
Appeal Decision

Site visit made on 15 June 2024

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 7 October 2024

Appeal Ref: APP/Y3940/X/23/3314398

The Stone Barn, Noble Street, Sherston, Malmesbury, Wiltshire SN16 0NA

- 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.
 - The appeal is made by Mr S Grainger (Grainger Fine Wine Ltd) against the decision of Wiltshire Council.
 - The application ref PL/2022/05322, dated 11 July 2022, was refused by notice dated 4 November 2022.
 - The application was made under sections 192(1)(a) and 192(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
 - The use and development for which a certificate of lawful use or development is sought is for the use of the premises for Class E (Commercial, Business & Service) and the proposed installation of a mezzanine floor.
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Decision

1. The appeal is dismissed in so far as it relates to the proposed use of the premises for Class E (Commercial, Business & Service). The appeal is allowed in so far as it relates to the installation of a mezzanine floor, and attached to this decision is a certificate of lawful use or development (LDC) describing the proposed operations which are found to be lawful.

Applications for costs

2. An application for costs was made by Mr S Grainger against Wiltshire Council. This is the subject of a separate decision.

Preliminary matters

3. An LDC is not an application for planning permission and the planning merits of the matter applied for do not fall to be considered. The decision is based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case. Evidence to support the case must be sufficiently precise and unambiguous and the onus is on the appellant to show that, on the balance of probabilities, the use would have been immune from enforcement action on the date of the application.
4. If the Council is provided with information satisfying it that the use or operations described in the application would be lawful, at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application.

Main issue

5. This is whether the council's decision to refuse to issue an LDC was well-founded. This will turn on whether the proposed use of the premises for a use that falls within Class E of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO) would be lawful, given the previous use of the premises, and whether the installation of a mezzanine floor involves development or requires planning permission.

Reasons

The use of the appeal building

6. The appeal relates to a detached stone building. The application form states that the existing use of the building is A1 (shop). The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020, amending the Town and Country Planning (Use Classes) Order 1987. The amendments to the Use Class Order created a new commercial, business and service use class (Class E), which incorporates the previous shops (A1), financial and professional services (A2) and offices (B1) use classes.
7. The appellant considered the use of the site to be mixed consisting of B1 and A1, now falling within Class E. The Council's view is that the proposed use does not constitute permitted development under Part 3 of Schedule 2 the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). This is because it considers that there is insufficient information to demonstrate that a retail use was lawfully established at Tucks Farm Shop. Thus, the Council considers the lawful use of the site to remain within Use Class B8 of the UCO. Class B8 is for storage or distribution uses. As there is no permitted change from Class B8 to Class E, the Council consider planning permission would be required.
8. When deciding whether a use would be lawful, it is first necessary to identify the correct planning unit before analysing what use that unit has been put to. The planning unit is usually the unit of occupation, unless a smaller area can be identified which is physically separate and distinct, and/or occupied for different and unrelated purposes; the concept of physical and functional separation is key. If a lawful use of the planning unit has been established, it is then necessary to consider whether there has been any supervening event, such as may cause any lawful use rights to have been subsequently lost. Thus, for the appeal building to have a lawful use as sought by the LDC application, it would be necessary for the appellant to demonstrate that the last established use was one falling within Class E on the date of the application, that is 11 July 2022 and that use had continued without significant interruption for a period of 10 years or had not been lost.
9. From the planning history, in the late 1980s the appeal building was in separate ownership and therefore did not form part of the planning permission granted in 1987¹ for the change of use of the wider site (yard area, access and two buildings) to a meat distribution centre with ancillary sales. The 1987

¹ N/87/01625/FUL Change of use to meat distribution centre with ancillary retail sales granted by notice dated 28 September 1987

application describes the use of the site for meat cutting, cold stores and preparation for sale to catering establishments, hotels, restaurants and retail from the site. The annotated site plan shows one building to be used as a cutting room and cold store and the other as office and stores. The appellant states that between 1987 and 2017 the largest building (building 1) was used for a butchery and farm shop. The building in the southeast corner of the yard (building 2) was used as an office and stores in 1987 and up to 2017, the use changed and, over a period of time, varied between retail and storage uses as part of the farm shop business.

10. Following its sale to the proprietor of the remaining land, the appeal building became incorporated into the meat distribution centre use in the 1990s. Over the years the appeal building is said to have been used for offices, garaging, deliveries, food storage and backroom storage and the overspill of paraphernalia. This was in association with the wider use of the site and on balance and as a matter of fact and degree I consider that the site was physically and functionally connected and formed a single planning unit.
11. I have no reason to doubt that the use of the site has evolved over the years from meat processing and distribution through to, as described by the appellant, a mixed light industrial and retail use and subsequently to one of primary retail with an on-site butchery and ancillary storage within the appeal building. The appellant's submissions state that the farm shop employed two butchers and at least 4 shop staff out of a total of 7. The sales particulars dating to around 2016/17 describe the site as a retail/business property offering options for retail or office use. It includes photographs of building 1 which show a large display of goods and produce for sale and a refrigerated serving counter in unit 1 and a storage/preparation room in unit 2. The appeal building and building 2 were not included in the sale at that time.
12. From the evidence before me, I am not persuaded that when it began operating, the site was anything other than a distribution centre with ancillary retail, a use that would have fallen within Class B8. However, I do not doubt that the use changed from one falling within B8 to a use that would be considered to fall within the 'new' Class E, but it is not clear when that occurred or, if the change was material, whether the Class E use had become lawful through the passage of time. The appellant references a signed declaration by the previous owner which might indicate otherwise, but this did not form part of the submitted evidence. I note its content is referred to by the appellant and by an interested party, but there is no specific reference to when changes occurred. Thus, I find that the evidence is not sufficiently precise, and I cannot be certain that a use falling within Class E was in operation for the requisite period of time².
13. Nevertheless, even if it was established that the lawful primary use of the site did fall within Class E, the evidence demonstrates that the appeal building has served as ancillary to the primary retail use of the complex. The site has since been sub-divided and the buildings and the land are now in different ownerships and have different uses, with buildings 1 and 2 having been granted planning permission for their change of use. There has been no active

² Section 171B(3) of the Town and Country Planning Act 1990

use of the appeal building to establish a lawful use in its own right since this time although the premises was said to have been used as a 'pop up shop' for a brief period around November/December 2021, and more recent correspondence references its use for storage purposes.

14. Therefore, it seems to me that the subdivision and sale of the land resulted in the creation of a new planning unit comprising the appeal building that had been used for purposes ancillary to the primary use of the former planning unit. The implementation of planning permissions for different uses of the buildings and land upon which the primary use had been conducted has resulted in the extinguishment of the use rights attached to the former planning unit. Put simply, as the appeal building was in an ancillary use, it would not survive the loss of the primary use, and this would result in the formation of a new planning unit and a new chapter in the planning history of the appeal building.
15. For these reasons, I find that the proposed use of the appeal building for a use falling within Class E (Commercial, Business & Service) of the UCO would not be lawful and planning permission would be required.

The mezzanine floor

16. The proposed insertion of a mezzanine floor within the building would provide a floor area of approximately 46sqm. It is stated that all works would be contained within the building and no external alterations would arise from the proposed works.
17. Section 55(2) of the Act states that the following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—
 - (a) the carrying out for the maintenance, improvement or other alteration of any building of works which—
 - (i) affect only the interior of the building, or
 - (ii) do not materially affect the external appearance of the building, and are not works for making good war damage or works begun after December 5, 1968 for the alteration of a building by providing additional space in it underground.
18. The Council states that as the mezzanine floor is a wide spanning load bearing floor it would likely require structural intervention such as columns to support the proposed floor and beams that would be affixed to the wall(s) of the Stone Barn. It was considered that this potentially could result in alterations to the external elevations, however, in the absence of full details such as elevational plans, sections or structural calculations, there was no certainty. The Council also notes that the structural interventions are engineering operations which may require planning permission. Overall, the Council considered that inadequate information had been provided to fully assess the application and the scope of the proposed works.
19. While the Council consider that insufficient information has been provided to demonstrate that the works would not materially affect the external appearance of the building, from the appellant's submissions I have no reason

to doubt that the mezzanine floor would be assembled solely inside the building and I consider that on the balance of probability, the installation of the mezzanine floor as proposed would be an operation that would not involve development and planning permission would not be required. If works went beyond what is proposed in the LDC application, planning permission may be required.

Conclusion

20. For the reasons given above I conclude that:

- 1) the Council's refusal to grant an LDC for the proposed use of the appeal building for a use falling within Class E of the UCO was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.
- 2) the Council's refusal to grant an LDC for the proposed installation of a mezzanine floor was not well-founded and the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act as amended.

S A Hanson

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 11 July 2022 the development described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The installation of a mezzanine floor as proposed on the application plan would not involve development by reference to s55 of the Town and Country Planning Act 1990 (as amended).

Signed

S A Hanson
INSPECTOR

Date 7 October 2024

Reference: APP/Y3940/X/23/3314398

First Schedule

Installation of a mezzanine floor.

Second Schedule

Land at: The Stone Barn, Noble Street, Sherston, Malmesbury, Wiltshire SN16 0NA

NOTES

This certificate is issued solely for the purpose of Section 192 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 would have been lawful, on the certified date and, thus, were 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 7 October 2024

by **S A Hanson BA(Hons) BTP MRTPI**

Land at: The Stone Barn, Noble Street, Sherston, Wiltshire SN16 0NA

Reference: APP/Y3940/X/23/3314398

Scale: Not to scale

