



Appeal Decision

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 24 March 2025

Appeal Ref: APP/X3540/X/23/3332250

6, Albert Road, Framlingham, Woodbridge IP13 9EQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Julie Biggs against the decision of East Suffolk Council.
 - The application Ref DC/23/2484/CLE, dated 24 June 2023, was refused by notice dated 23 August 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 the use of the entire property as a primary residence and family home.
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Decision: the appeal is dismissed

Procedural matters

1. I have taken the description of the use for which a LDC is sought from that set out on the application form, albeit I have paraphrased it to more accurately reflect the use described.
2. The time limits for taking enforcement action are set out in section 171B of the Town and Country Planning Act 1990 (the 1990 Act). These time limits were amended on 25 April 2024 by The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024. The time limit for taking enforcement action against the unauthorised change of use to a single dwellinghouse is set out at Section 171B(2) of the 1990 Act.
3. Where the change of use took place before 25 April 2024, the time limit for taking enforcement action against an unauthorised change of use to a single dwellinghouse under section 171(B)(2) of the 1990 Act is four years. Where the change of use took place after 25 April 2024 the time limit for taking enforcement action against an unauthorised change of use to a single dwellinghouse is ten years.
4. With an LDC, the relevant date is the date on which the application was made, not the date on which any subsequent appeal is determined. In this case, the LDC application was made on 24 June 2023. This was prior to 25 April 2024, such that the time limit for taking enforcement action against any unauthorised change of use to a single dwellinghouse is four years. The relevant period in this case is therefore the four years prior to 24 June 2023.

5. The appellant's evidence is largely in the form of various invoices, plus two letters from neighbours. The Council acknowledges that the whole of the appeal property is in use as a dwelling at this time. I am therefore satisfied that I can determine this appeal on the basis of the written evidence that is before me, and that there would be nothing to be gained from a site visit at this time.

Reasons

6. Section 191(4) of the 1990 Act indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operation or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a LDC was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.
7. By way of background, the appeal property was formerly the Royal British Legion Foresters Hall. Following its closure in 2016, the appeal property was designated as an Asset of Community Value (ACV). The ACV listing makes reference to "*part of the building being used as the owner's residence*". I concur with the Council insofar as this confirms that only part of the appeal property was being used for residential purposes, and not the property as a whole. The Council also ascertained from its own investigations that the sale listing produced by the auctioneers stated that the property already contained a kitchen and toilet facilities as part of the former use. The significance of this is that part of the appeal property appears to have provided all the facilities required for day-to-day private domestic existence before being acquired by the appellant.
8. The appellant has provided copies of a number of invoices, including from Amazon, Waitrose and Eon. The common denominator with these invoices is that they could all relate to the residential use of that part of the property noted in the ACV listing. For example, the bathroom taps ordered from Amazon could have been fitted to the existing bathroom in that part of the building already in residential use: there is no way of determining this from that invoice. The same applies to the invoice for carpet-cleaning, which could equally relate to the cleaning of carpets in that part of the property noted in the ACV listing. Consequently, these invoices do not show that the whole of the appeal property was in residential use.
9. The appellant has also provided copies of two payslips. These payslips are of very little evidential value. In the first instance, these payslips are not on headed paper. Consequently, I have no way of knowing whether these are genuine payslips. Secondly, the payslip for 25 May 2018 states a different address for the appellant and is outside of the relevant period. Thirdly, the address stated on the payslips could relate to use of just part of the appeal property. For these reasons, I place only minimal weight on this evidence.

10. The appellant has provided letters from two of her neighbours, both of which confirm that the appellant moved into the appeal property in the summer of 2018. There is, however, no dispute that the appellant has occupied part of the appeal property from that time. The letters from the two neighbours do not assist the appellant's case in terms how much of the appeal property was occupied during the relevant period. Neither of the neighbours describes having been into the appeal property itself at any point in time, and as such provide no indication of the use of property during the relevant period. Neither letter provides any meaningful evidence of the use of the appeal property as a whole during this period.
11. Similarly, the email exchange with Framlingham College does not assist the appellant in this respect. There is nothing in those emails to indicate that the whole property was being occupied as a dwelling at that time, rather than just part of it. Likewise the notification of change of address to the Co-op is of little assistance. This could equally relate to that part of the building already in residential use rather than use of the property as a whole.
12. Looked at in the round, the evidence provided by the appellant does not, on the balance of probability, show that the use of the entire property as a primary residence and family home was lawful on the date that the LDC application was made. The appeal must fail on this basis alone.
13. Moreover, with LDC applications, it is sometimes the evidence that is not provided that is the most instructive. That is true in this particular case. If the appeal property has been wholly occupied as a dwelling throughout the relevant four-year period, it would have been a relatively simple matter to provide photographic evidence of that.
14. Photographs taken using modern cameras (and even mobile phones) typically have metadata embedded within the photograph that would show conclusively the date on which the photograph was taken. Dated photographs of the whole property furnished/equipped as a dwelling could have been submitted and would have been conclusive proof of the condition of and facilities within the property on those dates. The appellant could then have provided a Statutory Declaration confirming that the whole property was used as a dwelling, as well as supporting evidence from those that had visited the finished property and/or who carried out the work.
15. None of this obvious evidence in support of the LDC application has been provided. To my mind, the absence of this evidence places a huge question mark over the appellant's claim that the whole property has been occupied as a dwelling throughout the relevant period.
16. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in this respect is 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.

Paul Freer
INSPECTOR