



Appeal Decision

No site visit

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 November 2024

Appeal Ref: APP/K3605/X/23/3320535

Lian Yard Redhill Road, Cobham, Surrey KT11 1EG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) 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 Challenge Fencing Ltd against Elmbridge Borough Council.
- The application ref 2023/0393 is dated 8 February 2023.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is proposed use for B8 and E.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests on the appellant and the evidential test is the balance of probability. For this reason, a site visit to the property is not necessary as it would not assist my assessment of the evidence.

Reasons

3. The **main issue** is whether the Council's deemed refusal to grant an LDC would not have been well founded.
4. The onus of proving lawfulness rests with the appellant. The courts have held that the appellant's own evidence does not need to be corroborated by 'independent' evidence in order to be accepted. The appellant's evidence does however have to be sufficiently precise and unambiguous to justify the grant of an LDC on the balance of probability.
5. The appellant wishes to ascertain whether a proposed use of buildings or other land would be lawful and has applied for a certificate under s192(1)(a) of the Town and Country Planning Act 1990 (as amended) (the 1990 Act). Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 specifies the contents of such an application and how it must be submitted.
6. Planning Practice Guidance¹ (the PPG) specifies that an LDC application needs to describe precisely what is being applied for and **not simply the use class** [my emphasis]. The LDC application form requires the use class that relates to

¹ Paragraph 005 Reference ID: 17c-005-20140306

the proposed use to be provided along with why it is considered that an LDC should be granted for the proposed use. The completed application form, dated 8 February 2023, states the proposed use class is 'Other', and in response to the 'Other (please specify)' box, the appellant has stated 'B8 and E'. The reason as to why an LDC should be granted is given as 'Because the historic B1 (now E) and B8 uses cover the entire Planning Unit as noted in the attached appeal decision and other supporting documents.'

7. The application form therefore fails to specify what the existing or last use of the land actually was or what the specific proposed use will be. Instead, three use classes are specified, which are wide ranging and encompass a considerable and diverse range of land uses. Even if I were to accept that a use class could be a land use, it is unclear whether the references to 'B1 and B8' or 'B8 and E' represent mixed uses consisting of two primary uses or whether one primary use is ancillary to the other. What proposed use the LDC is being sought for is therefore imprecise and ambiguous.
8. The Tetra Tech letter, dated 8 February 2023, states the application '*...is drafted on the basis of a proposed use, to establish that any use within the former Classes B1 and/or B8 (now Class E and B8) of the Use Classes Order on the site would be lawful.*' The letter further refers to '*a continuation of the previous use which had been taking place at the time when it was acquired in 2007...*' and makes various other references to '*B1/B8 uses*'. In the absence of any detailed description of the proposed use to which the land would be put, this letter offers no greater precision or unambiguity than the application form.
9. The appellant may well have relied upon wording of the previously granted LDC, reference 2013/2131, as the basis for the proposed LDC. However, that certificate fails to specify the land use that had justified it being issued. It is unfortunate that the deficiency with the description of the proposed use was not identified earlier in the application/appeal process. This does not change the fact that I need to satisfy myself that the last lawful or proposed land uses have been defined with sufficient precision to allow me to determine whether the proposed use would not constitute development as defined at s55 of the 1990 Act.
10. Furthermore, for a certificate to be granted, I must be able to include a description of the use, regardless of whether it falls within a use class. That description needs to be more than simply a title or label, if future problems interpreting it are to be avoided. Having regard to the application documentation, I am unable to spell out the characteristics of the proposed use so as to define it unambiguously and with precision. In accordance with s192 (2) of the 1990 Act, insufficient information to satisfy me that the proposed use would be lawful if instituted or begun at the time of the application has been provided.

Conclusion

11. For the reasons given above I conclude that, had the Council refused to grant a certificate of lawful use in respect of 'proposed use B8 and E' that refusal would have been well founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

M Madge
INSPECTOR