



Appeal Decision

Site visit made on 24 September 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 October 2019

Appeal Ref: APP/R5510/X/18/3216747

Wall Garden Farm, Sipson Lane, Hayes UB7 0JG

- 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 Ms Marian Borsberry against the decision of the Council of the London Borough of Hillingdon.
- The application Ref 3952/APP/2018/1283, dated 5 April 2018, was refused by notice dated 31 May 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 described on the application form as: *"The existing use is for the storage of vehicles on the site of the obsolete farm"*.

Summary of Decision: The appeal is dismissed.

Main Issue

1. The main issue in this appeal is whether it has been shown that, at the time the application was made, there was a subsisting lawful use at the appeal site for the storage of vehicles.

Reasons

2. The site consists of a large rectangular parcel of land, enclosed by fencing and masonry walls. Apart from a cluster of substantial buildings close to the entrance, most of the site is hard surfaced. Probably in the region of several hundred vehicles, predominantly private cars with some light vans, were present at the site when I visited.
3. The onus is on the appellant to show that the use applied for is lawful, the relevant test of the evidence being on the balance of probability. To support their claim that the site had been used continuously for the storage of vehicles for a period in excess of ten years prior to the application being made, the appellant supplied copies of a series of dated aerial photographs. These showed substantial numbers of vehicles present at the site in September 1999, July 2004, March 2005, July 2013, September 2014 and July 2018. Vehicles were present only on parts of the site and in significantly reduced numbers, in the aerial photographs taken in May 2008 and June 2010 also supplied.
4. Furthermore, the appellant provided a copy of a Non-Domestic Rate Bill dating from March 2019 describing the site as 'land used for storage', presumably to illustrate their contention that business rates had been paid for a storage use throughout the ten-year period. The appellant could produce no other

documentary evidence which might have supported their version of events, as the business that rented the site from October 1995 to March 2017 had ceased trading.

5. Be that as it may, an interested party referred in their representations to a 'long history' of unauthorised car parking and storage at the site and drew my attention to enforcement action previously taken by the Council. I invited comments from both main parties on the effect of any previous enforcement action on the use applied for and have taken their submissions into account in my decision.
6. The Council subsequently confirmed that an enforcement notice had been issued in respect of use of the site for the parking and storage of vehicles, the notice being upheld at appeal in June 1971. They confirmed the issue of a second enforcement notice dating from November 1976 concerning use of the site for the repair, maintenance and storage of vehicles. Furthermore, the Council confirmed the issue of a third enforcement notice dating from April 1987, concerning use of the site for the parking and storage of vehicles. Whilst the appellant also referred to an enforcement notice dated 16 March 1989, neither main party was able to provide any further information in this respect.
7. At s191(2)(b), the Act provides that uses are lawful at any time if they do not constitute a contravention of any of the requirements of any enforcement notice then in force. The Council did not indicate that the above notices had been withdrawn. In the case of the 1987 notice, the Council stated that in 1988 it had advised a former owner of the site that it would not seek to enforce the notice in relation to the parking of vehicles in connection with his business. However, the Council did not suggest that this extended to any vehicle storage. The passage of time does not, in itself, have a significant bearing on whether an enforcement notice remains in effect. Neither main party provided any evidence which might have indicated that the notices were no longer in effect. Therefore, there is nothing to suggest that the notices were not in effect at the time the application was made. For the purposes of the above section of the Act, a notice being in effect has the same meaning as it being in force and in practice, there is no distinction to be made.
8. Unfortunately, only limited details of the notices were provided. However, all the notices referred to vehicle storage in the brief summary of the allegation. To my mind, it is likely that the requirements of the notices would therefore have included the cessation of vehicle storage. There is no evidence to suggest otherwise. Consequently, based on the evidence before me and on the balance of probability, use of the site for storage of vehicles is not lawful, as it contravenes the requirements of enforcement notices which are in force. It follows that an LDC cannot be issued in respect of the use applied for.
9. Given the above findings, it is not strictly necessary for me to consider whether it has been shown that the vehicle storage use was continuous for more than ten years prior to the application date. However, as there are limited details available of the previous enforcement action and having regard to the respective cases of the main parties in this appeal, I shall do so.
10. Where there is no enforcement notice in force, in order to become immune from enforcement action an unauthorised use must have been continuous for a period of more than ten years. Some minor interruption in the use, such as a short suspension during a change of ownership, would not normally be fatal to

its continuity. In such circumstances, the relevant question would be whether an interruption in activity resulted in the cessation of the use such that the Council could not have taken enforcement action against it during that period. If that was the case, resumption of the use would have amounted to a fresh breach of planning control and the ten-year period for taking enforcement action would begin again.

11. The appellant's aerial photographic evidence suggested that vehicle storage was taking place from at least September 1999 to March 2005 and that it also occurred from at least July 2013 onwards up to the application date. However, the Council's evidence included a copy of an aerial photograph taken in 2008, most likely during the summer months, which showed limited numbers of vehicles present at the site at that time. As the use is likely to have fluctuated in its scale, coverage of the site by vehicles would have changed over time. Even so, the 1999 to 2005 photographs together with the 2013 and subsequent photographs consistently showed substantial numbers of vehicles present on large parts of the site. The photographs represent a 'snapshot' of one moment in time. However, it is unlikely that numbers of vehicles at the site would have varied significantly in the periods before and after the photographs were taken. Therefore, the photographs are likely to accurately depict the scale and extent of any vehicle storage occurring at or around those dates.
12. For the above reasons, the appellant's claim of a simple fluctuation in the number of vehicles on one day does not convincingly explain why, in the Council's summer 2008 photograph, there were very few vehicles present at the site. To my mind, a more likely explanation of events is the one offered by the Council-i.e. that the use had ceased by the date of that photograph. I note that there were also comparatively few vehicles present at the site in the appellant's May 2008 and June 2010 photographs. Therefore, the available evidence is consistent with the use being reduced in scale, probably as a result of the Council's enforcement investigation, prior to it ceasing and then gradually recommencing much later, after the investigation had been concluded.
13. Consequently, the Council's evidence casts doubt on whether the use had been continuous, as it suggests that there was part of the ten-year period when vehicle storage activity had ceased at the site. When no activity was taking place in and around 2008, it is unlikely that it would have been expedient for the Council to have taken enforcement action, as there was no longer any planning harm being caused. The Council's closure of its investigation in January 2009 on the basis that no further action was necessary supports this conclusion. As a result, on the balance of probability the ceasing of activity at the site in or around 2008 is likely to have resulted in a material interruption in the use. A fresh breach would have occurred when the use recommenced sometime later.
14. Accordingly, even if there had not already been enforcement notices in force, based on the evidence before me the use would not have been immune from enforcement action and it would not have been lawful, as the current breach would not have been continuous for more than ten years prior to the application date.

15. Payment of business rates is not contingent on a use taking place. Therefore, even if evidence had been supplied to show that such payments were made throughout the ten-year period, I would still have given this matter limited weight. As the considerations in an LDC appeal are confined to matters of fact and law, whether the site should remain in the Metropolitan Green Belt, whether it forms part of a proposed third runway for Heathrow airport and the likelihood of a reversion to agricultural use are not relevant considerations.
16. Therefore, on the balance of probability and based on the evidence available I find that the use contravenes the requirements of enforcement notices which are in force. Even if that were not the case, it has not been shown that the use was continuous for more than ten years prior to the application date. It follows that the available evidence does not show that there was a subsisting lawful use at the site for the storage of vehicles at the time the application was made.

Conclusion

17. 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 the site for the storage of vehicles 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.

Formal Decision

18. The appeal is dismissed.

Stephen Hawkins

INSPECTOR