



Appeal Decision

Site visit made on 26 March 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2024

Appeal Ref: APP/B0230/X/23/3320832

130 Leagrave Road, Luton LU4 8HX

- 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 Iftikhar Ahmed against the decision of Luton Borough Council.
 - The application ref 23/00112/LAWE, dated 30 January 2023, was refused by notice dated 28 March 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 described as 'residential at the rear of 130 Leagrave Road, Luton, LU4 8HX'.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description in the banner heading above is taken from the appellant's original application form. However, it is evident from the application form and appellant's submissions that they are seeking to establish that the use of the appeal site as a dwelling is lawful, and indeed no residential use of the appeal site was contended for other than the use of the building as a dwelling. It is therefore on this basis that I have considered the appeal.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

Background

4. 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.
5. By virtue of section 171B(2) of the 1990 Act, where there has been a breach of planning control consisting of a material change of use of a building to a dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

6. The issue to be determined in this appeal is whether the use as a dwelling was lawful on the date the application was made, that is, 30 January 2023.
7. Whilst it is necessary for the use to be existing on the date the application is made, it is an established principle that a use which was merely dormant or inactive could still be 'existing', so long as it had not been extinguished by evidence of abandonment; by the formation of a new planning unit; or by being superseded by a further change of use.
8. It is not clear from the evidence whether the site was occupied at the time of the application however, it appeared to be occupied at the time of my visit, albeit I saw that one of the bedrooms was in use for storage purposes.
9. Where an LDC is sought, the onus of proof is on the appellant and the standard is the balance of probabilities.

Assessment

10. 130 Leagrave Road is a mid-terrace property which is in use for commercial purposes at ground floor level with residential use above. The appeal site is located to the rear of and accessed through the ground floor premises at No.130, albeit it occupies broadly the same floor level as the first-floor part of No.130 due to the steep gradient at the rear.
11. The accommodation is on a single level and consists of two bedrooms, a kitchen/living space and a toilet and shower room with a basin outside on the wall. Each room is accessed from its own door off a yard area which also contains a cold room, formerly used in association with the ground floor commercial use at No.130. It does not appear, and there is no evidence that the yard area is private or for the exclusive use of the occupants of the accommodation.
12. There is no definition of the term 'dwellinghouse' in the Act, but it is an established principle that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence.
13. In this case the accommodation offers all the facilities expected to be found in a dwelling. However, whilst an outside toilet for example, might not be entirely unusual, or necessarily preclude accommodation from constituting a dwellinghouse, it seems highly unusual for each room in a dwelling to be accessed from an outside yard, especially where that yard is not private.
14. Accordingly, whilst it seems probable there has been some form of residential use, the accommodation does not consist of what would generally be considered by reasonable people, to comprise the test for a dwelling, to which the four-year period would apply.
15. Even if I am wrong, the evidence is limited to statutory declarations from the owner (appellant) and previous occupant. Those were properly made and as such carry significant weight. They are consistent in terms of the dates of occupation, however the appellant referred to continuous occupation for residential purposes and referenced appended plans, but the previous occupant did neither. Moreover, the declarations contain scant detail about the nature and terms of the residential use.

16. Council Tax may not have been paid and this would not of itself justify refusing an LDC as its absence is not determinative. However, given the limited detail in the declarations, evidence of separate utility bills, and a tenancy agreement for example, may have helped the appellant's case.
17. Planning Practice Guidance states that if a local planning authority has no evidence itself, nor 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* [my emphasis] to justify the grant of a certificate on the balance of probability.
18. Based on my observations and the evidence before me, I find, as a matter of fact and degree, that the appellant has failed to provide sufficiently precise and unambiguous evidence to demonstrate, on the balance of probability, that the use as a dwelling is lawful.

Conclusion

19. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the development described as 'residential at the rear of 130 Leagrave Road, Luton, LU4 8HX' 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