



Appeal Decision

Site visit made on 3 September 2019

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2019

Appeal Ref: APP/C1570/X/18/3209446

The Grain Store, Waltham Hall, Bambers Green Road, Takeley CM22 6PF

- 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 Latham against the decision of Uttlesford District Council.
 - The application Ref UTT/17/3474/CLE, dated 21 November 2017, was refused by notice dated 30 January 2018.
 - 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 B2 – General industrial.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council contends that the appeal is invalid because the date of the decision was 30 January 2018 and the appeal documents were submitted to the Council on 16 August 2018. However, there is currently no time limit within which an appeal against the local authority's refusal of and LDC application has to be received. On that basis the appeal is valid.

Main Issue

3. The main issue is whether the Council's refusal to issue an LDC was well-founded. In this case that turns on whether the appellant has proved on the balance of probabilities that the use of the property changed to B2 General Industrial purposes on or before 21 November 2007.

Reasons

4. In an appeal relating to a lawful development certificate the onus of proving the relevant facts rests with the appellant, and the standard of evidence is the balance of probabilities. The appellant's own evidence does not need to be corroborated with independent evidence, and if there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate provided that it is sufficiently precise and unambiguous.
5. The appellant contends that the use of the site for the relevant period is Use Class B2 – General industrial. This is set out in the evidence submitted and also the application form. It is the appellant's assertion that repairing and

maintaining of plant, machinery and tools is an industrial process. It is also asserted that the use does not fall within Use Class B1 because the nature of the activity is such that it could not take place without causing disturbance by reason of noise, vibration, fumes, smoke, soot, ash, dust or grit and would not be suitable in a residential area. It is my understanding that the processes taking place involve using substantial plant and machinery.

6. The appellant also states that the business is at its most effective when there is little in the way of tools, plant or machinery at the site because they are out on hire, most typically in the building trade. It is contended that the storage element of the use is ancillary to the main activity.
7. The evidence submitted by the appellant, including that of Speedy Hire Centre Services Ltd confirms that the premises has been used for storing and distributing tools and materials. A plant hire yard or depot falls within sui generis use rather than a B2 general industrial operation. In addition, a tool hire company would be a B1 use and tool storage and distribution would be a B8 use. It is evident that repairing and maintaining any article is defined as an industrial process and therefore I recognise that there may have been some industrial processes taking place within the stated period. However, it is also quite clear that those processes are only part of a broader use that has been taking place on the premises. The broader mix of activities leads me to the conclusion that the property has been used for sui generis purposes rather than B2 general industrial during the immunity period. As such, there is insufficient evidence before me to conclude that the use for which the certificate is being sought has occurred continually for the relevant period.
8. The evidence submitted with the application indicates that the use commenced on 11 January 2008 when the lease with Speedy Hire Centres (Southern) Limited was signed. The accompanying letter also states that the lease was a renewal, but there is no firm evidence of when the use actually started. However, the statutory declarations submitted with the application are evidence of storing a distributing tools and materials which, as previously set out do not constitute a B2 general industrial use.
9. The onus of proof is on the appellant and in this particular case the relevant facts are not proven with the submission. As such, I conclude that the appellant has failed to prove on the balance of probabilities that the use of the property changed to B2 general industrial purposes on or before 21 November 2007.

Conclusion

10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of B2 – General industrial was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

A A Phillips

INSPECTOR