



Appeal Decision

Inquiry Held on 22 May 2018

Site visit made on 22 May 2018

by Diane Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 June 2018

Appeal Ref: APP/M3645/X/17/3180947

Bridges Wood, Church Lane, Burstow, Surrey RH6 9TG

- 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 Steve Kiss against the decision of Tandridge District Council.
 - The application, Ref TA/2016/2176, dated 21 November 2016, was refused by notice dated 10 February 2017.
 - The application was made under section 192(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 described as 'The use of existing buildings for the storage of cars for hotel patrons'.
-

Decision

1. The appeal is dismissed.

Procedural Matters and Background

2. At the start of the Inquiry it was necessary to clarify the description of the development as this had not been stated on the application form. The words used to describe the development in the Council's decision notice were based on the description of the activity given in the appellant's Planning Statement which supported the application. The appellant agreed that these words best summarised his proposal and as such, the appeal has been determined on the basis that the lawful use sought is for the use of existing buildings for the storage of cars for hotel patrons. I have added this to the summary of the case above.
3. The Inquiry sat for one day. All of the oral evidence to the Inquiry was given under oath or affirmation.
4. Section 192(2) of the Act indicates that if, on an application under that section, the local planning authority is provided with information satisfying them that the proposed use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. Applying the terms of s192(2) of the Act to the appeal proposal, the Council has determined that the development would be unlawful because it would represent a material change of use of the land.
5. The application sought is a certificate of lawfulness for a proposed development. The purpose of an application made under s192 of the Act is to

find out whether *future* (my emphasis) development, as described in the application, would be lawful if instituted or begun at the time of the application. It is on this basis that I have determined whether the development shown in the appellant's application would have been lawful if it had been begun at the time of the application.

6. However, at the Inquiry the appellant confirmed that the buildings on site were already being used to store vehicles. It is submitted that this use is in accordance with a grant of planning permission given in 2007, reference TA/2006/1629, which the parties agreed had been implemented. The description of that development is 'Change of use of buildings to provide 13 460 sqm of Class B8 floor space plus associated works of demolition and conversion'. At the site visit I saw that one building used by 'In Autos' contained vehicles awaiting repairs and restoration and another used by Thrifty, a car hire company, contained some of their vehicles. The remaining buildings were being used to keep cars. The full details are not known on what basis the use of the majority of the buildings is taking place.
7. A previous appeal¹ in respect of the use of the buildings on site (the 2016 appeal) was dismissed for a development described as an airport parking 'meet & greet' facility and the relocation of the 'In Autos' car facility.
8. For the avoidance of doubt therefore, I would point out that the purpose of the application is not to find out whether the existing use of the buildings on site for the storage of cars for hotel patrons is lawful. That would be dealt with under an application made in accordance with section 191, which deals with existing development. Furthermore, an LDC under s192 is not the equivalent, in law, of a planning permission and as such, the planning merits of the proposal are not relevant to the determination of this appeal.

Main Issue

9. Against that background the main issue is therefore whether the Council's refusal to issue a certificate of lawfulness in respect of the proposed use was well-founded. This turns on a consideration of firstly, whether the proposed use falls within Class B8, which the parties agree is the lawful use of the site following the implementation of the 2007 planning permission. If it does not then secondly, whether the proposed use would be materially different from the storage use taking place that has resulted in the implementation of the 2007 planning permission.
10. The onus is on the appellant to describe his proposal with sufficient clarity and precision so that what is involved is understood. The application is determined purely on the basis of an interpretation of the facts in the context of the law.

Reasons

Description of the site

11. The appeal site is located immediately to the south east of junction 9 of the M23 motorway though there is no actual access to the motorway for several miles and Gatwick Airport is some 2km west of the site. Access to the site is from the north side of Church Lane, which is a bridleway, with the actual access point being positioned several metres back from the edge of the

¹ APP/M3645/W/16/3150030 dismissed 26 October 2016

highway and marked by secure gates. The site contains six substantial former agricultural buildings, some of which are partially open on one side, and there are large areas of hard standings. The metal palisade fencing around the perimeter of the site has been reinforced with the addition of hoardings. There are some cottages in the vicinity of the access but other nearby residential development is heavily screened by the mature vegetation in the area.

The appellant's case

12. The appellant proposes to use the buildings on site to store cars. He will enter into contracts with hotels that are unable to keep cars on site while patrons are not using their facilities. They will rent storage space from him to keep cars until the patrons return. Minibuses will take drivers to the hotels and then the cars will be driven in a convoy during off-peak times to the appeal site and placed in one of the buildings. On average they will be stored for ten days and then they will be returned to the hotels using the same process in reverse. The buildings on site have the capacity to store 1200 cars.
13. Initially during cross examination the appellant's agent indicated that cars could be stored for a variety of reasons but later he confirmed that the stored cars would be while the owners were away on holiday. The owners would fly from Gatwick airport to their holiday destination and return to their hotel to collect their cars at the end of their holiday.
14. The appellant submits that the proposed use would accord with the 2007 planning permission. A number of conditions were imposed on this permission and some of these were discharged. Surrey County Council as highway authority was satisfied over various matters and both the appellant and the Council agreed that the planning permission had been implemented. There was no condition that limited the type of items that could be stored within the buildings.
15. The Class B8 category of the Town and Country Planning (Use Classes) Order 1987 is for storage use or as a distribution centre. As the appellant's contract would be with the hotels and not the vehicle owners and the cars would be stored on site, it is his view that this would accord with the 2007 permission. He also relies on a 2003 appeal decision² in respect of a LDC that sought to clarify whether the open storage of vehicles would accord with a previous LDC which authorised the use of the site for the storage of timber. The Inspector in that case concluded that the use of that site for the long term storage of cars until required by dealers fell within Class B8. Where the primary use of land remains storage, a change in the nature of the items stored would not amount to a material change of use requiring planning permission.

The Council's case

16. The Council question whether the proposed use actually amounts to the storage of cars. They refer to a Court of Appeal decision, *Crawley Borough Council v Hickmet Limited*³, which draws a distinction between the storage of cars and the parking of cars. On the facts of the case the Council conclude that the appellant's proposal would amount to a parking use and therefore would not fall within the Class B8 use. Furthermore, the parking use would be a material change of use from the existing lawful use as the Court of Appeal in

² APP/X0415/X/03/1119458

³ *Crawley Borough Council v Hickmet Limited* [1998]75 P & CR 500

Hickmet described the concepts of storage and parking as being mutually exclusive.

Assessment

17. My first consideration is whether the proposed use falls within Class B8. I consider the parking of a vehicle is distinct from the storage of a vehicle. It was held in the *Hickmet* case that 'parking is when a car is left in a convenient place for the resumption of an interrupted journey or the start of the next journey'. It may be 'short term, overnight or long term'. However taking a car off the road because for example the driver is disqualified or keeping cars on a site after manufacture before they go to be displayed at the dealers would be storage. This is because 'The notion of parking is that it is a temporary cessation from when the vehicle is in motion. A car is still in use when it is parked. It is probably not in use when it is put into store'.
18. In terms of the actual activity that would take place within the buildings on site, cars would be driven to the site and left in lines within the buildings to make the maximum use of the space available. The appellant submitted that cars are often left like this in a compound to await shipping overseas and his use would be no different from this storage use. However, this ignores the circumstances in which the cars are left. The appellant's proposed use is more akin to the description given in the *Hickmet* case. The cars would be left in a convenient place until the start of the next journey which in all likelihood would be to take the owners home after their holidays.
19. Air passengers often arrange for their cars to be parked near to the airport. This happens in a variety of ways such as within a car park at the airport, in a car park near to the airport that offers a shuttle bus service or by making use of a 'meet & greet' company. These companies meet the owner of the car at the airport and then take the car to a nearby place to be parked until the owner returns from their trip. Passengers use their cars to get to the airport and they leave them nearby to await their return and those that stay overnight in a hotel near to the airport can sometimes leave their cars at the hotel. The appellant's proposal involves a contract with the hotels rather than directly with the car owners but this would not change the circumstances in which the cars would be left. They would still be left to await the owners return. As such, I regard this as a parking use, not a storage use.
20. The appellant submits that the proposed use would not be 'airport parking' as there would be no advertisements at the site. The site would also be securely fenced with a security presence, cameras and lighting just like a compound used by car dealers. However, notwithstanding that off-site airport parking areas are often laid out in the same way, these points overlook the principal consideration which is the circumstances in which the cars are left. In addition, keeping the car keys in an office in Crawley, not having the site open to the public and not driving cars to the airport also does not change the circumstances in which the cars are left.
21. The appellant also referred to his company as a storage company, that car owners would not know where their car would be kept and that hotels would pay storage fees rather than car owners paying a daily or weekly parking fee. However, this of itself does not confer a storage use on the site in the same way that John Lewis, a retail operator, does not confer a retail use on a site which it uses as a distribution centre. In 'meet & greet' businesses car owners

are not aware of the location of their cars and the payment structure does not change the circumstances in which the cars are left.

22. I find that the appellant's argument that his proposal can be distinguished from the parking that took place in the *Hickmet* case also overlooks the circumstances in which cars are left. For these reasons I conclude on my first consideration that the proposed use would not fall within Class B8 as it would not be a storage use.
23. I turn now to my second consideration, whether the proposed use would be 'materially different'. There is limited information from the appellant on this matter. He submits that the test is whether the proposed use would be materially different from airport parking but this is incorrect as it is necessary to compare the proposed use with the actual lawful use currently taking place. He claims the vehicle movements associated with the proposed use would not be materially different from the limit set down in the 2007 planning permission but does not provide any figures to support his assertion.
24. He fails to describe the manner in which the vehicles arrive at the site for storage by 'In Autos' and whether that is 24/7 or limited to week days only during normal working hours and how that would compare with the convoys of cars and the use of mini buses which would regularly travel 'to and fro' from the site, as envisaged for the proposed use. He also makes no distinction or comparison between the type of traffic associated with the 'In Autos' use and the proposed use.
25. The onus is on the appellant to provide all the information to demonstrate that the proposed use would be a non-material change of use. On the evidence before me there is insufficient information of any clarity to lead me to the view that a material change of use would not occur if the proposal were to go ahead.

Conclusion

26. 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 use of existing buildings for the storage of cars for hotel patrons 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.

D Fleming

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Stephen Whale, of Counsel

Instructed by Simkins Solicitors

He called

Philip Rowe BA (Hons)
BTP

Agent, PROwe Planning Solutions

Thomas Kiss

Appellant's son

FOR THE LOCAL PLANNING AUTHORITY:

James Hitchcock, Solicitor

He called

Christopher Hall BSc
MPhil MRTPI

Principal Planning Officer

DOCUMENTS

1. Agreed Statement of Common Ground
2. Copy of Crawley Borough Council v Hickmet Limited [1998]75 P & CR 500
3. Copies of the Council's first and second notification letters