The Planning Inspectorate

Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 30 January 2020

Appeal Ref: APP/F5540/X/19/3223670
Heston Tyres, Rear of 222 Great West Road, Hounslow TW5 9AW

- 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 Muzaffer Iqbal against the decision of the Council of the London Borough of Hounslow.
- The application Ref: 00505/R/O222/LAW2, dated 25 October 2018, was refused by notice dated 8 January 2019.
- 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 tyre shop.

Decision

1. The appeal is dismissed.

Main Issue

2. Under s191(1)(a) of the 1990 Act, any person who wishes to ascertain whether any existing use of buildings or other land is lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use. S191(2)(a) of the 1990 Act specifies that for the purposes of the Act, uses and operations are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason).

3. The time limit relevant for taking enforcement action under s171B(3) of the 1990 Act regarding the use of buildings or other land is the end of ten years beginning with the date of the breach. The ground under which the appellant applied for the LDC was that the use began more than ten years before the date of the application.

4. The appellant therefore needs to show, on the balance of probability, that the use as a tyre shop had existed on a substantially uninterrupted basis for at least ten years by the date of the application for the LDC, which was 25 October 2018. Consequently, the evidence to support that claim needs to date back to at least 25 October 2008. The burden to make out the case rests with the appellant.

Reasons

5. A letter from Euro Carparts only states that they have traded with Heston Tyres since 2012. SSE Southern Electric 'Statement of Account' and 'Invoice' for supply to the 'Garage, 222 Great West Road' only covers quarter 4 of billing year 2014/15. The letter from GSF Car Parts dated 12 October 2018 only refers to trading with Heston Tyres for over four years. None of these documents cover the relevant ten-year period. The Council also confirms that there are no business rate documents associated with the property. At the application stage the appellant's agent apparently stated that there are 'ten years long records from Council Tax' but they had been lost and the applicant was not able to provide them. I have had regard to the plans submitted with the application to the Council, but these shed no light on the length of time that a tyre shop may have operated.

6. In addition, despite claiming on the application form that the use began more than ten years before the date of the application and that it began on 23 July 2007, it is subsequently stated that "*the business has been running continuously for more than four years which is required by the Council to obtain the certificate".* These claims give a confused picture about how long the tyre shop has operated.

7. Taking all the above in the round, the appellant's evidence falls well short of showing, on the balance of probability, that the tyre shop use had existed on a substantially uninterrupted basis for at least ten years by the date of the application for the LDC.

Conclusion

8. For the reasons given, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a tyre shop 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.

Gareth Symons

INSPECTOR