



Appeal Decision

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 08 September 2022

Appeal Ref: APP/U1430/X/22/3297672

**Silverhill Pump House Business Unit, Bodiam Road, Silverhill, Hurst Green
TN19 7QD**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Stephen Rich of FR Studio Ltd against the decision of Rother District Council.
 - The application Ref RR/2021/1821/O, dated 22 July 2021, was refused by notice dated 5 January 2022.
 - The application was made under section 192(1)(a) the 1990 Act as amended.
 - The use for which a certificate of lawful use or development is sought is proposed change of use of building from Class B8 (storage and distribution) to Class B1a (office).
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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 Matters

2. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.
3. The planning merits of the use are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
4. Section 191(2) of the 1990 Act provides that uses and operations are lawful at any time if (a) no enforcement action may 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). The application sought confirmation that the proposal would fall within development 'permitted' under Article 3 and Schedule 2, Part 3, Class I(a) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) and, as such, planning permission would not be required for the proposed development.

5. The Council is of the opinion that the proposed development would not be lawful because it does not relate to a specific class within Schedule 2, Part 3 of the General Permitted Development Order 2021. I must decide whether the proposed use of the building would have been lawful on the date of the application. The main issue is whether the Council's refusal to grant an LDC was well-founded.

Reasons

Background

6. The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2021/814 art.4(11) (August 1, 2021) substituted the previous provision under Class I(a) - *Development consisting of a change of use of a building (a) from any use falling within Class B2 (general industrial) or B8 (storage or distribution) of the Schedule to the Use Classes Order, to a use for any purpose falling within Class B1 (business) of that Schedule*; with the following provision under Class I - *Development consisting of a change of use of a building from any use falling within Class B2 (general industrial) of Schedule 1 to the Use Classes Order, to a use for any purpose falling within Class B8 (storage or distribution) of that Schedule*.
7. The Schedule to the Use Classes Order as originally enacted in 1987, and subsequently amended, set out use classes in Parts A, B, C and D. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force and provided that:
- Uses which previously fell under classes A4 and A5 are included in the list of uses outside of any class set out in Article 3(6) to the UCO.
 - The Schedule is now Schedule 1.
 - Parts A and D of Schedule 1 are revoked while Part B is modified.
 - Classes A1, A2, A3, B1, D1 and D2 are replaced by Class E in Part A of Schedule 2.
 - New 'learning and non-residential institutions' and 'local community' use classes, F.1 and F.2, are created in Part B to Schedule 2.
8. For the 'material period' beginning 1 September 2020 and ending on 31 July 2021, the following transitional provisions applied - *Any references in the GPDO to uses or use classes specified in the Schedule to the UCO are to be read as if those references were to the uses or use classes which applied on 31 August 2020 – that is, before the UCO Amendment Regs came into force; Regulation 3(2)*.

Analysis

9. The application relates to a triangular-shaped plot of land, which is occupied by a circular building. There is no dispute that the lawful use of building is B8 and I am referred to an appeal decision in which the Inspector stated - *"I am cognisant that the lawful use of the building comes under storage and distribution (Use Class B8) and through permitted rights it could be used for office uses (Use Class B1)"*¹.

¹ APP/U1430/W/18/3218644 dated 9 September 2019.

10. The proposal must be considered against the GPDO that was in force on the date the application was made, which was 22 July 2021. On that date the proposed change of use would have been permitted development by virtue of Class I(a). The provisions in relation to the transitional period are clear and the date of the application was within that period. Consequently, references in the GPDO to use classes should be read as if those references were to use classes which applied before the UCO Amendment Regs came into force.
11. I am satisfied, therefore, that the appellant has shown on the balance of probabilities that the proposed development would have been lawful had it been instituted on the date of the application as it would have benefitted from permitted development rights under Article 3 and Schedule 2, Part 3, Class I(a) of the GPDO.
12. Section 192(4) provides that the lawfulness of any use or operation for which an LDC is in force under s192 'shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness'. A material change may include a change in the law or other circumstances affecting the status of the land. While this may limit the value of the LDC, it does not mean that the appeal should be dismissed on this basis because the provision concerns an LDC in force. The relevant date for the purposes of this appeal remains the date of the application.

Conclusion

13. 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 change of use of the building from Class B8 (storage and distribution) to Class B1a (office) 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.

Debbie Moore

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 22 July 2021 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 development would have been lawful had it been instituted on the date of the application as it would have benefitted from permitted development rights under Article 3 and Schedule 2, Part 3, Class I(a) of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Debbie Moore

Inspector

Date: 08 September 2022
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First Schedule

Change of use of the building from Class B8 (storage and distribution) to Class B1a (office).

Second Schedule

Land at Silverhill Pump House Business Unit, Bodiam Road, Silverhill, Hurst Green TN19 7QD.

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: 08 September 2022

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Scale: NTS

