
Appeal Decision

Site visit made on 25 February 2020

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 19 March 2020

Appeal Ref: APP/G2815/X/19/3236229

Land at Blotts Barn, Brooks Road, Raunds, Northamptonshire, NN9 6NS

- 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 Messrs Roger and Harry Denton against the decision of East Northamptonshire District Council.
- The application Ref 19/00994/LDE, dated 5 June 2019, was refused by notice dated 30 July 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:
Use of the land for external storage of building materials and containers.

Costs Application: A costs application has been made by Messrs Roger and Harry Denton against the Council. This is the subject of a separate decision.

Decision

1. The appeal is dismissed,

Matters of clarification

2. The application, the subject of this appeal, followed a previously refused LDC application (18/01387/LDE). That application sought a LDC for use of the same land but the use had been described as a *'builder's yard'*. On behalf of the appellant it is indicated that this description *'was problematic because a 'builders yard' can be construed in a number of different ways'*. It is stated that the appellant considered it to mean *'an area where building materials are stored'*, whereas the Council interpreted it as the basis for operations for a commercial builder.
3. It is stressed that this is not the current use as applied for and that this second application has made it clear that the LDC seeks to confirm that the lawful existing use of the land is for open storage, in Use Class B8. However, the items stored on the land (storage containers and general building materials) are the same as those in place at the time of the first LDC application. I have dealt with the appeal on the basis of this second application and in relation to the submitted plans for the whole of the site as outlined in red. Thus, not for the lawful use of the appeal site as a *'builder's yard'*.
4. The previous application had been refused on the basis that the LPA was not satisfied that the evidence provided was sufficiently precise and unambiguous to indicate that the site (the red-line site of the application) had been in the stated use continuously for a period of 10 years or more prior to the date of the LDC application. This application, the subject of this appeal was refused for exactly the same reason.

Introduction and background information

5. The appeal site is located to the north west of Brooks Road, to the west of the business units (and the pond) at Blotts Barn and to the north-west of September Hall Farm. The site is perceived as predominantly open land with boundary hedges to the north, south and west. In the past it would appear that it was in agricultural use in conjunction with the surrounding farmland. There is open countryside and agricultural land to the north and to the west. The built-up area of Raunds lies to the south-west.
6. At the time of my site visit I noted that the 4 container units and the building materials were all located to the northern end of the site. One container was empty; the second contained a VW camper van; the third boxes of metal frames and the fourth contained various building materials. There was also a builder's skip adjacent to the container units. Some items of builder's equipment and materials were located between the skip and the containers. Other builder's materials, including bricks and roof tiles, were stored in wooden pallets immediately to the east of the containers.
7. Close to the north-eastern boundary of the site there was a pile of rusting scrap metal and further to the west, close to the northern boundary, there was a pile of timber logs. A second pile of timber logs was located immediately to the south of the containers and the pallets of building materials. Close to the western boundary of the overall site there was a linear, triangular-shaped mound of earth approximately, 20m to 30m long and 1.5m high. This was stated to be top-soil which had been removed from the area on which the containers and building materials are now located. This area had been surfaced with rough stone gravel material.

Reasons

General points relating to LDC appeals

8. An appeal relating to a Certificate of Lawful Use or Development (LDC) is confined to the narrow remit of reviewing the Local Planning Authority's (LPA) reason for refusal and then deciding whether the reasons are well founded. The planning merits of the case do not fall to be considered and the relevant test, relating to the submitted evidence, is '*the balance of probability*'.
9. National Planning Practice Guidance (PPG) indicates that an applicant is responsible for providing sufficient information to support a LDC application and that, without sufficient, precise and unambiguous information (my underlining), a LPA may be justified in refusing to grant a certificate. However, PPG also indicates that if a LPA has no contrary evidence itself and there is none from others to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application.

The gist of the case for the appellants

10. It is stressed that the Council has refused this latest 2019 application for exactly the same reason as the previous 2018 application. This is despite the fact that the two applications were different. It is further indicated that this latest application addressed the ambiguity relating to the previously described application as being for a '*builder's yard*'. It is stated that there appears to be no argument advanced by Council officers that the containers were not on the land; that the containers are clearly visible in the submitted aerial photographs and that the case officer's delegated report (CODR) acknowledges the presence of the containers on the land.
11. On behalf of the appellant it is then contended that the officer then mistakenly sought to question what was stored within the containers. This question is considered to be irrelevant since the storage of containers (or stationing of containers on the land)

constitutes a material change of use, rather than operational development. It is considered, therefore, that what is stored in them is irrelevant to the use of the land.

12. Reference is made to the CODR at paragraph 6.1, which accepts that the containers were stationed on the land following the conversion of Blotts Barn. A letter from the previous owner of the site confirms that there were containers on the land in 1993 and this is supported by aerial photographs. It is contended, therefore, that the appeal land has been used for external storage and the stationing of containers for a period of 26 years.

13. The same letter is referred to which indicates that building materials were initially stored on the site in 1993 and that again *'piles of materials are evident on the aerial photographs'*. This is said to be corroborated by the Statutory Declaration (SD) of Roger Denton, wherein it is stated that *'throughout my ownership, [from July 2007 to present] there have always been building materials and storage containers on the land'*. The SD of Harry John Denton is also noted as confirming the use of the site as being for the storage of building materials and the stationing of containers.

14. It is contended that even if the letter from the previous owner is afforded less weight (due to the fact that it is not a sworn statement) the evidence of Roger Denton (one of the appellants) on its own, is sufficient to indicate that the lawful use (of Class B8 storage) covers a period in excess of 10 years. In summary it is contended that the submissions (SDs and accompanying exhibits) in relation to the 2019 application, are sufficient to indicate that the appeal land has been used for both the storage of containers and building materials throughout the relevant 10 year period (period beginning on 5 June 2009).

The appellants comments on the Council's approach to this application (2019)

15. From the reading of the two reports it is contended that the Council's approach to this application (2019) has been to assume that it is identical to the earlier application (2018). It is argued, therefore, that the Council has not properly engaged with this second application and nor has it understood its purpose in seeking to address the ambiguity of the previous application (2018). It is contended that the Council has *perpetuated the confusion through the continued reference to a 'builders yard'*.

16. With regard to *'consultations'* on the application(s), it is indicated that two letters of objection had been received. However, the Raunds Town Council (RTC) objection related to the 2018 application (the *'builders yard'* application) and not to this current 2019 (Use Class B8) application. It is stated that the appellant is unclear whether or not the Council has considered the additional SD and that it appears more weight has been given to the unsworn statement from the RTC than to the SDs.

17. Furthermore, it is stressed that the LPA has not provided any contrary evidence of its own to indicate that building materials have not been stored on the site for the relevant period. The container storage is considered to have been clearly and unequivocally established and many of the comments (reported in section 6 of the officer report for this application) relate to the suitability of the highway infrastructure. The merits cannot be considered and so these comments are irrelevant.

18. It is indicated that the Council's case has been submitted by a different officer and that no attempt has been made to address the appellant's concerns about the failure to distinguish between the 2018 and 2019 applications. It is therefore contended that the current officers must have concluded that they are unable to provide any counter evidence or explanation as to why the 2019 application was dealt with in this way.

19. In summary it is contended that the Council has unreasonably sought to refuse the application on the basis that the use applied for is still that of an operational *'builder's*

yard', as opposed to an open storage use of the land. The Council has failed to handle the application correctly and to reasonably assess the evidence which precisely and unambiguously demonstrates that the use applied for has been continuous for the relevant 10 year period.

The gist of the case for the Council

20. By letter, dated 17/01/2020, the Council indicates that it relies on the contents of the Case Officer's Delegated Report (CODR) and that this forms the basis of its case. It is indicated that the main issues, which the Council considers to be the determining factors, are those set out in their reasons for refusal.

21. The Officer Report for application 19/00994/LDE is dated 26/07/2019. Before reaching conclusions or an evaluation of the application the Report describes the proposal; the site and surroundings; planning policy; relevant planning history and consultations and representations. With regard to the latest point it is stressed that no consultations were carried out because these are not required in a LDC application. However, it is contended that objections from interested persons and parties are relevant if these providing evidence relating to the use for which the LDC is sought.

22. This evidence includes the contentions that the site has never been used for material storage; that the photographic evidence relates to materials that have simply been left on the site and that the land has never been used for the true storage of building materials. Other references to traffic and infrastructure cannot be relevant to this application.

23. In section 7 of the CODR, comments are made on the '*Evidence submitted by the applicant*' and the narrative of submissions made on behalf of the appellant is set out. This covers the site; the contention that it has been used as a builder's yard since 1994; the fact that the appellant recently purchased the land; the photographic evidence and the sworn statements. Despite the appellant's confirmation that the appellant is not operating a commercial '*builder's yard*' the report repeatedly refers to the land being used for that use. The report also refers to the evidence being the same as for the previous application despite a further statement having been submitted.

24. It is contended that the photographs do not demonstrate that the containers have been used to store building materials. Furthermore, the submitted photographs are stated to show only a small proportion of the site for the storage of miscellaneous items. Reference is also made to the fact that there is no evidence of a building trade having been carried out from the site. The Council accepts that the sworn statements must be given some weight, but stresses that it is the appellant's responsibility to put together a robust set of supporting documents to sit alongside the SDs to tip the balance in favour of issuing a LDC. The response from RTC is stated to support the Council's case.

25. It is again stated that the appellant sought a LDC for use of the land as a '*builders yard*' and that the use applied for was for the external storage of building materials and storage containers. However, having considered the details of this latest application, it is considered that '*no substantive new details or evidence have been submitted*' and, therefore, the '*scheme cannot be supported*'.

My assessment

26. From its appeal submissions it appears that the Council has ignored the fact that this appeal application is not seeking a LDC for use of the land as a '*builder's yard*'. As indicated above, this second application simply sought a LDC for the '*external storage of building materials and containers*' (as a Class B8 storage and distribution use) on the appeal site. Thus, in this case, the onus is upon the appellant to demonstrate, on the

balance of probabilities, that the appeal land (the red-line area on the application plan) has been used for that use continuously, for a 10 year period, from on or before 5 June 2009 (the relevant date). In essence this means that the LPA would have been precluded from taking any enforcement action relating to the use of the red-line application site.

27. From the appellant's SDs and the letter of the previous owner it seems clear to me that the northern-most part of the appeal site has been used at various times since 1993 for the storage of both containers and what appear to have been various building materials. The aerial photographs reinforce the claims now made on behalf of the appellant. Although there are no detailed photographs to show that the scattered materials stored in the open are actually building materials, the aerial photographs from 2005 to 2017 all show two containers (one 40 foot and one 20 foot) together with a large caravan and what appear to be loose and scattered materials stored on the land.

28. Some of the stored loose building materials are indicated to have related back to the time that the previous owner developed the buildings at Blotts Barn. From one of the aerial photographs it would appear that some of the scattered materials are located outside of the red-line application site. The stored materials, along with the two containers and caravan are stated to have been included in the sale of the appeal land to Mr Harry John Denton.

29. Apparently, the caravan was old and it is indicated that it was removed from the land, along with the two containers, shortly after the purchase of the land. The four blue containers were then stationed in their present positions and used for a variety of storage purposes. I accept that what is stored in them is irrelevant since the LDC application referred to '*external storage of building materials and containers*' and not specifically to the storage on the land of containers which contained building materials. However, as far as the other materials being stored in the open air are concerned, the application refers specifically to just '*building materials*', albeit not in the form or operation of a commercial '*builder's yard*'.

30. With regard to the main elements of the submitted evidence, I see no reason to question the contents of the previous owner's letter, or the SDs from the appellants and I accept that the Council has not provided any evidence of its own to refute these submissions. Therefore, between December 2017 and the present day, I accept that the two previous containers and the caravan had been replaced on this part of the overall site by the four new containers and that various building materials (although less scattered than previously) were still being stored in the open air.

31. Sometime between 2017 and the date of the LDC application, the top-soil (see above) had been removed from this northern part of the appeal site and located in the linear, triangular-shaped mound parallel to the western boundary of the appeal site and the rough gravel had been laid on the land immediately surrounding the containers and pallets of materials. On some other dates the scrap metal and timber logs had also been located on this northern part of the site

32. As indicated above, for the proposed use as applied for to be lawful it is necessary that the appellants demonstrate, on the balance of probabilities, that the appeal site (the red-line area) had been used continuously for the relevant 10 year period for the '*external storage of building materials and containers*'. Whilst accepting that such a storage use did indeed take place and that they date back to well before 5 June 2009, I share the Council's concerns relating to the detailed use of the appeal site land and to the lack of precision and the ambiguities which are raised by this LDC application.

33. First of all I do not consider that the evidence is precise enough in relation to how the rest of the appeal site had, or has, been used since 5 June 2009. The original use

of the land would have been agricultural and I have not been provided with any details to suggest that the appeal site was anything other than agricultural prior to the northern part of it being used for external storage of building materials; the containers and the stationing of the caravan.

33. There is no evidence to suggest that the storage use related to any part of the site other than the northern part. Thus there could well have been a mixed use of the appeal site between June 2009 and the date of the application. That is the use of the northern part for storage and another use for the rest of the site. Nor is there any indication that the appeal site was related to any change of use of the Blotts Barn land. I consider that the overall site forms one planning unit which is occupied by the appellants and that this was the case when the land was in the previous ownership.

34. Whilst acknowledging that the storage use dated back to the use of the land by the previous owner, there is no evidence to indicate that the whole area of the appeal site was used for external storage use. Indeed, one aerial photograph shows scattered materials outside of the red-line application site closer to the Blotts Barn development. The appeal site may well have been occupied as a single planning unit by the previous owner but the material character would have been altered by the introduction of the external storage, containers and caravan.

35. I find that the stationing of the caravan, as well as the storage of building materials and the containers, adds to the overall ambiguity of this second LDC application. It is clear that the caravan had been stationed on the land since at least 2005 and that it was still there until the end of 2017. However, there is no precise or unambiguous evidence or information relating to the actual use of this caravan. It could have been used for storage purposes only but, equally, it could have been used for residential purposes or even agricultural storage purposes. If the land had been in any form of mixed use which had materially affected the character of the planning unit then the LPA could have taken enforcement action.

36. I find a further issue in relation to the removal and mounding of the top-soil on the land. Having seen the extent of the material moved, I consider that this, as a matter of fact and degree, amounted to an engineering operation. It seems unlikely that it was the intention that the top-soil would be put back into its original position, since the gravel has been laid around the containers and stored materials. Thus, another change has occurred which, in my view, has noticeably materially changed the character of the original planning unit. Again the LPA could have taken enforcement action.

37. It is also evident that the land has been used for the external storage of scrap metal and timber logs, neither of which can be reasonably described as being '*building materials*'. Thus, there is nothing to convince me that, during the relevant 10 year period the appeal red-line site was used continuously, only for the '*external storage of building materials and containers*'.

38. For all of the above reasons, I consider that the evidence submitted fails to demonstrate, on the balance of probabilities, that the red-line application site has been used continuously for the relevant 10 year period, only for the '*external storage of building materials and containers*'. Thus, irrespective of the manner in which the LPA dealt with this second LDC application, I consider that their overall conclusion in not issuing a LDC was sound and that there is insufficient precise and unambiguous evidence that this specific breach of planning control has been continuously on-going (on the red-line application site) since on or before 5 June 2009.

39. I do not consider, therefore, that a LDC should be issued for the use as applied for and the appeal must fail.

Other Matters

40. In reaching my conclusions I have not considered the merits of the case and nor have I given weight to the inappropriate comments made by the RTC and which go to the merits of the use of the land. I have, however, given full weight to the submitted SDs; the evidence of the previous owner; the photographic evidence and other indisputable facts relating to the submissions.

41. However, none of these factors carries sufficient weight to alter my conclusions as set out above and nor is any other factor of such significance so as to change my decision that a LDC should not be issued in this instance.

Formal Decision

42. The appeal is dismissed and a lawful development certificate for the use of the appeal land for '*external storage of building materials and containers*' is not issued.

Anthony J Wharton

Inspector