
Appeal Decision

Site visit made on 14 September 2021

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2021

Appeal Ref: APP/E2530/X/20/3259140

11A Costa Row, Long Bennington, Newark NG23 5DY

- 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 Mrs Lucy Dames against the decision of South Kesteven District Council.
 - The application Ref S20/0880, dated 5 June 2020, was refused by notice dated 3 August 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 'partial use of dwelling as florists'.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue a certificate was well-founded. This turns on whether, on the balance of probability, the use of the property in connection with the appellant's florist business has brought about a material change of use of the property.

Reasons

The certificate sought

3. The description of the use in the heading above is taken from the planning appeal form. The Council describes it as, 'To use property for florist business'. It is important to understand the nature and extent of the use in a little more detail in order to determine whether it is lawful (or, more precisely, whether it was lawful on the date of the application).
4. The appellant has a florist business – described as part business and part hobby - which she runs from her home. The main focus of the business is preparing flowers for weddings. There is no industrial equipment required to prepare the flowers. The flowers are prepared in the appellant's kitchen or conservatory. Additionally, a room above the garage is used for receiving clients, although the kitchen and conservatory are also sometimes used for that purpose. Although the appellant's website refers to a 'team', the appellant

advises that there are no employees, and I have considered the appeal on that basis.

5. The business does not operate every day of the week, but includes some weekend working. The appellant would typically provide flowers for about 60 weddings in a year and in any given week there are a maximum of 3 deliveries to the house in connection with the business. There are said to be, on average, 2.75 deliveries and 8 appointments with clients per week. Since the business is seasonal, the figures will vary throughout the year.
6. The certificate sought is to establish the lawfulness of the continuation of these activities at the house, in addition to its occupation as a dwelling. Although there are various references in the material before me to the prospects of the business growing in the future, the certificate the appellant seeks, and my decision, relate to the business as described in the application made on 5 June 2020.

Assessment

7. It is established planning law that a material change of use will only have occurred if there has been a change in the definable character of the use of the land. As the appellant points out with reference to judicial authorities¹, assessments need to be made on a case-by-case basis and the change needs to be one of substance.
8. In this case the starting point is that the pre-existing use of the property is as a dwellinghouse. Other activities can take place at a dwellinghouse without causing a material change of use provided they remain incidental or ancillary to that use. The question here is whether the florist business, as described in the application, is a primary use in its own right, causing a material change of use of the property. As the appellant points out, thousands of businesses are run from people's homes, and no doubt many of these take place without raising any planning issues.
9. Although described as part time and part hobby, it is clear that the business operates on a significant scale. This is evident from:
 - The number of weddings catered for, which would be over 1 a week if distributed evenly throughout the year, but in practice must be focused over part of the year.
 - The amount of the dwelling used in connection with the business. The room over the garage is fairly modest but appears to be used mainly in connection with the business. While it may be used for other purposes, photographs of it are included on the company's web site, where it is described as a 'consultation space'. The conservatory is equipped with a sink, apparently in connection with the business. The large kitchen was in use for preparing flowers when I visited the property, although clearly cannot be dedicated exclusively to that purpose. I understand that the garage is used for storage in connection with the business, although it is not used exclusively for that purpose and primarily contained normal domestic items when I saw it.
 - The number of movements to and from the site, including deliveries.

¹ Wood v Secretary of State for the Environment [1973] and Palser v Grinling [1948]

- The hours of working. Although the appellant refers to the business as part time, the peak season hours set out by the appellant are:
 - Wednesday - 15:00 to 20:00;
 - Thursday, Friday and Saturday – 09:00 to 17:00; and
 - One Sunday a month – 10:00 to 17:00

Although these hours do not amount to a full working week, they are not insignificant and indicate something that is plainly more than a hobby.

10. The scale of the business does not, on its own, mean that a change of use has taken place. To make that assessment it is necessary to consider its effect on the character of the use of the property.
11. No 11A is a detached house situated at the end of a fairly lengthy driveway which also serves the neighbouring No 11. The area is residential in character. Although the appeal property has a parking and turning area, it appears that it is not sufficient to enable delivery vehicles to easily park and turn, bearing in mind that domestic vehicles will usually be parked there. This has led to vehicles being unloaded on the private driveway shared with No 11 and also to vehicles using the shared driveway and the frontage to No 11 for turning, as illustrated in photographs provided by the occupiers of No 11. Alternatively, another neighbour advises, vehicles reverse the length of the driveway and onto Costa Row.
12. Of course, delivery vehicles may visit any property in connection with its normal domestic use. However, the additional visits and manoeuvrings associated with the business use are significant in scale and are likely to add materially to disturbance and nuisance experienced by the occupiers of No 11. Deliveries in connection with the business can take place at fairly early hours, although the instances of deliveries prior to 7am appear to be limited.
13. Additionally, the property is regularly visited by clients. There are said to be an average of 8 client visits per week. Some of these take place at 11A Costa Row, while others take place elsewhere. However, in either case a trip to or from the appeal property will be generated, most likely by car. There will also be trips made from the appeal property to deliver to clients.
14. It is unlikely that any business activities that take place wholly within the appeal property materially affect the outside world. However, the number of vehicle movements the use generates is significant and it is clear that the deliveries and vehicle manoeuvrings spill out into the shared driveway and even onto the private property of No 11. This is a direct consequence of the limited parking and manoeuvring space available at the appeal property. While it would be perfectly adequate for use as a dwelling alone, it is insufficient to serve the dwelling when its occupation is combined with a florist business operating on this scale.
15. In my judgement, operated on this scale, the business has brought about a material change in the use of the land. In particular, the character of the use of the land has been changed by the number of vehicles visiting the property, including delivery vehicles. Given the fairly close relationship of No 11 to the appeal property, and the fact that they share a driveway, this has had a material effect on the living conditions of the neighbouring occupiers.

16. The Government's Planning Practice Guidance (PPG)² advises that, in cases such as this, relevant considerations include whether home working or a business leads to, amongst other things, notable increases in traffic or disturbance to neighbours. In my view the traffic and disturbance to the occupiers of No 11 in this instance is significant.
17. My attention has been drawn to other appeal decisions, but I am not persuaded that either is sufficiently similar to provide a valid comparison. Appeal ref APP/Y0435/X/10/2122067 related to the use of part of a house for private tuition, which does not appear to have involved any deliveries. Appeal ref APP/G5180/C/10/2142478 concerned a cat rescue centre, operating at such a small scale that the Inspector concluded that it was 'evidently akin to a hobby'. I have no evidence to suggest that either use caused commercial vehicle movements.
18. While the 1997 paper by Sir Iain Glidewell, to which the appellant refers, suggests that things such as a doctor using rooms in a private dwelling may not bring about a change of use, that strikes me as being materially different to the business being conducted in this case, not least in the matter of deliveries. General comparisons to other uses such as childminding are of little assistance, given the need to assess proposals on a case-by-case basis.
19. I have noted the personal circumstances raised in relation to this appeal but my decision concerns only the question of whether the development is lawful. Matters such as human rights and the Equality Act 2010 have no bearing on this determination.

Conclusion

20. 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 applied for was well-founded. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended and dismiss the appeal.

Peter Willows

INSPECTOR

² Paragraph: 014 Reference ID: 13-014-20140306