
Appeal Decision

Site visit made on 20 March 2017

by Simon N Hand MA

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

Decision date: 30 March 2017

Appeal Ref: APP/M3645/X/16/3151873

Stubpond Fisheries, Stubpond Lane, Newchapel, Lingfield, RH7 6HU

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr James Sweeney against Tandridge District Council.
 - The application (Reference 2008/1756.) is dated 15 December 2008.
 - 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 use of the land for the crushing of concrete and similar material, with a mechanical concrete crusher (in addition to the lawful use of the land for the storage of plant, machinery and building materials as confirmed under application TA/2004/1802).
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs has been made by the appellant and is the subject of a separate decision letter.

Background to the Appeal

3. The site is part of and sits to the back of a larger parcel of land all within the appellant's ownership. This larger parcel includes fishing lakes and ponds and an access track. In 1989 Surrey County Council issued an enforcement notice and a stop notice alleging the "unauthorised use of the land for the deposit of waste materials". This notice is still extant. In 1991 the County were concerned the notice had not been satisfied and a series of visits were made in that year. Other visits were made by the District Council to the land in 1995, 1996, 1999 and 2001, concerning various allegations such as tipping, excavations, commercial fishing and so on, but none were found to be unlawful or resulted in further action.
4. In 2004 an application was made for a lawful development certificate for the same area as the current appeal site for the "storage of plant and building materials". The Council noted the history of visits outlined above, and that there were no records from any of those visits mentioning such storage. However, the visits had not explicitly involved the LDC site and any storage going on at the time could well have been taken to have been part and parcel

of the unlawful tipping and later the works to the fishing ponds. Various statutory declarations were made to support the application and in the absence of any evidence to the contrary the Council granted the certificate on the basis the use for storage had been undertaken for 10 years prior to 2004.

5. In 2008 it would seem a "draft" application for a lawful development certificate was made to the County Council for the concrete crushing activity. That Council informed the agent that the evidence was insufficient as it comprised only the same statutory declarations as provided for the 2004 LDC. The current application subject to this appeal was then made to the District Council, also in 2008. The application was registered but never determined. The appeal was made in 2016 against non-determination and the main issue is therefore whether, on the balance of probability, the site had been used for the crushing of concrete with a mechanical concrete crusher for 10 years prior to 2008.
6. The Council contend this is not a matter that falls within their jurisdiction, as the use amounts to the deposit of waste and so is a County matter. I do not need to make a definitive finding on this matter as the LDC application was made and registered and a lawful appeal has been accepted by the Inspectorate against non-determination. However, I would say on the basis of the evidence before me that the importation of demolition rubble, its processing into aggregate, subsequent storage and then disposal is a usually considered to be a waste matter. This is a fairly common issue that arises in enforcement appeals and is generally considered to be a waste issue rather than industrial processing under Class B2.
7. A number of court cases and appeal decisions have been referred to by the appellant, but the only one I have been provided with is from the Council, APP/H3700/A/00/1037345 from April 2000, where the Inspector found that concrete crushing was a sui-generis use not B1 or B2. Irrespective of the scale of operations this seems persuasive to me.

Reasons

8. The appellant relies principally on various Statutory Declarations (SDs) provided in 2008 with the application to the District Council. There are eight SDs of which 6 are the same. They are short and state that "to my knowledge concrete and brick rubble crushing has been carried on upon the land for in excess of ten years in the position marked X on the plan exhibited hereto". Two SDs differ from this pro-forma approach, the appellant's which states that "I have since 1990 carried on from time to time a concrete and brick rubble crushing service..." And Steven Page who says "I know for a fact that crushing has been taking place on the site during the years from 1990 to the present day". He also says "I have on numerous dates transported crushing and screening plant to and from the site during the past 15 years".
9. I have no reason to doubt these claims, but they do not, to my mind, amount to clear and unambiguous evidence that the matters applied for in the application have been carried out continuously from 1998-2008. The appellant says it has happened from "time to time" and Steven Page says he has transported the crushing machinery to the site on numerous dates. The strong implication is that for certain periods of time the crushing machinery has not been on site.

10. This view is reinforced by the SDs provided in support of the 2004 LDC for storage. The Appellant said he had "a total of 18 working pieces of plant that are either engaged on my own fishing lakes or engaged in off-site contracts". He goes on to say this has been "reasonably constant" all the time he has occupied the site. By his own admission there was, in 2004 no plant on the site being used for anything other than the fishing lakes business. Mark Verbeeten also mentioned he hired the "concrete crushing machine on at least a monthly basis", so these were further times when no crushing was taking place on site. Christopher Leaver said that the storage of plant and machinery varied due to off-site commitments and contracts, a point made by several others. Phillip Kavanagh also noted that he hauled the appellant's machinery on his low loader, again suggesting movement on and off the site.
11. I also note that none of the 2004 SDs mentioned the crushing of concrete on site. Many SDs list the plant and machinery they saw stored on site and often mention the crusher, but two others who made similar lists did not, which suggests it was not at the site often enough to have been seen by them. Presumably this was because it was hired or transported off-site by at least two people on a regular basis.
12. I have no doubt that some concrete crushing had been going on at the site from 1998 to 2008, as the appellant says, from time to time. But the evidence taken all together suggests the crushing machine was often not on site as it was hired out for off-site contracts. Consequently, despite the SDs made in 2008 to the contrary, there is considerable doubt as to how much crushing had been actually going on at the site in the preceding 10 years and in particular from 1998 to 2004.
13. Other circumstantial evidence is the fact that no-one from the County Council who were involved in enforcing the 1989 notice during the early part of the 1990s noticed any concrete crushing being carried out, despite the appellant's claim it began in 1990. Finally that no permit was obtained for crushing until 2010, which again suggests up to then it was sporadic rather than an on-going process. No other evidence apart from the SDs has been provided by the appellant. The SDs do not need to be corroborated by other evidence as long as they are consistent and persuasive, but I find they are neither. Consequently, I do not consider that on the balance of probabilities the appellant has made out his case that the use of the land for the crushing of concrete and other materials has been undertaken continuously for 10 years prior to 2008.

Simon Hand

Inspector