



Appeal Decision

Site visit made on 27 May 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 22 July 2020

Appeal Ref: APP/Y0435/X/20/3246460

Eagle Farm, Cranfield Road, Wavendon MK17 8AX

- 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 McCann Homes against the decision of Milton Keynes Council.
 - The application Ref 19/02703/CLUP, dated 14 October 2019, was refused by notice dated 9 December 2019.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
 - The use for which a certificate of lawful use or development is sought is the change of use of the building and its curtilage to residential use comprising 6 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address in the banner heading above is taken from the application form. In addition, the description of the development is taken from the covering letter that was submitted with the LDC application. It is clear from the evidence before me that the LDC relates to the proposed residential use of Units 3, 7 and 8 on the above site. I have dealt with the appeal on this basis.
3. There are 3 additional appeals¹ on other units at Eagle Farm and I have dealt with each in a separate decision letter.

Background and Main Issue

4. Article 3(1) and Schedule 2, Part 3, Class P of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) grant planning permission for the change of use of a building and any land within its curtilage from a use falling within Class B8 (storage or distribution centre) of the Schedule to The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) to a use falling within Class C3 (dwellinghouses) of that Schedule.
5. Article 2(1) of the GPDO states, amongst other things, that '*In this Order- "building"- (a) includes any structure or erection and, except in ... [Classes P and PA of Part 3] ...of Schedule 2, includes any part of a building...*'². Therefore, Class P cannot apply to part of a building.

¹ Ref Nos: APP/Y0435/X/20/3246458, APP/Y0435/X/20/3246459 & APP/Y0435/X/20/3246461

² Words inserted by Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2018/343 art.3(a) (April 6, 2018)

6. In April 2019 the appellant applied to the Council seeking confirmation as to whether its prior approval would be required for a change of use of the appeal building from a Class B8 use to 6 dwellings (Class C3). The application was given reference 19/01041/PANOTH. There are a number of limitations and conditions within paragraphs P.1. and P.2. of Class P of the GPDO. Paragraph P.1.(a) states, amongst other things, that development is not permitted if the building was not used solely for a storage or distribution centre use on 19th March 2014 or in the case of a building which was in use before that date but was not in use on that date, when it was last in use.
7. The appellant argues that the use of the building falls within Class B8 of the UCO, whereas the Council maintains that Unit 8 functions as part of/ within the adjacent general industrial use (Class B2) within Unit 4. There is no suggestion from either party that any of the other limitations in P.1. or conditions in P.2. would not be complied with and I have no reason to disagree with that approach.
8. There is no dispute that the land within the '*curtilage*' of the building as shown on the submitted location plan would comply with the definition of '*curtilage*' as stated at paragraph P.3.(b) - '*an area of land immediately beside or around the building in storage or distribution centre use no larger than the land area occupied by the building*'.
9. There is also no dispute that the Council did not determine that application and as such the prior approval is deemed to have been granted. However, a Court of Appeal decision³ makes it clear that if an application for prior approval is submitted for works that do not fall within the scope of permitted development, and the Council fails to issue a decision within the specified period, the works do not become permitted development.
10. Therefore, the appellant sought to demonstrate through an LDC application, which is the subject of this appeal, that the change of use to residential use comprising 6 dwellings was lawful.
11. The Court of Appeal decision also states that crucially, the grant of planning permission itself comes about not through the procedure to be followed under article 3(2) of the GPDO and the specific provisions for 'Conditions' in a class, but through the operation of article 3(1) of the GPDO and the provisions for permitted development in that class. As such, to be permitted development in the first place, the development in question has to come fully within the relevant description of the permitted development provided for within each class.
12. Against all of the background information above, the main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This will turn on whether the proposed development would entail a change of use of a building and any land within its curtilage from a use falling within Class B8 of the UCO to a use falling within Class C3 of the UCO.

Reasons

13. The onus is on the appellant to make their case on the balance of probability. If there is no evidence to contradict or make the appellant's version of events

³ Keenan v Woking BC and SSCLG [2017] EWCA Civ 438.

less than probable, and their evidence alone is sufficiently precise and unambiguous, an LDC should be granted.

14. The appeal building constitutes a traditional brick building that forms part of a larger complex that was originally part of a farm. Several buildings have been used for various commercial/industrial uses and are sited within a communal parking/access area. There is no dispute that the proposed use of the appeal site would fall within Class C3 of the UCO.
15. The evidence before me indicates that in 1990 planning permission⁴ was granted for a '*Change Of Use of Redundant Agricultural Buildings to Light Industrial (Class B1), General Industrial (Class B2) and Storage and Distribution (Class B8) and Repositioning Of Access*' at Eagle Farm. I have not been provided with a copy of the decision notice associated with that planning permission. Nevertheless, there is no dispute that Class B8 of the UCO was one of the uses specified for Units 3, 7 and 8 through that planning permission.
16. At the time of the LDC application Unit 3 was occupied by The Greenhouse Effect Hydroponics Ltd (TGE). The appellant states, within the cover letter submitted with the LDC application, that Units 7 and 8 are used as storage for the former owner of the site as well as for the storage of car parts associated with the business in Unit 4.
17. At the time of my site visit Unit 3 was vacant, Unit 7 and part of Unit 8 was in use as what appeared to be general storage and there were various parts and supplies that would normally be associated with the repair/renovation of vehicles within the remaining part of Unit 8 (RP Unit 8). I acknowledge that the part of Unit 8 used for general storage can be accessed from Unit 7 and that Unit 7 can be accessed from the communal parking area. Nevertheless, there is a partition dividing Unit 8 into separate parts and whilst there is what appears to be a doorway in that partition I was informed at the site visit, by the appellant's representative and one of the occupiers of Unit 4, that the doorway had been sealed shut for some time. I was also informed by them that the only access into RP Unit 8 was through Unit 4.
18. The concept of the planning unit is a means of determining the most appropriate physical area against which to assess the materiality of a change of use. The broad tests for determining the appropriate planning unit are set out in the Burdle judgement⁵. Whilst, Schedule 2, Part 3, Class P of GPDO refers to the change of use of a '*building and any land within its curtilage*' I consider that the guidelines established by the Burdle judgement are useful in determining whether the use of the whole of the appeal building would, at the date of the LDC application, have fallen within Class B8 of the UCO.
19. As a general rule and starting point the planning unit is the area in the same occupation or ownership because that is normally the unit in which a set of functionally and physically interdependent activities are carried out. The assessment is a matter of fact and degree.
20. A planning unit in a composite or mixed use is described as an entire unit of occupation where the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to the other. A composite use is where the component activities fluctuate in their intensity from time to time,

⁴ Ref: MK/1140/90

⁵ Burdle & Williams v SSE & New Forest RDC [1972] 1 WLR 1207

but the different activities are not confined within physically and distinct units of land. It also may occur that within the single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose, together with its incidental activities, ought to be considered as a separate planning unit.

21. In this case, from the information before me it appears that even though there is no dispute that units 3, 7 and 8 form one building, that building was physically subdivided and occupied by 3 different unrelated occupiers. Based on my findings⁶ in relation to Unit 2 the part of the building utilised as Unit 3 was used, at the date of the LDC application, as part of the area occupied by TGE and the overall character of that use was as a storage or distribution centre, within Class B8 of the UCO. There is no reason for me to dispute the appellant's evidence that Units 7 and part of Unit 8 were used as general storage by N & JD Richardson.
22. RP Unit 8 was, at the date of the LDC application, and is currently used by Urban Automotive. From the evidence before me it would also appear that this company occupies Units 4, 5 and 6. I have no information as to how Units 5 and 6 are utilised by this company. Nevertheless, there is no dispute that the use of Unit 4 can be treated as falling within a Class B2 use of the UCO or a sui generis use on the basis that car repairs/renovations are undertaken within it.
23. I acknowledge that the paint booth shown on the submitted photographs is sited within Unit 4 and that Unit 4 and RP Unit 8 are within separate buildings. However, there is a door opening from Unit 4 through to RP Unit 8 and the separate buildings are practically adjoining with a very narrow gap between them. As stated above, I was informed that currently the only access to RP Unit 8 was through Unit 4.
24. There is no evidence before me to indicate that the parts and supplies within RP Unit 8 are stored for any other purpose other than for use in the repair/renovation of the cars that takes place in Unit 4. Therefore, even though, there is no indication that the space within RP Unit 8 has been or is used to repair or renovate cars the parts and supplies stored in it are functionally related to the car repair/renovation use. In my experience this storage can be treated as one that is normally found with a car repair/renovation use.
25. The activities within Unit 4 and RP Unit 8 are physically and functionally related to the overall vehicle repair/renovation use and they are both occupied by Urban Automotive. The use of RP Unit 8 would have been and is subsidiary and ancillary to the primary use of Unit 4 when considered as a whole. As such, as a matter of fact and degree, I consider that Unit 4 and RP Unit 8 form part of the same planning unit even though they are in separate buildings. The overall character of the use of that planning unit was, at the date of the LDC application, as a car repair/renovation workshop and that use does not fall within Class B8 of the UCO.
26. The evidence before me in this case is such that I do not consider that it has been demonstrated, on the balance of probability, that the use of the whole of

⁶ APP/Y0435/X/20/3246459

the building and any land within its curtilage, at the time of the LDC application, would have been from a use falling within Class B8 of the UCO.

27. Accordingly, therefore, I find that the proposed development would not be lawful as it would not fall within the provisions of Article 3(1) and Schedule 2, Part 3, Class P of the GPDO and so would not be permitted development on this basis.

Conclusion

28. Consequently, for the reasons given above, I conclude that the Council's refusal to grant an LDC 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.

D. Boffin

INSPECTOR