The Planning Inspectorate

Appeal Decision

Site visit made on 3 July 2017

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 11 July 2017

Appeal Ref: APP/E2001/X/16/3165075

The Workshop, Bramble Lodge, Station Road, Cranswick, Driffield, East Yorkshire YO25 9QZ

- 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 James Halligan against East Riding of Yorkshire Council.
- The application (Ref. 16/01430/CLE) is dated 25 April 2016.
- 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 manufacturing of flexible duct connectors, sheet metal working, storage of materials, business equipment and tools, plant, machinery, trailers and aggregates and metal.

Decision

1. The appeal is dismissed.

Reasons

2. Bramble Lodge is a detached dwelling in a residential plot. To the east of the plot is the land, about 800 square metres, that is the subject of the appeal. On the land is a workshop, a stable building and two containers. Stored on the land and in the stables are a variety of building materials mainly associated with groundworks, such as paving, kerb edging and drains. Also on the land at the time of the site visit was a telehandler vehicle. Within the workshop are a small office, a large work table, an electric mitre machine, sewing machines, a welding machine, a lifting beam, and materials and templates.

3. Planning permission M.3134(B) was granted in 1998 for 'change of use of land to form part of the curtilage of existing dwelling and erection of a shed'. Condition 2 of the permission states that 'The shed shall only be used incidental to the enjoyment of the dwelling house and not for any business purpose'. The shed is the workshop and the Appellant claims that "…it has been (in) use by me for my business since it was constructed in 1998". The Appellant's business is Flex-A-Duct which has two elements; the manufacture of flexible duct connectors and groundwork contracting. The workshop is used for the manufacture of flexible duct connectors. The Appellant claimed in a letter to the Council dated 21 April 2013 that the "…machinery, items and materials kept in the yard area are either personal items or they belong to Flex-A-Duct. The building materials are surplus to the self-build of Bramble Lodge. Building materials used for construction away from Bramble Lodge are delivered directly to the site…and any surplus materials…" are returned to the builder's merchants.

4. The application form indicates that the existing use for which an LDC is sought relates to a Class B2 'General Industrial' use. From evidence submitted with the Appellant's appeal statement the two elements are clearly part of his single business; invoices for plant and materials used in connection with the groundwork contracting element, for instance, are made to Flex-A-Duct. But groundwork contracting, and the storage of materials, equipment and plant for such a use, is not a Class B2 use, it is a *sui generis* use. An LDC cannot therefore be granted for the appeal land for 'Class B2 'General Industrial' use'.

5. The application is specific in that it describes the use, a mixed use, for which the land is used and for which an LDC is sought. The Council claims that the mixed use is not a use in its own right but is rather an incidental use to the residential use of Bramble Lodge. Furthermore, they claim that even if it was found to be a mixed use in its own right it hasn't subsisted for a period in excess of ten years, such that it is now immune from enforcement action and is thus a lawful use.

6. The main issue is whether the mixed use of the land is an independent use that has subsisted for in excess of ten years before the date of the application. The burden of proof in an LDC application is on the applicant though there shall be no good reason to refuse the application provided the applicant's evidence, which need not be corroborated by independent evidence, is sufficiently precise and unambiguous to justify the grant of an LDC on the balance of probability.

7. The Council has accepted, for many years, that the manufacture of flexible duct connectors was occurring in the building on the land but prior to April 2013 they accepted that the use was sufficiently low key in character to be ancillary to the residential use of Bramble Lodge. At that time, following a site visit, they concluded that the land was in use as a builder's yard and they advised the Appellant that "…the Flex-A-Duct use had gone beyond ancillary and planning permission would be required for both the land and buildings".

8. The Appellant clearly has been manufacturing flexible duct connectors in the workshop since before the relevant ten year period began. However, he does not claim to ever have employed any one to assist in the manufacturing process and given that this is only one element of his Flex-A-Duct business it is not clear how much of his working time has been spent in the workshop. In this regard, though he has submitted letters from customers that confirm his supply of flexible connectors there are no invoices for the relevant period that give an indication of the quantities of materials purchased or the number of connectors supplied.

9. All except two invoices, in fact, are for plant, materials and equipment supplied for the groundwork contracting element of his business. Some of the invoices are for significant sums paid for a JCB in 2008, a Terex roller and a JCB forklift in 2009, a JCB telehandler in 2011, and a Terex high lift dumper and a JCB mini digger in 2012. The payments for these items of plant, all purchased within the relevant ten year period, indicate that the groundwork contracting element of his business must have been a significant income generator and leads to a conclusion that he has worked away from the land for a significant percentage of the ten year period. At such times the Appellant cannot have been at the workshop engaged with the manufacture of flexible duct connectors.

10. This factor will have contributed to the Council's stance, up until April 2013, that the workshop and the land were in a use incidental to the residential use of Bramble Lodge. Slightly less than two years before that date, in a Design and Access Statement that accompanied an application dated 14 June 2011 for the

'demolition of existing structures and erection of new dwelling' on the appeal land, it was stated that "The application site stands within the curtilage of Bramble Lodge…On the proposed site there are currently two existing buildings…the stables are used for storage and equestrian use". This statement, on the Appellant's behalf, will have contributed to the Council's stance up to April 2013.

11. The payment of non-domestic business rates, contracts for the removal of commercial waste, and a separate business telephone line, do not provide conclusive evidence that the land has been in the claimed separate use for the relevant ten year period. Neither does an invoice for the courier of manufactured items from the land in November 2011, which only demonstrates that the Appellant was making and sending items during that month.

12. On the Appellant's own evidence, in the aforementioned letter of April 2013, building materials on the land were "…surplus to the self-build of Bramble Lodge" and if that was the case, at that time, the materials cannot have been associated with a business use of the land. If the building materials, plant and equipment on the land at the time of the site visit are associated with a business use of the land that use can only have subsisted for the latter part of the relevant ten year period.

13. The workshop has been used for the manufacture of flexible duct connectors throughout the relevant ten year period but at a level that justifies a conclusion that the use of the workshop was incidental to the residential use of Bramble Lodge. Furthermore, on the evidence submitted it is likely that the land has been used for other incidental residential purposes such as storage and, possibly, equestrian use. If the land has been used for the storage of plant, equipment and materials associated with the groundwork contracting element of Flex-A-Duct then it is likely that this use has only subsisted during the latter part of the relevant ten year period. Taking all these matters into account and all other matters mentioned in support of the appeal there is insufficient precise and unambiguous evidence to justify the grant of an LDC, even on the balance of probability.

14. For the reasons given the Council's stance that an LDC should not be granted for 'manufacturing of flexible duct connectors, sheet metal working, storage of materials, business equipment and tools, plant, machinery, trailers and aggregates and metal' at The Workshop, Bramble Lodge, Station Road, Cranswick, Driffield, East Yorkshire is well-founded and the appeal fails.

John Braithwaite

Inspector