

APPEALS – UPDATE

Ward: Battle

Appeal No: APP/ E0345/X/22/3310197

Planning Ref: 200036/CLE

Site: 551b Oxford Road, Reading RG30 1HJ

Proposal: Use of building to rear of 551 Oxford Road as self-contained dwelling.

Decision level: Appeal **Method:** Written Representation

Decision: Appeal Allowed

Date Determined: 25/08/2023 **Inspector:** Mr. S. Hawkins MA MRTPI

BACKGROUND

An application to obtain a Lawful Development Certificate for an existing use (CLUED) as a residential development must be supported by evidence that the use is immune from being enforced against by virtue of being in continuous use for at least 4 years.

The application to confirm the lawful use of the building at the rear of 551 Oxford Road was refused for the following reason on 6 May 2022:

The applicant has not provided sufficient evidence or other information that satisfies the Local Planning Authority that the use of the building to the rear of 551 Oxford Road, Reading, RG30 1HJ as a self-contained dwelling has been ongoing continuously for at least four years. It follows that there is no justification to grant the certificate of lawfulness applied for by the applicant.

SUMMARY OF DECISION

The Inspector's task was to decide if the Council's decision to refuse was well founded based on the appellants ability to prove a period of continuous use for four years (the relevant period) as a separate dwelling preceding the date the application was made.

Relevant Period

When assessing the 'relevant period' for a change of use (i.e. 4 years continuous use for the change of use of a building, or part of a building, to use as a single dwelling house) the relevant period can be at **any time** before the application, not just the preceding 4 years up until the date of the application.

However, in this case the Council's decision identified the four years as extending back from when the application was submitted, which the Inspector confirmed by reference to relevant appeals, to not be the correct approach.

In the case of *Ocado, R (on the application of Ocado Retail Ltd) v Islington London Borough Council* [2021] the High Court confirmed the well-known principle that a breach of condition, or material change of use, must be continuous for the relevant {ten-year} period for immunity from enforcement to be gained. Further, once the lawful use right accrues, its continued existence does not depend on that right continuing to be exercised. This is because the language of TCPA 1990, s 191(2) and (3) makes it plain that the time limit for enforcement may have expired at some point prior to the application date. The LPA must be satisfied of the lawfulness of the matter in question at the date of the application for a CLEUD, and not that that matter became lawful on that date, so the relevant period relied on can be sometime in the past and does not have to immediately precede the date of application. Once immunity

is gained, the lawful use right can only be lost via abandonment or a supervening event such as a material change of use or the creation of a new planning unit.

HEAD OF PLANNING, TRANSPORT & PUBLIC PROTECTION SERVICES COMMENT

I understand from the Legal Officer, that the correct relevant period is now taken into account when assessing CLUEDs, and therefore this should not occur again. Planning officers have also been made aware of this outcome and will ensure that legal assistance is sought when dealing with these often technical and complicated applications to ensure that the correct scrutiny is given.



Site Plan - 551b Oxford Rd at rear.