



Appeal Decision

Site visit made on 17 July 2017

by D H Brier BA MA MRTPI

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

Decision date: 28 July 2017

Appeal Ref: APP/P2365/X/16/3162123

Blackbirds Farm, Lees Lane, Dalton, Wigan, Lancashire WN8 7RB

- 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 D Halliwell against the decision of West Lancashire Borough Council.
 - The application Ref 2016/0352/LDC, dated 21 March 2016, was refused by notice dated 14 October 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 use of land for the sale and storage of motor vehicles.
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Decision

1. The appeal is dismissed.

Preamble

2. In order for the appeal to succeed it has to be shown that the use in question commenced more than 10 years before the date of the LDC application, the relevant date in this instance being 13 January 2006, and has continued actively throughout the subsequent 10 year period. The test for the evidence is the balance of probability and the Courts have held that in cases such as this the onus on proving it lies with the appellant.

Appeal

3. The area indicated in red on the LDC application plan includes the long driveway leading to Blackbird Farm and a roughly rectangular hard surfaced area part of which is bounded by low walls and part of which is next to a garage and a barn located to the north-east and east respectively.
4. My attention has been drawn to enforcement proceedings and a dismissed appeal under section 174 of the 1990 Act in July 2004 concerning land at Lees Lane Nurseries to the east¹. Although this did not involve the current appeal site, I note that as is the case now, the appeal was made by a Mr D Halliwell and the allegation included the sale and storage of motor vehicles.
5. Evidence regarding the use of the appeal site in the past comprises a covering letter from the appellant submitted with the LDC application, a copy of a statutory declaration by a Mr S Monks, various insurance documents, a number

¹ Appeal decision ref APP/P2365/C/04/1140024 dated 7 July 2004

of invoices, a set of accounts, a VAT return and correspondence from the DVLA. Some of the dates contained in this evidence are prior to the relevant date, and some are during the 10 year period afterwards.

Commencement of the Use

6. According to the LDC application form, the use began on 1 October 2001. What this apparently precise assertion is based upon is not stated, but it is somewhat at odds with the covering letter that accompanied the application which indicates that cars have been sold from Blackbirds Farm since 2002. Mr Monks' statutory declaration notes that he has been supplying motor vehicles to Blackbirds Farm for "*motor trade purposes*" "*on a regular basis*" since 2003. However, no indication of the frequency or actual numbers is given. Nor does the declaration expressly refer to the appeal site, or, just what Mr Monks understood to be Blackbirds Farm. I say this firstly, because the Council's submission that the appellant had acquired both Blackbirds Farm and the adjoining Lees Lane Nurseries in 2001 has not been called into question, and secondly, the site address on the 2004 appeal decision is 'Blackbirds Farm', albeit the enforcement notice involved did not apply to the current appeal site.
7. A number of documents, which appear to concern aspects of the motor vehicle trade, refer to the Blackbird Motor Company at Blackbirds Farm. These include: items appertaining to insurance dated 11 July 2003; a letter from the DVLA dated 1 June 2005; a VAT return for October 2003; a vehicle 'remarketing' invoice dated 10 March 2005; and the Company Accounts for the period ended 30 April 2005.
8. However, while the documents are not necessarily inconsistent with the appellant's case, none of them throw much light on the nature and extent of any use of the appeal site prior to the relevant date. In particular, while the trading address of the Blackbird Motor Company may have been Blackbirds Farm, I am not satisfied that the documents show that the use in question was actually taking place at the appeal site.
9. My concern in the latter respect is fuelled further by the Council's unchallenged evidence that the 2004 enforcement notice was complied with by 19 October 2004. In this respect, my attention has been drawn to a photograph, said to have been taken then, of a notice indicating that the Blackbird Motor Company had moved to a location in Wroughtington. This raises the possibility that the car sales and storage activity carried out by the company was being undertaken away from the appeal site. All in all, I do not consider the evidence relating to the period prior to the relevant date helps to paint a particularly clear picture of the manner which the appeal site was being used then. Accordingly, therefore, I am reluctant to attribute great weight to it.

Continuity of the Use

10. I am also concerned that there is a lack of clarity in the evidence covering the 10 year period after the relevant date. Again, insurance documents, which cover various dates between 28 February 2006 and August 2015, are addressed to Blackbirds Farm, as is a motor parts invoice dated 13 September 2013. A letter from the Inland Revenue, which refers to the Blackbird Motor Company, gives the address at Blackbirds Farm, as does a VAT Return for October 2013 and an invoice from British Car Auctions dated 12 March 2007. However, while these items point to a link between the company and

Blackbirds Farm, they offer little insight into the use of the appeal site. Nor, as is noted in paragraph 6 above, does the information contained in Mr Monks' statutory declaration either.

11. The evidence also includes a bundle of 14 individual car sales invoices that cover a range of dates between 12 January 2011 and 9 March 2016. The address Blackbirds Farm appears on all of them, but this in itself does not demonstrate that the use in question was actually taking place at the appeal site. Furthermore, there are some fairly lengthy gaps in the dates. As these gaps include several periods of 6 months or more, this makes it difficult to conclude that the claimed use was taking place on a continuous basis. In addition, none of this evidence relates to the earlier part of the relevant 10 year period. As the earliest of the invoices is dated 12 January 2011, this evidence is silent insofar as the period of almost 5 years between the relevant date and then is concerned.

Overall Conclusion

12. An appellant is often best placed to produce evidence regarding activities that have taken place on land. In this case, there is a good deal of evidence that points to a clear link between Blackbirds Farm and elements of the motor vehicle trade prior to and after the relevant date. However, the clarity I have referred to is far less apparent when it comes down to the actual use of the appeal site. Even though, as noted in paragraph 2 above, the test for the evidence is on the balance of probability, the lack of clarity makes it very difficult for me to conclude that it demonstrates that it is more likely than not that the use in question had begun before the relevant date.
13. The lack of clarity also applies to the 10 year period after the relevant date onwards. Indeed I find the evidence patchy to the extent that it falls well short of showing that the use was continuous throughout this period. Indeed, mindful that the appellant refers to what he describes as a 'low key' operation, the possibility that the activity was casual and intermittent, as opposed to a main use of the land, cannot be discounted.
14. The circumstances of this case are such that I am not satisfied that the evidence is sufficiently precise and unambiguous to justify the grant of a LDC for the use in question on the basis of the balance of probability. The burden of proof that lies with the appellant has not been discharged.
15. For the reasons given above, and having regard to all the other matters raised, I am satisfied that the Council's refusal to issue a LDC in respect of the use of land at Blackbirds Farm, Lees Lane, Dalton, Wigan, Lancashire WN8 7RB for the sale and storage of motor vehicles was well-founded. I shall therefore exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

D H Brier

Inspector