



Appeal Decision

No site visit

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 January 2025

Appeal Ref: APP/Z5630/X/23/3319446

**Yard rear of Kenwood Green Lane, Chessington, Kingston Upon Thames
KT9 2DS**

- 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 M Casey against the decision of the Council of the Royal Borough of Kingston Upon Thames.
 - The application ref 22/03931/CEU, dated 21 December 2022, was refused by notice dated 13 February 2023.
 - The application was made under section 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 Building (1) used as a kennels/kitchen and building (2) used as a restroom.
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Decision

1. The appeal is dismissed.

Preliminary Matters and Background

2. The description of development for which the LDC is being sought is taken from the application form. The application form declares that the appellant is seeking an LDC for existing building works, consisting of '*Building (1) – Building used as Kennels/kitchen*' and '*Building (2) – Building used as a rest room*'. The LDC is being sought on the grounds that buildings (1) and (2) were substantially completed more than four years before the date of the application.
3. The refusal notice's description, '*Continued use of 2no. buildings used as kennels/kitchen and rest room*', fails to acknowledge that the LDC relates to existing building works. There is nothing to show that the appellant agreed to change the description from that declared in the application form to that identified in the Council's refusal notice. I shall therefore proceed on the basis of the application form description, with duplicated words deleted.
4. 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 with 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.
5. A personal planning permission was granted on appeal for '*continued use of land for 2No gypsy pitches together with the formation of additional hard standing and utility/day room ancillary to that use*' in accordance with the

application reference 17/10080/FUL, subject to seven conditions¹ (the 2017 PP). Condition 3 of the 2017 PP restricts the number of caravans on the land to '*no more than four...(of which no more than two shall be a static caravan)*'. Condition 7 of the 2017 PP requires the completion of works pertaining to an earlier grant of planning permission, in accordance with the previously approved scheme or an alternative agreed scheme. The 2017 PP supersedes any previous grant of planning permission, as such any conditions imposed on earlier planning permissions are no longer enforceable.

6. A copy of the Council's '*Register of Local Land Charges Official Certificate of Search*' dated 3 November 2022 (the Local Search) is provided by the appellant. The Local Search states, at section 3.9, that no '*Notices, orders, directions and proceedings under Planning Acts*' subsist in relation to the property, nor has '*the local authority decided to issue, serve, make or commence*' any.
7. Notwithstanding the information contained in the Local Search, the Council has provided a signed copy of a breach of condition notice dated 24 May 2019 (the BOCN) in their Statement of Case. The BOCN relates to non-compliance with conditions 3 and 7 of the 2017 PP.

Reasons

8. The **main issue** is whether the Council's refusal to grant an LDC was well-founded.
9. 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, and the relevant legal test is on the balance of probability.
10. Having regard to s55(1) of the Town and Country Planning Act 1990 as amended (the 1990 Act), the erection of buildings (1) and (2) constitutes development. Planning permission is required for that development. The appellant does not claim that planning permission, either deemed or express, exists for buildings (1) and (2). It is therefore necessary for the appellant to show that the time for enforcement action had expired (s192(2)(a) of the 1990 Act) by 21 December 2022, the material date.
11. The appellant claims buildings (1) and (2) were erected in approximately 2015 and aerial imagery has been submitted that shows buildings (1) and (2) on the land in April 2017, May 2018, April 2019, April 2020, March 2021, and March 2022. While there is no evidence to corroborate the appellant's claim buildings (1) and (2) were erected in 2015, their presence on the land from at least April 2017 shows they were erected more than 4 years before the material date.
12. The Council has provided no evidence of its own to show when buildings (1) and (2) were erected and does not dispute that they were erected more than four years before the material date. I therefore find the appellant's evidence is sufficiently precise and unambiguous to show buildings (1) and (2) were substantially completed more than four years ago, and the time for taking enforcement action has expired.

¹ APP/Z5630/W/17/3191630

13. However, the provision of s191(2)(b) of the 1990 Act also needs to be met. This states that operations are lawful at any time if '*they do not constitute a contravention of any of the requirements of any enforcement notice then in force.*' A breach of condition notice is an enforcement notice for the purposes of s191(2)(b).
14. Whether the BOCN was registered in accordance with s188 of the 1990 Act or registered as a Local Land Charge are not determinative as to whether the BOCN was correctly served. S172(2) of the 1990 Act requires a copy of an enforcement notice to be served on the owner and on the occupier of the land to which it relates; and on any other person having an interest in the land. The BOCN relates to all the land forming the extent of the 2017 PP, which comprises 2 No gypsy pitches. I would therefore expect that copies of the BOCN would have been served on the landowner(s), the occupiers of each gypsy pitch, and any other relevant person(s).
15. The Council's evidence shows that the BOCN was hand delivered to the appellant at 61 Woron Road, Iselworth, Middlesex TW7 6HL. While that address is different to the appeal site address, there is no evidence to show that it is not a relevant address for the appellant. There is however no evidence to show whether the BOCN was served on anyone else, in compliance with s172(2) of the 1990 Act. While I sought clarification from the Council on several points relating to the service of, purpose of, and compliance with the BOCN, no response was received within the specified timeframe.
16. As stated above, the onus of proof rests with the appellant. There is no substantive evidence before me to show that the BOCN was not served in accordance with s172(2) of the 1990 Act. In the absence of such evidence, I find it more likely than not that the BOCN subsists.
17. The BOCN requires the person responsible for the breach to '*Undertake such works on site as are necessary to ensure adherence to the details approved on the 2nd May 2014 under application reference 14/10021/COND (decision notice and approved plans enclosed).*' A copy of the relevant approved drawing, number 11_459_012 revision A, entitled 'Site Development Scheme', accompanies the Council's Statement at Appendix 4 (the approved plan). While the works required to be undertaken are not specifically identified, the approved plan shows the area where building (1) is located to be '*returned to grass*' and '*proposed tree planting*', and the area where building (2) is located to be '*proposed tree planting*' and a '*grassed area*'.
18. The 2017 PP requires the works to be carried out in accordance with the approved plan. It does not however require the works, once completed, to be retained.
19. Buildings (1) and (2) were erected before the BOCN was issued. Buildings (1) and (2) would therefore have to be removed for the BOCN requirements to be complied with. In accordance with condition 7 of the 2017 PP, an agreed alternative scheme of works could have provided for the retention of buildings (1) and (2). However, I have not been made aware of any agreed alternative scheme. Buildings (1) and (2) do therefore constitute a contravention of the requirements of the BOCN, which was then in force.

20. Having regard to all the above factors, the appellant has failed to show, on the balance of probability, that buildings (1) and (2) were lawful at the material date.

Conclusion

21. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful development in respect of Building (1) used as kennels/kitchen and Building (2) used as a rest room 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).

M Madge

INSPECTOR