



Appeal Decision

Inquiry held on 10 and 11 September 2024

Site visit made on 11 September 2024

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 October 2024

Appeal A Ref: APP/W1905/X/24/3342448

Brackendale, St James Road, Goffs Oak, Hertfordshire, EN7 6TR

- 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 Angelo Bellini against the decision of Broxbourne Borough Council.
 - The application ref 07/23/1040/LDC, dated 18 December 2023, was refused by notice dated 12 February 2024.
 - 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 Carpentry workshop falling within Use Class E(g)(iii).
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the existing use which is found to be lawful.

Applications for costs

2. An application for costs was made by Mr Angelo Bellini against Broxbourne Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. At the Inquiry, evidence was presented in respect of this appeal and another appeal (APP/W1905/X/24/3342466) on another location within the wider site. While I heard from witnesses about both appeals during the Inquiry, I have dealt with each in a separate decision in the interests of clarity.
4. The applicant details on the application form mistakenly include the name of the company of the agent acting on behalf of the applicant. I have excluded this from the banner heading above.
5. At the Inquiry I asked the advocates to address in closing submissions the matter of the planning unit that I should be concerned with when considering this appeal. I am satisfied from my observations of the site and the building that the workshop itself is a discrete and self-contained area of operation, unrelated to the use of the wider site and as such comprises a single planning unit and I have considered the appeal on this basis.

Main Issue

6. The main issue in this case is whether the decision of the Council to refuse the certificate was well-founded. This will turn on whether the appellant has proved on the balance of probability that the site has been used as a Carpentry workshop falling within Use Class E(g)(iii), for a continuous period of ten years prior to the date of the application being made, i.e., since 18 December 2013 (the "relevant date"), and that the use continued for 10 years after the date of change without having been abandoned or otherwise lost.

Reasons

7. The appeal site comprises a single storey building, found within a wider site that comprises of a number of uses. At the time of my visit, I was able to inspect the interior of the building and saw that it was laid out to be used as a carpentry workshop, with work benches throughout, as well as small hand tools, pots of timber treatment products, as well as some timber and wood also present.

The use of the site

8. The appellant contends that the site has been used continuously as a carpentry workshop since 1 May 2012 and that this has been operated by a relative, Mr Giuseppe Abello. It is said that there was a rental agreement in place, in the form of a rolling agreement which while provided in writing was informal in its nature, and that minimal rent was paid which only made a minor contribution towards site maintenance costs.
9. The above is corroborated by Mr Abello, who says that he has operated his carpentry business from the site since May 2012, and constructed bespoke furniture productions. In support of this, copies of a single invoice from each year between 2012 and 2018 have been provided, together with pictures of items of furniture that have been produced, which are "geotagged" at the location of the workshop.
10. Accepting that only two of the provided invoices pre-date the relevant date, and that a limited number have been supplied, they do indicate that Mr Abello operates a carpentry business. It was also his evidence, under oath, that he has used the workshop to manufacture furniture since May 2012. Details of a rental agreement, albeit an informal version of one, have been provided which although dated 30 April 2012, Mr Abello admitted that it has been post-dated. Nonetheless, he was clear in his evidence that he began working from the workshop from May 2012 and there is nothing that the Council have produced that calls this into doubt.
11. It is noted that the workshop is not registered for business rates, that there has been no evidence adduced to show that rent has been paid in respect of the building, and that the address on Mr Abello's invoices does not refer to the workshop, but a private residence. However, in my view, these matters do not discredit the evidence given, under oath, that the workshop use has been undertaken from within the building. It was also stated that there should be more evidence available to the appellant to demonstrate the use. While I agree with this, the fact that it has not been provided does not lead me to draw any negative inference in respect of the ongoing use of the site.

12. During the Inquiry, it was raised with the appellant that in response to a Planning Contravention Notice (PCN) in 2019, no mention was made of there being a carpentry workshop operating at the premises, with the appeal site being said to be an area used as a pig farm. Under cross-examination the appellant accepted that the plan submitted in response to the PCN was not accurate in showing the location of the buildings that existed at that time but explains that the plan was used to save paying for updated plans to be produced. The appellant also stated that he has no recollection of being asked about the uses taking place on the site by his agent, as well as no recollection of seeing the plan that was attached. It was also accepted that the information provided at that time may have been a mistake.
13. I can appreciate the concerns that this matter has brought up from the Council, in that it contends that it shows inconsistencies in the information that has been provided in regard to the site and creates ambiguity, as well as that the response to the PCN undermines the credibility of the appellant. However, accepting that this one piece of evidence does not support the application, the evidence that was given under oath by the appellant and the other witnesses is, in my view, precise and unambiguous. It demonstrates on balance that it is more likely than not that a carpentry business has been operating from the site for at least the relevant period.

Whether the use falls within Use Class E(g)(iii)

14. The application for the certificate includes reference to a specific use class and thus it is necessary to consider whether the use applied for falls within that use. It is contended that the use falls within Use Class E(g)(iii).
15. The Town and Country Planning (Use Classes) Order 1987 (as amended), provides, where relevant:

Class E. Commercial, Business and Service

Use, or part use, for all or any of the following purposes -

(g) for—

(iii) any industrial process,

being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

16. It is further stated that:

"industrial process" means a process for or incidental to any of the following purposes: —

(a) the making of any article or part of any article (including a ship or vessel, or a film, video or sound recording);

(b) the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article; or

*(c) the getting, dressing or treatment of minerals;
in the course of any trade or business other than agriculture, and
other than a use carried out in or adjacent to a mine or quarry.*

17. The use as a carpentry workshop as set out in this case can clearly fall within the ambit of an industrial process, being the making of an article, specifically bespoke furniture. However, it is also necessary to consider the nature of the use in terms of its effects. It was put to me in the appellant's closing submissions that the operation can "clearly" be carried out in a residential area without detriment to amenity, and that the area surrounding the appeal site is not a purely residential area. Whether or not the operation is currently within a residential area is not the consideration here, it is the potential of the operation, if it were in such an area, to result in detriment to amenity.
18. It was Mr Abello's evidence that the business has got to the point where larger pieces of furniture are being constructed at the site, which are then installed at client's properties. It was also said that higher value tools, of which a table saw was mentioned, are kept in Mr Abello's van, but were used in the workshop. From my observations at the time of my site visit, it was clear that there were several hand tools within the workshop (hand saws and the like), but there were also a number of power tools present, which I noted included a small table saw and an electric planer. It was further stated by Mr Abello that he would work from the workshop for 3 days in any given week.
19. In my view, given the frequency with which Mr Abello works from the workshop, together with the use of, albeit moveable, tools during the construction of furniture, it is likely that there would be sufficient noise emanating from the workshop such that, if it were located in a residential area, there would be a deleterious effect on the living conditions of nearby residents, and thus detriment to the amenity of the area.
20. As such, I find that the carpentry use does not fall within Use Class E(g)(iii) and that reference to this use class should be omitted from the description of the use. Moreover, I do not consider it necessary to determine what other use class the development may fall within, it is sufficient that any certificate I grant refers to a carpentry workshop.
21. Considering the information submitted, and without any compelling evidence to the contrary, the appellant has demonstrated that, on the balance of probability, the building has been used as a carpentry workshop for a period in excess of 10 years. There is nothing to indicate any break in occupation of such significance as to consider otherwise.

Conclusion

22. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of a carpentry workshop was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

Martin Allen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Simon Bell

Counsel for the Appellant

He called

Angelo Bellini
Giuseppe Abello
Martin Keane
Tony Bellini
Anthony Bellini

Appellant
Tenant of appellant
Tenant of appellant
Brother of appellant
Son of appellant

FOR THE LOCAL PLANNING AUTHORITY:

Christian Hawley

Counsel for the LPA

He called

Liam McLoughlin

Planning Officer

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 18 December 2023 the use 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

- It has been demonstrated on the balance of probabilities, that use of the building as a Carpentry workshop, began on or before 18 December 2013, and continued without significant interruption for ten years after the date of the change.

Signed

Martin Allen

INSPECTOR

Date: 11 October 2024

Reference: APP/W1905/X/24/3342448

First Schedule

Carpentry workshop

Second Schedule

Land at Brackendale, St James Road, Goffs Oak, Hertfordshire, EN7 6TR

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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: 11 October 2024

by Martin Allen BSc (Hons) MSc MRTPI

Land at: Brackendale, St James Road, Goffs Oak, Hertfordshire EN7 6TR

Reference: APP/W1905/X/24/3342448

Scale: Not to Scale

