



Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 17 January 2025

Appeal Ref: APP/P3610/X/24/3342079

7 Melton Place, Epsom, Surrey KT19 9EE

- 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 Aleks Perpalaj against the decision of Epsom and Ewell Borough Council.
 - The application ref 23/00525/CLE, dated 3 May 2023, was refused by notice dated 6 November 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 3 self-contained 1-bed units.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The outcome of the appeal turns on considering relevant aspects of planning legislation and not on assessing matters of planning merit that would normally require a visual site inspection of the premises. I have therefore been able to determine the appeal without a site visit. Neither side has been prejudiced by this course of action.
3. The burden of proof, based on the balance of probability, rests firmly with the appellant.

Preliminary Matter

4. On 1 December 2011 the Council served an Enforcement Notice (EN) alleging the unauthorised change of use of 7 Melton Place, Epsom, Surrey KT19 9EE from use as a single dwelling to three self-contained flats (LPA Ref: 11/00129/COU). The site address for the EN and the site address in this appeal match.
5. An appeal was made against that EN (Ref: APP/P3610/C/12/2168106). Around the same time, a second appeal was submitted against the refusal of planning permission (LPA Ref: 11/00469/FUL) for converting a 4-bedroom dwelling into 3 no. 1 bedroom self-contained flats (Ref: APP/P3610/A/11/2164599). The site address in the second appeal also matches the site address in the current appeal. The application form seeking planning permission for the three flats also states that the property address was 7 Melton Place, and the associated site location and block plans for the application clearly identify the correct property. Furthermore, the previous Inspector's decision, for both appeals, records the site address for each as 7 Melton Place.
6. Moreover, the Council has been clear in its consideration of the LDC application and in its appeal papers that the EN issued in December 2011 relates to the current appeal property.

7. Given the above, despite what the appellant claims about the previous planning application, EN and appeals being related to a different property, that is not the case. It appears that the misunderstanding may arise from the wrong plans showing on the Council's website under the planning application Ref: 11/00469/FUL. Whilst this error on the website is regrettable, it does not cast any doubt on the facts I have set out above.

Main Issue

8. The main issue is whether the Council's decision was well founded.

Reasons

9. S181(1) of the 1990 Act states that compliance with an enforcement notice, whether in respect of (a) the completion, removal or alteration of any building or works; (b) the discontinuance of any use of land; or (c) any other requirements contained in the notice, shall not discharge the notice. Furthermore, without prejudice to s181(1), s181(2) states 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. The Council advises that the EN issued in December 2011 has not been withdrawn and it remains in force.
10. Under s191(1)(a), if any person wishes to ascertain whether any existing use of buildings or other land is lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use, operation or other matter. Under s191(2) of the 1990 Act, uses and operations are lawful if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force. I make the point here that for development to be lawful, both parts (a) and (b) of s191(2) need to be met.
11. Having regard to the above, even if the appellant considers they can show that the time for enforcement action has expired, s191(2)(b) means that the use applied for cannot be lawful. Consequently, there is no need to consider the rest of the appellant's evidence.

Conclusion

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of 3 self-contained 1-bed units 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).

Gareth Symons

INSPECTOR