundays throughout May, and the other advert, a Brighton Fringe flyer from 2012, refers to the "Amazing Knitted Garden" being at a different venue.
11. An Argus article from 4 August 2012 refers to another knitted garden exhibition at the garage, but for only two days in August. Another Argus article from 25 January 2014 refers to being able to view handmade arts and crafts at the appellant's garage between 11am and 4pm on the first Saturday of every month, but there is nothing to confirm whether this was just in 2014 or every subsequent year. In any event, the occasions would have only been 12 each year. A "Truckstuff" article advertising the appellant's lorry knitting patterns

does not refer to an exhibition. The text "A Short History of Crafty Old Crow" from October 2013 refers to a small shop being in the appeal garage open on the first Saturday of every month for local artists and craftspeople to display their products and raise money for the NSPCC.

12. Taking account of the above, even if the use of the garage started on an undefined date in 2008, the documentary evidence supporting the application only goes up to 2014, which falls well short of the required ten years. Moreover, the use of the garage for craft display/club/charity purposes appears to have been on a very intermittent basis centred mainly around times when funds would be raised for certain local charities. That inconsistency limited to a few occasions each year and for limited hours each time does not show a substantially uninterrupted material change of use. All in all, as a matter of fact and degree, the submitted evidence fails to show on the balance of probability that the use applied for has become lawful by virtue of s191(2)(a) of the 1990 Act.
13. No other evidence, such as title deeds which have been submitted, persuade me away from this finding.

Conclusion

14. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of development described as "Charity Display/Facility Arts and Craft Club (Community)" 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).

Gareth Symons

INSPECTOR