



Appeal Decision

Site visit made on 5 August 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2024

Appeal Ref: APP/A0665/X/24/3345834

51- 52 High Street, Farndon, Chester, Cheshire West and Chester CH3 6PU

- 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 Will Pollard against the decision of Cheshire West and Chester Council.
 - The application ref 23/02506/LDC, dated 1 August 2023, was refused by notice dated 16 April 2024.
 - 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 confirmation that the entirety of the building is now residential use since June 2019.
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Decision

1. The appeal is dismissed.

Main Issue

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

Reasons

3. The onus is on the appellant to demonstrate that, on the balance of probabilities, the use was lawful at the time of the Certificate of Lawful Use or Development (LDC) application. A development is lawful under the provisions of section 191(2)(a) and (b) of the Act if no enforcement action may be taken because it did not involve development requiring planning permission, or because the time for enforcement action against the use has expired; and, providing it does not constitute contravention of any requirement of any enforcement notice then in force. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.
4. The application sought an LDC for the use of the entirety of the appeal property as residential use. There is no extant enforcement notice preventing the lawful use of the building as a dwelling. Therefore, for the material change of use to be lawful through the passage of time, the appellant must show that the use of the property materially changed to a separate dwelling at least 4 years prior to the date of the application, namely by 1 August 2019, and that the use then continued for at least 4 years thereafter, without significant interruption.

5. The appellant contends that prior to 2019, approximately 80 % of the appeal property was in residential use and 20% in retail use. The crux of the matter is whether there was a material change in the area used for retail to part of the overall residential use prior to 1 August 2019 and remained in continuous use for more than four years thereafter.
6. An extract of a social media post, dated 16 October 2018, from the appellant confirmed Dawson's DIY and Hardware shop would be closing on 26th October. This is in relation to the retail section of the appeal property. However, the post merely states the business was closing. It makes no reference to the shop being converted into residential use or when this would take place.
7. The architectural drawings dated 11 February 2019 clearly depict existing and proposed floor plans. The appellant contends the conversion works commenced shortly after these drawings were produced. The front two rooms on the existing drawings are annotated with 'Shop' and a third room annotated as 'Store'. On the proposed plans these three rooms are annotated as 'Sitting Room' and 'Bedroom'. Therefore, these drawings clearly indicate an intention to convert the property. However, the date of these drawings coincides with the submission of a planning application for 'Change of use from shop to one dwelling¹' which was refused and subsequently dismissed on appeal². Therefore, it is not unreasonable to conclude that the drawings were drafted for the purpose of the planning application. It is not an indication that the works depicted on the plans would be carried out regardless of the outcome of the application.
8. The Inspector for the previous appeal noted 'It was evident at the time of my visit that internal works within the property had taken place and were ongoing following the closure of the shop subject of this appeal. Some rooms previously used for retail were informally in use as part of the well-established residential accommodation (C3 use) within the wider property.' It is clear that the Inspector witnessed some internal works taking place and some of the previous retail rooms were in use, to some extent, as part of the wider residential use. However, the reference to 'some rooms' suggests that not all of the rooms were in use and 'informally in use' raises questions as to how the rooms were being used. Therefore, the Inspector's findings introduce a significant degree of ambiguity as to what rooms were in use and how they were being used.
9. Moreover, the Inspector undertook the site visit on 13 February 2020, six months after the relevant date of 1 August 2019. As the Inspector noted internal works were ongoing, this suggests the conversion works had not been completed. This raises the further question of what state and use the previous retail rooms would have been in 6 months prior to the visit, ie 1 August 2019.
10. The appellant has provided numerous invoices and receipts from various construction supplies companies. These date from December 2018 to December 2019. However, those that predate 11 February 2019 conflict with the appellant's argument that the works commenced promptly after the architectural drawings were produced. Furthermore, the list of renovation works costs in Appendix 9 of the Appellant's evidence statement include 'Pennine' and 'Decora'. Both of these suppliers are dated after 1 August 2019 and therefore fall within the relevant four year period of immunity. This

¹ Council Ref: 19/00732/FUL

² Appeal ref: APP/A0665/W/19/3241522

suggests that on 1 August 2019, the conversion works had not yet been completed. Moreover, the invoices and receipts simply evidence that items were purchased/hired. None of them state these items were subsequently used/installed at the appeal property, in particular used in the conversion of the previous retail rooms to residential use. More importantly, none of the invoices state when the use of the previous shop rooms materially changed use to a residential use.

11. The April 2019 and September 2020 Google Street View images clearly show a difference in the frontage of the property. The 2020 image depicts very little evidence of the previous retail use. However, the 2019 image clearly shows the shop name on the fascia sign. Whilst this supports the argument the change of use took place sometime between April 2019 and September 2020 there is nothing in the images to suggest it took place before 1 August 2019.
12. The photographs of the interior of the property taken between November 2018 and mid 2019 show what appears to be works being undertaken for the conversion. Notwithstanding the fact that the individual photographs are not dated and therefore it is not possible to ascertain on what dates they were taken, the description of the timeframe between 'November 2018 and mid 2019' is very vague and imprecise. Given that the relevant date is 1 August 2019 or before, the reference to 'mid 2019' could reasonably be regarded as being before or after this date.
13. The statement submitted by Stephen Whatmore confirms they did all the work to convert the rooms of the property for residential use and the conversion work started in 2018 and finished in March 2019. Notwithstanding this does not indicate when the residential use of the previous retail rooms commenced, the completion of the works in March 2019 does not correlate with the dates of many of the invoices, notably from CEF (dated 12 June 2019), Magnet (30 June 2019), Ideal Bathrooms (7 July 2019), Plumbfix (21 May 2019) as well as numerous others listed in the 'List of renovation works costs'. Moreover, this statement is inconsistent with the appellant's own admission in their Planning Rebuttal Statement that the works were completed in December 2019, which itself is inconsistent with the date in the description on the application form for which the LDC is sort, ie June 2019.
14. In respect of the statement from Anne Dale, they confirm they attended the property on various occasions following its conversion in 2019. They note that many of the gatherings were in the dining room which was part of the original shop front. However, it makes no reference to when in 2019 the change of use occurred or whether all of the previous rooms for retail use were in residential use at that time.
15. The prior approval application form for the proposed change of use of the property from Use Class E to Use Class C3 in 2021³ refers to the property currently being 80% residential and 20% retail. The appellant contends this was put on the form as that was the legal use of the property at the time and that the change of use had already occurred. I find this to be a reasonable explanation. However, it does not indicate when the change of use took place.
16. I find therefore, the evidence is not sufficiently precise and unambiguous to demonstrate that, on the balance of probabilities, the use of the entirety of the

³ Council ref: 21/03425/PDM

appeal property has been in residential use since 1 August 2019. As planning permission has not been granted for the use of the appeal property for residential use at the time the LDC application was made, the use is unlawful.

Other Matters

17. The appellant has referred me to a planning permission recently granted for a change of use of a retail unit on Farndon High Street. However, this has had no bearing on my consideration of whether the use that is the subject of this appeal is lawful.

Conclusion

18. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development is 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.

A Walker

INSPECTOR