



Appeal Decision

Site visit made on 29 September 2020

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 22 October 2020

Appeal Ref: APP/E1210/X/19/3225967

20 Hurn Court, Hurn Court Lane, Hurn, Christchurch BH23 6BH

- 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 Bowl against the decision of Christchurch Borough Council
 - The application Ref 8/18/2470/CLE, dated 7 September 2018, was refused by notice dated 20 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 use of the garage in breach of condition 14 of Application reference 8/94/0111F.
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Procedural Matters

1. The appellant says the garage has been used for purposes other than for the parking of private vehicles only and no other purpose, and this has existed continuously since 2005.

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2. The appeal is dismissed.

Reasons

3. The current owner has not been in the property for the period of 10 years having purchased it relatively recently. The previous owner has provided a Statutory Declaration about the use since about 2005.
4. It is important to note that if a condition is breached for 10 years, it is not discharged, but the use will have effectively become lawful while the breach of the condition continues. If at any time the use of the development changes and accords with the terms of the condition, then it would become enforceable again, unless it is breached for a further 10 years period
5. The previous owner clearly indicates that the use of the garage was in breach of the condition before 2005 when it had been converted to an office, with an understanding it was used by an accountant. Sockets, carpet, ceiling, coving, lighting and a stud wall were provided.
6. The previous owner indicates that in 2005 the stud wall was removed allowing the garage door to open to return it to a working garage, although he says it was primarily used for storage. The physical condition of the garage, while providing some evidence of usage is not directly relevant as it is the use that is important.

7. It is understood that a Maserati motor car was in the garage and at least for part of that time it had a Statutory Off Road Notice and was not able to be used on the roads. Use for a motor car by the owner of the main premises would bring it back to garage use for parking. There is little detail of the use of the building in the relevant period. However, a neighbour has provided the MOT records for the car that was in the garage and clearly it has had considerable road use in different years, particularly 977 miles in 2010 and 511 in 2011 and has not just been in storage. It may have been laid up for considerable periods each year, and even if that is not considered as being a normal ancillary usage of the garage, each time the car was brought back into use for a considerable number of miles the condition would become operable and a further 10 years breach would be required for the use to become lawful.
8. There may have been other items stored in the garage, but there is little detail to show on the balance of probability that the garage storage would be material and not de minimis, particularly with a car within. It has not been demonstrated on the balance of probability that the use has been for storage only 10 years prior to the certificate.
9. I note the Council has written a letter regarding the use of garages to residents, but that does not affect the permission and conditions imposed.
10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of the garage in breach of condition 14 of Application reference 8/94/0111F 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.

Graham Dudley

Planning Inspector

