



Appeal Decision

Site visit made on 12 November 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 November 2024

Appeal Ref: APP/A5270/X/23/3317862

Annexe at rear of 2 Barlow Road, Acton, London W3 9LJ

- 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 Garfield Reece against the decision of the Council of the London Borough of Ealing.
 - The application ref 225106CPE, dated 1 December 2022, was refused by notice dated 27 January 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 *'use of single one bedroom dwelling as self-contained flats.'*
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description in the banner heading above of the use for which an LDC is sought is taken from the application form. However, the evidence submitted by the appellant largely refers to use of the building in question as a single, self-contained flat. The Council clearly considered the application on those lines, having regard to how the use is described both in the officer delegated report and on their decision notice. The appellant adopted a similar description to that used by the Council on the appeal form. Therefore, I shall deal with the appeal on the basis that an LDC is being sought for the use of the building as a self-contained flat.

Main Issue

3. The main issue in this appeal is whether the Council's refusal to grant an LDC was well-founded. This turns on whether it has been shown that the use of the building as a self-contained flat was lawful at the date of the application.

Reasons

4. The onus is on the appellant to show that the use applied for is lawful, the relevant test of the evidence being on the balance of probability.
5. The appeal concerns a freestanding single storey building, located in the rear garden of a semi-detached residential property. The building contains a living room with a separate bedroom, kitchen and bathroom.
6. At s191(2), the 1990 Act states that uses and operations 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 because the time for taking enforcement action has expired or for any other reason; and (b) they do not constitute a contravention of any of the requirements of an enforcement notice then in force.

7. The appellant claimed that the building had been in use as a self-contained flat for more than four years prior to the date of the application and supplied supporting evidence in this regard. In doing so, they sought to rely on s171B(2) of the 1990 Act, which at the time of the application provided that no enforcement action may be taken in respect of a breach of planning control consisting in the change of use of a building to use as a single dwelling house after the end of the period of four years beginning with the date of the breach¹.
8. The Council drew attention however to an enforcement notice, dated 21 February 2005, affecting 'Land at 2 Barlow Road W3.' The notice concerns the unauthorised '*change of use of the detached single storey building to the rear of the dwelling house on the land (marked in red on the attached plan) from use incidental to the dwelling house to use as a self-contained dwelling.*' The notice went on to require the use of the said building as a self-contained dwelling to cease within six months of it taking effect.
9. The notice clearly refers to the building in this appeal. As far as I was made aware, no appeal against the notice was lodged. Therefore, it is not unreasonable to assume that the notice took effect on the stated date, i.e., 4 April 2005. Since this appeal is strictly concerned with matters of fact and law, whether the existence of the notice was noted on any search of the land charges register made prior to the appellant becoming the sole owner of the property in 2006 can have no bearing on my findings. In any event, the copy of the appellant's letter supplied, dated 15 June 2005, shows they knew at the time that there was an enforcement notice in relation to use of the building as a self-contained dwelling.
10. The appellant referred to a Council visit to the property made in June 2005 following a cessation in the use of the building as a self-contained unit of accommodation, after which there was an extended period of vacancy. This points towards the notice having been complied with at that time and there being no contravention of the notice requirements for several years.
11. Nevertheless, once an enforcement notice takes effect it continues to apply to the land concerned unless it is withdrawn or, where planning permission is subsequently granted, so far as it is inconsistent with that permission. At s181(1), the 1990 Act provides that compliance with any of the requirements contained in an enforcement notice '*shall not discharge the notice*'. The 1990 Act at s181(2) further provides, without prejudice to s181(1), that any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it shall be discontinued permanently and that the resumption of a use which has been discontinued in compliance with an enforcement notice shall be a contravention of the notice. The requirements of an enforcement notice therefore have an enduring effect for the future.
12. There is little practical difference between the use required to cease by the notice and use of the building as a self-contained flat; whichever description is utilised the building has the ability to afford to those who use it the facilities

¹ The period was extended to ten years on 25 April 2024

required for day-to-day private domestic existence, this being the distinctive characteristic of a dwelling house. There is nothing before me which would suggest that the Council have withdrawn the notice. Moreover, in my experience it would be rare for a Council to withdraw an enforcement notice once it had taken effect, since doing so would not prevent a future breach of planning control from becoming lawful. The Council's letter of 19 August 2005 confirms that the notice had been complied with, not that it was withdrawn. Whilst the appellant might well have genuinely believed the notice was no longer effective, that does not alter the position in law.

13. Neither is there any evidence that the notice has been superseded by a subsequent grant of planning permission or that it was otherwise not still in effect on the application date. For the purposes of s191(2)(b), a notice being in effect has the same meaning as it being in force and in practice, there is no distinction to be made.
14. Therefore, based on the available evidence and on the balance of probability, I find that at the time of the application the use of the building as a self-contained flat contravened the requirements of an enforcement notice then in force. Given the circumstances, it is not necessary to consider the evidence supplied concerning the continuity of the use; as enforcement action has already been taken the time limit set out in s171B(2) cannot apply in any event.
15. Accordingly, the appellant has been unable to show that the use of the building as a self-contained flat was lawful at the date of the application, the available evidence not supporting their claim in this regard.

Conclusion

16. For the reasons given above I conclude that, the Council's refusal to grant a certificate of lawful use or development in respect of the use of the building as a self-contained flat 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).

Stephen Hawkins

INSPECTOR