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# Appeal Decision

**by D Fleming BA (Hons) MRTPI**

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

**Decision date: 30<sup>th</sup> APRIL 2021**

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**Appeal Ref: APP/H0520/X/20/3263087**

**21 Cambridge Street, St Neots PE19 1JL**

- 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 D Anderson against Huntingdonshire District Council.
  - The application (Ref:20/00627/CLPD) is dated 30 March 2020.
  - The application was made under section 192(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 "Proposed use as a single dwellinghouse".
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## Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

## Application for costs

2. An application for costs was made by the appellant. This application is the subject of a separate decision.

## Preliminary Matters

3. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, a decision can be reached on the papers.<sup>1</sup>

## Main Issue

4. The main issue is, if the Council had determined the application, whether their decision would have been well-founded.

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<sup>1</sup> The Procedural Guide - Certificate of lawful use or development appeals – England, dated November 2020, states at paragraph A.9.4. "Where the appeal concerns a case, which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the case without a site visit." In addition, Footnote 12 within Appendix F states that a small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents.

## Reasons

5. The appeal relates to an end of terrace, two bedroom property that is three storeys at the front with a single storey projection at the rear and a later, rear single storey extension. The building is listed, Grade II, and is situated within a conservation area.
6. The front part of the property comprises residential accommodation and a portion of the rear single storey element was used as a workshop and office by the appellant, who lives on site.
7. The appellant seeks to establish that if he were to use the whole of the property for residential purposes as a single dwelling house, that this would not amount to development and would therefore be lawful.
8. It appears that the appellant has owned the property since 1982. He obtained planning permission in 1986 for a small extension to use as a workshop, which was subsequently built, and since 1988 the premises were used for a mixed use of residential and a bespoke blind-making business. The appellant sold his business in October 2019 and since then the workshop, toilet and office have remained unused.
9. There is no dispute between the parties that the mixed use has existed for a number of years<sup>2</sup> and that it is now considered to be immune from enforcement action, though there is no LDC to that effect.
10. The principle point at issue is whether the proposed use would amount to development within the meaning of section 55 of the Act. The meaning of development includes the making of any material change in the use of any building. In order to ascertain whether the appellant's proposal would amount to development, it is necessary to consider how the premises are or were used and whether those uses took place in one or more planning units.
11. The leading case on the subject is *Burdle*<sup>3</sup> and the tests within it start with the unit of occupation and turn on the concept of physical and functional separation. The appellant also refers to *Burdle* as well as the cases of *Wipperman*, *Philglow* and *Hertfordshire County Council*<sup>4</sup> to support his case.
12. There are three entrances to the property, one from Cambridge Street which leads directly into a lounge and two from a shared passageway between the houses that leads to the rear. The second entrance provides access to the rear of the house via a lobby with a door leading into the kitchen and one into the office. The workshop and toilet are accessed via the office. The third entrance leads directly into the workshop from the shared passageway.
13. All of the property is owned and occupied by one individual. It seems to me that the layout of the property is such that the business element is an integral part of the property. There is a clear physical link with the residential portion of the building and in terms of how the building would have been used, the layout leads me to conclude that it could be described as a "live-work" unit.

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<sup>2</sup> An extract from the Council tax valuation list shows that the living accommodation was banded A from 1 April 1993 and an extract from the Business rates shows the workshop and office area (amounting to approximately 41sqm) was subject to business rates.

<sup>3</sup> *Burdle & Williams v SSE* [1972] 1 WLR 1207

<sup>4</sup> *Wipperman v SSE and LB Barking* [1965] 17 P and CR 225, *Philglow v SSE & Hillington LBC* [1985] JPL 318 and *Hertfordshire County Council v SSCLG* [2012] EWCA Civ 1473

The appellant stepped from his kitchen across the lobby and into the office and perhaps took deliveries of materials directly into the workshop from the third entrance. As such, I find the property comprises one planning unit in a composite use.

14. It was held in *Wipperman* that the cessation of one element in a composite use of land would not necessarily result in a material change of use. It is a question of fact and degree as to whether the subsequent use of the land is materially different from the earlier composite use. In *Philglow* it was established that the discontinuance of the use of land cannot of itself amount to a change of use and the case of *Hertfordshire County Council* concerned the intensification of use and whether that constituted a material change of use.
15. Applying what was found in these cases to the proposal, it is necessary to consider whether the proposed use of all of the site for residential purposes would be materially different from the former composite use and whether there would be an increase in the residential use which would constitute a material change of use.
16. I find there would be little difference between the use of the ground floor toilet and office for business purposes and their subsequent residential use in the form of a convenient ground floor amenity and home office. The workshop space is akin to a large double garage in area and it could be used for a variety of residential purposes either as one space or subdivided to form two rooms, such as an additional bedroom and a quiet lounge area away from the main road. It seems to me that the scale of the proposed residential facilities would not add significantly to the existing layout of the property and, as such, their residential use would not amount to an intensification of the use of the property for residential purposes.
17. I conclude as a matter of fact and degree, having regard to the layout of the property and the appellant's proposal, that a wholly residential use of all of the floor space would not amount to development requiring planning permission within the meaning of section 55 of the Act. The listed status of the building and its situation within a conservation area have no bearing on my decision. I therefore find that the proposed use would be lawful.

## **Conclusion**

18. For the reasons given above I conclude, on the evidence now available, that the Council's deemed refusal to grant a certificate of lawful use or development in respect of the proposed use of the property as a single dwellinghouse was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

*D Fleming*

INSPECTOR

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## Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on 30 March 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use would not amount to a material change of use of the property. It would not therefore fall within the meaning of development set out in section 55(1) of the Town and Country Planning Act 1990, as amended, and no planning permission is required.

Signed

*D Fleming*

Inspector

Date 30<sup>th</sup> April 2021

Reference: APP/H0520/X/20/3263087

### **First Schedule**

Proposed use as a single dwellinghouse

### **Second Schedule**

Land at 21 Cambridge Street, St Neots PE19 1JL

## NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



## Plan

This is the plan referred to in the Lawful Development Certificate dated:

**by** D Fleming BA (Hons) MRTPI

**Land at:** 21 Cambridge Street, St Neots PE19 1JL

**Reference:** APP/H0520/X/20/3263087

Scale: not to scale

