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# Appeal Decision

by R Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18<sup>th</sup> July 2024

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**Appeal Ref: APP/C4615/X/23/3327623**

**Adjoining 17 Laurel Lane, Halesowen, B63 3DA**

- 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 (LDC).
  - The appeal is made by Mr Roger Barker of Halesowen Clothing Company Distributors against the decision of Dudley Metropolitan Borough Council.
  - The application ref P23/0595, dated 3 May 2023, was refused by notice dated 10 July 2023.
  - 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 Class E - commercial, business and service.
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## Decision

1. The appeal is dismissed.

## Procedural Matter

2. Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO) was introduced by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. From 1 September 2020, any land situated in England that was on 31 August 2020 in use or part use for all or any purpose falling within Classes A1 (Shops), A2 (Financial and professional services), A3 (Restaurants and cafes) or B1 (Business), is to be treated as it is being used for a purpose specified within the new Class E.

## Main Issue

3. The main issue is whether or not the Authority's decision to refuse the LDC was well founded.

## Reasons

4. The 2-storey unit is located at the corner of Laurel Lane and Powell Street. The rendered building is attached to a residential dwelling at 17 Laurel Lane in a predominantly residential area.
5. The appellant's claim is that the use of the site has persisted for 10 years or more within those Class E – Commercial, Business and Service uses. The appellant's signed statement advises that he has owned the site since the mid 1970's. He states that Halesowen Clothing Distributors Ltd has operated from there since its incorporation in 1999. According to the appellant, the premises have been used for clothing distribution and included some manufacturing processes. However, his summary alternatively describes the activity as textile manufacturing and a trade retail counter.

6. There is dispute between the Council and the appellant as to the nature of the manufacturing element. Crucially, in referencing the use of sewing and embroidery machines, and an overlocker, the Council indicate that that industrial use was tantamount to a Class B2 - General Industrial use.
7. In contrast, it is the appellant's contention that the nature of the industrial process fell within Class E(g)(iii), being one which can be carried out in any residential area without detriment to amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. The owner's statement highlights that the primary business took part-manufactured clothing items and stretch covers for finishing by embroidery, stitching, sewing, overlocking and/or packing. It states that the items were then sold wholesale direct or distributed to customers.
8. However, there is little information to clarify the size, nature, number, frequency or duration of the use of machines operating within the building. It is therefore unclear whether they would have had any effect on nearby residential amenity sufficient to say which of those classifications would apply.
9. Furthermore, there is little to distinguish what proportion of the overall activity taking place at/from the site any manufacturing elements represented. The various title descriptions of the business used in the appellant's evidence, and indeed his initial description, allude to a use substantially concerned with clothing distribution. The premises were described in the supporting statements as the 'warehouse' premises. According to the Council, 'warehousing' reflects a business rates charge on the premises dating from 2015.
10. Taking all of the above together, I find the evidence provided by the appellant lacks sufficient detail. It is ambiguous and imprecise. Even if the manufacturing element of the business were operable without adverse effects on local residential amenity, the evidence before me points to a mixed use comprised of manufacturing and distribution. As distribution is not a use described in Class E of the UCO it is not capable of being part of a mixed use under that class. Accordingly, I find the use described cannot fall within Class E as applied for.

### **Other Matters**

11. I note the Council's references to another registered addresses for the business, and the Council's classification of the site for other (non-planning) purposes. However, these are of little consequence as it is the actual use of the site which is determinative.

### **Conclusion**

12. For the reasons given above, I conclude that the Council's refusal to grant an LDC in respect of the use of the site as a Class E use was well-founded on the basis of the evidence provided 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).

*R Hitchcock*

INSPECTOR