
Appeal Decision

Inquiry Held on 27 June 2017

Site visit made on 27 June 2017

by Alan Novitzky BArch(Hons) MA(RCA) PhD RIBA

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

Decision date: 07 July 2017

Appeal Ref: APP/K0235/X/16/3158406

Land West Side of Mill Hill (Opposite 1-5) Keysoe, Bedfordshire MK44 2HP

- 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 Carey Lennox-Lamb against the decision of Bedford Borough Council.
 - The application Ref HG/PD-3-18-382, dated 20 April 2016, was refused by notice dated 2 August 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 open storage and storage in building.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Oral evidence was given on oath.
3. The relevant dates for establishing a ten year immunity period are from 25 May 2006 to 25 May 2016.

Main Issue

4. The main issue is whether, on the balance of probability, the use - open storage and storage in building - had acquired immunity from enforcement action through being in place continuously for 10 years at the time the application for a LDC was made.

Reasons

5. The site comprises an area of some 470 sq m of unpaved land, slightly raised above adjacent agricultural land, bound by hedges, and set on the outside of a gentle curve of the B660. Access is in place across the grass verge to the north of the site, through a gap in the hedgerow. Historical evidence exists of a small chapel on the land at the end of the 19th century, and then a cottage - possibly the same building - for which rates apparently were assessed in 1927, but which had probably substantially disappeared by the 1950s.

6. The next firm historical evidence is of Mr Ruff, the landowner, applying for planning permission in December 1969 for the siting of a caravan, raised off the ground on blocks, to act as a store for bee rearing and equipment in connection with bee keeping.¹ The application form notes the purpose for which the land is now used as 'bee keeping and allotment', and a connection with agriculture or horticulture as 'bee keeping for the last 50 years'. The application was refused on the basis of harm to the character of the rural area. Nevertheless, there is evidence that at least one caravan was positioned on the land, and a metal frame which may be the chassis of a caravan is still present on site.
7. Mr Barnett bought the land from Mr Ruff in 1994 and placed a small lock-up shipping container on it in 1995. The appellant, who has shown that he carries out building work, bought the land from Mr Barnett on 20 November 2014.
8. Mr Barnett was active as a builder, and appears to have deposited material on the site. It is not clear whether this was done for storage purposes, or was simply the discarding of unwanted material. The on-line Oxford English Dictionary defines storage as the action or method of storing something for future use. This can be seen as distinct from the dumping of waste or unwanted material.
9. Many aerial photographs were submitted to the Inquiry, featuring high level views of the site, generally dating from the beginning of the 21st century up to 2014. However, it is difficult to gauge the use taking place. Although objects can be detected on the site, at least to the north, near to the entrance and the container, in most photographs the site and entrance appear over grown, sometimes wildly so.
10. The first photographs available from within the site were taken on a Council enforcement visit in 2005,² prompted by a complaint that the land was being used as an illegal dump. They show the site in a disorganised state, with brick rubble, tree cuttings, old guttering, an armchair, door and other items. There are Google Street View photographs from March and October 2009, but these mainly show the thick hedge next to the road and an overgrown entrance.
11. The next photographs from within the site are series taken by the Council in June 2015, October 2015, February 2016 and June 2016; and a series taken by Mrs Morgan, whose family farmland borders to the west, on 29 August 2015.³ These were all taken after the appellant took ownership in late 2014 and show the land being radically cleared, the western hedge being cut down and replanted, and building materials such as concrete slabs and roof tiles being introduced onto the site. They also show the site entrance cleared, possibly widened, and laid with hard material.
12. In correspondence submitted by the appellant, Mr Wheatley tells us that he was asked to clear the site in April 2015, but he declined because of the large piles of waste material obstructing his machine. Likewise Mr Maddison tells us that in April 2015 he declined to cut the hedge by tractor for the same reason.
13. Besides what can be seen on the ground of the appellant's use of the site, a layout is shown on the reverse of a letter from the appellant to the Council.

¹ Doc C1, App 9

² Doc C6

³ Doc IP1

- The date is unclear, but it was certainly sent some time after purchase of the land. It shows the site neatly laid out as an open store for building materials.
14. It is not at all apparent that the appellant's present use of the site is consistent with that to which Mr Barnett put it. It seems Mr Barnett may have put the site to a mixed use, for the deposit of waste and for storage - the primary use perhaps being the deposit of waste - whereas the appellant's use appears to be primarily storage, as noted on the LDC application.
 15. There are a number of letters on either side, recalling use over time. However, they are general in nature, and it is difficult to draw conclusions from them. The evidence of the witnesses is also difficult to assess and relies to a great extent on aspects of memory which cannot be easily checked. Moreover, no business rates, which might support a particular use, have been paid in relation to the site over the ten year period.
 16. Overall, I am not persuaded that sufficient evidence of weight has been presented by the appellant to show that, on the balance of probability, the present use is consistent with the use of the site over the previous ten years.
 17. Moreover, the evidence for continuity of use is not clear. The pattern and frequency of use by Mr Barnett is conveyed anecdotally in various written representations and by the witnesses at the Inquiry. It is difficult to form a reliable impression from this evidence. However, the aerial photographs show some kind of attempt to control the wildness of the site up to about 2006 and then, from 2009 to 2014, the site becoming increasingly overgrown. This might indicate a decline in use.
 18. In addition, there is no evidence of use during the first six months or so of the appellant's ownership, up to the point in spring 2015 when clearance of the site took place. This accords with the reports given by the occupants of the neighbouring dwellings, numbers 1, 3 and 5 Mill Hill, opposite the site. Although direct visibility from these dwellings may be obscured at ground floor level, the occupants would have a feel for activity on the site through their own daily routines of coming and going.
 19. Given the evidence, I am not persuaded overall that, on the balance of probability, immunity against enforcement for material change of use has been acquired through ten years continuous use of the site for storage.
 20. I conclude on the evidence available that the Council's refusal to grant a LDC was well founded.

Alan Novitzky

Inspector

APPEARANCES

FOR THE APPELLANT: Celena Lennox-Lamb

FOR THE LOCAL PLANNING AUTHORITY: Thea Osmund-Smith, barrister, instructed by the Council

She called:

Tanya Cosford

Senior Planner with the Council

INTERESTED PERSONS:

Carol Johns

Local resident

Freya Morgan

Local resident

DOCUMENTS

- A1 Errata sheet
- A2 Appellant's bundle re: building activities
- A3 Photograph and enlargement of site entrance

- C1 Appendices to Tanya Cosford's proof of evidence
- C2 PPG Extract re: Lawful development certificates
- C3 Tabulated bundle of already submitted documents re: application and appeal
- C4 Judgment CO 3030/1999 Regina v Thanet District Council
- C5 Brief opening statement on behalf of the Council
- C6 Colour reproductions of photographs in Appendix 6 of Tanya Cosford's proof
- C7 Closing Statement on behalf of the Council

- IP1 Photographs of the site taken by Freya Morgan,