



Appeal Decision

Site visit made on 4 February 2020

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 April 2020

Appeal Ref: APP/M1595/X/19/3231066

Land to the rear of Ewen House, High Road, Fobbing, Essex SS17 9JH

- 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 Ricky Jeffs against the decision of Thurrock Borough Council.
 - The application Ref 18/01814/CLOPUD, dated 19 December 2018, was refused by notice dated 15 March 2019.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as "a new storage building no new hard standing is proposed".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Decisions on applications for certificates of lawfulness depend on matters of fact and law. I am aware that the site is subject to important constraints as it is in a Conservation Area and the Green Belt. However, notwithstanding this, this is an LDC and I am not therefore considering the planning merits.
3. Amended plans have been submitted with the appeal. However, I have considered the appeal on the basis of the plans submitted to and determined by the Council.

Main Issue

4. The main issue is whether the Council's refusal to grant the LDC was well founded. It is necessary to consider whether the proposal constitutes permitted development under the terms of Article 3 of the Town and Country Planning (General Permitted Development) Order 2015, as amended (the GPDO). In particular, it is agreed by the main parties that it is necessary to consider whether the proposal would comply with the Schedule 2, Part 7, Class H of GPDO.

Reasons

5. The appeal site relates to a roughly a rectangular area of land, located to the rear of a number of residential properties on the High Road. Prior to the appellant purchasing the appeal site in 2001, it was used as part of the Hurst

and Sons Builders' Merchants. Following the acquisition of the appeal site and the land fronting High Road, planning permission was granted for the demolition of existing buildings and erection of 2 no. detached houses with detached garages¹. The current appeal site was not however affected by the residential development and drawings submitted by the appellant demonstrate this. There is no dispute between the parties that the current appeal site lies outside of the boundaries of these dwellings. The Council refused the LDC for a storage building as it was considered that the use of the site does not qualify it for the permitted development allowed for by the GPDO in Schedule 2 of Article 3, at Part 7, Class H.

6. Class H allows some industrial and warehouse development to be undertaken without the need for express planning permission. This includes the erection of a warehouse, but this is subject to the conditions in H.2 (a), amongst other things, that the development must be within the curtilage of an existing industrial building or warehouse. Given the matters raised in this case it is necessary in particular to look at whether the site falls within the curtilage of a warehouse which paragraph O of Part 7 defines as a building used for any purpose within Use Class B8 (storage or distribution)².
7. Both parties have submitted their views regarding the lawful use of the land. The burden of proof lies with the appellant, and the test of evidence is on the balance of probabilities. The appellant considers that the existing site has been operating within Use Class B8 (Storage and Distribution) of the UCO and has done so, ever since he purchased the site in 2001.
8. In a statutory declaration the appellant states that he purchased the entire site in 2001, when it was in use as a Builders' Merchants, and that the building materials that were left on the site by the previous sellers were also included in the sale. These materials were palleted up and stored in the yard during the period 2001-2002 and that over time some of these have been used or sold. From the limited details of how the use as a Builders' Merchants operated, it is not clear whether the site would have fallen within any particular class within the schedule to the UCO.
9. The appellant states that he is a builder and developer and that he purchased a storage container and large open barn for the storage of building materials. In 2002 the appellant made it known locally, by verbal communication with other builders, that he had space to rent in the yard. The appellant states that space was rented in the yard and barn to another Building Company since 2002 and in 2003 they had 20 tonnes of used granite kerb stone delivered to the yard and that the majority of the load still remains. The company purchased building materials from the appellant, including materials stored on the site.
10. The appellant states that a second building company agreed to take some space in the yard in or about 2004 and is still currently using the yard, and a third building company moved materials onto the site from 2006 to the present time. The appellant also declares that he has used the yard for short term lets and the sale of building materials to trades people. The appellant explains that there is no hard and fast rule who stores what tools, materials and equipment where and that this is an extremely flexible arrangement.

¹ Council Ref: 01/01270/FUL.

² Of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO 1987).

11. Three statutory declarations from local builders/trades people referred to in the appellant's declaration above also state that they store building materials/equipment on the site.
12. One of the statutory declarations from a local builder declares that in 2006, he reached an informal agreement with the appellant to use the land for the storage of materials and that this agreement was reached as a favour without any payment being made to use the land. However, the informality of the agreement suggests that there was no particular limitation of the use within activities that fall within Use Class B8 of the UCO. I also note that this document does not fall within the category of a statutory declaration as it does not contain the necessary words "and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act 1835". Furthermore, the statement also has not been witnessed by an authorised person (no signature and details have been provided of the authorised person). This further reduces the weight which can be attributed to this document.
13. Another statutory declaration from a builder, declares that he rented space in the yard for storage of building materials since 2002. However, he also states that he was employed to work on the approved scheme for two houses fronting High Road, in 2002, which were both owned by the appellant. I note that the period of use of the appeal site, by this builder broadly coincides with the development of the 2 new houses fronting the road. Given that the appeal site is immediately adjoining that development site and is under the same ownership, of the appellant, it would not be unusual for the rear yard to be used as a site compound for the storage of building materials and equipment in connection with the construction of the houses. Again, this therefore raises further uncertainty that the site was being used for purposes that would fall within Use Class B8 of the UCO.
14. Photographs of the site have also been submitted between 1999 to 2019 in an attempt to support the LDC. However, the photographs are not particularly clear nor provide any clear and unambiguous evidence that the site has been in continuous use for ten years as Use Class B8 of the UCO.
15. Furthermore, comments from a neighbouring occupier of the street further states that the land has been left unused for much of the time under the current ownership. Whilst not conclusive on its own, it adds further doubt to the appellant's submissions regarding the continuous use of the land/buildings.
16. Whether or not the use of the site falls outside of any specific use class (*sui generis*), as suggested by the Council, as a matter of fact and degree it is less than probable that the site has been in Use Class B8 of the UCO for ten continuous years. I therefore conclude that the evidence before me does not clearly show that the land on which it is proposed to erect the new storage building clearly falls within the curtilage of an existing industrial building or warehouse, in Use Class B8 (storage and distribution) of the UCO. The appellant has therefore not discharged the burden of proof upon him to establish, on the balance of probability, that the proposal accords with the provisions of Condition H.2 (a) of Class H (Class H – extensions etc of industrial and warehouse), of Part 7, Schedule 2 of the GPDO. As such I have to conclude that the erection of the storage building requires express planning permission.

Other matters

17. It is therefore not necessary for me to consider whether or not the proposed building would be used within Use Class B8 of the UCO, because even if it would, the development would not be permitted by the GPDO and it would not change the outcome of this appeal.

Conclusion

18. 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 application subject to this appeal 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.

R Satheesan

INSPECTOR