
Appeal Decision

Site visit made on 15 September 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2020

Appeal Ref: APP/Q4625/X/20/3251884

Lavender Hall Farm, Lavender Hall Lane, Berkswell, Solihull CV7 7BN

- 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 Jon Paul Weaver against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2018/00380/CLEUD, dated 2 February 2018, was refused by notice dated 21 January 2020.
 - 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 storage/parking of materials, plant, lorries (HGVs) and other vehicles – B8 and sui generis.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. An amended plan was submitted prior to the Council's determination of the application. The Council considered the application on the basis of the amended plan and so shall I.

Main Issue

3. The main issue of the appeal is whether the Council's decision to refuse the certificate of lawfulness was well-founded.

Reasons

4. The appellant applied for a Lawful Development Certificate (LDC) on the basis that the use of the land has been used for storage and parking of materials, plan lorries and other vehicles for over 10 years. To succeed on this appeal, the appellant must prove on the balance of probability that the refusal of an LDC was not well founded. This will turn on whether the use began more than 10 years before the date of the application the relevant date being 2 February 2008¹ and, if so, whether it continued without significant interruption for at least 10 years thereafter. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) under S191 of the Act. The proposed development must be considered in the light of the facts and the law.

¹ This being the date 10 years prior to the date of the LDC application.

5. S191(2)(a) and (b) sets out that uses and operations are lawful at any time if:
i) No enforcement action may 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); and ii) They do not constitute a contravention of any enforcement notice then in force. S171B sets out that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
6. The site is in single ownership and has a shared access. A site plan, showing the location of tenants has been provided and identifies that the site is occupied by Multi Vehicles Movers, Bill Olton Skips, Adam Orster Skips, Darren Rigby Logs. A section of the site is also identified for Person Use. The area previously occupied by Adam Orster Skips is not included in the amended site plan and does not therefore form part of my consideration.
7. I saw that Multi Vehicle Movers (MVM) occupies a distinct part of the site which is delineated by palisade fencing. However, it is not clear to me whether any of the land outside the site is utilised by the MVM. Within the southern part of the site, wood working and the storage of logs was evident and make-shift timber buildings have been erected. The parking of vehicles, including cars, vans, and lorries, was taking place across much of the site. Storage of ISO containers, trailers and waste and other materials was also evident.
8. Whilst fencing, both permanent and temporary, has been erected in parts of the site, different activities appear to utilise space outside the demarcated areas. Furthermore, the appellant confirms that the land has never been divided into separate, clearly defined, smaller planning units. The appellant states that the site has been marketed as being available for storage use continuously since 1999.
9. On the evidence before me, and on the basis of what I saw on site, I consider that the appeal site comprises a single planning unit in mixed use. S191(4) allows me to modify the terms of the application, giving a certificate in somewhat different terms so as to accord with the facts and evidence, rather than an outright refusal. Whilst the description does not accurately identify the use of the land, it is therefore open to me to amend it.
10. The appellant took ownership of the site in 2003, prior to which the Council had been using the site for storage of materials, plant, lorries and so on, in connection with road construction taking place in the vicinity of the site. It was also used for the storage of wheelie bins. The appellant states that Arden Wood Shavings occupied the whole of the land between 2002 until 1 May 2010 on an informal basis. This arrangement was formalised in 2010 through a licence to occupy the site and continued until Arden Wood Shavings vacated the land in March 2016.
11. A letter from Arden Wood Shavings Ltd, dated 12 June 2015, states that the company has used the premises for overflow storage of baled animal bedding since late 2002/early 2003 and confirms that the use has continued to date [sic]. A copy of a licence to occupy the land, dated 1 May 2010, is provided. Clause 5.2 states that this Licence is restricted to occupation as a storage yard. It is not disputed that the use of the site by Arden Woodshavings would have fallen within Class B8.

12. Photographic evidence dated between 2009 and 2014 points towards the use of the site for storage and shows baled material, presumably the animal bedding referred to above. Photographs, labelled B and D, dated 2013 and 2014 respectively, show some limited parking of HGVs with very little other activity evident. Photograph A, dated 2009, shows a burnt out car and some storage of what is presumed to be animal bedding in the background and Photograph C, dated 2013, also shows what is presumed to be animal bedding stored in the background, with very little other activity evident within the site.
13. The description of the use of the site for overflow storage suggests an intermittent use, and whilst the site appears little used in aerial photographs dated 2009 and 2013, I do not consider this demonstrates abandonment. However, the use of the site for the parking of vehicles is likely to have been ancillary to the storage use, which is materially different to the use of the site for the parking of lorries and other vehicles. Indeed, aerial photography dated 2013 suggests that whilst the site was being used for storage, it was not being used for the parking of lorries or any other vehicles at this time. Although tracks within the site are visible, this would be expected with a storage use since vehicles would need to move across the site to deposit and remove items being stored.
14. The appellant asserts that despite the licence, Arden Wood Shavings allowed him to let parts of the site to other users for storage purposes when parts of the land became vacant and samples of counterfoils and receipts have been submitted which are said to confirm payment of rent by individuals using portions of the land for 'storage etc purposes'. However, no details of the individuals or the activities that were carried out by them have been provided and so I cannot conclude that the documents provided demonstrate continuous use.
15. After Arden Wood Shavings Ltd left the site, the site was rented out to Site Syndicate for the use of storage of materials and lorries, Darren Rigby for the storage of logs, and Bill Olton and Adam Orsier for the storage of 'one skip lorry and utilities'. Rates bills for the site, dated 2017, have been provided, for these various companies. However, this simply gives an indication of the uses occurring in 2017 and does not demonstrate continuing use.
16. Although I saw significant quantities of wood being stored within part of the site, I saw that the activities carried out at the site are not limited to the storage of logs. Machinery was in use at the time of my visit to make what appeared to be firewood logs. Due to the noise generated by the machinery and the potential for dust, I consider such a use to be a B2 use rather than a storage use. This is materially different to the previous storage use and there is no evidence to suggest that this use has persisted for a period of 10 years or more.
17. A statutory declaration, signed by Alan Johnson of Stuchfield, Johnson and Co Accountants, confirms that he has declared income from activities and rents received and that during the period from February 2000 to date [sic] the site has been used continuously for the storage of plant, lorries and materials and that the usage of the site is continuous and ongoing. Statutory declarations made by neighbours, dated 28 September 2016 and 24 January 2018, also state that the land has been used for the storage of materials, plant, lorries and other vehicles and still continues to date. Whilst I have no reason to doubt

that the declarations were genuinely made, the declarations do not include details of the activities carried out and are therefore insufficient to demonstrate continuous use.

18. Decisions made during the Local Plan process have no bearing on whether or not the existing uses are lawful. Whilst evidence submitted in support of it the site's inclusion in the Plan give a brief overview of the site's history, it does include substantive detail of those uses. It is not disputed that the land is previously developed or that the land is in commercial use. The identification of the site as brownfield land in commercial use does not therefore support the appellant's claim.
19. Lawful use rights may be lost by a material change to some other use or by the creation of a new planning unit in respect of the land in question. The uses which are taking place within the site are, in my view, materially different to the previous storage use which was taking place when Arden Wood Shavings Ltd occupied the site. I therefore conclude that there has been a material change of use of the site in the last 10 years.
20. It has not therefore been demonstrated, on the balance of probabilities, that the use of the site for storage/parking of materials, plant, lorries (HGVs) and other vehicles – B8 and sui generis had become lawful through the passage of time at the time of the application. Consequently, the appeal must fail.

Conclusion

21. 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 timber building 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.

M Savage

INSPECTOR