



Appeal Decision

Site visit made on 12 October 2020

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2020

Appeal Ref: APP/B5480/X/19/3239568

67 Butts Green Road, Hornchurch RM11 2JS

- 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 Imperial Carriages Limited against the decision of the Council of the London Borough of Havering.
 - The application Ref E0012.19, dated 8 April 2019, was refused by notice dated 2 August 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 rear part of the site for the parking of cars in association with lawful office use.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the heading above is taken from the application form. Whilst the Council's decision notice describes the development as the use of parking area as an ancillary storage area, the description in the heading above is the development for which the LDC was sought and that is the basis on which I have determined the appeal.

Main Issue

3. No issues of planning merit are relevant to any LDC appeal. The planning merits of what has been applied for cannot be considered. The main issue is therefore solely concerned with whether the Council's decision to refuse the certificate of lawfulness was well-founded.

Reasons

4. Section 191(1)(a) of the 1990 Act allows a person to apply for an LDC to certify that any existing use of buildings or other land is lawful. Section 191(2)(a) of the 1990 Act sets out that uses are lawful at any time if no enforcement action may be taken in respect of them because either: they did not involve development or require planning permission; or, the time period for enforcement action has expired and they do not constitute a contravention of any enforcement notice then in force.
5. The appellant company is a car dealership, selling vehicles from its showroom and forecourt at 69-71 Butts Green Road directly opposite the appeal site.

- At the appeal site, 67 Butts Green Road comprises a three-storey building which is in use as offices. The company uses part of the office space in No 67 for its non-sales operations.
6. To the rear of No 67 is an open area of hardstanding which faces onto Wykeham Avenue. Bound by fencing on three sides, it contains a single storey building with garage doors and removable black bollards to the frontage to Wykeham Avenue. At the time the application was made, it is said that vehicles were stationed on the land. That remained to be the case at my site visit.
 7. The appellant indicates that the vehicles located at the appeal site are not displayed or advertised for sale. It is said that sale of the vehicles occurs once they are transferred across to the appellant's showroom. There is no indication from the parties that the land has been used for the sale or display of motor vehicles and taking into account everything before me there is no reason for me to conclude otherwise.
 8. The focus for this appeal is therefore whether the use of the land for the parking of cars in association with the office use at 67 Butts Green Road was lawful at the date the application was made.
 9. Case law has drawn a distinction between the use of land for the parking of vehicles and the use of land for the storage of vehicles. In *Hickmet*¹ the Court of Appeal held that a car is parked when it is left in a convenient place for the resumption of the interrupted journey or for the start of the next journey. In contrast, the Court found that storage of a car implies taking a car off the road while it is not in current use. The difference lies in the circumstances in which the car is left.
 10. The cars on the site are not those belonging to the staff who work in the appellant's office in No 67. Moreover, the appellant indicates that the land is not advertised as car parking and no other occupants of No 67 have access to it. In contrast, the vehicles on the land are kept there until they are transferred across to the showroom for sale. The use is not, therefore, directly related to the appellant's use of No 67 as an office. Rather, the vehicles are kept on the land in connection with the use of No 69-71 for the sale and display of motor vehicles. The cars are left on the land not as a temporary cessation from their everyday use but kept in store for future use.
 11. The appellant raises two tests, one of severability and one of an environmental impact test, however, does not indicate from which authority the tests are derived. Nevertheless, the appellant suggests that in this instance the use of the land would cease if the office use were to cease and therefore its use is ancillary to the office use.
 12. However, this draws more clearly the distinction between what the appellant says has occurred and what the evidence indicates has occurred, since none of the vehicles on the land are owned or used by the people occupying the office space. In that scenario, were the office use of No 67 to cease, including the appellant's office use within the building, the use of the land for the keeping of vehicles in connection with No 69-71 could continue unaffected. There is

¹ *Crawley B.C. v Hickmet Ltd (1998) JPL 210*

clearly no linkage or dependency on the land to the office use of the building. The use cannot therefore be considered to be ancillary.

13. This indicates, as a matter of fact and degree, that a separate planning unit has been created and a material change of use to the storage of motor vehicles has occurred. I therefore find, on the balance of probabilities, that there has been a material change of use from the parking of cars in association with the office use to the use of the land for the storage of cars.
14. The evidence also leads me to conclude, as a matter of fact and degree, that the use of the land for the storage of motor vehicles subsisted at the date the application was made. Whilst there is no specific requirement that a use must be subsisting at the date the application was made, case law² has established that an application for a lawful use which became dormant and was obviously abandoned would not succeed. The land should not have been put to any other use inconsistent for which an LDC is sought. In this instance, any lawful use rights accrued for the use of the land to the rear of No 67 for parking in association with the lawful office use of the building have been superseded by the further material change of use to the storage of cars. There is no right of reversion to the last lawful use.
15. Consequently, the use of rear part of the site for the parking of cars in association with the lawful office use would not have been lawful at the date the LDC application was made because it would have involved development in the form of a material change of use for which planning permission is required.

Conclusion

16. 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 use of rear part of the site for the parking of cars in association with lawful office use 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.

J Whitfield

INSPECTOR

² *Panton and Farmer v SSETR and Vale of White Horse DC* [1999] JPL 461