



Appeal Decision

Site visit made on 21 March 2022

by C Sherratt DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 October 2022

Appeal Ref: APP/K2420/X/21/3283791

78 Main Street, Bagworth, COALVILLE, Leicestershire, LE67 1DN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr & Mrs Alec Moore against the decision of Hinckley and Bosworth Borough Council.
 - The application ref 21/00889/CLE, dated 7 July 2021, was refused by notice dated 9 September 2021.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is use of outbuilding (only) to the rear of 78 Main Street, Bagworth as a maintenance, service and repair workshop.
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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 existing use which is found to be lawful.

Main Issue

2. The main issue is whether the refusal of the local planning authority to issue a certificate is well founded.

Reasons

3. Section 191(2) of the Town and Country Planning Act 1990 states that for the purposes of this Act, uses and operations are 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.
4. Section 171B(3) of the Town and Country Planning Act 1990 states that "In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach." Therefore, to be lawful the use described must have occurred for a continuous period of 10 years or more.
5. The burden of proof is on the appellant and the relevant test is the 'balance of probability'. If the local planning authority has no evidence itself to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided that the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate

on the balance of probabilities. It is necessary to consider whether, on the facts of the case and relevant planning law, the specific matter for which a certificate is sought would be lawful. Planning merits are not relevant at any stage in this particular appeal process.

6. The appellants explain, in their statement, that the residential dwelling and garden at 78 Main St, Bagworth is held under a separate land registry title to that of the workshop and adjoining land. The appeal site was purchased in 1997 as a workshop having previously been occupied by an agricultural contractor, as a workshop for the maintenance of his equipment.
7. The appeal site is defined as the outbuilding and access to the side of number 78. The appellant explains that the area of land to the north of the building has been purposely excluded as this has been used for the long term storage of a variety of vehicles owned by him and not associated with the workshop use.
8. The appellants' state on the application form, that the use had begun on 1 June 1966, and make the case that it was used thereafter for a continuous period of 10 years, thus gaining immunity from enforcement action at that time. The appellant explains that the use has not subsequently been abandoned and nor has there been any further material change of use since, therefore the use remains lawful. Reliance is placed on established case law to support this submission.
9. The Council accepts that the building has been used as a workshop in the past but suggests that sufficient evidence has not been provided to show the building has been used continuously for this use, within the last 10 years. However, the relevant 10 year period is the date when the breach commenced, which may not necessarily correspond with the 10 years immediately prior to the date of the application. Indeed, as set out above, the appellants' case is that the use commenced in 1966. In such circumstances, it will be necessary to consider not only whether the use occurred continuously for a period of 10 years, such that enforcement action could have been taken throughout that period, but also, whether there had been any subsequent material change or subsequent abandonment of that use, that would cause a lawful use to be lost.
10. The evidence supports that the building was initially used to maintain and repair farm machinery. A local resident confirms that as far as he can remember, the building was used as a workshop originally by two brothers who were farmers, using it to maintain tractors and farming machinery. However, it is not clear on the evidence before me, whether this was a primary use, physically and functionally separate to surrounding land, or ancillary to a wider agricultural use.
11. In a signed statutory declaration dated 21st July 2020, the appellant declares that from 1997 – 2011 he assisted his father at the workshop on a self-employed basis repairing mixers, dumpers and various items connected to the building trade along with the service, repair and restoration of third party motor vehicles. His father has continued to do this. In addition, between 2011 – 2018 he confirms that a landscaping contractor also utilised the building to store, maintain and service gardening and landscaping machinery including mowers, strimmers, cutters, shears, chippers, chainsaws and other associated equipment. In 2018, this business was wound up, and all machinery and equipment has been stored, maintained, serviced and restored at the workshop before being sold.

12. Shephard and Wilson Ltd Motor & General Factors confirm in a letter that the appellant has purchased parts for a variety of different vehicle types (via cash sales) regularly over the past 20 years. Letters from local residents also refer to the use of the building by Alec Moore and his son as a workshop for the repair of third party cars and plant machinery associated with a landscaping business. This evidence, whilst not determinative on its own, supports the statutory declaration.
13. From 1997, it would appear more probable than not, that the building and surrounding land was physically separate. The Council refer to the lack of business rate bills/payments, electricity bills, telephone bills etc. to demonstrate continuous use over the period claimed. The appellant claims that the workshop is not registered for business rates on the basis it would qualify for Small Business Rates Relief. All sales and purchases were cash as highlighted in the accompanying letter from Shepherd & Wilson Ltd (Motor and General Factors). I note that all telephone calls to the appellant are made via his house phone or via a personal mobile. Historically there was a second line which ran from the house but as the appellant has slowed down his activities due to old age, this has been removed. Electricity to the site is not sub-metred and is taken directly from the house supply. The electricity was used for power tools and a compressor. Heating to the workshop is via propane gas. The workshop benefits from a water connection with working toilet. Notwithstanding the shared utility connections with the residential property, this in itself does not indicate a mixed use. I consider that there is and was a functional separation between the appeal building and dwellinghouse and that no material change of use has occurred.
14. A planning application was submitted in 2019 for the erection of a dwelling on the land and a site visit was undertaken by the Council on 31st October 2019. The photos from this visit show vehicles on the site and within the building. A site visit was also carried out for the purposes of this application on 11 November 2020. This site visit showed a number of the same vehicles on the site at the November 2020 visit that were in the same state as they were in October 2019. This brings into question, the Council assert, if the use in the last year at least has been operational. Rather it suggests a storage use.
15. It appears, on the evidence before me, more likely than not, that the primary use of the building as a workshop had begun by 1997 and occurred for a continuous period well in excess of 10 years thereafter. Subsequently it is clear that the level of activity has greatly reduced. However, the mere cessation of a use is not development. The concept of abandonment applies if a building or land remains unused for a considerable time, in such circumstances that a reasonable man might conclude that the previous use had been abandoned. Abandonment involves a cessation of use in such a way and for such a time as to give the impression to a reasonable onlooker, applying an objective rather than a subjective test, that it was not to be resumed.
16. It is asserted that the level of work carried out at the workshop more latterly is restricted to the service and repair of vehicles belonging to family and friends given Mr Moore is semi-retired. Storage at the site is accepted by the appellants to occur but only as ancillary to the workshop use. The Council's photographic evidence shows that there has been no change in some of the vehicles in the building between their site visits, over 12 months apart. However, that in itself does not suggest that the use of the building changed to

one for primary storage purposes. Little evidence of much happening is probably reflective of the appellant's age and semi-retirement. I did not get the impression from my site visit that the use was not to be resumed and had been abandoned; for example, the various tools and machinery one might expect to find in a workshop still remained. To my mind, someone passing by would not adopt a view that the building was used solely for storage either. Rather it still has the appearance and characteristics of a workshop.

17. S.191(4) of The Town and Country Planning Act 1990 allows the LPA to modify the terms of the application, and to issue a certificate in somewhat different terms to those applied for, so that it accords with the facts and evidence, rather than issuing an outright refusal. This power is also granted to the Secretary of State or the Inspector in the case of an appeal. The applicant would be agreeable to an amended description: "Certificate of Lawful Existing Use for the use of the outbuilding (only) to the rear of 78 Main Street, Bagworth as a maintenance, service and repair workshop and associated storage"
18. In conclusion, the submitted evidence including the sworn affidavits and corroborating letters from neighbours and local motor factors suggest, on the balance of probability, that the use of the building as a workshop has occurred for a continuous period in excess of 10 years. There is, in my view, no substantive evidence of actual abandonment of the use or that a subsequent material change of use of the building has occurred. As any storage use appears to be ancillary, it is not necessary to amend the description as suggested.

Conclusion

19. 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 'use of outbuilding (only) to the rear of 78 Main Street, Bagworth as a maintenance, service and repair workshop' 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.

C Sherratt

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 7 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The submitted evidence demonstrates, on the balance of probability, that the use of the building as a workshop has occurred for a continuous period in excess of 10 years and has not been subsequently abandoned or that a further material change of use has since occurred.

Signed

C Sherratt

Inspector

Date 03 October 2022

Reference: APP/K2420/X/21/3283791

First Schedule

Use of outbuilding (only) to the rear of 78 Main Street Bagworth as a maintenance, service and repair workshop.

Second Schedule

Land at 78 Main Street, Bagworth, Coalville, Leicestershire, LE67 1DN

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.



The Planning Inspectorate

Plan

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

by C Sherratt DipURP MRTPI

Land at: 78 Main Street, Bagworth, COALVILLE, Leicestershire, LE67 1DN

Reference: APP/K2420/X/21/3283791

Scale: Not to Scale

