
Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2020

Appeal Ref: APP/Z3825/X/20/3254448

Bentons Cottage, Bentons Lane, Dial Post RH13 8NP

- 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 Keith Hedges against Horsham District Council.
 - The application Ref. DC/20/0214 is dated 3 February 2020.
 - 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 described as 'B1(a) existing office'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is a result of the Council not giving notice of its decision within the statutory determination period. The Council have since determined the application and submitted a decision notice and statement including the reasons why they consider a certificate should not be granted. I have therefore determined the appeal on the basis of the appellant's submission, having regard to the reasons set out in the Council's decision notice and evidence.
3. The description given in the banner heading above is taken from the original application form. I have noted the appellant's representations in respect of what they consider they have applied for and have addressed this in my reasoning below.
4. On 1 September 2020 the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force, amending the Town and Country Planning (Use Classes) Order 1987 (UCO). As a result, from 1 September 2020, a new broad 'commercial, business, service' use (Class E) was created, which incorporates the previous B1 (Business) use class.
5. However, the relevant date for determining whether the existing development is lawful, is the date of the application. As the application was made prior to 31 August 2020, it must be determined by reference to the use class in force at that time.
6. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the parties

have submitted sufficient evidence to understand the nature of the site given the points in dispute.

Reasons

Background

7. Section 191(2) of the 1990 Act states that uses are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and, they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
8. The appeal building is detached from but was built at the same time as Bentons Cottage. There appears to be no dispute between the parties that it formed a single planning unit with the cottage and was formerly in use as a garage.
9. In section four of the original application form the appellant ticked the box to indicate that they were applying for a lawful development certificate for an existing use, stated to be a B1(a) office. In section five the description is given as B1(a) existing office. In section six (under what grounds is the certificate being sought) the appellant ticked the box which states that the building works were substantially completed more than four years before the date of this application. They stated that a certificate should be granted because 'The property has been used as an office for more than the prescribe period. The application includes invoices from the conversation.'
10. Additionally, the supporting statement submitted with the application describes the application as an LDC for a converted garage to an office use B1(a).
11. The appellant, however, argues that what they applied for is an LDC to establish that the conversion works to an office are lawful. They stated that the evidence of the change of use was simply provided to support the claim that the building works were undertaken specifically for the development of an office.
12. Nevertheless, it is evident, based upon the original application, that what was applied for was a lawful development certificate for an existing use as a B1(a) office. It is on this basis that I have considered the appeal.
13. Consequently, the issue to be determined is whether the use of the building as a B1(a) office was lawful on the date the application was made, that is, 3 February 2020.
14. It seems that the conversion works were undertaken to facilitate and were therefore part and parcel of the alleged material change of use to a B1(a) office and there appears to be no dispute about when the works were completed. However, the submitted invoices, photographs and plans, provide little detail about what the works consisted of, and therefore it is not possible to determine whether the works constituted development within the meaning of s.55 of the Act.
15. In any case, whether the conversion works are lawful, because either they did not amount to development or were substantially completed more than four years before the date of the application, in order for the appeal to succeed, the

appellant would need to demonstrate that the building has been used as a B1(a) office for not less than ten years (s.171B(3) of the Act).

16. Where an LDC is sought, the onus of proof is on the appellant and the standard is the balance of probabilities.

The appellant's evidence

17. The appellant's evidence consists of an affidavit, various plans, photographs and invoices from contractors as well as a BT bill and two letters from former employees.
18. In the affidavit the appellant stated that they have owned Bentons Cottage since 2010 and that Avidia Ltd has operated from the office at Bentons Cottage for seven years, since it was converted from a garage to an office in 2013. They again confirm that they are applying for an LDC as the building has been used as an office for more than four years.
19. The appellant provided no detail about how the business operates. The floor plans indicate that the layout is as an office and the letters from two former employees confirm that they worked in the office in the converted garage. They provide no detail or explanation about what their employment consisted of, although I understand from the Council's submissions that this was on a 9-5 basis 5 days a week.
20. Whilst I note that the property is now rated as 'commercial' and have had regard to the BT business bill, there is insufficient information about the characteristics of the use to enable me to determine whether or not a material change of use to a B1(a) office has occurred.
21. Indeed, the email from Jo Hopkinson of the Council to the appellant, dated 16 January 2020, confirmed that she did not consider there had been a material change of use based on the current level of use of the garage. She confirmed that should the owner intend to employ people in the future that he may wish to consider applying for an LDC (proposed use).
22. In any event, there is no dispute that the use of the building began in around 2013 when the conversion works were completed and therefore the use cannot have been ongoing for the requisite ten-year period.
23. Planning Practice Guidance states that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
24. On the basis of the evidence before me, I find, as a matter of fact and degree, that the appellant has failed to provide sufficiently precise and unambiguous evidence to demonstrate, on the balance of probability that the use as a B1(a) office is lawful.

Other matters

25. My decision rests on the facts of the case. As such, the appellant's misgivings about how the Council dealt with the application have no bearing on my decision.

Conclusion

26. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of a 'B1(a) existing office' 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.

Felicity Thompson

INSPECTOR