



Appeal Decision

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 June 2020

Appeal Ref: APP/F2360/X/19/3236315

Hilton's Farm, 2 Jane Lane, Midge Hall, Leyland, Lancashire PR26 6TQ

- 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 Trevor Day against the decision of South Ribble Borough Council.
 - The application Ref 07/2019/6070/CLU, dated 14 June 2019, was refused by notice dated 23 August 2019.
 - The application was made under section 192(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 mixed use of agricultural engineering, general engineering and fabrication of agricultural buildings.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's refusal to issue an LDC was well founded. In this case that turns on whether the appellant has proved on the balance of probability that the use of the land changed to mixed use of agricultural engineering, general engineering and fabrication of agricultural buildings on or before 14 June 2009 and that the use then continued without significant interruption for 10 years after the date of the change.

Reasons

3. In an appeal relating to a lawful development certificate the onus of proving the relevant facts rests with the appellant, and the standard of evidence is the balance of probabilities. The courts have held¹ that the appellant's own evidence does not need to be corroborated with independent evidence, and if there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate provided that it is sufficiently precise and unambiguous.
4. The appeal site is situated to the rear of Hilton's Farm, 2 Jane Lane and comprises several buildings and areas of hardstanding. The appellant considers that the evidence submitted with the application is sufficient to satisfactorily discharge the burden of proof and the Council's refusal is

¹ Gabbittas v SSE & Newham BC [1985] JPL 630

incorrectly based on the representations of objectors and on the stricter 'beyond reasonable doubt' burden of proof. However, it is clear to me that the Council determined the application on the basis of the appellant's evidence together with the planning history of the site. The matters raised by interested parties were taken account of with particular respect of how the site has been operated in the past and how it continues to be used.

5. The planning history of the site and surrounding land clearly shows that planning permission reference 07/2007/0800/COU allowed for a change of use to a mixed use of agriculture and agricultural engineering, general engineering and fabrication of agricultural buildings. However, the permission relates to land other than the land to which the current appeal relates which is land and buildings to the immediate north of Hiltons Cottage. Planning permission 07/2007/0800/COU was a variation of a previously approved scheme under reference 07/1998/0699 for a change of use from agricultural to mixed use of agricultural, agricultural engineering and fabrication of agricultural buildings. The approved plan shows a different area of land to the site location plan reference 1227 submitted with the application to which this appeal relates.
6. Consequently, there is no extant planning permission for the mixed use sought and this point is confirmed by comments received from interested parties. However, it is clear that the appellant has operated a business from this area, but exactly where it continuously operated from during the 10 year period up to the date of the application is key in determining this appeal. The appellant's evidence in this respect is unclear. Evidence from British Gas shows that there is a single phase meter on the site which British Gas have supplied since March 2002 and the meter was exchanged to a smart meter in December 2012. However, a letter from Taylor & Sons shows that the meters related to a larger site previously owned by the appellant rather than the appeal site itself. Billing information does not relate to the period before 2017 which is key in this case.
7. Letters of support provide evidence that the applicant has been engaged with activities such as repairing equipment and farm machinery, but there is insufficient detail to confirm the precise location of activities. Indeed, some of the plans submitted as evidence are contradictory with the uses of various plots of land being different. Furthermore, some of the evidence which conflicts with the appellant's version has been confirmed by the comments of other interested parties. The evidence of a previous Council enforcement officer whose evidence is vague and his last visit to the site was some 13 years ago, outside the material period.
8. Objections confirm that a range of activities have taken place during the material period, including the change of use of a garden area to a workshop and the conversion of a former stable into an engineering workshop. These and other activities resulted in action by the Council's enforcement officer who concluded that a material change of use has taken place to vehicle repair, refurbishment and valeting. This and other unauthorised activities are shown to have taken place before the submission of the application and do not correspond with the appellant's version of events.
9. Cassidy and Ashton has confirmed that the appellant was evicted from the land to the north of the application site in May 2017. This corresponds with the dates provided by WTS who state that the use of the land to the back of the appellant's house (Hiltons Farm) has only recently been modified as Mr Day

was evicted from the workshops around two years ago (dated August 2019). Business rates data collated by the Council also corresponds with Land Registry evidence relating to the change of ownership of the land. The appellant has also confirmed in writing that in 2017 he consolidated his business activities into the buildings directly behind Hilton's Farm and moved out of the buildings known as land to the rear of Hilton's Farm

10. Since the Council's refusal the appellant has submitted some additional evidence in support of the appeal, including letters, photographs and planning history documentation. However, I have noted that the evidence does not include statutory declarations, nor is it sufficiently precise with regard to the location of the activities nor the details of the activities that have taken place. As such it adds little to the appellant's case and certainly is insufficient to demonstrate on the balance of probabilities that the mixed uses sought took place continuously during the material 10 year period on the land to which the application and this appeal relates.
11. Therefore, it is clear to me that the appellant's own evidence is not sufficiently precise and unambiguous to discharge the burden of proof in this case. Furthermore, there is a significant body of evidence which contradicts the appellant's own version of events 3.

Conclusion

12. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use in respect of the mixed use of agricultural engineering, general engineering and fabrication of agricultural buildings on land at Hilton's Farm, 2 Jane Lane, Midge Hall, Leyland, Lancashire PR26 6TQ 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

13. The appeal is dismissed

A A Phillips

INSPECTOR