

Appeal Decision

Hearing held and site visit made on 18 October 2016

by Elizabeth Jones BSc (Hons) MCTP MRTPI

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

Decision date: 2 December 2016

Appeal Ref: APP/P1805/X/16/3155580

Land to the West of Arrow Bridge, Grange Lane, Alvechurch B48 7DJ

- 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 Mr and Mrs Carl and Jacqui Winn against the decision of Bromsgrove District Council.
 - The application Ref 15/0995, dated 20 November 2015, was refused by notice on 29 January 2016.
 - The application was made under section 192(2)(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 to establish that existing ancillary buildings and associated land would fall into Use Class B8 following the severance in ownership and occupation of the property known as Arrow Bridge.
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Decision

1. The appeal is dismissed.

Procedural matters and Background

2. The application form does not include a description of the proposed use but refers to the use falling within Class B8 of the Town and Country Planning (Use Classes) Order 1987. The Planning Practice Guidance advises that an application needs to describe precisely what is being applied for (not simply the use class).
 3. At the hearing it was clarified that the use for which a certificate of lawfulness is sought is to establish that using the ancillary building and associated land for storage following the severance in ownership and occupation of the property known as Arrow Bridge would be lawful. Such a B8 use would be unrestricted and would only be limited by the size of the building or site to which the proposed certificate relates.
 4. Section 193 (4) (a) allows a certificate to be issued for the whole or part of the land specified in the application. At the hearing the appellant submitted a revised drawing Ref: 1221/AR Rev.2. This drawing also included in Appendix B of the appellant's final comments indicates an area closer to the building to be considered in the event that the Council's intensification/open storage concerns are considered materially compromising to the appellant's case. As the revised plan shows the red line enclosing a smaller area of land than originally submitted no party would be prejudiced by my determining the appeal taking this drawing into consideration.
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5. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on whether or not the use of the appeal site for storage following its severance from the property known as Arrow Bridge would be lawful if instituted or begun at the time of the application (s192(2) of the 1990 Act). The planning merits of the application are not relevant and there is no planning application before me.
6. The Council refused the application because it considered that if the appeal site was severed from the residential property it would become a new separate planning unit in storage use. The Council consider that this would be a material change of use within the meaning of s55 of the 1990 Act and therefore to be development requiring planning permission. The appellants contend that this interpretation of the legislation is incorrect and that planning permission is not required for the use of the appeal site for storage following its severance from the property known as Arrow Bridge because the use before and after the severance would not be materially different.
7. In my determination of this appeal I have had regard to the appellants' Counsel Opinion together with the case law referred to therein¹.

Reasons

8. The appeal site is an area of land located to the west of the River Arrow and comprises a stable building surrounded by open land. The character of the appeal site is distinctly rural. There is a vehicular access to the appeal site from Grange Lane. Arrow Bridge is a residential property located east of the River Arrow. Until approximately two years ago a wooden footbridge across the river gave access between the appeal site and Arrow Bridge. This footbridge was removed having fallen into disrepair.
9. The appellants currently use the former stable building for the storage of various items including amongst other things furniture and domestic appliances in connection with the appellants' household and their family. In addition, there are a number of items such as safes, tools and filing cabinets being stored following the selling of the appellants' factory in 2005. Given their nature it is likely that the majority of the items were brought to the site via a vehicle rather than carried over the footbridge. There is no evidence that outside storage has taken place on the appeal site, only within the stable building.
10. Although the appeal site is not within the residential curtilage, its use is considered ancillary to the primary residential use of Arrow Bridge. Having regard to the three broad tests for determining the appropriate planning unit² there is no dispute that the appeal site and Arrow Bridge form one single planning unit.
11. So long as they remain ancillary to the primary use of the planning unit as a whole, ancillary uses may change, expand or decrease without constituting a material change of use. Ancillary use rights do not continue after the cessation of the primary use. The fact that the appeal site would no longer be in the same ownership as Arrow Bridge would mean that the land and building would not operate in an ancillary manner.

¹ Counsel opinion of Heather Sargent dated 2 March 2016.

² *Burdle v SSE* [1972] 1 WLR 1207.

12. Both parties agree that once the appeal site is severed from Arrow Bridge (i.e. sold separately) it would become a new planning unit. Thus, there would be two planning units – the appeal site and Arrow Bridge. Consequently, in line with the third test in *Burdle*, the appeal site and Arrow Bridge would become physically separate and distinct areas, occupied for unrelated purposes. There would be a change of the appeal site from ancillary residential use to wholly storage use by excluding the former residential use. The question is whether or not as a matter of fact and degree this would result in a material change of use of the land?
13. Planning Policy Guidance advises that there is no statutory definition of 'material change of use'; however, it is linked to the significance of a change and the resulting impact on the use of the land and buildings.
14. I note that the appellants state that the level and nature of storage will continue as at present and will not intensify. Be that as it may, intensification, involving simply more of the same is not on its own sufficient to bring about a material change of use. Rather, the increase must bring about a definable change in the character of the use made of the land.
15. At present the use of the appeal site by the appellants as ancillary to Arrow Bridge is relatively low key. There is no guarantee that once sold the use of the site for storage separate from the residential use would be the same. In my view it has the potential to be very different. A storage use, whether or not the site is owned by the appellants, is likely to differ greatly from an ancillary residential use in that it could generate a significant amount of traffic which in turn could adversely affect the living conditions of local residents and alter the rural character of the land. Notwithstanding a reduced site area to that shown on the revised drawing would confine any outside storage, given its location and rural character an unrestricted storage use albeit largely limited to the size of the building, could well alter the rural character of the appeal site to a harmful degree.
16. In my view, the consequence of using the appeal site for storage unconnected to any residential use would bring about a definable change in the character of the use which would significantly alter the rural character of this piece of land. I therefore consider that the use of the appeal site for storage unconnected to Arrow Bridge would be a material change of use within the meaning of s55 of the 1990 Act and therefore would be development requiring planning permission.

Conclusion

17. For the reasons given above I conclude on the evidence now available that the Council's refusal to grant a LDC in respect of the use of the appeal site for storage following the severance in ownership and occupation of the property known as Arrow Bridge was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

Elizabeth Jones

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mrs Jacqueline Winn	Appellant
Heather Sargent	Landmark Chambers, 180 Fleet Street, London EC4A 2HG
Adam Rabone	Agent

FOR THE LOCAL PLANNING AUTHORITY:

Constanze Bell	Kings Chambers, Manchester M3 3FT
Claire Gilbert	Planning Officer, Bromsgrove District Council

DOCUMENTS

1. Final Comments, Plainview, October 2016 on behalf of the appellant.
2. Statutory declaration made on 18 May 2010 by Mr Carl George Winn application Ref: 10/0598 on behalf of the Council.
3. Transcript of oral statement by Mrs J Winn.
4. Statement of Common Ground.