Planning Inspectorate

Appeal Decision

by Sarah Dyer BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th August 2025

Appeal Ref: APP/G5180/X/25/3365597
2A Jackson Road, Bromley BR2 8NP

- 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 Soydan Zeki against the decision of the Council of the London Borough of Bromley.
- The application ref DC/25/00151/ELUD, dated 13 January 2025, was refused by notice dated 25 March 2025.
- 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 establishment of a mixed-use property comprising a residential unit and a barber shop. The residential unit consists of a one-floor studio with an open-plan living area and kitchen and one bathroom. The flat is used by the owner of the barbershop. The barber shop occupies again one-floor and operates during standard business hours, catering to the local community'.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Reference has been made to the floorspace of the mixed use relative to planning policies and standards. For the avoidance of doubt, the planning merits of the existing use are not relevant, and they are not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 (the Act), as amended, which relates to an application for a Certificate of Lawful Use (LDC). My decision rests on the facts of the case and on relevant planning law and judicial authority. The onus is on the appellant to make out his case to the standard of the balance of probabilities.

3. Rights under Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1988 are not engaged in the context of an LDC appeal, except in relation to the fairness of the proceedings. The Public Sector Equality Duty is also not engaged. The grant of an LDC is declaratory of lawful use or development rights and any refusal to grant one is simply a refusal to grant the declaration sought. For those reasons I have not had regard for the mixed use of the site as providing a service for the local community.

4. It was not necessary for me to undertake a site visit because I can determine the appeal on the basis of the appeal submissions before me. I sought comments from the parties prior to making this decision and I have not received any response to suggest that a site visit should be made.

Main Issue

5. The main issue is whether or not the Council's decision to refuse the application was well-founded.

Reasons

6. The appellant seeks to establish that the mixed use described in his application is lawful. The Act establishes that uses are lawful at any time if no enforcement action may then be taken in respect of them. The appellant is not seeking to establish that the use of the appeal site does not involve development nor that it does not require planning permission. His contention is that the time for enforcement action has expired.

7. In this case, where the alleged change of use took place before 25 April 2024, the development would be immune from enforcement if no action was taken within ten years of the unauthorised change of use to a mixed use. Therefore, the appellant needs to show that the site changed to the use described in his application on or before 13 January 2015 (that being ten years prior to the date of the LDC application) and that the mixed use then continued for at least ten years after the date of the change, without any substantial interruption.

Evidence provided by the appellant

8. The appellant stated in his application for the LDC that the mixed use began on 1 January 2014.

9. The appellant has provided a copy of a letter from his landlord. This states that the appellant has been working and living at the premises since June 2014. However, this document is not in the form of a statutory declaration and there is no declaration that it is a true statement.

10. The appellant has submitted copies of correspondence all of which is addressed to him by name and some of which includes the address '2a Jackson Road'. The correspondence is as follows:

    - Copies of bank statements for a personal current account addressed to the appellant at 2a Jackson Road have been provided covering the following months:

      May 2019, August 2020, Sept 2020, October 2020 and Jan 2021,

    - Letters from HM Revenue and Customs addressed to the appellant at 2a Jackson Road requesting tax returns for all tax years from 2014/2015 to 2023/2024. These letters are dated 6 April for every year from 2015 to 2024.

    - Letter from HM Revenue and Customs addressed to the appellant at 2a Jackson Road dated December 2020 relating to self- assessment tax payments and credits between 28 February 2017 and 31 January 2019.

    - Two letters from TV licensing which are addressed to the appellant at 2a Jackson Road are dated 31 December 2017 and 23 February 2019.

    - A letter from the Council addressed to the appellant and including reference to the name of the business in the address relating to non-domestic rates between 1 April 2019 to 31 March 2020 dated 4 March 2019.

- Letters from a utility provider addressed to the appellant and including reference to the name of the business in the address requesting a meter reading dated 17 February 2021 and setting out charges for a ‘business electricity bill’ for the period 3 September 2019 to 22 November 2019 dated 22 November 2019.
- Photographs of undated and unaddressed documents listing payment history to a utility provider between 27 September 2020 and 29 October 2020 and two payments in November 2016 and March 2017. A further photograph of a utility bill for the period between 24 November 2016 and 22 March 2017 with a tariff name given as ‘Freedom for business’.
- A letter from the Home Office is dated 26 February 2019 but it does not include an address.
- An undated letter from Universal Credit addressed to the appellant at 2a Jackson Road and relating to an assessment period between 23 March and 22 April 2020. Another letter from Universal Credit addressed to the appellant, with no postal address, but dated 24 April 2020.
- A letter relating to a medical appointment addressed to the appellant at 2a Jackson Road and dated 21 September 2021.
- An undated letter to the appellant regarding a seasonal Covid-vaccination and a letter dated 21 September 2021 relating to an NHS Covid pass.

11. A letter from a firm of financial accountants has been submitted but a translation of the letter into English has not been provided. The letter is addressed to the appellant, but a different postal address is given which appears to relate to a property adjacent to the appeal site

12. A photograph of an international translation of a foreign driver’s license includes the appellant’s name and gives his address as 2a Jackson Road has been provided. Its validity is shown as 27 December 2021 to 27 December 2031.

Assessment of evidence of mixed use as set out in the application for the LDC

13. The letters from HM Revenue and Customs include two relating to the tax years 2014/2015 and 2015/16. However, these letters are dated 6 April 2015 and 6 April 2016 respectively so whilst they show the appellant may have resided at the site on those dates they do not demonstrate he was present when the tax years began in April 2014 or April 2015 or at any time during those tax years.

14. Setting aside that the letter from the accountants has a different postal address and has not been translated it is clearly dated 2016 and therefore it does not demonstrate that the appellant was living at the site before that time. Similarly, ignoring the fact that some of the utility bills and related information refer to tariffs for a business use, evidence of payments being made in 2016/2017 do not demonstrate that the appellant was living at the site prior to those dates.

15. All of the other correspondence is dated between 2017 and 2024 and does not provide evidence that the mixed use commenced on 1 January 2014 when the appellant said it did.

16. There is an inconsistency between the appellant who says the mixed use began on 1 January 2014 and his landlord's letter which says he has been working and living at the premises since June 2014.

17. The landlord's support for the appellant is also contradicted by evidence from the Council that when the landlord submitted a planning application in 2024, he did not reference any residential use in the property in the planning application form. Furthermore, the Council says that the Planning Statement which supports the 2024 application describes the appeal site as 'barber shop'. The appellant has provided no explanation as to why the residential use was not referred to in these documents.

18. Based on my assessment of the evidence which has been submitted I find that the appellant's evidence is incomplete, inconsistent, and limited to the extent that the balance of probability does not rest in favour of the appellant.

19. I conclude on the balance of probabilities that at the date that the enforcement notice was issued, the time for taking enforcement action as set out in section 171B(3) of the 1990 Act as amended had not expired. Therefore, the appeal does not succeed.

Conclusion

20. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the mixed use comprising a residential unit and a barber shop 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).

Sarah Dyer

INSPECTOR