



Appeal Decision

Site visit made on 22 May 2023

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2023

Appeal Ref: APP/H1705/X/22/3307572

The Studio, Upper Whitehill Farm, Overton, Basingstoke RG25 3DS

- 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 Mrs Gillian Barnes against the decision of Basingstoke & Deane Borough Council.
 - The application Ref 21/03503/LDEU, dated 15 November 2021, was refused by notice dated 13 April 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: Use of first-floor offices known as The Studio contained within The Old Barn.
-

Summary of Decision

1. The appeal is allowed in-part and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Procedural Matter

2. Both parties consider the appeal is suitable to be determined by the written procedure. That being so, I do not consider that injustice or prejudice to a party arises.

Main Issue

3. The main issue is whether the Council's refusal to grant a certificate of lawfulness for an office use was well founded.

Reasons

4. In matters such as this the onus is on the appellant to demonstrate on the balance of probabilities that the office use is lawful. My assessment is therefore very fact specific, based upon the evidence before me.
5. The site itself relates to the first-floor of a large barn building. The appellant contends that the entirety of the first-floor has been used as offices for a continuous period of at least 10 years prior to the submission of the appeal application.
6. The appellant has then provided two statutory declarations and a number of tenancies which provide evidence of an office use since at least September 2001.

7. I could see during my site visit that the first-floor is divided into two separate spaces of approximately the same size, which I shall refer to as the eastern and western rooms.
8. It was apparent that the eastern room was in use as an office. However, the western room had not been fitted-out or converted. It therefore did not contain the same flooring, ceiling coverings, walling, decoration or fixtures and fittings, including lighting, of the eastern room. Indeed, it was a single void space which merely appeared to contain a small number of ad-hoc boxes and paraphernalia. It was thus largely the same as when the Council undertook its site visit, the photographs of which are before me. Whilst I appreciate such visits only represent a snap-shot in time, it was very apparent to me that the western room had an entirely different character to the eastern room. Given the absence of it then having been converted, it casts significant doubt in my mind that it could or would have actually been used as an office for a requisite continuous period.
9. Whilst the entirety of the first-floor may then have been let, albeit there is limited evidence of plans accompanying the tenancies, that does not demonstrate on the balance of probabilities that the entirety was then actually used for a continuous requisite period as an office. It is merely what the tenancies may have prescribed. Moreover, the statutory declarations are silent in respect of the very apparent division created as a result of the two rooms, which is an omission which further casts significant doubt in my mind. They are therefore vague and ambiguous when it comes to evidencing the full extent of the actual office use that has subsisted. Instead, they have merely identified what has been let or they choose to describe as 'The Studio', or what may have been understood to have been the case in respect of a previous temporary office use.
10. The statutory declarations therefore do not unequivocally evidence an office use of the entire first-floor for a requisite period, or indeed even discharge the necessary burden of proof. That the western room can only be accessed from the eastern room has no bearing on whether it has actually been used as an office. It is therefore not clear from the appellant's evidence that an office use has subsisted for a requisite period for the first-floor as a whole, or that the western room has been put to a lawful ancillary use for a continuous requisite period.
11. I appreciate that an interested party seeks to contest the office usage, however there is little evidence before me to directly dispute the evidence of the appellant in respect of the actual office use made of the eastern room.
12. Some reference is also made to the provision of vehicle parking. However, this does not form part of the description for what certification was sought and is not evidenced in the statutory declarations. Neither do the tenancies contain a plan identifying a parking area.
13. It remains the case that the appellant's own evidence needs to be sufficiently precise and unambiguous to justify the grant of a certificate. In considering the evidence in the round, as a matter of fact and degree, the appellant has only discharged the necessary burden of proof to demonstrate lawfulness in respect of the eastern room and so a certificate of lawfulness should now be granted. However, the same has not been demonstrated for the western room.

Conclusion

14. 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 was not well-founded in respect of the eastern room and that the appeal should succeed. I will accordingly exercise the powers transferred to me under section 195(2) of the 1990 Act as amended in respect of the eastern room and section 195(3) in respect of the western room.

Formal Decision

15. The appeal is allowed in-part and attached to this decision is a certificate of lawful use describing the existing use which is considered to be lawful. In all other respects the appeal is dismissed.

Paul T Hocking

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 15 November 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and highlighted in pink and marked with the letter 'E' 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 appellant has demonstrated the lawful office use of the first-floor eastern room on the balance of probabilities.

Signed

Paul T Hocking

Inspector

Date: 12 June 2023

Reference: APP/H1705/X/22/3307572

First Schedule

Use of the first-floor eastern room as offices (use class B1(a)) contained within The Old Barn

Second Schedule

Land at: The Studio, Upper Whitehill Farm, Overton, Basingstoke RG25 3DS

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 described in the First Schedule taking place on the land specified in the Second Schedule was 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 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: 12 June 2023

by **Paul T Hocking BA MSc MRTPI**

Land at: The Studio, Upper Whitehill Farm, Overton, Basingstoke RG25 3DS

Reference: APP/H1705/X/22/3307572

Scale: DO NOT SCALE

