The Planning Inspectorate

Appeal Decision

Site visit made on 2 July 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 06 August 2019

Appeal Ref: APP/N1920/X/18/3211190
Land adjacent to Oak Villa, Wash Lane, South Mimms EN6 3QA

- 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 by Guy Liscoe (Liscoe Building Services) against the decision of Hertsmere Borough Council.
- The application ref. 18/0923/CLE, dated 9 May 2018, was refused by notice dated 23 August 2018.
- 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 use of the land for a construction company.

Decision

1. The appeal is dismissed.

Background matters

2. The appeal site is an approximately rectangular piece of land to the west of Oak Villa on the southern side of Wash Lane. There are a timber boarded/trellis fence and gates on the road boundary, that I estimated to be about 2 metres high. Immediately to the west is an electrical sub-station, with a chain-link fence along the boundary. To the south are an hotel and part of the South Mimms motorway service station. There is a part boarded timber fence and part steel paling fence along this boundary.

Reasons

3. For the avoidance of doubt, I should explain that the planning merits of the existing development are not relevant, and they are not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

4. The main issue for me to determine is whether the Council's decision to refuse the grant of a LDC was well-founded. In that regard the principal question is whether the use of the land for a construction company has subsisted continuously for a period of 10 or more years prior to the date of the LDC application on 9 May 2018. In a case of this sort the burden of proof is upon the appellant to show that on the balance of probabilities this is the case.

5. Mr Brian Liscoe has submitted what purports to be a sworn statement, which is un-dated. He says he bought Oak Villa in September 1999 and had assumed the land that is now the appeal site was also his, since there was no separating fence and the previous owners of Oak Villa had left various materials there, such as bricks, sand, cement and scaffold poles. In January 2000 he had put up a chain-link fence separating the appeal site from the Oak Villa site. Liscoe Construction, as his business was called, had stored building materials and equipment there, including 2 cement mixers, a skip, a flatbed truck, a digger, a trailer, a pickup, 2 vans and 3 cars. He also had 3 workshop buildings on a pre-existing hardstanding extending from the front to the back of the site

6. The various vehicles came and went from the site on a daily basis, driven by Mr Liscoe, his two sons, and labourers working for the business. Deliveries from builders' merchants were also received at the appeal site – on average once or twice weekly. He had sold Oak Villa in December 2011 but retained the appeal site and passed it on to his son Guy Liscoe, who continued to use the land to operate Liscoe Construction using the same labour and vehicles. At this time a 1.8 metre timber panel fence was put up along the Oak Villa boundary.

7. The son has owned the land since 2015, when it was given to him as a wedding present and continued to use it to keep plant and building materials for his own company Liscoe Building Services. This operation has been scaled down since 2017 with a view to selling the land. However, the firm still operate a panel van and 2 cars that go back and forth on a daily basis, and there are occasional deliveries from builders' merchants.

8. Guy Liscoe has submitted a letter dated 27 April 2018, but unsigned, swearing it to be a true and accurate statement of facts. The letter is headed 'Liscoe Building Services'. This essentially repeats the information provided by Brian Liscoe, adding that he (Guy) had put the land up for sale in 2017.

9. A letter from a family friend says he had helped the Liscoes with their move to Oak Villa in 1999. He says there were building materials left on the appeal site by the previous owner, that 3 workshops had been erected on a pre-existing hardstanding, and that the land had continued in use for the Liscoes' building company. Furthermore, he had worked in the building trade with Guy Liscoe for the year 2010/11.

10. A letter from a Borough Councillor says that Brian Liscoe operated his business from Oak Villa from 1999. He had visited the site and considered this was an ideal location for operation of the business. The hardstanding had already been there and was in use for storage of building materials and machinery.

11. The appellant acknowledges that - in relation to LDC applications for existing uses - the government's Planning Practice Guidance advises that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make an appellant's version of events less than probable, there is no good reason to refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability[1].

12. I saw that much of the appeal site is surfaced with brick and concrete pavers used as hardcore. There are heaps of rubble and ash. A small digger was

[1] Planning Practice Guidance – 'Lawful Development Certificates' Paragraph 006 Reference ID: 17c-006-20140306.

parked near the front boundary. Close to the site entrance were a stack of bricks, cement bags, concrete pavers, a wheelbarrow, an electric mixer, and a coil of mains water pipe. There were no sheds or other buildings there, nor any other vehicles.

13. I understand that in 2017 a planning application was made for construction of a 4-bedroom house on the appeal site[2]. The statement submitted with this application said the appeal site was formerly part of the residential garden of Oak Villa, that it contained mature trees and landscaping, and that the lawful use of the site was for residential purposes. One of the drawings submitted with that application shows trees on the site, as well as what I take to be three workshops or sheds.

14. The Council made two site visits. The first in August 2017, in connection with the planning application, when they saw a wooden shed, a small pile of boards, and a pile of rubbish. There were no vehicles there, nor were any vehicle movements seen. The Council say the use as a construction business was not apparent. Similar observations were made at the second visit in May 2018.

15. Various aerial photographs have been put forward. A bird's-eye view of uncertain date shows the appeal site with no boundary separation from the Oak Villa site. Images from 2011 and 2012 put in by the appellant are of low quality, and little can be inferred. A Google Earth image of 2005 is reasonably clear but shows little other than tree cover on the appeal site.

16. In a case such as this, where it is claimed a business has operated from the site for a period of some 18 years, I would expect to see documentary evidence in support. For example, records of deliveries to the site from builder's merchants – which are claimed to be frequent - receipts and/or orders for goods, correspondence addressed to, and sent from the business at the site, vehicles and plant bought or sold during the period and registered at the site, and business accounts. No such documentary material has been put in.

17. The statements from Brian Liscoe and Guy Liscoe make a series of assertions about the general history of the site, but are short of detail, as are the letters from the family friend and the Borough Councillor. There is an obvious ambiguity in the claim made in the planning application statement to the effect that the site had been in residential use rather than the business use now claimed.

18. Furthermore, Guy Liscoe's statement headed 'LBS Liscoe Building Services' is from an address in Letchworth, although he claims the business continued to operate from the appeal site on a daily basis. The number of vehicles and pieces of plant, and the number of people said to have been operating them suggests this had been a reasonably substantial business, but there is no significant documentary evidence of its existence on the site.

19. Overall, I find the evidence presented to be remarkably vague, and have elements of ambiguity. Although there was clearly a shed or sheds on the site, and evidence of the presence of boards, materials and rubbish, that is by no means sufficient to demonstrate the claimed use of the land over many years. I conclude that on the balance of probabilities it has not been shown that the appeal site has been used for a construction company for a continuous period

[2] Planning application ref. 17/1406/FUL, validated on 11 July 2017.

of 10 years before the LDC application date, and that the Council's decision to refuse the LDC application was well-founded.

Conclusions

20. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of Land adjacent to Oak Villa, Wash Lane, South Mimms EN6 3QA for a construction company 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.

Stephen Brown

INSPECTOR