



Appeal Decision

Site visit made on 29 December 2020

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 January 2021

Appeal Ref: APP/F2360/X/19/3240862

Unit 3, Moor Hey Business Park, Moss House Lane, Much Hoole PR4 4TE

- 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 Matthew Curley of MJC Auto Services Ltd against the decision of South Ribble Borough Council.
- The application Ref 07/2019/7764/CLU, dated 3 August 2019, was refused by notice dated 6 November 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 B2 – General Industrial.

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. For purposes of clarifying the basis upon which this decision has been made, the application relates to Plot 3, Parcel 3 or Unit 3 (depending on how the land is identified in the submissions) and the use for which the certificate is sought is B2 general industrial as set out on the application form.

Main Issue

2. The main issue is whether the appellant has proved on the balance of probabilities that the use of the property changed to B2 general industrial use on or before 3 August 2009 and that the use then continued for 10 years after the date of the change.

Reasons

Legal Basis for Determination

3. When dealing with a case such as this, the burden of proof is on the appellant and the standard of proof is the balance of probabilities. Following the judgement of *Gabbitts*¹ the evidence of an appellant should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, the appeal should be allowed.
4. It is not sufficient that something may have occurred or is capable of having occurred or even that it could be assumed that something has occurred. It must clearly be demonstrated that it was more likely than not that the use

¹ *Gabbitts v SSE & Newham LBC* [1985] JPL 630

actually occurred. In addition, in accordance with case law² the Council states that the question is whether the site has been used throughout the ten year material period so that the Council could have taken enforcement action in respect of that use at any time and furthermore, it is insufficient to start the use, but the use must have taken place over the whole period. These represent the legal principles against which I have determined this appeal.

Reasons

5. The statutory declarations submitted with the application show that the appellant purchased the property in August 2016 and since then it has been used by him to carry out his business as a motor vehicle mechanic dealing with cars and light commercial vehicles and the hire and lease of light commercial vehicles. This is clearly a sui generis mixed use and not a B2 general industrial use.
6. I have taken account of the planning history of the site including the grant of planning permission in February 2002 under reference 07/2002/0023 for the erection of 2 no. replacement storage buildings. I have also taken account of the evidence of how the site has been used between 1963 and the date of the application, including its use for the manufacture of swimming pools and associated equipment by William Taylor Swimming Pools Ltd, the use of the site by OJSS Ltd, the range of activities that appear to have taken place on the land and the debate about whether or not the use of the site was abandoned from 2009 to 2016. I have also taken account of the previous investigations carried out by South Ribble Borough Council and advice to the appellant provided by the Council.
7. There is no dispute between the main parties that the site has been used for B2 purposes in the past but in dealing with the current appeal it is important to understand that that is not sufficient to discharge the necessary burden of proof. As previously explained in this decision, the evidence needs to demonstrate that on the balance of probabilities the B2 general industrial use of the site started on or before 3 August 2009 and then continued for a period of 10 years after the date of the change.
8. The site has certainly not been used for B2 purposes for all of the material period, and specifically not since August 2016 when a sui generis mixed use started.

Conclusion

9. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use in respect of B2 general industrial 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

The appeal is dismissed

A A Phillips INSPECTOR

² LB Islington v SSHCLG [2019] EWHC 2691 (Admin), Thurrock BC v SSE [2002] EWCA Civ 226, [2002] JPL 1278 and Swale BC v FFS & Lee [2005] EWCA Civ 1568; [2006] JPL 886