



Appeal Decision

Site visit made on 17 April 2024

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30TH MAY 2024

Appeal Ref: APP/G5180/X/22/3302823

13 Ethelbert Road, Bromley BR1 1JA

- 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 Kim Booysen against the decision of the Council of the London Borough of Bromley.
 - The application ref 21/05746/PLUD, dated 9 December 2021, was refused by notice dated 20 June 2022.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the use of part of the lower ground floor of the existing dwelling as an aesthetic clinic.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant's case for the LDC is that the introduction of the proposed aesthetic clinic use would not amount to a material change of use which requires planning permission. They claim that the aesthetic clinic use is 'incidental' to the residential use of the main dwelling at 13 Ethelbert Road. The submissions include an Application Form, Planning Statement, site location and floor plans as well as an Appeal Statement and copies of historical LDC decisions allowed by the Council.
3. It is noted that the appellant has referred to paragraph 14 of the Planning Practice Guidance (PPG) in his Planning Statement, which provided advice on whether planning permission is required to homework or run a business from home¹. However, since the Planning Statement was drafted this paragraph has been deleted from the PPG.

Main Issue

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

Reasons

5. An application under section 192(1)(a) of the Act seeks to establish whether any proposed use of buildings or other land would be lawful at the time of the application. Section 191(2)(a) and (b) 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

¹ Paragraph: 014 Reference ID: 13-014-20140306) removed 04 01 2022

- 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.
6. The main issue turns on whether or not a material change of use would occur and if so, whether that use would be incidental to the enjoyment of the dwellinghouse. In an LDC appeal, the onus is firmly on the appellant to make out their case, on the balance of probabilities. Planning merits form no part of the assessment of an application for a LDC under section 192 of the 1990 Act. The proposed development must be considered in the light of the facts and the law.
 7. Development is defined in section 55(1) of the 1990 Act as including 'the making of any material change in the use of any building or other land'. Section 55(2)(d) of the 1990 Act also states that the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such, does not involve development of the land for the purposes of the Act. Whether or not the proposed use is incidental for the purposes of section 55(2)(d) regard must be given to the primary residential use and the type and size of the dwellinghouse and its curtilage, as well as the scale and nature of the claimed incidental activity.
 8. The appeal site comprises a detached dwelling located in an area of residential and community uses adjoining a retail high street. The dwellinghouse sits in a relatively spacious plot, with a garage, a driveway either side and good sized rear garden. From what I saw, the lower ground floor consists of a utility room, a wine cellar and an open plan space being used for domestic storage. The lower ground floor can be accessed from the upper floors via a staircase, but it is also possible to access the area via a rear door directly from the private garden. The private garden can be accessed externally via the driveway to the side.
 9. The appellant has submitted proposed plans that detail a treatment room, reception/waiting room, disabled toilet, store and office in the lower ground floor. The wine cellar, utility room and access to the upper floor would remain but the separate access, which is available from the garden, would be used for customers. The floorspace to be used would measure 45.6 sq.m. which equates to 13.5% of the total floor area of the dwelling.
 10. In terms of use, it is outlined that the proposed aesthetic clinic would involve the provision of Botox, fillers, micro needling, chemical peels, Ultherapy and thread vein treatments. The treatments would be carried out by the appellant with no employees. The business would operate over the equivalent of 3 full days, with each day including a maximum of two online consultations and five customers visiting per day. The operating hours would be between 1000 and 1800 on weekdays and occasionally on Saturdays between 1100 and 1400. The Planning Statement sets out that the location and onsite parking provision means customers have the option of walking, using public transport or can access the site by car.
 11. The appellant claims that the proportion of the floor space given over to the aesthetic clinic would be ancillary to the residential use, and the number of visitors would not result in a marked rise in traffic to and from the site. Further to this, it is claimed the operating hours are normal working times, and the nature of the proposed use would not involve any activities, or the use of any machinery, which would create a nuisance in terms of noise, smell or other disturbance.

12. The amount of floorspace given over to the business use is modest when compared with the whole of the residential property. However, much of the lower ground floor would be used as the aesthetic clinic, with the plans detailing a specific area and a separate access point. Consequently, despite being comparatively small to the residential floorspace, the aesthetic clinic would dominate the lower ground floor. The provision of the dedicated rooms together with a separate access, which would mainly be used by visiting members of the public, is not of a nature that can reasonably be described as incidental to the enjoyment of the residential use.
13. Furthermore, I accept that the property is large and is in a location where the level of traffic would be greater than a typical residential area. Also, the scale of the business proposed could be regarded as relatively small with few environmental harms. However, in an LDC such as this, the comparison between the existing and proposed use should be based on the actual existing use, and not on the notional use of a large dwelling in this location. Accordingly, detailed information on the residential use and its activities would need to be provided to allow me to carry out this assessment. However, I have not been provided with detailed information on the number of people living in the property, or the typical number of comings and goings associated with the residential use.
14. Without details on the composition of the existing residential use and its activities, I have no solid evidential basis upon which to make an accurate comparison between the two. As such, based on the evidence before me, it is not possible to determine whether the number of comings and goings and any subsequent noise and disturbances would change the character of the existing residential use. The onus rests with the appellant to make out their case. In my judgment, that burden has not been satisfactorily discharged as I do not have the necessary evidence to make a reasoned decision one way or the other.
15. Based on the evidence before me, on the balance of probability, the appellant has failed to show that the change of use is not material and, therefore, not development having regard to section 55 of the 1990 Act.

Other Matters

16. The appellant has referred to historical decisions² for LDC applications where a working from home use was determined to be lawful. The issue being highlighted by the appellant is one of consistency in decision making when determining LDC uses with a similar scale of activity.
17. I agree that there are similarities in the scale of the uses highlighted, and consistency in decision making is important to ensure public confidence and. However, there are clearly differences in the type of uses proposed as well as the size and location of the residential properties. Furthermore, the Council appear to have afforded weight to the advice in paragraph 14 of the PPG, which has subsequently been removed. I have therefore taken the decisions into account, but each case must be individually judged on a fact and degree basis and in the light of the circumstances at that time. Due to the differences highlighted, I have afforded limited weight to the cases when making my assessment.

² Council references 15/00498/PLUD, 18/00562/PLUD, 19/03598/PLUD, 21/02912/PLUD

Conclusion

18. While I agree with the Council's decision to refuse to issue an LDC, having regard to the available evidence, my decision is made on a different basis. As with all LDC applications, it is open for fresh applications to be made if, for example, greater detail or other evidence comes to light.
19. For the reasons given above I conclude on the evidence available that the refusal to grant a certificate of lawful use in respect of the lower ground floor as an aesthetic clinic was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195 (2) of the 1990 Act as amended.

M. P. Howell

INSPECTOR