



Appeal Decision

Site visit made on 20 September 2016

by Elizabeth Jones BSc (Hons) MCTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 5 December 2016

Appeal Ref: APP/W3710/X/16/3149675

Nuneaton Fields Farm, Watling Street, Warwickshire CV11 6BG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Paul Phillips against the decision of Nuneaton & Bedworth Borough Council.
 - The application Ref 033890/WE, dated 28 January 2016, was refused by notice dated 20 April 2016.
 - 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 the storage of commercial vehicles and vehicle parts.
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Decision

1. The appeal is dismissed.

Reasons

2. The main issue is whether the appeal site has been used for the storage of commercial vehicles and vehicle parts on a continuous basis in breach of planning control for ten years as to be immune from enforcement action under s171B of the 1990 Act.
3. The Council does not produce any evidence of its own in this appeal but rather points to the insufficient evidence submitted by the appellant. The Planning Practice Guidance (PPG) provides that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability¹.
4. It is therefore for the appellant to demonstrate his case, on the balance of probability that the use applied for is lawful, not for the Council to disprove it.
5. The appeal site comprises land and a number of farm buildings to the north of Nuneaton Fields Farm house. The appellant's business, Phillip Commercials Ltd, is concerned with the purchasing and selling of commercial vehicles. The company's main base is at Attleborough Fields Industrial Estate where the majority of vehicles are stored.

¹ The Planning Practice Guidance -Lawful Development Certificates.

The appellant's case

6. The appellant submits that due to a lack of space at their main base the land and buildings at the appeal site have been used for the parking of commercial vehicles and vehicle parts in connection with his business since he bought the property in 2001.
7. The appellant's evidence relies upon two statutory declarations, one from himself as founder and owner/manager of Phillips Commercials Ltd who bought the appeal site in 2001 and the other from Mr Carl Devlin an employee of the company since 2000.
8. The statutory declaration made on 27 January 2016 by the appellant states that since buying the appeal site all the land and buildings have been used continuously for the storage of all types of commercial vehicles and vehicle parts. The vehicles once purchased are taken to the site and stored there pending their sale. The statutory declaration made on 27 January 2016 by Carl Devlin states that having known the appeal site for about fourteen years he has delivered commercial vehicles and vehicle parts in association with the business and all the land and buildings have been used throughout this period for these purposes.
9. In addition, the appellant relies on a number of Google Aerial images dated February 2006, December 2006, 2008, 2010, 2015 and 2016. Also, three letters from individuals who have known the appellant for many years and have visited the site on a regular basis.
10. With reference to the Council's concern regarding the lack of evidence. The appellant submits that the operator's licence is based at the business' main depot and that as part of the business there are no separate accounts or invoices for the appeal site and no invoices for vehicles which have been stored there.

The Council's case

11. The Council has expressed concerns regarding the authenticity of the Google images dated as February 2006, December 2006, 2008, 2010, 2015 and 2016. In addition, whilst the Council accepts that some storage has taken place on the site, it considers that the images do not show the use of the entire site for the whole ten year period. In addition, the Council refer to the lack of evidence regarding the level of use, number and types of vehicles, operator's licence, business accounts, invoices and information from any companies or customers who may have visited the site.

Assessment

12. In cases dealt with by way of written representations the legally sworn statements must carry considerable weight since any deliberate untruth carries with it the risk of a perjury charge. In the complete absence of any evidence to the contrary there is nothing to cast doubt on the appellant's or Mr Devlin's version of events. However, whilst stating that the appeal site has been used for the storage of commercial vehicles and parts since 2001, the statutory declarations give no detail regarding the scale of activity. Also, Mr Devlin states that he has delivered/collected commercial vehicles to/from the land but gives no particular dates or indication of how often he did this. Whilst this is

not a reason to set these statutory declarations to one side, I am only able to give them limited weight.

13. The Google images are hand annotated with the dates of capture. Those dated December 2006, 2008 and 2010 appear to be the same image as there is no variation between them as would be expected over such a period. Moreover, no authenticity of the date of capture has been provided from the supplier of any of the images. This casts doubts on whether the images were taken on the dates as shown. In addition, the images do not show the nature or scale of what was being stored in the buildings. As there is no other material submitted to support or to explain the dates of the images and given the apparent duplication they also only have limited weight.
14. The letters from Patrick Everitt, Patrick Barrett and Peter Collins indicate that they have been regular visitors to the appeal site and that there has been some storage of vehicles on the site over the years. However, these letters do not give sufficient detail for me to conclude that the use of the site for the storage of commercial vehicles and vehicle parts has been continual on all parts of the site for ten years. As with the statutory declarations and Google images it is considered that on their own they have limited weight.

Conclusions

15. From what I saw at my site visit it is clear that commercial vehicles and vehicle parts are stored at the appeal site both on the land and within the buildings. However, the submitted evidence is not adequately compelling. It is clear the site has been used for the storage of vehicles for many years, but the evidence does not show the whole site has been used continually, without any significant breaks, for the required period. Some storage could take place at the farm without triggering a material change of use and I have no evidence to suggest the storage use has been going on at the intensity shown, for example, in the aerial photograph from 2016 for the whole period. Although the business was established in 1983 there are no details of the business operations that would indicate the turnover of commercial vehicles or that the storage capacity of the main site requires additional storage elsewhere. The statutory declarations and letters state that commercial vehicles have been brought to the site since 2001. However, these documents do not provide details of how often or how many vehicles were brought to the site or the amount of vehicle parts being stored there. Thus, there is no evidence to ascertain at what point the level of storage in connection with the business amounted to a material change of use of the land and buildings.
16. Taking all the evidence before me as a whole I find that it is not sufficiently precise and unambiguous for me to draw the conclusion that the appeal site has been used for the storage of commercial vehicles and vehicle parts on a continuous basis for a period of ten years in breach of planning control to justify the grant of a LDC.

Overall Conclusion

17. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the storage of commercial vehicles and vehicle parts at Nuneaton Fields Farm, Watling Street, Warwickshire CV11 6BG was well founded 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.

Elizabeth Jones

INSPECTOR