

Delegated Report

Lawful Development Certificate (Existing)

Application no:	20220108
Location	10 The Drive, Gravesend, Kent, DA12 4BZ
Proposal:	Application for Lawful Development Certificate in respect of the continued use of outbuilding for business use (hair & beauty).
Applicant:	Mrs Leighan Cooper
Site Visit	N/A Desktop Assessment

Plans & Documents

- Application Form - dated 03/02/2022;
- Un-numbered Ordnance Survey Location Plan (scale - 1:1250) - received 25/02/2022;
- Un-numbered Pre-Existing Block Plan (showing previous flank garage) (scale - 1:200) - received 25/02/2022;
- Un-numbered Land Registry Map - received 25/02/2022;
- Un-numbered Plan Drawing - Outbuilding Front Elevation - received 25/02/2022;
- Un-numbered Plan Drawing - Outbuilding Rear Elevation' - received 25/02/2022.

Proposal

This application is made under section 191 of the Town and Country Planning Act (1990) (as amended) for a Certificate of Lawfulness to confirm the continued use of the outbuilding for business use as a hair and beauty salon.

Relevant Planning History

Reference	Description	Decision	Decision Date
20200866	Erection of an outbuilding for business use (hair & beauty).	TEMPORARY PERMISSION	16.11.2020
20200552	Application for a Lawful Development Certificate in respect of the proposed erection of single storey outbuilding at the foot of the rear garden for purposes incidental to the main dwelling.	CERTIFICATE GRANTED	15.09.2020

20170412	Demolition of existing garage and erection of a single storey side extension.	PERMITTED	07.08.2017
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Consultations, Publicity and Representations

This is an application for a Lawful Development Certificate that is considered on its facts and relevant planning law. As confirmed in national planning guidance, views expressed by third parties on the planning merits of such cases are irrelevant. Accordingly, unlike planning applications, there is no statutory requirement to undertake publicity or consultation.

Legislation

The Town and Country Planning Act (1990) (as amended) Section 191: Certificate of Lawfulness of existing use or development.

Procedure for determination

This application seeks a determination by the LPA as to the whether the use of the outbuilding as a business is a lawful use.

The outbuilding was granted a lawful development certificate in 2020 (ref. 20200552) and was later granted a temporary permission for business use (hair and beauty) in 2020 (ref. 20200866). The temporary permission included a condition requiring business operation to end following the date of 1st March 2022, unless an extension was approved in writing by the Local Planning Authority:

- The use hereby permitted shall cease on or before the date of one year following the commencement of the use and the outbuilding hereby permitted thereafter shall be used for purposes incidental to the enjoyment of 10 The Drive, Gravesend only. No business, commercial or industrial use shall be carried out within the outbuilding following the 1 March 2022 unless an application for an extension of the period hereby granted is approved in writing by the Local Planning Authority.*

Reason *To enable the Local Planning Authority to review the situation at the end of the period and in accordance with Policy CS19 of the Local Plan Core Strategy 2014.*

Therefore, by virtue of the time limit condition that restricts permanent use of the outbuilding as a business beyond 1st March 2022 triggers s.171B (3) of the Town and Country Planning Act 1990. S.171B (3) states that no enforcement action may be taken at the end of the period of 10 years beginning with the date of the breach, which is for any other breach of planning control such as a breach of condition. For the avoidance of doubt, the other breaches requiring a 4-year period are building, engineering or other operations in, on or above land / the change of use of a building to use as a single family dwellinghouse.

National Planning Guidance on determining applications of Lawful Development Certificates for existing uses or development is clear in stating that the onus is on the applicant to provide sufficient information to demonstrate that the use of development is lawful beyond any reasonable doubt. Furthermore, in the case of an application for exiting uses, if a Local Planning Authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicants evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

To confirm the lawful status of the outbuilding, the Local Planning Authority need to be satisfied that the building has been in use as a business, in breach of condition, for a period of 10 years.

Analysis

The outbuilding was only granted permission in 2020 and therefore has only been constructed for a period of 2 years. Moreover, the condition only expired in March 2022 which is not near the 10 year period required under s.171B (3).

Therefore, notwithstanding the Local Planning Authorities investigation, the evidence provided in this case is not considered to prove that the outbuilding has been in operation as a business, in breach of condition, for a period of 10 years and is not lawful through the passage of time.

Note (positive and proactive) - the applicant was contacted during the application process and informed that the Lawful development certificate would be refused. It has since been observed that the property is up for sale, which is why the decision has been taken to determine the application as submitted. Planning enforcement seek to regularise the planning breach in due course.

Conclusion

On the balance of probabilities and in the absence of evidence to the contrary, it is considered that the outbuilding is not lawful by reason of Section 171B (3) of the Town and Country Planning Act 1990, as amended.

The use is therefore not lawful by reason of Section 191(3) (a) of the Act and a Certificate of Existing Use is refused.

Recommendation: Refuse Lawful Development Certificate			
Case Officer:	Mr Ethan Bonthron	Team Leader:	Richard Hart
Signed:		Signed:	<i>R Hart</i>
Dated:	9 th February 2023	Dated:	9 th February 2023