The Planning Inspectorate

Appeal Decision

Site visit made on 31 January 2017

by Martin Joyce DipTP MRTPI

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

Decision date: 17 February 2017

Appeal Ref: APP/W4705/X/16/3152723
Stone Yard, Bradford Road, Idle, Bradford BD10 8SX

- 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.
- The appeal is made by A K Stratford Stone Supplies against the decision of the City of Bradford Metropolitan District Council.
- The application, Ref: 16/00178/CLE, dated 8 January 2016, was refused by notice dated 7 March 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 Existing Lawful Use or Development (CLEUD) is sought is the storage of stone components, pre-packaged walling stone and stone sets.

Summary of Decision: The appeal is dismissed.

Background and Planning History

1. The appeal site comprises part of a stonemason's and stone dealer's yard which lies within the Friars Industrial Estate on the eastern side of Bradford Road in Idle. The appellants process, store and sell stone that is largely salvaged from previous developments and use four areas within the estate, shown as Areas A-D on plans submitted with the appeal. These areas border the main access road into the estate.

2. The appeal site is Area B, an open strip of land in the south-western part of the estate bounded on its western side by the rear gardens of two detached houses, Nos 151 and 153 Bradford Road. It varies in width from about 10m at the northern end to 15m at the south, and is about 45m in overall length. At the time of my visit the site was being used for the storage of various types of stone including paving slabs, coping stone, lintels and loose walling stone, either on the ground or in bags or on wooden pallets. A stack of metal palisade fencing and a number of large empty metal baskets were also stored on the land. The area is fenced on its western and southern sides with 1.8m-high metal palisade panels but open on the other sides. The land to the north (Area C) is similarly used for open storage of stone.

3. Area A to the west, adjoining Area C, is a secure compound which contains the appellants' offices, in a series of portacabins, various items of plant, vehicles and machinery associated with the business and other stocks of stone products as well as skips for waste. The fourth area (Area D) is located to the north-east, beyond a rough-surfaced car park that serves the whole estate. This area has large piles of stone and is also used for cutting and other processing, albeit

restricted to certain parts of that land by a planning permission granted in 2015 (LPA Ref: 15/03072/FUL).

4. The appeal site was the subject of an enforcement notice issued on 10 February 2015 alleging the unauthorised material change of use of the land to use as a stonemason and stone dealer's yard for the storage, processing and sale of stone. The notice required the cessation of the unauthorised material change of use of the land and the removal from the land of all material and equipment associated with that use. An appeal (the 2015 appeal) against that notice was dismissed on 9 October 2015[1] save for the correction of the first requirement and an extension of the period for compliance from one month to four months. The first requirement was corrected so as to read "*Cease the use of the land as a stonemason and dealer's yard for the storage, processing and sale of stone*". That notice, as varied and corrected, is extant and in force, albeit that the use of the land for the storage of stone is continuing pending the determination of the current appeal.

5. Following the appeal decision in 2015, a planning application was made in November 2015 (LPA Ref: 15/06265/FUL) for the continued use of the appeal site as a storage area for redressed stone. That application was refused on 18 December 2015 and a subsequent appeal (the 2016 appeal) dismissed on 3 May 2016[2].

The Case for the Appellants

6. The appellants' case is based upon the findings of the Inspector in the 2015 appeal in respect of an appeal on ground (d)[3]. After consideration of the various arguments and items of evidence before her, she stated "*there is, therefore, compelling evidence of the use of the land for the storage of stone over the relevant time period*"[4]. She further stated, "*on ground (d) I conclude that, whilst there is persuasive evidence of use for the storage of stone, there is insufficient evidence of sales and the evidence of processing is inconclusive*"[5]. She subsequently dismissed the appeal on ground (d) but the appellants contend that such conclusions are unequivocal, and far exceed the required test of the balance of probability, in respect of a storage use that has taken place on the appeal site for more than ten years, since 2003. Moreover, in consideration of an appeal on ground (g)[6], the Inspector stated "*Additionally, I am mindful that, in view of my findings on ground (d), the appellant may wish to explore the possibility of a more limited use of the appeal land, a matter on which I express no view as this would be an issue for the appellant and the Council in the first instance. However, a longer period might assist that process*."[7]. It is also relevant that both this Inspector and the Inspector who determined the 2016 appeal found that the use being carried on was a composite use, comprising processing, sales and the storage of stone.

[1] CLG Ref: APP/W4705/C/15/3009032.
[2] CLG Ref: APP/W4705/W/16/3142386.
[3] Section 174(2)(d) states "that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters".
[4] Paragraph 16 of the 2015 appeal decision.
[5] Paragraph 22 of the 2015 appeal decision.
[6] Section 174(2)(g) states "that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed".
[7] Paragraph 23 of the 2015 appeal decision.

7. It is acknowledged that the issue of a CLEUD may conflict with the provisions of Section 191(2)(b) of the Town and Country Planning Act 1990 (The Act)[8], but the requirement of the upheld enforcement notice to cease the use of the land as a stonemason and dealer's yard for the storage, processing and sale of stone can only be interpreted as a requirement to cease the composite use, and not each individual component of the use, which would otherwise be regarded as separate uses in their own right. It is clear that there have been two separate uses of the appeal site – the storage of stone, which is accepted to have acquired the relevant ten-year immunity period, and the composite use as a stonemason's and dealers yard which was occurring at the time at which the enforcement notice was issued. The notice requires that composite use to cease, but the continued use solely for the storage of stone would not conflict with Section 192(2)(b) because the period of immunity has been established. Accordingly, the appeal should be allowed and a CLEUD should be granted.

The Case for the Council

8. The Council accept that the various extracts from the 2015 appeal decision indicate that the Inspector formed the view that one element of the composite use of the appeal site had been on-going continuously for a period exceeding ten years. However, that storage element was subsumed within the composite use, which also included sales and processing, during the ten-year immunity period, and this must have been the view of the Inspector or she would not have upheld the notice. Whilst the storage use may have been the first element of the composite use to begin, it cannot be isolated from the other two elements of that use and is not, therefore, lawful in its own right.

9. The upheld enforcement notice requires the appellants to cease the use of the land as a stonemason and dealer's yard for the storage, processing and sale of stone. Section 191(2)(b) of The Act clearly states that a use cannot be considered to be lawful if it would contravene any of the requirements of any enforcement notice then in force. Use of the appeal site for the storage of stone components, pre-packed walling stone and stone sets would contravene those requirements therefore a CLEUD cannot be issued and the appeal should be dismissed.

Appraisal

10. The main issue in this appeal is the legal question of whether a CLEUD can be issued notwithstanding the provisions of Section 191(2)(b) of The Act.

11. In considering this matter I begin by confirming that I have not sought to re-examine the evidence presented in previous appeals with regard to the actual usage of the appeal site over the relevant period, as the appellants did not submit this with their application and it is not disputed by the Council. I have no reason to doubt, therefore, that storage of stone has taken place on the appeal site for more than ten years preceding the date of the application for a CLEUD, notwithstanding that third parties continue to dispute that this is correct. In this context I note that the Inspector who determined the 2015 appeal considered similar representations before reaching the conclusions summarised above.

[8] Section 191(2) states "For the purposes of this Act uses and operations are lawful at any time if - ... (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.".

12. The appellants' case relies upon the continuous use of the land in question for the storage of stone since 2003, but this argument is flawed by the fact that such storage did not take place as a discrete and separate use throughout that period. At some point the storage use became part and parcel of a mixed or composite use of the land for the storage, processing and sale of stone and the commencement of that use marked a new chapter in the planning history of the site. I am uncertain as to the precise date at which the composite use started, but I note from the 2015 appeal decision that it was taking place in 2006, and also in 2008/9[9]. Therefore, there was not a continuous period of ten years from the start of any storage, in 2003, before the new use of storage, processing and sale started and no lawfulness, accrued through the passage of time, for a discrete storage use was established. Cessation of the processing and sales elements of the composite use, as has now occurred, does not therefore allow for any lawful resumption of the use of the land for storage as a discrete and isolated use in its own right.

13. The enforcement notice now in force requires all elements of the composite use to cease, including storage of stone, thus a CLEUD cannot be issued for the continuation of one element as it would contravene that requirement, having regard to the provisions of Section 191(2) of The Act.

14. For the reasons given above I conclude that the Council's refusal to grant a Certificate of Lawful Existing Use or Development in respect of the storage of stone components, pre-packaged walling stone and stone sets 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.

Other Matters

15. I have taken account of all other matters raised in the written representations but they do not outweigh the conclusions I have reached in respect of the main grounds and issues of this appeal.

FORMAL DECISION

16. The appeal is dismissed.

Martin Joyce

INSPECTOR

[9] Paragraphs 18 and 19 of the 2015 appeal decision.