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Ref.						Act.
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Received	24 FEB 1998	Your Ref:	
Comments		97/050	
		Our Ref:	T/APP/X/A1910/002837

Date: 23 FEB 1998

Dear David Lane Associates

**TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 195 AND SCHEDULE 6, AS AMENDED BY THE PLANNING AND COMPENSATION ACT 1991
APPEAL BY MR AND MRS J WILLIAMS
LAND AT BEECHCROFT HOUSE, BARNES LANE, KINGS LANGLEY**

1. I have been appointed by the Secretary of State for the Environment, Transport and the Regions to determine your clients' appeal against Dacorum Borough Council's refusal to grant a certificate of lawfulness for planning purposes (LDC) in respect of an existing use on the above-mentioned land. I have considered the written representations made and documentary evidence submitted in support of the appeal, together with the Council's submissions and those of other interested parties so far as these are relevant to the purely legal and factual issues arising in this sort of appeal. For the avoidance of doubt I should explain that the planning merits of the existing use are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act. I conducted an accompanied visit to the appeal site on 20 January 1998.

2. The application for a LDC was dated 25 April 1997. The application was made under section 191(1)(a). The existing use for which a certificate was sought was the use of part of the dwelling for business purposes.

3. The Council's decision refusing to grant a LDC was dated 17 June 1997. The reasons for refusal were as follows:

The use of part of the dwelling as an office employing six staff, not including the applicants, is not considered to be ancillary to the lawful use of the property as a single dwelling house; therefore, a material change of use requiring planning permission has taken place. Notwithstanding the above, no evidence has been produced by the applicants to show that the use has been carried out for more than 10 years. Consequently, the office use is not lawful.

4. Beechcroft House is four-bedroomed detached house situated on a small residential court of 3 dwellings. At the time of my site visit, the claimed lawful use was not in operation. The property was being used as a dwelling in accordance with the floor layout shown on the application plan, apart from the use of part of the larger of the two integral garages for the storage of business documents. The first floor bedroom which was formerly used for business purposes has a window facing the rear garden of No.1 Greenways, Barnes Lane at an oblique angle and at a distance of about 10 m. This rear garden is bounded by a brick wall about 2 m high. At the front of Beechcroft House is a paved parking area which leads from a short shared access way off Barnes Lane. This access way passes close to the front of No.1 Greenways.

5. On behalf of the appellants, it is stated that the claimed lawful use started in 1995 and relates to the appellants' business as independent medical advisors. The use entails the use of the dining room as an office and a small upstairs bedroom as an office and domestic study. The business uses general office technology, such as computers, printers, fax and telephone. The appellants are the only full time members of staff and there are six part time staff. The dining room contained a desk with two computer terminals and could accommodate two staff. The bedroom had three desks, each with a computer terminal, and had a maximum of three staff.

6. The appellants argue that the floor area of the two rooms used for business purposes amounts to some 22 sq m, which is only about 12% of the floor area of the property, or 14% if the garages are discounted. It is defined by the Institute of Directors as a small business. The part time staff only work during school terms and only four of them would be on the premises at any one time. They work between 11.5 and 21 hours a week at the property. They normally work in the middle of the day, when their comings and goings create no disturbance, and they have no need to work outside of the hours of 0930-1700. None of them park at the property, and the only deliveries are a once monthly delivery of office stationary by car and normal postal deliveries. The business use creates less comings and goings than a normal dwelling where occupiers are travelling to and from work. And there is no undue noise emanating from within the dwelling. In terms of the advice in Planning Policy Guidance Note 4, the business use creates no noise, fumes, traffic or an increased number of visitors, and one of the adjoining residents has not objected to the use. The business use has not changed the character of the use of the property and remains ancillary to the permitted residential use. This is supported by two appeal decisions elsewhere.

7. The Council argues that the eight people working at the property arrive and leave at different times, thereby increasing the disturbance. Two of the five habitable rooms of the dwelling are used for business purposes and the toilet and kitchen facilities would also be shared. Planning conditions could not ensure that employees did not arrive by car and park on the property, and this would create on street parking problems and disturbance to the other residents on the cul-de-sac. The business use is over and above that which may be expected from a single dwelling house and constitutes a material change of use requiring planning permission. The appeal cases cited by the appellants are not comparable to this case, whereas a similar use to that now claimed was found on appeal to be a material change of use.

8. In three letters received from nearby residents living outside the cul-de-sac it is claimed that staff have been seen coming and going at 2000 hours. In the letter from the occupier of the adjoining dwelling, No.1 Greenways, it is claimed that the level of business activity observed far exceeds that which is asserted by the appellant. One of the garages is used to store documents. Photographs support their claim that staff park at the property, that they work outside the hours of 0930-1700, that deliveries are more frequent than one a month

and that there are regular business visitors. Their garage has been obstructed, their verge has been damaged and vehicles regularly park on the communal access way. Noise from the use of the bedroom has been clearly audible in their rear garden in the summer and vehicles passing their front window at close range has created disturbance and loss of privacy.

9. As there is no dispute that the claimed business use has not subsisted for the 10 years preceding the submission of the application, I consider that the main issue in this case is whether the business use is ancillary to the lawful residential use of the dwelling house and thereby does not constitute a material change of use requiring planning permission.

10. The type of equipment and furniture used in the business may have been common to many homes, but the amount of it was considerably more than would be normally found in a dwelling. Whilst it may have been possible to easily convert the rooms used for business purposes back to wholly domestic use, the rooms were laid out and retained for business purposes. The area used for business purposes, including part of one of the garages, was a significant proportion of the floorspace of the dwelling and occupied two of its habitable rooms. In my opinion, anyone viewing the inside of the property would have sensed that the business use of the dwelling was significant and materially different in character to its residential use, particularly at those times when six staff were working.

11. Turning to the impact of the business use, the comings and goings of the part time staff would have been in addition to those associated with the residential use of the property. The working hours and travelling arrangements of the part time staff are disputed. With regard to the latter, the appellants' comments in your letter of 4 December 1997 that their staff do not regularly (my underlining) park at Beechcroft House indicates to me that the number of vehicle movements associated with the business are greater than they initially indicated. Their comments that Sarratt Office Supplies, who are their suppliers, also make visits in their business vehicle as friends also casts doubt in my mind on the frequency of deliveries.

FORMAL DECISION

15. For the above reasons, and in exercise of the powers which have been transferred to me, in section 195(3) of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, I am satisfied that Dacorum Borough Council's refusal to grant a LDC in respect of the use of part of dwelling for business purposes on land at Beechcroft House, Barnes Lane, Kings Langley was well-founded. Therefore I hereby dismiss your clients' appeal.

RIGHT OF APPEAL AGAINST THE DECISION

16. This letter is issued as the determination of the appeal before me. Particulars of the right of appeal against my decision, to the High Court, are enclosed for those concerned.

Yours faithfully,



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Inspector

12. Without the benefit of questioning the parties, I am unable to come to a firm conclusion on the exact numbers of vehicle trips. But, even if the appellants did not make any trips in their own vehicles during the day, I consider it likely that the business use increased the number of vehicular movements to and from Beechcroft House over and above that which might be expected if the property was just in residential use, notwithstanding that these movements would have been limited to term times. Given the proximity of the front windows of No.1 Greenways to the access to the appeal property, its occupants would have experienced more disturbance from these extra movements. I consider that noise from use of the bedroom as an office is unlikely to have created a serious nuisance. However, the assertion that the noise of staff working and talking in this room could be heard is another indication that the character of the use of the property was different to that of residential use alone.

13. I have insufficient information to persuade me that the appeal decisions cited by the parties are comparable to this case, as I have no details of the exact extent of the business uses, the number of staff involved or the situation of the properties concerned. In any event, I have to determine this case on its particular facts. Given the significant proportion of the appeal property which was retained for business purposes, that up to six people were working there at any one time, the extra movements of vehicles and visitors on foot that are liable to have been generated and the impact of these extra movements on the adjacent property, I consider as a matter of fact and degree, that the business use of Beechcroft House was not ancillary to the residential use of the property, but that it constituted a material change of use from residential to a mixed use of residential and for business purposes. As this development does not have the benefit of planning permission, enforcement action could be taken against it.

14. I therefore conclude that the existing use of part of the dwelling for business purposes at Beechcroft House, Barnes Lane, Kings Langley is not lawful.