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## Appeal Decision

Site visit made on 28 July 2020

**by N Thomas MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 August 2020**

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**Appeal Ref: APP/C1435/X/3220251**

**Canberra Farm, Three Cups Corner, Warbleton TN21 9LR**

- 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 Kevin Weller against Wealden District Council.
  - The application (Ref. WD/2018/1932/LDE) is dated 4 September 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, B2 and B8.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. I have taken the description of the use for which a lawful development certificate is sought from the application form, but I have removed superfluous wording.
3. The Council has indicated that if it had been able to determine the application, it would have granted the certificate for a revised description of the development, under Section 191(4) of the 1990 Act which allows the LPA to modify the terms of the application, giving a certificate in somewhat different terms so as to accord with the facts and evidence, rather than an outright refusal. The same power can be exercised by an Inspector on appeal.
4. A certificate of lawfulness<sup>1</sup> was granted in 2018 for the 'use of yard by a groundwork and haulage contractor with workshops to repair equipment and vehicles', and this is the wording stated in the first schedule. The parties state that this certificate specified the use as B8. However, the first schedule does not state a use class, nor should it. The use class is mentioned only in the Council's reason for issuing the certificate.
5. I note that there is disagreement between the parties regarding works to the building, but this has not had any bearing on my decision.

### Reasons

6. In an application for an LDC, the onus is on the appellant to provide all the relevant information and evidence to support their case. The appellant must

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<sup>1</sup> WD/2018/0991/LDE

show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful. The appeal is against the failure of the Council to give notice of its decision within the prescribed period, which has resulted in a deemed refusal. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's deemed refusal to issue an LDC was well-founded or not.

7. The Planning Practice Guidance (PPG) in paragraph 005<sup>2</sup> advises that an application for an LDC needs to describe precisely what is being applied for (not simply the use class). Without sufficient or precise information, a local planning authority may be justified in refusing a certificate.
8. Neither party is arguing that there has been a change of use since the 2018 certificate was issued, nor that the certificate was granted in error. However, the appellant is seeking a certificate that specifies individual use classes into which he considers that the uses taking place would fall, arguing that the office and workshop uses are not purely ancillary to the use of the land for storage and distribution.
9. However, use classes describe broad categories of use and their purpose is to allow changes within a use class and for the purposes of permitted changes in and between use classes. A LDC should specify a use class where there is a single primary use of a planning unit, and that use falls within a use class. But within a single planning unit where there are uses that fall into more than one use class, then the overall use of the land or buildings is regarded as a single mixed use, which will normally be *sui generis*. In these circumstances the actual use must be described accurately. To describe the use by reference to use classes would lack the specificity necessary for a local planning authority to make a future determination as to a material change of use.
10. In this case the appellant has not demonstrated that the individual uses which he says would fall within specific use classes are carried out on separate identifiable single use planning units. Considering the site as a single planning unit, the use of the land and buildings as described in the existing certificate is a mixed use. It is appropriate therefore that the existing LDC for the use does not specify a use class.
11. I acknowledge that the Council has indicated that if it had been able to determine the application, it would have granted a certificate for a revised description of the development, referring to the use classes B2 and B8 and the use of the site as a groundworks depot, and listing the various uses and activities being carried out, some of which would have been identified on an accompanying plan. However, as set out above, reference to use classes is not, with specific exceptions which do not apply here, an appropriate way of describing a mixed use because it lacks the necessary specificity to determine the materiality of any future changes.
12. I am able under section 191(4) of the Act to issue a certificate of a different description from that applied for. However, it would serve no useful purpose to grant a further certificate with the same description as the 2018 certificate, as the appellant is seeking a certificate with specific land use classes. Such a description would not adequately describe the uses that are being carried out, having regard to the advice in the PPG. Similarly, the revised description

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<sup>2</sup> Paragraph: 005 Reference ID: 17c-005-20140306 Revision date: 06 03 2014

suggested by the Council would not be accurate if the use class references were simply omitted.

13. Accordingly, for the reasons given above, I conclude that the deemed refusal to grant a certificate of lawful use or development in respect of the use of the site for B1, B2 and B8 was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended and dismiss the appeal.

*N Thomas*

INSPECTOR