



Appeal Decision

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 4th February 2021

Appeal Ref: APP/R5510/X/20/3254228

Land at Brickfield Lane, Harlington

- 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 Anup Khosla against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 54720/APP/2020/494, dated 11 February 2020, was refused by notice dated 23 April 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 the use of land for car parking, car storage, open storage and siting of storage containers.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. On his appeal form the appellant states that his reason for the appeal is that the Council has refused to grant planning permission for the development. However, that is not the case as the application which has been refused was for a certificate of lawful use or development (LDC). The appeal form is not the correct version in this case. However, it is clear from the evidence presented by the appellant and the Council that both parties are clear that the appeal relates to the LDC. Therefore, neither party would be prejudiced if I determine the appeal on that basis.
3. The Planning Inspectorate initially made arrangements for the appeal to be dealt with under the written representations procedure following a site visit. The file has subsequently been reviewed to consider the optimal procedure for the appeal. It appeared that the appeal could be determined on the papers, that is, without a site visit, without causing prejudice to any party. This is because the case turns on legal points and the parties have submitted sufficient plans and documentary evidence to understand the nature of the site given the grounds of appeal and points in dispute.
4. The parties were contacted on 7 January 2021. Both the appellant and the Council have no objection to the appeal being determined without a site visit being made.
5. For the avoidance of doubt, the planning merits of the existing use are not relevant, and they are not therefore an issue for me to consider, in the context

of an appeal under section 195 of the Town and Country Planning Act 1990, as amended (the Act), which relates to an application for an LDC. My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proving relevant facts rests on the appellant and the test of evidence is made on the balance of probability.

6. In response to a request from me, the appellant has clarified the extent of the land to which his appeal relates and provided a revised plan. This amendment does not affect the evidence or arguments made by either party and the Council would not be prejudiced by my determination of the appeal on the basis of the revised plan.

Main Issue

7. The main issue is whether the Council's decision to refuse the application for an LDC was well-founded.

Reasons

8. The appellant has set out in his application form that he is seeking a certificate for an existing use and that that use falls to be considered as 'sui generis' to the use classes set out in the Town and Country Planning (Use Classes) Order 1987 (as amended). The description of the existing use for which the LDC is sought is set out on the application form as a use of land for car parking, car storage, open storage and siting of storage containers. The Council used the same description in its decision.
9. An LDC application must relate to a specific existing or proposed use, operation or activity and the application was made in those terms. The Council considers that in order for an LDC to be granted it is necessary to establish that the car parking and storage uses, as detailed, have been in operation for at least 10 years up to the date of the submission of the application. This is the test which falls to be considered under section 171B (3) of the Act and relates to 'any other breach of planning control'.
10. The appellant has completed a Statutory Declaration (SD), which has been signed by a solicitor and which contains the necessary form of words set out in the Statutory Declarations Act 1835. As such the contents of the SD can be treated as sworn first-hand evidence.
11. As part of the SD the appellant has provided three images from Google Earth from September 2008, July 2013 and May 2015. The 2015 image shows vehicles across the majority of the site which could be either parked or stored and the 2013 image shows vehicles parked on part of the site in a configuration which suggests storage as opposed to parking. These two images, in combination with the appellant's statements in the SD demonstrate that on the balance of probability parts of the site were being used for car parking and/or storage in 2013 and 2015.
12. There are no cars visible on the site in 2008 but it appears to be hard surfaced. The appellant says that the surfacing was carried out in the 1990s and he has provided a photograph which he confirms in his SD was taken in the mid-1990s. However, the photograph is undated, and it is not clear which part of the site is shown on it. The provision of the hard surfacing does not in itself provide evidence of the way in which the site was used.

13. On all three images (2008, 2013 and 2015) there are objects against the southern boundary of the site which are in the locations shown on the plan as the positions of two storage containers. Whilst there are other objects on the 2013 and 2015 images in front of the containers it is not clear whether this is the open storage referred to in the application.
14. The Council accepts that the land has been used for parking and storage uses from July 2013 until the date when the application was determined. However, in order for the LDC to be granted it must be demonstrated that the use has been active for 10 years prior to the submission of the application, in this case since 11 February 2010.
15. In relation to the period between 11 February 2010 and July 2013 the appellant relies on the lease which he entered into with a car park operator on 14 February 2008 for a period of 10 years. The appellant has provided a copy of the lease and he argues that the car parking and storage is a commercial operation and no company would sign the lease and pay rent and then not use the land.
16. The appellant has not provided any images to show how the site was used between 11 February 2010 and July 2013. In contrast the Council has provided an aerial photograph of the site in 2012 and a Google Earth Pro image from 2010. The 2012 image shows vehicles on parts of the site, but the 2010 image does not show any cars on the site. The appellant says that there are no cars on the aerial photograph from 2008 which is also provided by the Council because there were no cars parked at the site when the photograph was taken. However, he provides no explanation as to why there are no cars on the 2010 image.
17. In his final comments the appellant refers to the aerial photographs provided by the Council dated 2012, 2015 and 2019. He regards these as evidence of the hard standing and use for storage and car parking. Even if these documents demonstrate that the use was present on the whole site in 2012, which the 2012 image does not because cars are parked on only part of the site, this does not cover the period between 11 February 2010 and all of 2011.
18. The appellant also refers to the hardstanding being shown on the images provided by the Council together with what he describes as the commercial tenants' orange shipping containers on the site. However, the presence of the hardstanding and storage containers do not in themselves demonstrate that the land has been in use for car parking, car storage, open storage and siting of storage containers since 2008 or since 11 February 2010 as required for the LDC.
19. Drawing all these strands together, the appellant's evidence and the information provided by the Council show that at least parts of the site have been used for the parking/storage of cars since 2012. With regard to the remainder of the 10 year period running from 11 February 2010 to 2012, the appellant principally relies on his SD and his view that the leaseholder would not have entered into the lease and then not commenced the use. However, the evidence from the Council contradicts the appellant's position and there is no explanation from the appellant as to why the 2010 image does not include any parked or stored cars.

20. With regard to the storage containers, the evidence shows that these have been present on the site since 11 February 2010 and probably before that date. The appellant states in his SD that the land has been used for the [siting] of storage containers. The Council does not dispute that the containers have been on the site for the relevant 10 year period, but it says that there is no evidence of commercial use of the storage containers.
21. The land to which the lease relates includes the site of the storage containers and it is reasonable to assume that they would have been used in connection with any commercial activities on the site. However, it has not been shown that the car parking/storage and open storage has taken place on the site for the full 10 year period required to justify the LDC. It follows that it has also not been shown, on the balance of probability, that the storage containers have been used in connection with those uses over that time period.

Conclusion

22. 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 land for car parking, car storage, open storage and siting of storage containers at Land at Brickfield Lane, Harlington 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.

Sarah Dyer

Inspector