



Appeal Decision

Site visit made on 25 February 2020

by J A Murray LLB (Hons), Dip. Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 29th February 2020

Appeal Ref: APP/U5360/X/19/3227878

2A Brenthouse Road, Hackney, London, E9 6QG

- 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 in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Property Development Solutions Ltd against the decision of the Council of the London Borough of Hackney.
 - The application (Ref.2018/3333), dated 5 September 2018, was refused in part by the Council by notice dated 21 November 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 B1(a) Office space with ancillary workshop and storage.
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Decision

1. The appeal is allowed and it is directed that the certificate of lawful use or development granted by the Council of the London Borough of Hackney on 21 November 2018 under reference 2018/3333 be modified by:
 - (a) substituting, as the "Reasons for Approval", the following:

"More than 10 years before 5 September 2018, the use of the land changed to the use described in the First Schedule and that use then continued for 10 years without substantial interruption."; and
 - (b) substituting, as the description of the "Proposal" and the details in the First Schedule, the following:

"Use as an arts and design office/research and development workshop, within Class B1 of Schedule 1, Part B of the Town and Country Planning (Use Classes) Order 1987.

Background

2. The appellant applied for an LDC in the terms set out in the heading above. However, using its powers under s191(4) of the 1990 Act, the Council substituted the following description in the statement of the "Proposal" and in the First Schedule of the LDC:

"Existing use of the property as B1(b) business (arts and design practice)."
3. The Council granted an LDC in those terms, being satisfied on the balance of probability that the premises had been used for "research and development of

design/building products” for a continuous period of not less than 10 years prior to the submission of the application. Whatever the appropriate description, I have no reason to doubt that the existing use had subsisted throughout the relevant 10-year period. There is also nothing to dispute the appellant’s evidence that, historically, the site was used as a furniture factory.

4. The appellant has appealed because it maintains that the use is primarily as an office, and it therefore falls within Class B1(a). Whilst the appellant acknowledges that the workshop use could be described as “research and development” of products, as covered by Class B1(b), it says this, and any related storage, is an ancillary function.
5. Section 195 provides for appeals against refusals of LDCs and refusals in part. By virtue of s195(4), references to a refusal of an application in part include a substitution of the description in the application.

Main Issue

6. Having regard to s195(3), the main issue is whether the Council’s refusal of the LDC in part was well-founded.

Reasons

7. Under Schedule 1, Part B of the Town and Country Planning (Use Classes) Order 1987 (the UCO), the following uses all fall within Class B1:

“Use for all or any (my emphasis) 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.”

8. It follows from this that (a), (b) and (c) are not separate Use Classes. The Use Class is simply B1 and (a) – (c) all fall within it. By Article 3(1) of the UCO, changes between (a), (b) and (c) shall not be taken to involve development.
9. The Council’s grant of an LDC with respect to Class B1(b) would not therefore prevent the premises being used as a B1(a) office without planning permission. That said, changes to uses outside Class B1 will not necessarily require planning permission; they will only need planning permission if they involve a material change of use. For this reason, a description of the current use beyond a simple reference to Class B1 would serve a useful purpose in setting a baseline against which the materiality of future changes could be assessed.
10. The Council’s evidence does not provide a detailed description of the activities taking place on the appeal site beyond the expression “arts and design practice.” The appellant’s evidence is that:

“... the business involves the design and development of a wide range of art, including lighting installation for governmental institutions and museums worldwide and small scale prototypes to showcase our ideas.”

11. What I saw during my site visit is consistent with that description. The building on the site is quite small, with 3 rooms of similar size marked 'A', 'B' and 'C' on the submitted ground floor plan and a smaller room marked 'D'. There is also a shipping container in the yard to the front of the building.
12. At the time of my visit, rooms A and B were primarily set up as office spaces, with 3 desks in each and computers on 2 of the desks in each room. Room A had lots of shelving on the walls with some small finished items displayed, but also many items stored in boxes marked e.g.: "Wood Equipment"; "Plastic Objects"; "Resin"; "Holes" (rather intriguingly); "Polystyrene" etc. Room B also had similar shelving with more stored items and lots of paperwork and reference materials.
13. Room D was serving as a lobby and kitchen, but also provided further storage space. There was an adjoining W.C. and another small adjoining room housing, among other things, a laser cutter.
14. Room C was clearly in use as a workshop, fitted out with benches, hand tools and some power tools, including a pillar drill, band saw, circular saw and belt sander, as well as what appeared to be an oven and a kiln. Materials were also stored in this room, including on a small mezzanine floor area, accessed via a ladder. The shipping container in the yard provided additional storage space for materials such as wood and plastic.
15. The appellant's written evidence included photographs of some of the design practice's projects, such as a canopy for "the world's largest botanic gardens" and a very large "future slide". Clearly such items are too big to be manufactured on this modest site. I accept the appellant's evidence that the process normally starts on a computer or through sketches, with concepts then being tested by producing prototypes in the workshop area, but that final pieces are generally manufactured off site.
16. Nothing I have seen or read indicates that the activities on the appeal site include any industrial process, other than ones 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. That said, the premises do not have the feel of a conventional office. I note the appellant's comparison with an architect's practice, which often produces models, but as a matter of fact and degree, the workshop/research and development elements in this case are more than merely ancillary to normal office use. It is appropriate to refer to them in the description of the use but, as indicated, these elements will not bring the use outside the scope of Class B1 and neither would the cessation those elements.
17. Whilst materials are also stored on the site, these are for use in the developmental stage and the production of prototypes. I have seen or heard nothing to indicate that storage is a primary use, as opposed to being merely ancillary to the office/research and development/workshop use.

Conclusion

18. For the reasons given, the Council's specific reference to "B1(b)" in the LDC may be largely academic, but it is inappropriate, given my findings concerning the nature and scope of the use which has subsisted for more than 10 years. Accordingly, the Council's refusal in part was not well-founded and I will allow the appeal, using my powers under s191(4), to substitute a new and more appropriate description of the use, but referring to Class B1, rather than

specifically to B1(b) or even (a). In accordance with s195(2), I shall modify the LDC granted by the Council, rather than granting a new LDC. This will avoid any doubt which could result from two LDCs being in force in different terms.

J A Murray

INSPECTOR