



Appeal Decision

Site visit made on 29 April 2024

by D Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 07/05/2024

Appeal Ref: APP/Z4310/X/23/3326091

51 Sandhills Lane, Liverpool L5 9XJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991 against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr F Connolly of FSF Estates Ltd against Liverpool City Council.
 - The application, Ref 21LP/2078, is dated 5 April 2021.
 - The application was made under section 192(1)(a) of the 1990 Act.
 - The use for which an LDC is sought is Class E of Schedule 2, Part A, of the Town and Country Planning (Use Classes) Order 1987 as amended (the Use Classes Order).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. 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. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
3. For the avoidance of doubt, the planning merits of the development are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act.
4. I have taken the description of the use for which the LDC was sought from the application form.

Main Issue

5. I must decide whether the appellant has shown, on the balance of probabilities, that the use of the site for purposes falling within Class E "Commercial, Business and Service" of Schedule 2, Part A of the Use Classes Order would have been lawful had it been instituted on the date of the application.

6. The main issue is whether the Council's deemed refusal to grant a lawful development certificate was well-founded.

Reasons

Background

7. Section 191(2) of the 1990 Act provides that uses are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason).
8. Section 55(2)(f) of the 1990 Act provides that, in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class shall not be taken to involve development of land.
9. Article 3(1A) and, from 1 September 2020¹ subject to transitional arrangements, Schedules 1 and 2 to the Use Classes Order thereby provide that where a building or other land is used for a purpose of any class specified in (a) Part B or C of Schedule 1, or (b) Schedule 2, the use of that building or other land for any other purpose of the same class is not to be taken to involve development of the land. These changes are bilateral.
10. Accordingly, no development is involved with a change within the same use class even if the character is substantially different, and the change would otherwise be material. This remains the case following the 2020 amendments to the Use Classes Order which provide, for example, that uses for the provision of financial services principally to visiting members of the public, and for an office to carry out any operational or administrative function, which previously fell under classes A2 and B1(a) respectively, now both fall under class E.
11. Also, Article 3(2) of the Use Classes Order provides that references in Article 3(1A) to a building include references to land occupied with the building and used for the same purposes.
12. Therefore, if the appeal site was in use for purposes falling within B1 of the Schedule to the Use Classes Order, it could now be use for purposes falling within Class E of Schedule 2, Part A.

Evidence and Analysis

13. The appeal site is a triangular-shaped parcel of land situated within a predominantly industrial and commercial area. It is occupied by a vacant building that the appellant describes as a low grade, part one and part two-storey warehouse/office building. The remainder of the site comprises hardstanding.
14. The appellant explains there is no relevant planning history for the site but says it has been used as offices on a long term basis. If that were the case, it would now have a lawful use for purposes falling within Schedule 2, Part A,

¹ As set out in the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.
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Class E of the Use Classes Order, which encompasses a broader range of commercial uses and service operations than the former Class B1.

15. The appellant's supporting evidence is very limited, and the Council has not provided any indication of how it would have determined the application. The appellant described the building as a warehouse/office, and this is how it appeared at the time of my site visit. The warehouse occupied the majority of the space and the offices/showroom appeared ancillary. There was no evidence of any intervening uses. It is not clear, therefore, that the building and site have been put to a use consistent with B1 because a warehouse would be a different use class.
16. Due to the lack of supporting information, I am not satisfied that the appellant's evidence is sufficiently precise and unambiguous to shown, on the balance of probabilities, that the use of the site for a purpose within Class E of Schedule 2, Part A, of the Use Classes Order 1987 would be lawful if it were instituted or begun on the date of the application.

Conclusion

17. For the reasons given above, I conclude that the Council's deemed refusal to grant an LDC in respect of Class E of Schedule 2, Part A, of the Use Classes Order 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.

Debbie Moore

Inspector