
Appeal Decision

Site visit made on 24 November 2016

by Melissa Hall BA(Hons), BTP, MSc, MRTPI

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

Decision date: 27 January 2017

Appeal Ref: APP/E3715/X/16/3150665

The White House, Oxford Road, Princethorpe, Rugby, Warwickshire CV23 9QD

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Richard Joseph Brown against Rugby Borough Council.
 - The application (Ref.R15/0490) is dated 24 February 2015.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The certificate of lawful use or development is sought for the existing use of the buildings for storage, fabrication, car repairs and light engineering within Use Classes B1, B2 and B8.
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Decision

1. The appeal is dismissed.

Preliminary and Procedural Matters

2. For the avoidance of doubt, the planning merits of any future use or operations are not relevant and are not therefore an issue for me to consider in the context of an appeal made under section 195 of the Town and Country Planning Act as amended. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
3. The appeal was made against a failure to give notice within the prescribed period of a decision on the application. However, in its appeal statement the Council confirms that had it been in a position to determine the application, it would have recommended that a LDC should not be issued. It considers that the variety of different uses on the site results in there being a requirement to show in which Use Class each unit has been operating for a period in excess of 10 years. It contends that without this evidence, the authorised use cannot be established and a LDC issued, notwithstanding that the units may have been used for more than 10 years for B1, B2 and B8 purposes.

Main Issue

4. Against this background, the main issue is whether a decision to refuse to grant a LDC would have been well founded.
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Reasons

5. The LDC application relates to commercial units located at The White House, Oxford Road, Princethorpe, which the appellant states have been used for a variety of purposes all falling within Use Classes B1, B2 and/or B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended) since 1 January 2005¹.
6. Under section 171B(3) of the 1990 Act (as amended), and in relation to the change of use of the land, no enforcement action may be taken after 10 years from the date of any breach of planning control. Any unauthorised breach must continue substantially uninterrupted to acquire immunity from enforcement action.
7. In any LDC application, an applicant is required to provide evidence that is sufficiently precise and unambiguous to justify the grant of a certificate. The burden of proof is firmly on the applicant, the relevant test of evidence being the balance of probability. If the evidence is insufficient and/or it cannot be shown that the use has subsisted for a continuous period of 10 years prior to the date of the application, then a certificate cannot be issued.
8. In this case, the appellant's evidence in support of the application consists solely of his Statutory Declaration; it states that each of the units has been occupied by various tenants for commercial purposes in connection with their respective businesses. Each tenant's occupation of a unit has been formalised either by a grant of a lease or under the terms of a written tenancy agreement. Although I have not been provided with a copy of the list entitled '*VOA Business Rates: Search Results*' to which the Council refers, I understand that each unit is individually assessed as a separate rating hereditament for business rates purposes. There are therefore 18 separate units for which the B1, B2 and B8 Uses are being claimed.
9. Indicated in a schedule attached to the Statutory Declaration are details of the current uses and occupiers of the units, and when those uses commenced. The individual uses include metal fabrication, vehicle and mechanical repairs, the manufacture of windows and doors, a joinery workshop and the storage of medical products. The Council does not dispute that these uses fall within Use Classes B1, B2 and B8. I do not disagree.
10. However, whilst the schedule shows that several of the current occupiers have leased their units since between 2003 and 2007, the majority have not leased their units until much later and mostly between 2013 and 2014. At my site visit, I also observed that some of the occupiers shown in the schedule have either vacated their units or moved to a different unit. Other units are occupied by entirely different occupiers to that shown in the schedule. Additionally, Unit 18 (which is in the schedule as vacant) is now occupied. This reflects the short term, transient nature of the leasing arrangements to which the appellant refers. Be that as it may, it also casts doubt in my mind as to whether a continuous 10 year period of B1, B2 and/or B8 use has occurred in respect of each of the 18 units.

¹ Whilst the application form states that the units have been in B1, B2 and B8 Use for a period in excess of 30 years and the appeal form states that they have been used for these purposes since 1985, the appellant's evidence refers primarily to 1 January 2005 as the date from which the use has been subsisting for a continuous 10 year period.

11. Furthermore, the appellant confirms in his Statutory Declaration that *'in addition to the current use of the units, individual units have, since 1 January 2005, been use for a considerable number of other different commercial purposes'*². I cannot be certain whether or not these are commercial purposes in Use Classes B1, B2 and B8 since there is little evidence before me that confirms this to be the case.
12. In its consideration of the application, the Council requested copies of the tenancy agreements for each individual unit for at least the last 10 years. However, the appellant did not concede to this request on the grounds that many of the units have been let on a short term basis in the period since January 2005, which would result in scores of agreements being submitted. He also asserted that the information requested relates to historic tenancies, the contents of which are confidential and inappropriate for public record.
13. Whilst the solicitor acting on behalf of the appellant explained that he had seen copies of the historic tenancies, and was thus prepared to submit a Statutory Declaration to confirm that fact, I have not been provided with a copy of the same.
14. I accept that the appellant has provided some limited evidence of B1, B2 or B8 use in relation to each of the units. Nevertheless, for the most part it relates to current occupiers, many of whom have taken occupation within the last 10 years. Those occupiers who have been leasing their units for a continuous period of ten years prior to the application being made represent a small minority of the total number of units on the site. Consequently, it has not been evidenced that each unit has been used continuously for the claimed purposes for a period of 10 years or more.
15. Thus, I find that the submitted evidence falls short of that required to clearly show, on the balance of probability, that the continuous B1, B2 and/or B8 use of all 18 units, as opposed to occasional or intermittent use, has been established for 10 years prior to the date of the application.

Conclusion

16. For the reasons given above, I conclude that an LDC should not be granted and the appeal should therefore fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Melissa Hall

Inspector

² Paragraph 7 of the Statutory Declaration.