



Appeal Decision

Site visit made on 17 May 2024

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 June 2024

Appeal Ref: APP/L5810/X/23/3326856

1A River Reach, Richmond Upon Thames, Teddington TW11 9QL

- 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 Mr David Woodnutt against the Council of the London Borough of Richmond-upon-Thames.
 - The application (Ref. 23/1468/ES191) is dated 30 May 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: C3 Dwelling house
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is, if the Council had refused the application, whether the refusal would have been well-founded.

Reasons

3. Under section 191(1) of the 1990 Act, if any person wishes to ascertain whether any existing use of buildings or other land is lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use.
4. Section 191(2) of the same Act states that for the purposes of this Act uses 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.
5. Section 191(4) provides 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 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.

6. Planning Practice Guidance (PPG) states that the applicant is responsible for providing sufficient information to support an application. In the case of applications for existing use, it 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 to justify the grant of a certificate on the balance of probability.
7. Section 171B of the 1990 Act provides time limits within which enforcement action may be taken. At the time this LDC application was made, for the use described by the appellant in this case, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.
8. From the information provided, a two storey extension was constructed on the side of 1 River Reach, pursuant to a planning permission granted on appeal on 12 February 2015, Ref: APP/L5810/A/2227128. That extension was then converted into a separate dwelling, which is now known as 1A River Reach.
9. The appellant has declared that the extension's use as a single dwelling house began on 10 August 2016, ie more than four years before the date of the LDC application. However, this does not matter due to the effect of section 191(2)(b), noted above.
10. According to the Council, at the date of the LDC application, there was an enforcement notice in force. In this regard, I have been provided with a copy of an enforcement notice, dated 27 February 2023, Ref: 22/0537/EN/UBW, concerning land at '1 River Reach'. No appeal against that enforcement notice was lodged before the notice took effect.
11. The breach of planning control alleged in that enforcement notice is a material change of use of the land comprising subdivision of a single family dwelling-house into two separate, self-contained dwellings.
12. Requirement (i) of that enforcement notice states:

"Cease the use of the property as two self-contained dwellings and reinstate its use to a single-family dwelling-house."
13. From the information available to me, it is clear that the land covered by that enforcement notice includes the land which is the subject of this LDC application, ie 1A River Reach, as well as 1 River Reach. Moreover, it is clear that No 1A has been formed by the subdivision of No 1.
14. In light of the above, the use which is the subject of this LDC application constitutes a contravention of requirement (i) of the enforcement notice noted above. As such, on the date of the LDC application, the use described in the LDC application was not lawful. Nothing has been provided to lead me to a different conclusion in this regard.
15. It makes no difference whether the appeal premises in this case changed to the use described and continued to be so used for 4 years after the date of the change and before the date of this LDC application, because section 191(2)(b) precludes the granting of an LDC in this case.

Conclusion

16. For the reasons given above I conclude that the Council's deemed refusal to grant an LDC in respect of 'C3 Dwelling house' 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).

L Perkins

INSPECTOR