The Planning Inspectorate

Appeal Decision

Inquiry held on 7 February 2017

Site visit made on 7 February 2017

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS

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

Decision date: 16 March 2017

Appeal Ref: APP/N2739/X/16/3147591
Farm, Lowgate Crossing, Lowgate, Selby DN14 OED

- 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 P Liddle, Iceline, against the decision of Selby District Council.
- The application Ref 2015/1129, dated 4 October 2015, was refused by notice dated 15 March 2015.
- 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 use of the building for commercial storage (B8).

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Reasons

2. The appellant indicates that the commercial use of the building by Iceline, then known as PEL, commenced in 2005, after his purchase of the land towards the end of 2004. The use commenced in an existing building, which at the time was not clad as now and did not have the current shutter door. These were added in about 2007 when the building was refurbished. The main business of PEL/Iceline is the dismantling of commercial refrigerators, initially mainly for Sainsbury's, but subsequently for a larger number of customers. The insulated panels were returned to the appeal building and stored awaiting either reuse elsewhere or scrapping.

3. While most of the witnesses have some 'stake' in the use of the building, Mr Dooler, the neighbour at Lowgate Stud, has no connection, and if anything would be more likely to be an objector to the use, given its proximity to his property. He confirms that the storage facility has been in existence and commercially used since 2005.

4. There was some question of the extent of view that Mr Dooler has of the storage unit, given that his house is a little away from the unit and that there is a tall fence between the properties. However, at the site visit it was seen that the fence is slatted and allows views through when reasonably close to the fence. There are also views from the upper windows of the house. While these

views would not be directly to the storage unit, they provided clear views of the access up to it, so comings and goings would be visible and Mr Dooler would be able to see the commercial vehicles going to the back of the site to the storage unit.

5. The courts have held that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their own, or 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 applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

6. The Council notes that Council Tax has not been paid for the commercial use of the premises until the more recent storage use by the brewery. Someone from the appropriate department did visit the appeal site around 2007/8, but no specific rates were requested. The site also has a use by kennels. It is not known why business rates for the storage use were not requested. While business rates paid may support a case, the reasons for imposing them do not necessarily accord directly with planning concerns and the fact that business rates have not been paid for the use does not mean the use has not occurred.

7. I also note that the building was not shown on the retrospective planning applications made around 2007/8. The appellant explained that as the building had nothing to do with the kennels use, which was under consideration in the application, there was no need to show the storage building. It seems to me that while all buildings might be indicated, there is no specific need or requirement to show the storage building, given its use was not being sought to be confirmed in that retrospective application. I do not accept that because it was not shown it was not there, given the neighbour's clear evidence of its use and existence.

8. The appellant's initial evidence indicates that Iceline's occupation of the building ended around May 2014, followed in July 2014 by Great Heck Brewing. Although the change in occupation was not 'neat', with some 'joint' occupation. The Great Heck Brewing company noted that it had to request stock from Iceline to be removed, so the whole building could be used. Great Heck Brewing knew its occupation commenced in July as that was when first payment was made. To my mind, a single break as short as about 2 months between one occupier vacating a building and a new occupier coming in is not sufficient to mean that the use of the building over a period of 10 years is broken. It also was evident from the considerable material stored in the lean-to at the end of the building that there is still Iceline's storage, supporting the dual occupation.

9. However, the presence of the lean-to with industrial racking and storage does not accord with the initial evidence provided by the appellant, which was that Iceline vacated the building in May 2014 and the brewing company took over around July. At the site visit, when this area was seen and the use questioned, the appellant acknowledged his continued use of this part of the building and that it was a general use associated with the rest of the site, clarifying later that this related mainly to a cement mixer which was seen in the lean-to. It was also clearly seen that the area was full of industrial type racking and many aluminium strips, clearly of a commercial nature. This part of the building has a

separate external access and is physically separate from the remainder of the use of the building.

10. I have some difficulty with the discrepancy in the evidence, but given that identification of the industrial racking and associated storage supports the dual and continued storage use of the building by Iceline after 2014, and that neighbour's evidence, I feel that on the balance of probability the use did continue in the way identified.

11. Overall, I consider that on the balance of probability the appellant's evidence is clear that there has been commercial use of the building since 2005, with refurbishment of the building in 2007 and transfer of the main use from Iceline to the brewery in 2014. This is supported by other suppliers, whom I accept have some interest in the use. However, the presence of the building and use from 2005 is also supported by the neighbour who has no direct interest. Not only is the neighbour in a good position to observe the presence of the building and its use, he would also be the one most likely to want to identify when the building was there and the use started. The lack of business rate payment and not showing the building on the plan is not sufficient to contradict or otherwise make the appellant's version of events less than probable.

12. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of use of the building for commercial storage (B8) was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Graham Dudley

Inspector

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on date of application the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The appellant has demonstrated on the balance of probability that the building shown hatched on the attached plan has been used continually for commercial storage for 10 years and the use continues now.

Signed

Graham Dudley

Inspector

Date: 16 March 2017
Reference: APP/N2739/X/16/3147591

First Schedule

Use of the building for commercial storage (B8).

Second Schedule

Land at Farm, Lowgate Crossing, Lowgate, Selby DN14 OED

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

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Plan

This is the plan referred to in the Lawful Development Certificate dated: 16 March 2017

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS

Land at: Farm, Lowgate Crossing, Lowgate, Selby DN14 OED

Reference: APP/N2739/X/16/3147591

Scale:NTS