



## Appeal Decision

Site visit made on 17 October 2023

**by Zoë Franks Solicitor**

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

**Decision date: 15 December 2023**

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**Appeal Ref: APP/A2335/X/23/3314012**

**The Old Furness St. Stables, Furness Street, Lancaster, LA1 5QZ**

- 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 Phil Bleazey against the decision of Lancaster City Council.
  - The application ref Application No. 22/01298/ELDC, dated 18 October 2022, was refused by notice dated 21 December 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 existing use of hallway, detached commercial/domestic garage and first floor dwelling house.
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**This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 28<sup>th</sup> November 2023.**

### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is whether the Council's decision to refuse to issue the LDC sought was well-founded. The planning merits of the uses taking place on the land will not be considered in this determination.
3. The appellant sought an LDC for use as a dwelling-house of part of the overall appeal site (as identified on the site plan), and states that the residential use began on 1 September 2016. Whilst the date for the commencement of the residential use is not contested by the Council, they argue that the overall site cannot be split into separate planning units and, therefore, the mixed use comprising all of the primary elements of the use must be considered. On this basis, the appropriate timescale for immunity from enforcement action would be 10 years (and therefore this would be the relevant period of mixed use to consider when determining whether the LDC should be granted).

### Reasons

4. When considering a change of use of land, as in this case, it is necessary to first identify the planning unit, and then to see whether the use has changed in a material way and on what date.
5. The leading case of *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207 held that the planning unit is usually the unit of occupation unless a smaller area can be identified which, as a matter of fact and degree, is

physically separate and distinct and occupied for different and unrelated purposes. The concept of physical and functional separation is key.

6. In this case, all of the appeal land is owned and occupied by the appellant. There are a variety of uses on the land described by the appellant in the application form as '4 workshops/storerooms, one garage for commercial use, and one room at the north end of the building which is the entrance hall to the first-floor dwelling.' The description of the use of the site given on the appeal form is similar but also refers to a 'detached commercial/domestic garage' and 'associated domestic garden' which suggests uses also associated with the residential flat. These descriptions accord with the layout of the building that I saw during the site visit, and the building sits within a larger plot which has garden, access track and hardstanding elements.
7. The concept of a mixed use is one of two or more primary uses existing within the same planning unit. From the evidence submitted including the site plans and my observations it is clear that there are three uses on the site: that of residential, workshop and commercial garage. These are all primary uses and none are incidental to another. It was also evident that there was significant overlap between where these uses took place on the land, for example the detached garage was used for both the domestic and commercial use, there is one shared access and track onto the site and the outdoor area is used as for garden and parking area and to access the workshops. In addition, parts of the storage areas within the main building and outdoor area are used in association with the domestic use and the toilet in the downstairs entrance hall to the flat is also used in conjunction with the workshops.
8. There is not a complete physical and functional separation between the residential and commercial parts of the plot i.e. within the outside area, garage and ground floor of the building, although I do accept that the first floor of the building is solely in residential use. The residential use takes place over a wider area than only the first floor as the access, garden, hallway, garage and some domestic storage takes place at ground floor level. The residential use is not therefore physically separate from the other areas used for the other primary uses on the site (i.e. the workshop and commercial uses) and the correct planning unit is the whole of the appeal land.
9. On the facts before me, the appeal site is a single planning unit which is within a mixed use, namely residential, workshop and commercial garage. At the earliest, this mixed use began in 2016 when the residential use was introduced though it is not clear from the evidence whether this was also the date when the commercial garage uses began. No enforcement action may be taken after 10 years beginning with that date of the start of the mixed use.<sup>1</sup> As the mixed use of the appeal site has not been proven on balance for this 10 year period the appellant's case cannot succeed at this time.

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<sup>1</sup> Section 171(B)(3) of the Town and Country Planning Act 1990

10. For the reasons given above I conclude that the Council's decision to refuse to grant a certificate of lawful use or development in respect of hallway, detached commercial/domestic garage and first floor dwelling house 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.

*Zoë Frank*

INSPECTOR