



Appeal Decision

Site visit made on 17 September 2019

by Mr K L Williams, BA, MA, MRTPI

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

Decision date: 15 October 2019

Appeal Ref: APP/E3525/X/18/3218744

Land at Arms Lane, Kedington, Suffolk, CB97QQ

- 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 C Hammond against the decision of St Edmundsbury Borough Council.
 - The application, ref: DC/18/0342/CLE and dated 21 February 2018, was refused by notice dated 12 June 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 as a builder's yard.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue a Lawful Development Certificate (LDC) was well-founded.

Reasons

3. Planning merits are not relevant in this case. They are not an issue for consideration in an appeal under section 195 of the Act, which relates to an application for an LDC. The burden of proof in this appeal rests with the appellant and the appropriate test of the evidence is the balance of probability. It is consistent with *Planning Practice Guidance (PPG)* that an appellant's case should be accepted if there is no evidence to contradict or otherwise make his or her version of events less than probable, provided that an appellant's evidence is sufficiently precise and unambiguous. It is consistent with relevant caselaw that that an unauthorised use must continue throughout the relevant period before it can achieve lawfulness. The relevant time limit for enforcement action in respect of a material change of use of land is 10 years after the beginning of the breach of planning control. A period of 10 years before the date of the LDC application began on 21 February 2008.
4. The appeal site is a narrow sliver of land extending westwards from an access onto Arms Lane. Mr C Hammond explains that the site was acquired in the 1980's. He says that it was used from the outset in conjunction with his building business. Use as a builder's yard is a "sui-generis" use, that is not

within any defined use class. It can be taken to involve use for the storage of materials and equipment and for activities associated with a building business. In this case, the use of the site is described in the application as the "storage of builder's materials and equipment and occasional manufacture". It is said that hardcore was put down near the entrance. Less valuable and heavier materials were stored. There were periodic letters from the Council, Parish Council and Environment Agency concerning tidiness and fires. Building materials continued to be stored in the open and in a shed near the entrance. Mr Hammond says that there may have been long periods when he was working out of the area and the site was not visited but materials continued to be stored there. Efforts to tidy up the site have been made but more remains to be done.

5. A series of photographs is submitted. Some of them show items on the site, including corrugated metal, a metal framework, a shed, doors, a trailer and steel drums. A Google Map photograph from 2009 is said to show some equipment and vehicle tracks. There are aerial photographs from 2013 and 2016, which Mr Hammond says show, amongst other things, the hardstanding. A Statutory Declaration is made by Mr Toby Hammond, the appellant's son. He says that as soon as the land was acquired it was use for the storage of building materials and for burning combustible waste related to his father's building business. Heavy and low value material were stored. Numerous letters of complaint were received about burning of materials. This largely stopped but storage of materials continued. In 2004 Toby Hammond took over the building business from his father. He says that he continued to use the site and provides photographs of materials on the site, many of which are said to have been on the site for long periods. In 2006 Toby Hammond moved to Kedington and says that he has visited the site at least once a week and sometimes every day, depending on business needs. He erected fencing and gates to keep people off.
6. Letters in January and March of 1994 from the Council to Mr C Hammond refer to untidy land, the dumping of rubbish and construction waste on the land and unauthorised laying of hardstanding. Mr Hammond responded, alluding to covering the access with hardcore, to vandalism and to his intention to erect fencing and restore the garage. Correspondence in 1996 between the parish council and Mr Hammond is about broken glass and a dilapidated shed. Letters in 1998 and 1999 from the Council to Mr Hammond concern complaints about burning and disposal of waste. In 1999 the Environment Agency also wrote to Mr Hammond about burning of waste on the site. Letters from the Council to Mr Hammond in 2000 refer to untidiness, rubbish on the site and a derelict shed. Mr Hammond also wrote to the Council in 2000 about his intention to tidy up the site and to clear the remains of a shed. Another letter from the parish council, in 2005, concerns the untidy and dangerous state of the site. In a February 2017 letter Mr C Hammond said that some metal parts have been on the site so long that trees are growing through them. He said that some building materials are stored outside but most are in a garage on the site and there are also 2 sheds on the land.
7. When I visited the site there was some hardstanding near the gated entrance. There was a garage type building close to the entrance and several other sheds further into the site. Within the site there was a range of materials, including metal components, block, bricks, posts, pallets and display panels. The western part of the site appeared more overgrown.

8. The current state of the site is not inconsistent with it now being used as a builder's yard. The aerial photographs appear to show some surfacing within the site. However, their quality is not sufficient to show much of what was happening with any precise detail. In the 2016 aerial photograph much of the site appears quite overgrown. Other photographs show various items within the site but are undated. Other than the February 2017 letter, the relevant correspondence all precedes the start of the 10-year period leading up to the LDC application.
9. It appears from that correspondence that the site was inspected by Council officers at various dates and that the parish council was observing what was going on the land. Yet, although there is reference to the site's untidiness and to the storage and burning of waste materials, there is no reference in the Council and parish council letters to its use being that of a builder's yard or to regular visits by builder's or other vehicles. Nor is there documentary evidence of records of deliveries or collection of building materials or equipment to and from the yard. Other than the aerial photographs, there is a lack of documentary evidence dating between 2005 and February 2017. Mr Hammond concedes that there were long periods when the site was not visited, although the lengths of those periods is not specified. In addition, although the LDC application description of the use includes reference to manufacture, there is no documentary evidence of any manufacturing being undertaken on the site or, for example, of delivery of materials for manufacturing.

Other Matters

10. Mr Hammond argues that the use of the site as a builder's yard is consistent with planning policies and that this is an appropriate location for such a use. These are matters of planning merit which, as set out above, are not relevant in an appeal concerning the lawfulness of development.

Conclusion

11. The appellants evidence is not sufficiently precise and unambiguous for me to conclude, on the balance of probabilities, that the use of the site as a builder's yard is lawful. Having regard to the above and to all other matters raised the Council's decision not to issue an LDC was well-founded. The appeal should not succeed.

K Williams

INSPECTOR