The Planning Inspectorate

# Appeal Decision

**by S A Hanson BA(Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 28 February 2023**

**Appeal Ref: APP/W2845/X/22/3300904**
**11c and 11d, Brackley Road, Towcester, Northamptonshire NN12 6DH**

- 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.
- The appeal is made by Mr Iain Hodgkinson against the decision of West Northamptonshire Council.
- The application ref WNS/2022/0504/LDP, dated 12 February 2022, was refused by notice dated 10 June 2022.
- 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 described as: an art exhibition space, where I teach students art and display artworks for sale. Members of the public will be able to visit the exhibition space by appointment and on regular open days. The proposal is not for a full time retail shop, but for occasional retail sales. I plan to hold private view events in the early evening on Fridays, from 18.00 to 20.00.

## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The header above correctly quotes the description of the proposed development set out in the application form. The decision notice issued by the council revises the description to 'proposed development of units from offices to art exhibition space'. That revision can only be done with the appellant's agreement where a lawful development certificate (LDC) is sought for proposed development under s192 of the Town and Country Planning Act 1990 as amended (the Act). As the council's amended description seems to be substantially different and there appears to have been no agreement to amend the description, I shall therefore consider this appeal as described by the appellant on the application form.

3. For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

4. It has not been necessary to carry out a site visit. This is because all the required information is included with the application and appeal documents, and a decision can be reached on the papers. Both parties were contacted regarding this matter and given the opportunity to comment on the appropriateness of the proposed approach. No comments were received.

## Main Issue

5. This is whether the council's decision to refuse to issue an LDC was well-founded. This will turn on whether an art exhibition space, where teaching takes place and artwork is displayed and sold would be lawful, given the previous use of the premises.

## Reasons

6. The council's view is that the proposed change of use does not constitute permitted development under Part 3 of Schedule 2 the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). This is because they consider the proposed use to fall within use class F.1(b) of the Town and Country Planning (Use Classes) Order 1987 which was amended in 2020. Class F.1(b) is for the display of works of art (otherwise than for sale or hire). There is no dispute between the parties that the previous use of the appeal site was offices and that these fall within Use Class E. The council considers that as there is no permitted change between Use Class E and Use Class F, express planning permission would be required.

7. The appellant in their appeal submissions, considered that the council had misunderstood what had been applied for and they say that the application sought an LDC for a change of use to Class E(a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public, changing from an office use falling within Class E. They say the intended use is to retail art and art materials and that the application made clear that the purpose was for retail. Therefore, as the proposed use would fall within the same use class, the change of use would be permitted.

8. However, this is substantially different from the full description of the scale and nature of the proposed use in the application form, which described the proposed use as 'an art exhibition space, where students are taught, and artwork is displayed for sale'. This is what was applied for at the time of the application. Section 192(1)(a) of the Act states that if any person wishes to ascertain whether the use of buildings or other land would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question. If, on an application under that section, the council is provided with information satisfying it that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application.

9. The onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful. Under s195 of the Act, it is the proposed use as described in the application form that is appealed, unless that description has been amended by agreement between the parties, and that is on which an appeal decision should be based.

10. While it seems that the council's considered opinion was that the proposed use would be as an art gallery, there is no consideration of the educational or retail elements in its submissions. Notwithstanding this view, I consider that the proposed use includes use as an art gallery, use for educational purposes and use for retail purposes. On the evidence provided I am unable to determine, as a matter of fact and degree, whether any of these uses are ancillary to another

rather than primary uses in themselves, hence my view that the overall use is a mixed use.

11. Land or buildings that are in a mixed use are regarded as a *sui generis* use, which means in a class of their own. There is no permitted change between the current Class E use as an office to the mixed use, nor is it clear, on the evidence available, that changing from the lawful office use to the proposed *sui generis* use would not be material in planning terms. Accordingly, I find, on the balance of probabilities, and having regard to the appellant's burden of proof, that the proposed use would require express planning permission.

**Conclusion**

12. For the reasons given above I conclude that the council's refusal to grant a certificate of lawful use or development described as "an art exhibition space, where I teach students art and display artworks for sale. Members of the public will be able to visit the exhibition space by appointment and on regular open days. The proposal is not for a full time retail shop, but for occasional retail sales. I plan to hold private view events in the early evening on Fridays, from 18.00 to 20.00." was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*S A Hanson*

INSPECTOR