The Planning Inspectorate

Appeal Decision

Site visit made on 26 January 2024

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 22 February 2024

Appeal Ref: APP/W1850/X/23/3323830
Unit 3, Rockfield Road Industrial Estate, Hereford HR1 2UA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development.
- The appeal is made by Rockfield Spirits Ltd against Herefordshire Council.
- The application ref P230153 is dated 17 January 2023.
- The application was made under section 192(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 distilling and bottling of gin and rum, with storage area and office accommodation, together with ancillary retail outlet and bar facility to enable free training to pubs, clubs and restaurants and in association with guided tours.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development (LDC) describing the proposed development which is found to be lawful.

Applications for costs

2. An application for costs was made by Rockfield Spirits Ltd against Herefordshire Council. This is the subject of a separate decision.

Preliminary Matters

3. The Council has not given notice to the appellant of its decision on the LDC application within the prescribed period. The appeal is therefore made under section 195(1)(b) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

4. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the Local Planning Authority is provided with information satisfying it that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application.

5. For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision will be 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. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. Planning Practice Guidance is clear

that the applicant (or in this case the appellant) is responsible for providing sufficient information to support an LDC application[1].

6. The application was submitted under s192 of the 1990 Act to ascertain whether the proposed use of the building would be lawful if instituted at the time of the application. In this case, although the business is currently operating from the premises, my decision will concern the lawfulness of the development as described in the application as a proposed use on the date of the application, that is 17 January 2023.

Main Issue

7. It is clear from the evidence provided within the Council's appeal statement that had they made a decision on the application it would have been to refuse the LDC. Since the Council has not determined the application, the appeal is against its deemed refusal. Therefore, the main issue is whether that deemed refusal would have been well-founded.

Reasons

8. The appeal relates to Unit 3, a premises within a row of four small industrial units in an established industrial estate. The premises was previously occupied by a company which supplied and fitted windows, doors and conservatories and vacated the site in July 2022. Although no further information has been provided concerning the previous use, the description of the business leads me to consider that the use would have fallen within Class E of Schedule 2 Part A of the Town and Country Planning (Use Classes) Order 1987 (UCO) as amended by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, which came into force on 1 September 2020 and had the effect of amending and simplifying the system of Use Classes within the UCO.

9. Article 3(1) of the Use Classes Order establishes that the use of a building for any other purpose in the same class shall not involve development of the land. In this case the appellant considers that the proposed use also falls within use Class E, and that consequently the use of the premises would be lawful because it would not amount to development as defined in s55 of the 1990 Act.

10. The Council consider that the information is not sufficiently precise regarding the level and frequency, and the variety of proposed uses. Concerns were raised over the use of the bar which, as a drinking establishment would be classed as sui generis, a training establishment which they considered to fall within use Class F1 and the possibility that the distillery process could cross between an industrial process falling within use Class E and general industrial, use Class B2. Accordingly, the Council considered that the use as proposed in the application may not fall within a defined use class but be a mixed use and therefore within a use of its own.

11. Application plans show the layout of the premises over two floors. The ground floor plans show a bottling area, distilling area, storage area, small kitchen, a single unisex wc and an inner hallway. A roller door would provide vehicular access to the storage area which would be the full height of the premises, and pedestrian access would be via the single front door leading into a modest sized area set aside for retailing products produced on the premises for sale to

[1] Lawful development certificates, paragraph: 006 Reference ID: 17c-006-20140306

the general public. On the first floor, the plans show the stairs providing access to two offices and a training area. Within the training area, there would be a bar and a table with individual 10 litre tabletop stills.

12. The primary operation is described as distilling and bottling gin and rum and selling the product directly to the public and to retailers, pubs and clubs. The objective of the business is to produce 20,000+ bottles per year and potentially employ 8 permanent staff. The 200 litre still in production 5 days a week over 45 weeks is said to be capable of producing 33,750 bottles. The business would use its own vehicle to deliver to retailers and it is envisaged that the retail element of their own products made on site and sold to the public from the premises would be around 10% of total sales.

13. The business plans to offer free training to staff in the hospitality industry and this would take place in the distilling area and the training room. The training would be undertaken by company staff and accommodate up to 20 people on a course. In addition to this, the appellant intends to offer gin making classes for 8-10 people and gin tasting and tours of the production area. These would incur a cost to those attending.

14. A premises licence was issued in December 2022, and this allows for the supply of alcohol and sales on Monday through to Sunday 0800 to 2300 hours and this is the same for the hours that the premises can open to the public for training courses. Although the licence allows for extensive operating times, the appellant surmises that it is more realistic that shorter hours would be kept with office hours from 08.30 to 17.00 with the bar area open for courses for a 4 hour duration, 3 to 4 times a week.

15. While there are four activities proposed: distillery, bottling and storage; retail; training; and 'experiences', i.e., tasting and classes, the main focus of the business is creating and selling the product. The distillery will be open to visiting members of the public either on an appointment basis or walk-in trade. To that extent the proposed use falls within use Class E because it provides a 'service to visiting members of the public'. Given the immediate site context, which is overtly commercial, the proposed distillery would also meet the description in use Class E of a use for any industrial process, being a use which can be carried out in a residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. Thus, I consider the distillery use of the premises to fall within use Class E.(g)(iii).

16. The product would be stored and then shipped out to retail units. Some products would be stored and shipped from the premises through online sales and there would be a small element of retail from the premises, most likely generated through customers engaging in the tasting and gin making experiences. To this extent, I consider that the retail element would be incidental to the distillery business, but even if it did form a greater element of the business, it would likely fall within use Class E.(a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public.

17. The proposed training and experiences element of the business are to support its main purpose which is to produce and sell gin and rum. The submissions to support the application suggested that the bar area would be open for courses for a 4 hour duration, 3 to 4 times a week. At this level, these additional aspects of the business support the claim that they would be incidental to the

primary use as proposed in the application. It is possible that at an increased level, the training and 'experiences' could become an additional main activity, however, I consider that training, gin making classes and tasting sessions would likely fall within use Class E.(c)(iii) for the provision of services principally to visiting members of the public - any other services which it is appropriate to provide in a commercial, business or service locality.

18. From the information provided by the appellant regarding the proposed level of activity as set out above, I consider that the retail, training and 'experience' uses would be incidental to the primary use of the premises as a distillery, and this would be a single primary use falling within Class E of the UCO.

Conclusion

19. For the reasons given above and having regard to all other matters raised, I conclude that the Council's deemed refusal to grant an LDC in respect of the proposed change of use of the premises to a distillery with storage and office accommodation, ancillary retail outlet and bar facility to enable free training to pubs, clubs and restaurants in association with guided tours, was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in s195(2) of the 1990 Act as amended.

S A Hanson

INSPECTOR

The Planning Inspectorate

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 17 January 2023 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:

It has been demonstrated that on the balance of probabilities, the proposed use would fall within Schedule 2, Part A, Class E (Commercial, Business and Service) of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO). There would be no material change of use of Unit 3 and thus the proposed use would not involve development. Planning permission is therefore granted by Article 3(1) of the UCO.

Signed

S A Hanson
INSPECTOR

Date 22 February 2024
Reference: APP/W1850/X/23/3323830

First Schedule
Distilling and bottling of gin and rum, with storage area and office accommodation, together with ancillary retail outlet and bar facility to enable free training to pubs, clubs and restaurants and in association with guided tours.

Second Schedule
Land at: Unit 3, Rockfield Road Industrial Estate, Hereford HR1 2UA

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.

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Plan

This is the plan referred to in the Lawful Development Certificate dated 22 February 2024

by S A Hanson BA(Hons) BTP MRTPI

Land at: Unit 3, Rockfield Road Industrial Estate, Hereford HR1 2UA

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Scale: Not to scale

