



Appeal Decision

Site visit made on 7 January 2022

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2022

Appeal Ref: APP/V1260/X/21/3281861

Land at 948 & R/O 950 Ringwood Road, Bournemouth BH11 9LA

- 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 Stewart Cook against the decision of Bournemouth, Christchurch and Poole Council.
 - The application Ref 7-2020-5196-E, dated 15 October 2020, was refused by notice dated 23 March 2021.
 - 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: Builders Yard and associated Office accommodation.
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Summary of Decision

1. The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Preliminary Matters

2. The parties opted for the appeal to be determined by means of written representations and did not identify injustice that would otherwise arise. I am content to determine the appeal on the written evidence that is already before me, as well as my site visit, and do not consider that injustice would arise.
3. The appeal application form seeks certification for an existing use of land as a builder's yard and associated office accommodation. The form states this is a use falling within use class B8, storage or distribution. The Council contends the use is a sui generis use. I consider that a builder's yard with associated office is a sui generis use, as such a use does not fall within a use class. However, my assessment as to whether the use can be certified does not turn on this point.

Main Issue

4. The main issue is whether the Council's refusal to grant a certificate of lawfulness is well founded.

Reasons

5. In matters such as this the onus is on the appellant to demonstrate his case on the balance of probabilities. For the purposes of certification, a continuous period of at least 10 years use will need to be demonstrated prior to the appeal

application, which is dated 15 October 2020. The site comprises 5 small buildings with an outside yard that includes parking provision.

6. The appellant has produced a statutory declaration where he states that 948 Ringwood Road was purchased on 7 September 2007 to be a rental property, with it being tenanted from that date. The appellant also operates a roofing business, and he states it became established at No. 948 when he erected an office in the garden and used the rear garden as a yard, although no specific date is given for this in his declaration.
7. The appellant then purchased land at the rear of the adjoining property, No. 950, on 15 May 2008, and added the area to what he states was, by then, the existing yard at No. 948. The appellant then purchased land at the rear of a further adjoining property, No. 952, on 13 February 2018, and further enlarged the yard, albeit this area of land is not before me.
8. The Council states the appellant does not provide specific dates of when the office or other buildings were erected or when the use of the yard commenced. However, the statutory declaration is clear and unambiguous in that the use has subsisted on the site as a whole since May 2008. It was then not necessary for the appellant to specify his business model or how the yard functioned or how it was being used in terms of the division of parking and open storage, given the site forms a single planning unit.
9. The appeal application is then not seeking to establish the lawfulness of any buildings at the site and so when the current buildings were individually erected is not of direct relevance for the purposes of my assessment. However, there is planning history for two buildings which were granted planning permission in 2006, albeit I accept these were determined on a householder premise. Whilst my own site visit then only represents a snapshot in time, I was able to inspect the five buildings at the site which were in use as an office, kitchenette and W.C, and for the storage of materials.
10. The appellant has also submitted a significant volume of further evidence in the form of statutory declarations from other individuals as well as various invoices and correspondence relating to the business. This evidence does not contradict the substance of the appellant's declaration, in that the site as a whole has been used as a builder's yard and associated office since May 2008.
11. The Council states that the appellant's evidence implies that a change of use has occurred, but not that it has continuously operated for a period of 10 years. It then provides a critique of some 66 documents or forms of evidence provided by the appellant.
12. I accept that much of that evidence in isolation does not demonstrate the physical use of the site on the balance of probabilities. However, in considering this evidence in the round, it lends further weight to the appellants declaration that his business has been run and operated from the site since he purchased the two parcels of land, and indeed before. The character of the primary use identified, and evidenced, is that of a builder's yard and associated office, as opposed any form of incidental use, and the evidence is that this has endured for a relevant and uninterrupted period of at least 10 years prior to the date of the appeal application. The Council's critique therefore does not cast significant doubt in my mind that leads me to conclude the appellant's evidence is insufficiently precise or ambiguous for the purposes of certification. The sites

planning history also does not make the appellant's version of events any less probable given the other available evidence.

13. The Council also states there are no records of business rates relating to the site and that it appears to still be banded as a dwelling for council tax purposes. It is then said this shows the use of the land is and continues to be residential. However, a site visit demonstrates that is plainly not the case, and the evidence of the appellant demonstrates on the balance of probabilities when the use commenced, with no evidence of any cessation or intervening use since. Moreover, records such as those referred to by the Council do not evidence the actual physical use of the site that was subsisting during the relevant period.
14. As a matter of fact and degree the appellant has therefore demonstrated on the balance of probabilities the asserted use for a relevant period and so has discharged the necessary burden of proof. The Council accordingly would have been in a position to have previously taken enforcement action against a material change of use, and so a certificate of lawfulness should now be granted.

Conclusion

15. 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 a builder's yard and associated office accommodation 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.

Formal Decision

16. The appeal is allowed and attached to this decision is a certificate of lawful use describing the existing use which is considered to be lawful.

Paul T Hocking

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 October 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The appellant has demonstrated the lawful use of the appeal site as a builder's yard and associated office accommodation on the balance of probabilities.

Signed

Paul T Hocking

Inspector

Date 17 January 2022

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First Schedule

Use of the land edged red on the enclosed plan as a builder's yard and associated office accommodation (sui generis)

Second Schedule

Land at 948 & R/O 950 Ringwood Road, Bournemouth BH11 9LA

NOTES

This certificate is issued solely for the purpose of Section 191 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 was /were 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 17 January 2022

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Scale: DO NOT SCALE



