



Appeal Decision

Site visit made on 19 May 2023

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 June 2023

Appeal Ref: APP/U4610/X/22/3307404

Telephone Repeater Station, Fletchamstead Highway, Coventry CV4 7BB

- 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 Parminder Bal against the decision of Coventry City Council.
 - The application ref LDCE/2022/1224, dated 13 May 2022, was refused by notice dated 8 August 2022.
 - 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 the use of a former BT Repeater Station (Sui Generis) as a commercial office (Use Class E(c)iii).
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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 Council's decision to refuse to grant an LDC is well-founded.

Reasons

3. The onus is on the appellant to demonstrate that, on the balance of probabilities, the use subject of the application is lawful for the purposes of section 191 of the 1990 Town and Country Planning Act (the Act). 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.
4. A use is lawful under the provisions of section 191(2)(a) of the Act if no enforcement action may be taken because it did not involve development requiring planning permission, or because the time for enforcement action against the use has expired. The use for which a Certificate of Lawful Use or Development (LDC) is sought, as set out in the application form, is the use of the former BT Repeater Station (Sui Generis) as a commercial office (Use Class E(c)iii).
5. In support of their case that the existing use of the appeal building at the time the application for the LDC was made was a commercial office, the appellant has submitted two statutory declarations, one from themselves and another from the previous owner, Mr Richard Simmons. With regard to the use of the building as a commercial office, the declaration from Mr Simmons simply states

they 'understand the new owner, Mr Bal, purchased the site in 2018 for office use'. This suggests that Mr Simmons has not themselves witnessed the use of the building as a commercial office.

6. The declaration from the appellant states that the building has been used as a commercial office space since 2018 and business rates have been paid on the building. The declaration provides no indication of how the office operates, eg what sort of business is carried out there, how many staff, opening hours. The only reference to what the office relates to is set out in the appellant's statement of case, which states it is used 'in connection with the applicant's architectural design studio.' However, this does not provide much clarity on how the office operates. The use of the phrase 'in connection' raises some ambiguity as to whether the architectural studio is located elsewhere and this building is used in some sort of ancillary capacity to it, or whether the architectural studio operates from the appeal building.
7. Consequently, the evidence in support of the use of the building as a commercial office is very limited and that which has been presented is ambiguous and imprecise. Therefore, it has not been sufficiently demonstrated that, on the balance of probabilities, the appeal property was in use as a commercial office at the time the application for an LDC was made.
8. Notwithstanding the above, s191(4) of the Town and Country Planning Act 1990 states '(4) *If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application*'. Therefore, I have the power to modify/substitute the description of the development for which an LDC is sought. On this basis, I shall now consider whether the appeal property has been in continuous use as a music studio for a period of ten years prior to the date on which the application for the LDC was made. Given the evidence submitted with the application refers to the use of the building as a music studio prior to its alleged use as a commercial office, I do not consider there would be any injustice caused in taking this approach.
9. The High Court judgment of *Ocado Retail Ltd v Islington LBC* [2021] EWHC 1509 (Admin) confirmed that a 4 or 10 year period of immunity, as set out in s171B of the Act, can be any period. It is not the immediate period prior to when the enforcement notice has been issued, or as in this case, an application for a s191 application made. Once a right has been accrued upon the expiry of a time limit in s171B, it is not lost if the right has not been exercised for a period of time, provided there has been no abandonment or new use introduced.
10. Although the evidence submitted by the appellant regarding the use of the appeal building as a commercial office is very limited, there is a significant amount of evidence stating that it was used as a music studio between 2006 and 2018. The Council does not dispute this and confirms that had the application sought an LDC for the use of the building as a music studio it would likely have considered the evidence as satisfactory to issue a certificate. There is no evidence before me to indicate that the building was not in continuous use as a music studio between 2006 and 2018.

11. As such, in accordance with *Ocado*, a 10 year period of immunity had been accrued for the use of the building as a music studio between 2006 and 2018. The only way this accrued right could be lost is if the use was abandoned or a new use introduced. The Council confirm that, having regard to *Hartley*¹ and *Hughes*², the use of the building as a music studio has not been abandoned. Furthermore, as I have found that it has not been sufficiently demonstrated that the building has been used as a commercial office since 2018, and no other use is suggested, a new use has not been introduced.
12. Consequently, based on the evidence before me, the lawful use of the building is that of a music studio. S191(5)(b) provides that where the existing use is within a class specified in an order under s55(2)(f), meaning the Town and Country Planning (Use Classes) Order 1987 (the UCO), the LDC should describe the use by reference to that class. However, the Planning Practice Guidance states that *'precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it...a certificate for existing use must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a use class... the description needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to spell out the characteristics of the matter so as to define it with precision. This is particularly important for uses which do not fall within any "use class"...'*³
13. There is no dispute that a music studio falls with Class E of the UCO. Therefore, I shall include reference to 'Class E' in the certificate. I note that the use of the building as a music studio became lawful prior to the amendments to the UCO in 2020 and would have previously fallen under a different use class. However, the description of the lawful use on the LDC must relate to the use at the time the application was made, at which point a music studio fell within use Class E.
14. As I am granting the certificate for a use which was not applied for, it is important to point out the implications of this. The change of use of the building to any other use falling within use Class E, including for example *'any other services which it is appropriate to provide in a commercial, business or service locality'* (Class E(c)(iii)) would not be deemed to be development under s55(2)(f) of the Act.

Conclusion

15. For the reasons given above, I conclude on the evidence available that the Council's refusal to grant a certificate of lawful use or development 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.

Alexander Walker

INSPECTOR

¹ *Hartley v MHLG* [1970] 1QB 413

² *Hughes v SSETR* [2000] 80 P&CR 397

³ Planning Practice Guidance Paragraph: 010 Reference ID: 17c-010-20140306

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 16 May 2022 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:

It has been demonstrated on the balance of probabilities that the property was in use as a music studio for a continuous period of ten years prior to the date the application was made.

Signed

Alexander Walker
Inspector

Date: 9 June 2023

Reference: APP/U4610/X/22/3307404

First Schedule

Use of the building as a music studio, being a use falling within Class E, Part A, Schedule 2 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

Second Schedule

Telephone Repeater Station, Fletchamstead Highway, Coventry CV4 7BB

IMPORTANT NOTES – SEE OVER

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: 9 June 2023

by Alexander Walker MPlan MRTPI

Land at: Telephone Repeater Station, Fletchamstead Highway, Coventry CV4 7BB

Reference: APP/U4610/X/22/3307404

Scale: Not to Scale

