



Appeal Decision

Site visit made on 15 October 2024

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th November 2024

Appeal Ref: APP/Y5420/X/23/3332527

17 Tower Terrace, Wood Green, London N22 6SX

- 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 Yousaf Khan against the decision of the Council of the London Borough of Haringey.
 - The application ref HGY/2023/0411, dated 9 February 2023, was refused by notice dated 28 June 2023.
 - The application was made under section 191(1)(a) and 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as the siting of garages and Portacabins (operational development) for purposes which are incidental to the dwelling house(s) and the installation of a means of access (engineering operation).
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use, operational development and the engineering operation, which are considered to be lawful.

Background and Preliminary Matters

2. 17 Tower Terrace is a three storey property situated on the corner of Tower Terrace and Mayes Road. It is divided into 3 flats (one per floor) with the benefit of planning permission granted in 1972.
3. The appellant owns the freehold to the property together with the leasehold interest in two of the flats (Flat A, ground floor and Flat C, second floor). His wife owns the leasehold of Flat B on the first floor. The appellant and his wife occupy Flats B and C, which are separate flats accessed from the communal stairway with front doors opposite each other on the 1st floor landing. Flat A is rented out to tenants but was occupied by the appellant's daughter from 2009-1016.
4. The freehold includes the land to the rear of the property which was used as the garden to No 17 when it was a single family dwelling house. The planning permission for the flats also permitted the erection of three garages in the garden. Access is from Mayes Road and planning permission was granted in 1957 to widen the existing vehicle access onto Mayes Road.
5. Today there are four portacabins in the former rear garden and only two of the garages remain. They are all accessible from either Mayes Road or by going through Flat A into what remains of the rear garden space.

6. The appellant provides time-stamped visual evidence (Google Earth and Street View imagery) of the garages and portacabins between 2008 and 2022. It is evident that the buildings and structures have been there for more than four years and the Council do not disagree. The Council also agree that the access into the site has existed for more than four years.

Main Issue

7. The main issue is whether the Council's decision regarding the incidental use was well-founded. That turns on whether the appellant can show that there has not been a material change of use off the property and garage area.

Reasons

8. The appellant's case is that there has not been a material change of use, rather that the uses he makes of the garages and portacabins are incidental to the enjoyment of the "residential property" or "the primary residential use".
9. In these situations, it is necessary to ascertain the correct planning unit and the present and previous primary uses of that unit. The leading case on the subject is *Burdle*¹ and the tests within it start with the units of occupation and turn on the concept of physical and functional separation.
10. I consider each flat is a planning unit, physically and functionally separate from each other except for the shared hallway area. This is the case even though the appellant and his partner live in two of the flats.
11. In terms of the outside space, what remains of the garden is situated adjacent to Flat A, is used by the tenants in Flat A to grow vegetables and flowers and is accessible from their flat. There is therefore a physical and functional connection between this part of the garden and this planning unit.
12. The remainder of the garden is taken up with the garages and portacabins. There is no physical link to Flats B and C as the appellant has to exit No 17 via the front door and walk around to the Mayes Road access to make use of the buildings, except when Flat A has no tenants or when his daughter occupied Flat A. Then the appellant would walk through Flat A.
13. Originally, the owners of each flat would have enjoyed the use of one of the garages. I consider that each garage would have been part of each planning unit due to the functional link, notwithstanding the lack of a physical connection. The use of the garage to park a car would have been incidental to the residential use of each flat.
14. The appellant has now acquired the freehold interest of the property and garden and the buildings are used as follows:

Portacabin A - used in connection with the appellant's film work, contains tables, equipment and a drawing board;

Portacabin B - used for tool storage;

Portacabin C² - used for work on comics and contains an exercise machine;

¹ *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207

² Installed in space formerly occupied by garage associated with Flat B, which collapsed

Portacabin D and garage GC³ - used for household storage and domestic belongings;

Garage GA⁴ – used for storage of picture framing materials, equipment and the carrying out of picture framing.

These uses were developed over time as the appellant's personal circumstances changed. For example, portacabin A was installed in 2010, a year after he acquired the freehold interest in the property and is used for film production work.

15. These details establish that there is a functional link with Flats B and C from the various activities carried out by the appellant. In my view these equate to incidental uses that can often be found within a dwelling such as the equivalent of "attic storage", "home office", "hobby room" and "shed". They are minor additional activities that do not affect the primary residential use of the whole site. They differ in character to the residential use but are being carried out as a function of the enjoyment of the residential units and the functional relationship is one commonly found.
16. The doctrine of primary and incidental use has been developed by the courts as a response to the practical realities of planning control on the ground: so long as the primary use does not change, the user(s) may vary the level and type of incidental use(s) over time and according to their needs without causing any material change in the overall character of the use of the land. A resident may change the incidental use of their shed from storage to a gym without there necessarily being any material change of use of the land.
17. The Council's reasoning for there being a material change of use is that the picture framing activity expanded to a point in their view where it ceased to be functionally related to the primary residential use and became a primary use on its own, within a new planning unit. The evidence for this conclusion is the appellant's own images such as those from June 2017 until February 2022, which show signage around the Mayes Road access advertising "Wood Green Picture Framing". The entrance from Mayes Road is also numbered separately from No 17 as No 147 Mayes Road. "Wood Green Picture Framing" also has a website describing the site as "North London's finest and cheapest bespoke picture framer... All work is undertaken in-house in our purpose-built workshops".
18. This, however, fails to take into account the findings from *Sage*⁵ (and the update to the Planning Practice Guidance⁶), namely a material change of use can be made without any adverse environmental impact at all. The crucial test is whether there is a change in the character of the use. Environmental impacts may be used to indicate a notable change of character of the property, for example: increase in traffic and parking, disturbance to neighbours caused by regular or the number or timing of, visitors or deliveries, abnormal noise or smells, or the need for any major structural changes or major renovations.
19. There is no evidence from the Council to support any environmental impacts from the use. The appellant submits it is primarily a hobby. He has become

³ Garage associated with Flat C

⁴ Garage associated with Flat A

⁵ *Sage v Secretary of State for Housing, Local Government and Communities* [2021] EWHC 2885 (Admin)

⁶ Paragraph 014

proficient in it and set up a web site to advertise what he could do. This is not unlike a lot of people who make crafts at home and advertise their wares online. There are some deliveries of materials and some visitors, as described by the appellant, but the scale is nothing to suggest it is out of the ordinary.

20. Over the years there has been an increase in online shopping and delivery vehicles now often go unnoticed in residential areas. In addition, there are parking restrictions in place (double yellow lines) along Mayes Road. The appellant still works as a film director, though less intently since his illness but it means he can be away for lengthy periods. Therefore, the picture framing activity is intermittent and is not the appellant's main source of income. Overall, I conclude that the manner in which it is carried out, together with the other activities in the garage and portacabins, has not led to a change in the residential character of the site and therefore there has not been a material change of use.

Conclusion

21. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the siting of garages and Portacabins for purposes which are incidental to the dwelling house(s), and the installation of a means of access, was not well founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended

D Fleming

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 9 February 2023 the use and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The erection of the garages, the installation of the portacabins and the formation of a means of access to the highway constitute development within the meaning of section 55 of the Town and Country Planning Act 1990 as amended, for which planning permission is required. Planning permission was granted for the erection of the garages in 1972 and together with the access and portacabins were in place and substantially complete at 17 Tower Terrace by 2017 at the latest. This is more than four years before the date of the application. Furthermore, the operational and engineering development do not contravene the requirements of any enforcement notice in force.

The various uses of the garages and portacabins are lawful as they have not resulted in a material change of use of the property. The uses are incidental to the residential use of the property and do not amount to development in themselves. They also do not contravene the requirements of any enforcement notice in force.

Signed

D Fleming

Inspector

Date: 4th November 2024

Reference: APP/Y5420/X/23/3332527

First Schedule

The siting of garages and Portacabins (operational development) for purposes which are incidental to the dwelling house(s), and the installation of a means of access (engineering operation).

Second Schedule

Land at 17 Tower Terrace, London N22 6SX

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: **4th November 2024**

by D Fleming

Land at: 17 Tower Terrace, London N22 6SX

Reference: APP/Y5420/X/23/3332527

Scale: Not to Scale

