



Appeal Decision

Site visit made on 1 December 2020

by S A Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2021

Appeal Ref: APP/G4620/X/20/3258044

26 Waterfall Lane, Cradley Heath, West Midlands B64 6RQ

- 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 Miss Lesley Pearson against the decision of Sandwell Metropolitan Borough Council.
 - The application Ref DC/20/63929, dated 28 October 2019, was refused by notice dated 3 April 2020.
 - The application was made under section 191(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 described as "No machinery, retailing and storage of household goods. Daily 8am to 7pm. 7 days week."
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The description of development in the banner heading above is taken from the application form. However, for clarity the Council's decision notice describes the particulars of development as "existing use as retail and warehouse¹". From the evidence before me, I take this to be a correct description of the use which the appellant seeks to claim is lawful.
3. Under S191(1)(a) of the 1990 Act, any person who wishes to establish whether any existing use of buildings or other land is lawful, they make an application for the purpose to the local planning authority specifying the land and describing the use. S191(2) of the 1990 Act specifies that uses and operations are lawful if (a) no enforcement action may then be taken in respect of them because they did not involve development or require planning permission or (b) because the time for enforcement action has expired.
4. Planning merits form no part of the assessment of an application for an LDC which must be considered in the light of the facts and the law. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case. The burden of proof lies with the appellant and the relevant test is 'the balance of probabilities'. However, the Courts have held the

¹ At the date of application retail warehouses are classed as falling within Class A1 of the Town and Country Planning (Use Classes) Order 1987 as amended (the UCO).

evidence of the appellant should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the appellant's version of events less than probable and the evidence alone is sufficiently precise and unambiguous that is enough.

5. The property is currently occupied by Steve Davies and at the time of my site visit, the building at ground level contained many items of reclaimed household items/antiques. I note from the evidence supplied by the appellant that it is Mr Davies' intention to "use the building as registered offices for my business, secure storage of hand tools and portable equipment, a workshop where I can service and repair my small equipment and portable scaffold towers, a showroom for antiques, architectural antiques, oak beams and reclaimed flooring that I salvage..... The showroom will not be open to the general public, unless by appointment, and goods will be advertised and sold online. I also intend to store my company vehicles there... and have a nice office to entertain developers who invite me to tender for new contracts. Between demolition contracts I will be able to relax there, restore antiques, service my vehicles and photograph architectural antiques and floorboards for selling on the internet (including items that I may have stored elsewhere). I will also be able to work on my website from these premises, including adding an items for sale page, and advertise for more work".
6. What is proposed by the current occupier and what is sought to ascertain whether the existing use of the building is lawful, as applied for, differ considerably. The purpose of an application for a certificate of lawfulness of existing use or development under s191 of the 1990 Act is to ascertain whether the existing use of the building is lawful. Consequently, in determining the appeal I will have regard to the evidence before me concerning its previous uses, and not those proposed by the current occupier, to establish whether the building has a lawful use for retailing and warehouse (storage) use (Class A1 of the UCO).

Main Issue

7. This is whether the Council's decision to refuse to issue an LDC was well-founded. The time limit relevant for taking enforcement action under s171B(3) of the 1990 Act regarding the use of buildings or other land is the end of ten years beginning with the date of the breach. The appellant therefore needs to show on the balance of probability, that by the date of the application for the LDC the use of the site for retail and warehouse had existed on a substantially uninterrupted basis for at least ten years, and had not subsequently been abandoned or supplanted by another use. The burden of proof rests with the appellant.

Reasons

8. The property comprises a former Methodist Chapel which, from the evidence that has been supplied by the appellant, has been used since 1960 for the following purposes.
9. From 1960 to 1991 the site was owned and occupied by Mr Jack Pearson and provided space for his business trading as "Wholesale Warehouse Supplies" which sold white goods, furniture and electrical appliances. On 25 March 1992

the property was leased from Mr Jack Pearson to Mr Donald Pritchard for 15 years (to 2007). An incomplete copy of the lease agreement has been provided by the appellant which does not include the full agreement or any signatures. The appellant provides that Mr Donald Pritchard traded as "Sweet Dreams" selling bedding furniture and carpets.

10. Also included with the appellants evidence is an incomplete copy of a Notice of Assignment of Leasehold Property, dated 17 December 2004, to Mr Jack Pearson showing the lease had been assigned from Donald Geoffrey Pritchard to Mark Barry Jones. From the evidence supplied, Mark Barry Jones continued trading as "Sweet Dreams" selling similar items. Sweet Dreams is listed by an online business listing service as 'Furniture – Retail'.
11. The Council's evidence notes that to support the application submission, the applicant has submitted three legal agreements (Notice of Assignment of Leasehold Property, Lease Agreement and Counterpart Lease). The submitted lease refers to the address of the premises as "The Warehouse" with no mention of retail found in the paperwork. Moreover, a lease would not provide sufficient evidence to confirm the use of the site for a continuous ten-year period. Furthermore, the council's Revenues and Benefits department has confirmed that from their records the premise has not been used for retail purposes and is listed as a warehouse. However, it is not provided to what period this refers.
12. From January 2010 to June 2015 a charity, Loaves n Fishes, occupied the property. An incomplete copy of a lease made on 22 July 2010 shows that the property was leased by Jack Pearson to Marcus Penberthy, Steven Hartland and Anna Hartland for 5 years starting on 4 January 2010. From the few pages which have been provided by the appellant, the lease stipulates that the property is not to be used except for the storage of furniture, nor to hold an auction sale. From the information provided, the charity operated from the site distributing furniture and a large variety of donated household goods.
13. The Council's statement provides that 'the use at the time was charity/storage' as stated on the application form for a storage shed². A letter provided by the appellant from an interested party states that he supplied the charity with excess bedding, blankets, sheets, curtains and towels for the needy. There is no further information provided to demonstrate that the activities undertaken during this tenure included a retailing element. It seems to me that the primary use was not one where the sale, display or service was to visiting members of the public. The use fell outside Class A1 of the UCO, being more akin to one falling within Class B8 (storage and distribution) of the UCO.
14. Following the occupation of the property by the charity, the unit was leased from June 2015 to 18 November 2018 to Mrs Christine Moore. From the limited evidence supplied in the form of photographs of 'A' board signage and a copy of rent receipts³, the building was occupied by HALO (Help and Love Others). The 'A' boards advertise "Gods (sic) Store Cupboard open today 1pm – 3.30pm (with Christian books and tapes for loan)" and "tearoom open today 1.00pm

² Planning application reference DC/12/54849

³ Receipt from HALO for rent paid to L Pearson from 22 June 2015 to 31 March 2016 paid by Christine Moore

until 3.30pm". The use of the property is described as a tea shop/gift shop in a letter from an interested party, supplied by the appellant.

15. The evidence supplied by the appellant is limited and ambiguous concerning the use of the site, particularly in the interim period since the property was vacated by the business trading as Sweet Dreams. From the evidence before me and on the balance of probabilities, I consider that although it is likely that there had been a lawful retail element of the site up to 2009, it is likely to have been supplanted during the years when it was occupied by the charity Loaves n Fishes from 2010 to 2015. As detailed above, and without any further evidence to the contrary, I consider that the use by Loaves n Fishes as a storage and distribution depot (Class B8 of the UCO) would likely have been materially different in character to a retail use. Moreover, it seems to me that a further material change of use occurred when the site was occupied by HALO. The sequence of events leaves no specific identifiable lawful use.

Conclusion

16. For the reasons given above I conclude that, on the evidence now available, the Council's refusal to grant a certificate of lawful use or development in respect of the use of the site for retail and warehouse 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.

S A Hanson

INSPECTOR