



Appeal Decision

Site visit made on 31 October 2023

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 26 January 2024

Appeal Ref: APP/W0340/X/22/3297678

Chestnut, Coppice Rag Hill, Aldermaston, READING, RG7 4NS

- 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 and Mrs Jones against the decision of West Berkshire District Council.
 - The application ref 21/01225/CERTE, dated 28 April 2021, was refused by notice dated 7 December 2021.
 - 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 continued use of the property as a live/work unit.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application was made by the appellants, Mr and Mrs Jones for a full award of costs against the Council and is the subject of a separate decision.

Main Issues

3. Chestnut was granted planning permission to convert from a barn to a live work unit in 2011. Conditions were attached to ensure it remained a live/work unit. The appellants purchased Chestnut in 2017 and were fully aware of the planning restrictions on the property. They understood that running their several businesses from home would meet the conditions.
4. The question is therefore what are the conditions and does the appellants' activity fall within them?

Reasons

5. The original planning permission was 11/01563/FULD. It was for "redevelopment, alterations and conversion of traditional open fronted barn to form 1x live/work unit" and was subject to 14 conditions. Conditions 12 and 13 are the relevant ones.

"12. The occupation of the dwelling shall be limited to a person (including their resident dependants) solely or mainly employed in the workshop as identified in this planning permission. The dwelling or workshop shall not be sold/ leased/ rented or otherwise separately disposed of and must remain as a live work unit."

13. The workshop floorspace, as shown on drw. no. 11/026-01 received on 20th July 2011, shall remain as a workshop for use of those solely or mainly employed at the workshop and residing in the dwelling and shall not be converted from a workshop to living accommodation”.

6. I note there is no reference to the use classes order but the conditions refer solely to a 'workshop'. In particular No13 says the workshop spaceshall remain as a workshop...etc”.
7. The appellant argues that a workshop would have fallen within use class B1(c) which has now been subsumed within the wider class E. There are no restrictions preventing a change between any of the parts of Class E so as the room is being used as an office and as this falls within Class E there has been no breach of condition. This raises two questions, what is the use the appellants are making of the space and is the application of Class E relevant given the wording of the conditions.
8. As I saw on my site visit the building is a relatively modest barn conversion. The end of the building has a pair of double doors and a separate pedestrian entrance to a large room that is the 'workshop'. There is a connecting door to the main dwelling beyond. The workshop was set up as a home office, with a desk and computer and a printer. There was also a corner settee and a fish tank. Otherwise there was not a lot in the room. One wall has a series of built in cupboards and these seemed to contain a boiler, washing machine and some domestic storage.
9. I have no reason to doubt the appellants' description of how they operate their various businesses. Mrs Jones runs two businesses and uses the office as her administrative base, often involving calls to the USA, Australia etc at anti-social times, and so benefits from having a separate office. Mr Jones runs several businesses. It seems these have their own premises and are involved in manufacturing medical equipment. However, he uses the office for out of hours admin and for research and development. It seems he sometimes actually uses the room to assemble parts for new equipment for testing purposes.
10. Whether this amounts to a separate Class E use is another matter. Many of us have a home office and that is considered ancillary to the domestic use of the dwelling. Just using a room as an office, even at odd anti-social hours does not stop it being ancillary, nor does using it every day, otherwise many householders around the country, including planning Inspectors, would find they had inadvertently created a separate planning unit. The assembling and testing of machinery parts does seem to go beyond an ancillary use. This is clearly not part and parcel of the residential use. however, I have no information on frequency of that use. Once a month could be considered de minimis, but on a daily basis would clearly amount to a material change of use. Similarly the visits by clients, how often does that happen? Regular visits would suggest the use had moved beyond ancillary but there is no evidence for that.
11. Another way of looking at the problem is whether the Council could successfully issue an enforcement notice alleging a material change of use if this had just been an ordinary dwelling. Given the evidence I have I would be reluctant to find there had been a material change of use. It is much more likely on the balance of probability the room is being used as a home office.

12. However, even if I am wrong, I do not think it matters because the condition does not require the use to be within Class B (or Class E) but to be a 'workshop'. Condition 13 is quite clear on this. Even though it goes on to specifically single out "shall not be converted from a workshop to living accommodation", this does not imply that conversion to other uses would be acceptable, it merely reinforces the point that a residential use is not. Similarly condition 12 requires the occupation of the dwelling to be by a person employed in the workshop, and there is no sense in which one is "employed in" a home office.
13. In my view the conditions clearly require the use of the unit to be as a workshop. Both parties have defined workshop and both agree it is a *"room or building where things are made or repaired using machines and/or tools"*. However the appellant goes on to add it can also mean *"meeting at which a group of people engage in intensive discussions and activity on a particular subject or project"*. However, this latter meaning is clearly not what the condition means, not least because it defines an activity not a building or room. None of the appellants activities are those associated with a workshop, apart perhaps from the assembling and testing of machinery, but that would appear to be very much a minor activity and not one that would amount to a use in its own right.
14. The appellant argues that a workshop originally fell within Class B of the Use Classes Order which has now been subsumed within Class E. Therefore any activity that falls within Class E is lawful. This also is clearly not correct. The condition does not refer to the Use Classes Order, but specifically to a single type of use – workshop. If the appellant is correct then the room could be used as a shop or a restaurant, which again is clearly not the case. The condition has to be read as it is written and given its ordinary, common sense meaning. The use of the room is restricted to that of a workshop and the appellants are not using it as a workshop. Consequently the building as a whole is not being used as live/work unit because that use is constrained by conditions that are being breached so an LDC to that effect cannot be issued.

Other Matters

15. The appellants argue that it is unreasonable to enforce the condition – what are they supposed to do? Move house or change business? However, this appeal is not to consider the merits of continuing to use the building as a home and office, or whether there is any merit in retaining the workshop restriction. Whether the Council have been inconsistent in how they approached previous applications and suggestions for the use of the property is also not relevant to this appeal. It is solely to answer the question whether the present use is lawful within the restrictions created by the planning permission.

Simon Hand MA

INSPECTOR