



Appeal Decision

Site visit made on 21 August 2019

by B M Campbell BA(Hons) MRTPI

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

Decision date: 27 August 2019

Appeal Ref: APP/B1415/X/18/3214160

Unit A, Brook Way, Hastings TN35 4NN

- 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 B Coleman against the decision of Hastings Borough Council.
 - The application Ref HS/EX/18/00607, dated 6 July 2018, was refused by notice dated 30 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 a parking and storage area.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. On the application form for the LDC, the subject of this appeal, the Appellant appears to have conflated use (for storage and parking) and operational development (the area of hardstanding).
3. At section 7 on the application form it is indicated that an LDC is sought for an existing use and not an existing operation and that use is described at section 8 as "parking and storage area". Section 9 gives the grounds for an LDC as being that the use began more than 10 years before the date of the application. All this points to an application seeking a certificate for an existing use – that is use for parking and storage.
4. In giving a reason why an LDC should be issued, however, section 9 of the application form states it is because "the area of hardstand has been there for over 10 years", but the provision of a hardstanding is operational development and not a use of land. For an LDC to be issued for operational development such as that, it would only be necessary to show that four years had elapsed since the hardstanding was substantially complete (s171B(1) of the Act) – but such a certificate would not include any use of that surface.
5. Section E of the appeal form gives a description of what a certificate is sought for as "Area of hardstanding" and also gives that description as the actual use of the site at the time of the application. But an area of hardstanding is not a use of land.

6. The Council has clearly treated the application as relating to use for parking and storage and not operational development and that seems to me to be correct having regard to what was applied for on the initial application form. I shall deal with the appeal accordingly.
7. In appeals against a refusal to issue an LDC, the onus is on the Appellant to make out his case on the balance of probability.

Reasons

8. In order for this appeal to succeed, the Appellant needs to show that no enforcement action could be taken against the use (s191(2)(a)) and that it does not contravene any requirements of an enforcement notice in force (s191(2)(b)). I have been advised that there is no enforcement notice in force on the site and thus the latter requirement is met.
9. With regard to the first, the Appellant's case is that enforcement action could not be taken because the time for taking enforcement action has expired. For this use, section 171B(3) of the Act sets out the period for taking action as ten years beginning with the date of the breach. Thus, for this appeal to succeed it would be necessary to show that the use of the site for parking and storage began more than ten years before the date of the application; continued throughout a ten year period (such that the Council could have taken action against it at any time had they visited the site); with no material change thereafter.
10. The only evidence provided in support of this proposition is aerial photographs dated 2004 and 2014 and current photographs of the site. The aerial photographs from 2004 show a clearing in amongst trees, largely devoid of vegetation, and which may or may not have been hardsurfaced. What it does not show is any active use of the clearing – it appears vacant and unused. In the photographs dated 2013, the clearing appears to have increased in size and the uniform colour of the surface could well indicate a hardsurface. However, in those photographs also, there is no indication of any use whatsoever taking place. Only the current photographs of the site show active use for parking and storage.
11. The supporting evidence is woefully inadequate. It fails to show any historic use of the site for parking and storage let alone a continuity of that use over a ten-year period. The Appellant has not made out his case and the appeal must fail.
12. 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 for parking and storage was well-founded and that the appeal should fail. I exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

B M Campbell

Inspector