



Appeal Decision

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 22 October 2020

Appeal Ref: APP/L5810/X/20/3247196

8 Plough Lane Mews, Teddington, TW11 9BN

- 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 D Harrison against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 19/2897/ES191, dated 23 September 2019, was refused by notice dated 15 November 2019.
 - 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 as a model-making workshop falling within Use Class B1(c).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I wrote to the parties to advise that, having reviewed the evidence, I was satisfied that I did not need to see the appeal site in order to reach a decision. Both parties confirmed agreement.
3. The application form does not provide a description of existing use. Reference is made instead to an attached statement which describes the existing use of the building as a model-making workshop falling within Use Class B1(c). This is the description I have used, rather than the differing descriptions given in the appeal form and the Council's decision notice.

Background and Main Issue

4. An application under s191(1)(a) of the Town and Country Planning Act 1990, as amended (the 1990 Act), seeks to establish whether, at the time of the application, any existing use of buildings or other land is lawful. S191(2)(a) of the Act explains that uses are lawful if no enforcement action may be taken in respect of them because they did not involve development or require planning permission or because the time for enforcement action has expired.
5. Planning merits form no part of the assessment of an application for a LDC which must be considered in the light of the facts and the law.
6. From the evidence before me, the main issue is whether the use of No 8 Plough Lane as a model-making workshop falling within Use Class B1(c) of the UCO¹

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) – as in force on the date of the application

took place without material interruption for a period of at least ten years before the date of the LDC application, so as to be immune from enforcement action under s171B(3) of the 1990 Act. It follows that the use must have commenced by no later than 23 September 2009 and that is the material date for this appeal.

7. The burden of proof lies with the appellant and the relevant test is 'the balance of probabilities' (that it is more probable than not). If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, that is enough. Evidence should not be rejected simply because it is uncorroborated.

Reasons

8. Use Class B1(c) is any industrial process which can be carried out in any residential area without detriment to the amenity of that area. Article 2 of the UCO defines 'industrial process' as a process for or incidental to specified purposes, including the making of any article or part of any article and the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale of any article.
9. I am satisfied that a model-making workshop would fall within this definition and the Council has not provided any evidence, such as complaints, to suggest it is a use which cannot be carried out in a residential area, without detriment to amenity.
10. A statutory declaration is submitted in support of the application. It states that Mr Farrow, Mr Wood and Mr Every have been the joint owners and occupiers of the building since 15 October 2001. It also says that Mr Farrow has used the building as a workshop since that time. However, it does not state what use is made of the building by Mr Wood or Mr Every, or that model making is the only use of the building.
11. It is clear that Mr Farrow works 'professionally' in the workshop – but it does not show that this is (for example) his main or only job, or that he has made models in the workshop on a sufficiently regular basis to demonstrate continuity of the use over ten years.
12. An invoice is provided from Robert Farrow Workshops dated August 2012 for an oversized Beatrix Potter model book and two photographs are provided of it within a workshop with benches, tools and materials consistent with such a Class B1(c) use. Two other model related invoices are provided from September 2013 and November 2013. However, these invoices do not go back ten years or even cover the whole of the period since 2013. Indeed, it is surprising that the appellant has invoices for model work in 2012 and 2013, but not before or since. Moreover, the bills addressed to a 'workshop' are not conclusive of any use.
13. The contradictory evidence provided by the Council is that the business rates paid for the site since August 2011 are for a 'store and premises'. The appellant's position is that when the ratings list was compiled, Valuation Office Agency officers did not inspect each and every premises to be rated; rather,

they grouped like properties together in a valuation scheme and on this basis the business rates cannot be determinative.

14. I agree that the rates evidence on its own is not fatal to the appellant's case. Nevertheless, the appellant has not shown that there was no storage use or explained why he paid rates for a storage use if that was wrong.
15. I acknowledge that the appellant's case rests on the statutory declaration but, for the reasons explained, I do not find it to be sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that the property has been used as a model-making workshop falling within Use Class B1(c) for a period of more than ten years before the date of the application, without material interruption.

Other matters

16. I note the appellant's comments relating to LDCs granted for other properties on Plough Lane but I am not aware of the content of any statutory declarations submitted with those applications. In any case, I am only able to consider whether what is before me is lawful.
17. The appellant has not made an application for costs against the Council but has suggested that I should consider issuing such an award. However, I have found the Council's decision to be well-founded and it has not been shown that it acted unreasonably, thereby causing the appellant to incur unnecessary or wasted expense in the appeal process.

Conclusion

18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the property as a model-making workshop falling within Use Class B1(c) 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.

Richard S Jones

INSPECTOR