Appeal Decision

Site visit made on 26 April 2022

by Chris Preston BA (Hons) BPl MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 May 2022

Appeal Ref: APP/J1915/X/21/3278904
The Cottage, Cherry Park Farm, Road from Blind Lane to Ardeley Village by the Old Bell, Ardeley, Stevenage SG2 7AH

- 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 & Mrs Ian and Virginia Neale against the decision of East Hertfordshire District Council.
- The application Ref 3/21/0632/CLXU, dated 11 March 2021, was refused by notice dated 02 July 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: Use of building as Class E (formerly B1) office use.

Decision

1. The appeal is dismissed.

Procedural Matter

2. The purpose of an application made under s191(1)(a) of the Town and Country Planning Act is to establish whether the use of land or buildings was lawful on the date the application was made. For the avoidance of doubt I make clear that the planning merits of the use are not relevant to the determination of the appeal which must be based upon the facts of the case and any relevant judicial authority.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

4. The Planning Practice Guidance (PPG) makes clear that an applicant is responsible for providing sufficient information to support an application for a certificate of lawful use. Further, in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

5. Section 191(2) of the Town and Country Planning Act 1990 (the Act) states that uses and operations will be lawful at any time if:

   a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

   b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

6. Subsection (a) relates to the terms of s171B of the Act which specifies the timescales within which enforcement action must be taken. The appellant does not assert that the use of the building as an office did not require planning permission or that it did not involve development. Thus, the application appears to be made on the basis that the use is lawful on the basis that the time period for taking enforcement action has expired. The requisite period for a material change of use of a building to an office use is ten years, beginning with the date of the breach.

7. For an LDC to be awarded it is necessary to establish when, or if, any breach of planning control occurred and work forwards to understand whether the building had been used as an office for a continuous period of ten years following any breach, with no intervening uses or significant gaps in use, such that any unauthorised use was immune from enforcement action at the time the application was made.

8. The appellant maintains that the company commenced using the building as an office for Igloos Ltd in 2006. The statutory declaration from Mr Luke Neale confirms that the company has used the building as an office since that time and that is supported by letters from a Director and employee of the company. I have no reason to doubt those accounts and the Council has provided nothing to the contrary.

9. However, in order to identify when, or if, a material change of use occurred, it is necessary to understand what the former use of the building was and whether its subsequent use as an office was materially different, such that it would have amounted to a breach of planning control. It is not uncommon for people to run a business out of a residential property or outbuilding and such use can remain ancillary to the primary residential use, depending on the scale of operations and the effect on the residential character.

10. Very little information has been provided as to how the building was used prior to 2006. The appellants' statement describes it as an 'outbuilding used in association with Cherry Park Farm'. Whether that involved ancillary residential accommodation, storage or some other use is not clear. Nor is it clear if Cherry Park Farm, or Ardeley Place as it has also been referred, is a working farm or a purely residential property.

11. The appellant has identified that the main dwelling was occupied by the late mother of one of the appellants and there is clearly a family link between the appeal site and the main dwelling. The wider site including Cherry Park Farm is within the appellants' ownership and Mr Luke Neale, their son, set up Igloos Ltd with his business partner. It is not clear if he was residing at Cherry Park Farm at the time. The two buildings share the same vehicular access and at the time

of my visit there was no signage to indicate that the office was separate from the remainder of the property. Moreover, none of the submitted bills or invoices refers to 'The Cottage' by name; the address for the company given refers to Cherry Park Farm.

12. Given those matters it seems likely that 'the Cottage' was part of the same planning unit as Cherry Park Farm until at least 2006. Whether its use afterwards as an office amounted to a material change of use would be a matter of fact and degree depending on the nature of the use and whether it was ancillary to the use of the main property.

13. Whilst letters have been provided from those involved in the company the accounts do not testify to the intensity or nature of the use. Factors such as how many people were employed at different periods, their relationship with those living in the adjacent dwelling, how many people used the building at different times, the extent of deliveries or visits to the property would all have a bearing on whether the use was ancillary to the established use of the wider planning unit. Consideration would also need to be given to whether the business had grown in scale over time or fluctuated in scale. This is by no means an exhaustive list but is an indication of matters that would need to be considered in order to determine whether a material change of use had occurred or whether the use had remained ancillary in nature to the primary use of the land over the relevant period.

14. The statutory declaration does indicate that the office has space for 5 employees plus a meeting room but it is not clear whether 5 people are employed, or what levels of employment have been throughout the period of occupation since 2006. Given the absence of information in respect of the previous use, the relationship with Cherry Park Farm, and how the business has operated there is ambiguity as to whether the building was, or is, occupied independently as an office within Class E(g)(i) (formerly Class B1) or whether the use was, or is, ancillary to the primary use of Cherry Park Farm.

15. Given the uncertainty over whether the building was occupied as a separate planning unit throughout the period since 2006, it is difficult to conclude, on the balance of probability, that the use was lawful due to the passage of time at the time the application was made. If the use was ancillary to the primary use of the land during that period there would have been no material change of use or breach of control. Without a breach of control, the clock would not start ticking in terms of the time period for enforcement action within s171B.

16. That matter alone would be sufficient to dismiss the appeal. However, even if a material change of use had been demonstrated, the supporting documents would be insufficient to demonstrate satisfactorily that the breach had continued for a period of ten years such that it was lawful at the time of the application. The business rate bills from the Council's Revenue Services cover the eight-year period from April 2013 to January 2021. The single invoice provided relates to a date in 2020. The four phone bills submitted date from 2008, 2011, 2012 and 2018. The 2011 bill is dated 23 May, less than ten years from the date of the application. Whilst it may be that some of the calls and expenses were incurred prior to that date, the bill is not itemised so it is difficult to tell.

17. There are no supporting bills or documents from 2006 or 2007 and the only supporting documents that date from more than ten years prior to the

application are the phone bill from 2008 and the Certificate of Incorporation from Companies House dating from 1998. However, the latter does not shed any light of itself as to when the business moved to the present accommodation. Consequently, there are significant gaps in evidence and the supporting documents and bills do not, of themselves, provide clear evidence of continuous use for a period of ten years between 2006, when the appellant contends that the use began, up to the point at which the application was made. Nor does the evidence shed detailed light on exactly how the business operated for the reasons set out previously.

18. Therefore, whilst I have no reason to doubt the veracity of the statements provided by those involved in the business, there is a lack of evidence relating to the former use of the building and its relationship with Cherry Park Farm. In addition, the supporting evidence is insufficient to demonstrate the full nature and intensity of the use over the relevant period. Accordingly, based on the information provided I cannot conclude, on the balance of probabilities, that the use of the building as an office within Class E(g)(i) was lawful at the time the application was made.

19. It follows that the appeal must be dismissed.

Chris Preston

INSPECTOR