
Appeal Decision

Site visit made on 12 October 2021

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 05/11/2021

Appeal Ref: APP/E2001/X/21/3276352

Village Stores, Church Street, Burton Pidsea, Hull, HU12 9DG

- 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 Erol Doneryuz against the decision of East Riding of Yorkshire Council.
 - The application Ref 20/03870/CLP, dated 15 December 2020, was refused by notice dated 4 March 2021.
 - 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 change of use of former Post Office (use class E (a)) to a restaurant (use class E (b)).
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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.

Preliminary Matter

2. The application and appeal forms list the address as Village Stores, Church Street, Burton Pidsea but the plans submitted with the application show that the appeal site is located at 8 Church Street.

Main Issue

3. The main issue is whether the proposed use as a restaurant (use class E (b)) would have been lawful if instituted or begun at the time of the LDC application (15 December 2020). Issues of planning merit are not relevant as the application being appealed was made to ascertain whether the proposed change of use would be lawful.
4. The Council's decision to refuse the LDC application is on the basis that the ground floor and first floor of the property constitute a single planning unit. They considered that the use was mixed with retail (Class E (a)) including former post office on the ground floor and residential (Class C3) on the first floor. The Council's reasons are that there is a shared front entrance onto Church Street and the only access to the rear outdoor area and outbuilding (described by the Council as a garage) is through the ground floor retail area.
5. The plans submitted with the application include a block plan which shows 8 Church Street and elevational drawings. The floor plans submitted only show

the ground floor (Plan D20.01) which indicate a second internal door within the entrance area annotated '*Access the flats above*'. I saw this door during the site visit and it was a locked internal door which led to stairs to the first floor (although I did not go through the door or up the stairs). I also went into the outdoor area at the back of the building through the door at the rear of the ground floor. It was evident that it has not been used for recreational purposes, or indeed for any other purpose, for quite some time as it was extremely overgrown and difficult to access.

Reasons

6. The application form does not specifically state that it relates only to the ground floor of the property but that is evident from the description of the previous use as a post office (Use Class A1), the use of the address of 'Villages Stores' (the previous business which was located on the ground floor) and the ground floor plans submitted as part of the application.
7. The first matter to be determined is therefore whether the ground floor constitutes a separate planning unit from the first floor of the property or whether they make up a single planning unit in mixed use.
8. The planning unit is usually the unit of occupation, which in this case would suggest that the ground and first floors will be separate as the occupier of the flat is not connected to the proposed restaurant (although it appears the occupier was connected to the previous use as shop and post office). The locked internal door leading to the stairs to the flat on the first floor mean that as a matter of fact and degree it is physically separate and distinct although it does share the small entrance area and external door to the front street. Whilst the burden of proof lies with the applicant, there is nothing to indicate from the evidence submitted during the appeal or my observations during the site visit that the flat on the first floor is using the outdoor area to the back and that there are therefore any shared facilities (other than the external front door which is not uncommon with flats). The ground floor and first floor units are distinct from each other and indeed the flat has continued to be occupied whilst the ground floor has been empty. The ground floor and first floor would be occupied for different and unrelated purposes with different primary uses if the change of use of the ground floor were to be instituted. I do not therefore find that the whole of the property is a single planning unit and the area to be considered as the planning unit for this appeal is the ground floor only, which is in accordance with the area shown on the application.
9. Article 3 Of the Town and Country Planning (Use Classes) Order 1987 (as amended by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 which came into effect on 1 September 2020) provides that where the use of a building or other land within Class E changes to a use for any other purpose within the same class it is not to be taken to involve the development of the land. Thus a change of the ground floor of the appeal property from retail (Class E (a)) to restaurant (Class E (b)) would not have constituted development on the date of the application. It is therefore not necessary to consider whether the development would have been permitted pursuant to the Town and Country Planning (General Permitted Development)(England) Order 2015.
10. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in

respect of the proposed change of use of the ground floor from a post office (Class E (a)) to a restaurant (Class E (b)) 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.

Zoë Frank

INSPECTOR

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

IT IS HEREBY CERTIFIED that on 15 December 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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 change of use from retail (Class E (a)) to restaurant (Class E (b)) would not have constituted development pursuant to the Town and Country Planning (Use Classes Order) 1987 as amended.

Signed

Zoë Frank

Inspector

Date 05/11/2021

Reference: APP/E2001/X/21/3276352

First Schedule

The change of use from retail (Class E (a)) to restaurant (Class E (b))

Second Schedule

Land at Village Stores, Ground Floor, 8 Church Street, Burton Pidsea, Hull, HU12 9DG

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 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 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 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:05/11/2021

by Zoë Franks Solicitor

Land at: Village Stores, Ground Floor, 8 Church Street, Burton Pidsea, Hull, HU12 9DG

Reference: APP/E2001/X/21/3276352

Scale: Not to scale

