



Appeal Decision

Site visit made on 6 January 2020

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 06 February 2020

Appeal Ref: APP/A1530/X/19/3231392

Ransomes Cottage, Wigborough Road, Peldon CO5 7RA

- 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.
 - The appeal is made by Mr & Mrs T Walklett against the decision of Colchester Borough Council.
 - The application Ref 182743, dated 18 October 2018, was refused by notice dated 21 December 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 the use of outbuilding for B1(a&c) commercial use purposes.
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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.

Application for Costs

2. An application for costs was made by the appellants against the Council. This application is the subject of a separate application.

Procedural Matter

3. There is a timber lean-to structure which adjoins the outbuilding. It was confirmed at the site visit that the application excludes this structure. The application relates solely to the outbuilding and it was therefore incorrect for the application plan to show any other land surrounding it.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant a lawful development certificate ('LDC') was well-founded.

Reasons

5. In order for a LDC to be granted under section 191 of the 1990 Act, the burden of proving relevant facts in this appeal rests on the appellants, and the test of the evidence is the balance of probability. The planning merits of what has been applied for cannot be taken into account.
6. The application concerns the use of an existing building adjacent to Ransomes Cottage for which planning permission was granted in 1990 as a garage. Since

2004 the appellants have operated a business from the building which they describe as providing a support service for motor racing cars. On the ground floor there is a workshop where the servicing, repair and finishing "to bespoke elite racing cars" takes place along with other works in conjunction with expansion of the business into other forms of fabrication works. Another floor has been added which operates as the office for the company base.

7. The application was refused because the Council considers that the existing use does not fall within Class B1 of the Town and Country Planning (Use Classes Order) 1987 ('the UCO'). Instead, the Council considers the use to fall more within Class B2 (general industrial) or *sui generis*, being a use which does not fall within a class of use specified in the Schedule to the UCO which contains the classifications. Some uses are explicitly excluded from the Schedule, but none of these relate directly to the use taking place.
8. A Class B1 business use comprises all or any of the following purposes (a) as an office other than a use within class A2 (financial and professional services), (b) for research and development of products or processes, or (c) for any industrial process, being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.
9. In this case, the application is made on the basis that the existing use falls within Class B1(a) and (c). Neither the application form nor the Council's decision identify the specific use to which the building is put.
10. An LDC application under section 191(1)(a) must relate to a specific existing use. Whilst section 191(5)(b) states that where a use is within a class in the UCO it should be identified by reference to that Class, this does not mean that a certificate should be issued simply for a class of use. The exact terms of a LDC and the development specified will be the base against which any subsequent change may need to be assessed. For example, if the UCO Classes are changed. A LDC should describe the actual use and refer to it as being within any appropriate UCO Class.
11. Therefore, the application and this appeal should be considered in light of the specific use that has taken place.
12. With those factors in mind, it is evident that the description of the use applied for should be modified to identify the specific use for which the LDC is sought. Having consulted the parties, the appellants described the use as: "Use of ground floor for undertaking light assembly works to specialist motor vehicles including servicing and limited repairs; use for fabricating exhibition props and staging for TV, films and similar events; and use of first floor for office purposes as the company base in conjunction with both the ground floor activities and operations elsewhere."
13. In response, the Council submitted that the "use for fabricating exhibition props and staging for TV, films and similar events" is a new element to the appeal which had not previously been evidenced in the application or appeal documentation. It points to the Appeal Statement which states: "The business operating from the appeal site involves specialist servicing, repairs and finishing to bespoke elite racing cars" and describes how "The business has since grown and expanded to fabricating props and staging for TV, films and events the majority of which are manufactured from premises elsewhere in the

Borough, although the racing car business has remained at Ransomes Cottage”.

14. The Statement which accompanied the original application makes clear that the business specialises in providing a support service for motor racing cars. It includes the text quoted above, but also goes on to say that the business commenced from the building in 2004 and “Some minor exhibition and staging work continues to be undertaken at the application site. This involves metal fabrication works which are usually to a specific order”. The application was supported by copies of purchase notes for the production of items to Elstree Studio.
15. It is apparent that the claimed use included those fabricating works although the statements indicate they have been relatively minor in comparison to the use associated with motor racing on which more emphasis was placed. For instance, in the Appeal Statement it says: “The entire premises form one single planning unit used by one single low-key business for the purposes of assembling specialist high value motor cars” with no mention of any other use. More detail was given in a letter of clarification from one appellant to the Council in November 2018 when reference was made to works undertaken for bespoke sets for film, TV and other bodies.
16. The position was not helped by the application form identifying a use class rather than describing the development in words. Nevertheless, I am satisfied that the description is a fair reflection of the use described within the application and appeal.
17. I shall exercise the power in section 191(4) of the 1990 Act to modify the terms of the application in the manner submitted by the appellants as that is the use for which the LDC is sought. As part of my assessment I shall consider whether a LDC should be granted for all or any part of the use applied for.
18. In determining an application for an existing use it is pertinent whether at the time of the application the use as described has taken place for a period in excess of 10 years for the use to have become immune from enforcement action under section 171B(3) of the 1990 Act.
19. In the Officer’s delegated report, it is stated “that the business as described has, on the balance of probability been established for 10 years or more.” In light of this, I asked the Council to confirm if the sole issue in dispute is whether the use falls within Use Class B1. It confirmed that to be the case.
20. Clearly, the Council’s concession on the length of time the business has operated from the site related only to the activities involving the servicing, repair and finishing of bespoke racing cars rather than the more recent fabrication of props and staging once the business expanded.
21. It is undisputed that the use related to racing cars and an office has been ongoing for a period in excess of 10 years. This use commenced in 2004. In a letter to the Council on 29 November 2018 the appellants explained how the business had evolved. With reference to activities including “contracting bespoke parts of sets and props for the film, TV and museum industries” the appellants say: “Over the past 4 years we have grown this new side of the business using the offices at Ransomes Cottage as our design studio and HQ”.

Therefore, it appears that the expansion into those fabrication works started from 2014.

22. As the use related to racing cars is accepted to be immune from enforcement action under section 171B(3), a LDC should be granted. The issue requiring determination is whether the use falls within a use class which should be identified in the certificate. The answer to that dictates whether the LDC should include the fabrication of props and staging. If the uses fall within the same use class, then there will have been no material change of use for 'development' requiring planning permission to have taken place. On the other hand, if the existing lawful use is *sui generis* or there became a mixed use upon expansion of the business resulting in a material change of use then that use will not have been ongoing for 10 years to have become immune from enforcement.
23. The parties disagree on whether the use for vehicle repairs fell within Class B1. The Council argues that vehicle repairs would normally comprise a Class B2 use. As the Council says, vehicle repairs and maintenance generally involve a wide range of activities some of which can be noisier than others.
24. The use would only be within Class B1 if the activities undertaken over the relevant 10-year period could be carried out in any residential area without detriment to the amenity of that area by reason of noise. The outbuilding is located among a short row of residential properties on reasonably wide plots. Bearing in mind that the nearest dwelling is the appellants' own home, it is perhaps unsurprising that there have been no complaints of noise. There are other dwellings that could be affected by noise. However, according to the appellants the nature of the activities are not audible beyond the building.
25. The Council cites extracts from the Land Use Gazetteer on racing car disassembly, assembly, rebuilding and reconditioning all being within Class B2. The Gazetteer is not conclusive as noted by the Inspector in the Gloucester appeal¹ quoted by the appellants where the publication was similarly raised in the context of whether a use fell outside Class B1. Consideration is required as to how the building was actually used rather than broad categorisations.
26. The Council has given examples of the types of activity that could generate noise in undertaking vehicle repairs. These include angle grinding which the appellants say has only been undertaken rarely. The appellants submit that the work undertaken is of a specialist nature, primarily using hand tools and any extensive body work repairs and paint spraying is contracted elsewhere. The circumstances are not the same of those in the Appeal Decision produced by the Council² where the repair and maintenance of motor vehicles was found to fall squarely within Class B2.
27. The workshop area on the ground floor is open plan with shelving along one wall for tools and storage. There is potential for the car repair activities to be a Class B2 use, but according to the appellants that is not the way that the building has been used. There is very little to contradict the appellant's version that the actual use has not in fact generated noise liable to be detrimental to residential amenity. From the appellants' account the way that the use on the ground floor has been practised since 2004 fits comfortably within Class B1(c).

¹ Appeal ref: APP/U1620/X/09/2097960 dated 4 June 2009

² Appeal ref: APP/Q1445/C/12/2169597 dated 30 August 2012

28. The office occupies a smaller area upstairs with limited headroom which is laid out with tables and chairs and drawing board. The Council considers that the office use is "ancillary to the dominant use of the building as a workshop and repair area for racing cars". However, the new description says it is also used in connection with "operations elsewhere" which are said to take place at other premises, on site and on film sets etc. The supporting information referred to it as the "HQ" for the business which is not limited to operations at Ransomes Cottage. In terms of hours spent, the appellants maintain that the office is used to a greater extent than the workshop. The office use described is a primary use in its own right which falls within Class B1(a). Class B1 comprises all or any of the sub-categories within (a) to (c) and so the use will have remained within Class B1.
29. In the Council's photographs taken during site visits there is some evidence of storage and I note that this has included domestic items. However, there is nothing before me to indicate that the storage use is anything other than ancillary to a primary business use or *de minimis*. Indeed, I observed some domestic items of storage during my site visit, but they were limited in area and formed a very small part of the overall use.
30. As a matter of fact and degree the evidence points sufficiently clearly to the established use comprising uses within Class B1. When the business expanded in 2014 to include the fabrication works the use of the workshop remained within Class B1(c). Section 55(2)(f) and Article 3(1) and the Schedule to the UCO permit changes of use of buildings, or any part thereof to other uses within the same Use Class. No development is involved with a change within the same Use Class even if the character is substantially different, and the change would otherwise be material. If in future activities are undertaken to take the use outside Class B1 then the LDC may be of no assistance to the appellants. All that would be certified as lawful is the specific use within that use class.
31. I find that the appellants have demonstrated on the balance of probabilities that the use of the building comprised an office and workshop used for an industrial process which could be carried out in any residential area without detriment to the amenity of that area by reason of noise. As such, the use fell within Class B1 of the UCO which at the time of the application had been carried on for a period in excess of 10 years to be immune from enforcement action.

Conclusion

32. 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 the use applied for 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.

KR Seward

INSPECTOR

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 18 October 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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 use as described falls within Class B1.(a) and (c) of the Town and Country Planning (Use Classes Order) 1987 (as amended).

A use within Class B1 has been ongoing for a period in excess of 10 years to have become immune from enforcement action under section 171B(3) of the 1990 Act.

Signed:

KR Seward

Inspector

Date: 06 February 2020
Reference: APP/A1530/X/19/3231392

First Schedule

Use of ground floor for undertaking light assembly works to specialist motor vehicles including servicing and limited repairs; use for fabricating exhibition props and staging for TV, films and similar events; and use of first floor for office purposes as the company base in conjunction with both the ground floor activities and operations elsewhere, being uses within Class B1 of the Town and Country Planning (Use Classes Order) 1987 (as amended).

Second Schedule

Land at Ransomes Cottage, Wigborough Road, Peldon CO5 7RA

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.



Plan

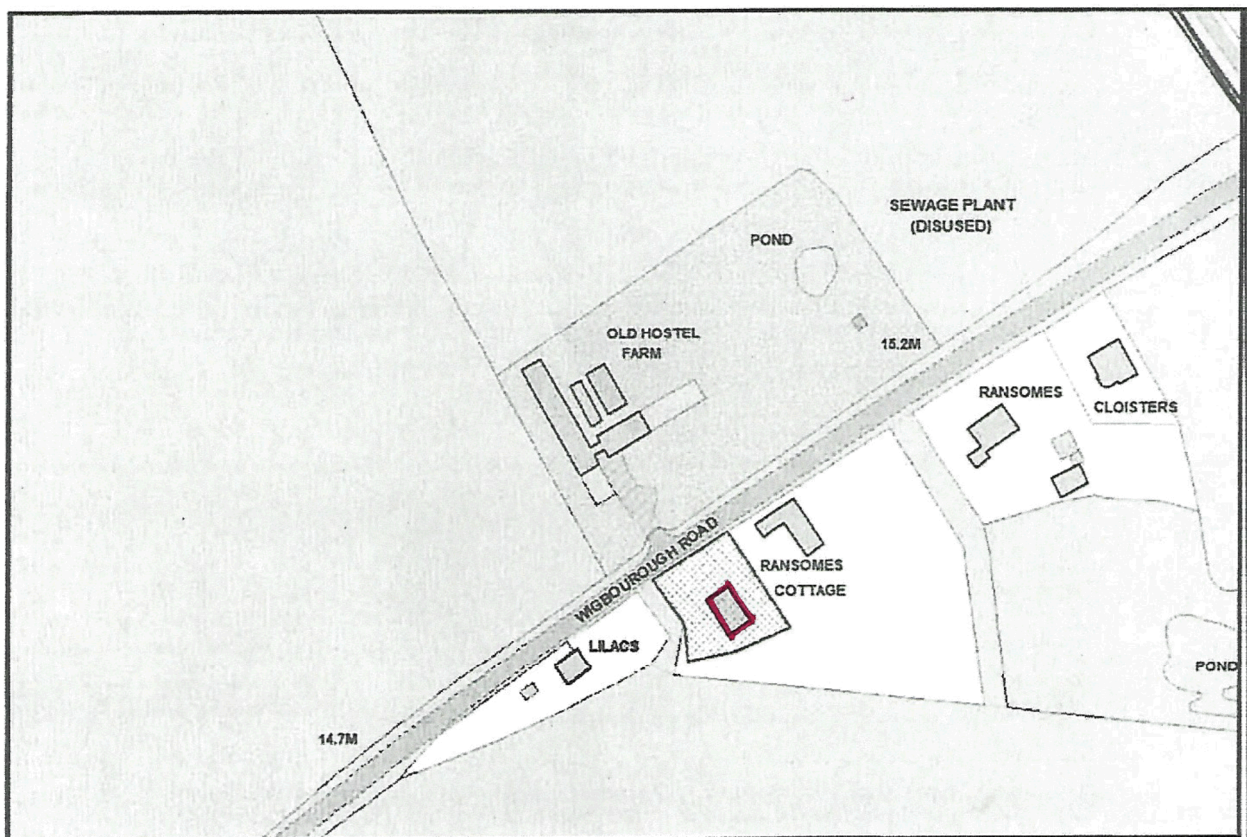
This is the plan referred to in the Lawful Development Certificate dated: 06 February 2020

by **K R Seward Solicitor**

Land at: Ransomes Cottage, Wigborough Road, Peldon CO5 7RA

Reference: APP/A1530/X/19/3231392

Scale: DO NOT SCALE



Application No: 182743

Location: Ransomes Cottage, Wigborough Road, Peldon, CO5 7RA

Scale (approx): 1:1250