



Appeal Decision

Inquiry Held on 27 and 28 April 2021

Site visit made on 30 April 2021

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 May 2021

Appeal Ref: APP/H1705/X/20/3261911

Hanging Garden Ltd, Wildmoor Lane, Sherfield-On-Loddon RG27 0HL

- 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 Steve Poole against the decision of Basingstoke & Deane Borough Council.
 - The application Ref 19/00103/LDEU, dated 10 January 2019, was issued by notice dated 24 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 was sought is described as: Hanging Garden Limited: Storage of equipment, landscaping materials, props, plants and floral decorations in connection with a grounds maintenance and landscaping business, including the hire of such items for themed events. Ancillary offices and parking. Graffiti Removal Limited: Offices, with ancillary storage and training facilities for a graffiti removal company. Associated parking for employees and visitors.
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Summary of Decision

1. The appeal is allowed and a certificate of lawful use is issued, in the terms set out below in the Formal Decision.

Preliminary Matters

2. The appeal application concerned two identified areas (Area 1: Hanging Garden Limited, and, Area 2: Graffiti Removal Limited). The Council has issued a certificate of lawfulness in modified terms. Section 195(4) of the Act clarifies that the appellant is entitled to appeal that decision since such a modification is to be considered as a refusal in part for the purposes of s195. That refusal in part relates to the Council not certifying a storage use as the primary use of Area 1. The appellant is content with the Council's certification of Area 2, which ostensibly accords with the description given in his application. The parties therefore agreed that Inquiry time did not need to be devoted to Area 2, nor for it to form part of my assessment.
3. Although the description given by the appellant for the appeal application reads that any storage is 'in connection with' the business operating from the site, the case of the appellant is that the storage use is a single primary use with all other activities being ancillary.

4. During the Inquiry the appellant suggested that if I was minded to allow the appeal, it would be appropriate to modify the issued certificate granted by the Council pursuant to s195(2) and (4), as this does not require me to make any findings in relation to Area 2. I have no counter proposal from the Council which might then dispute this. I am content that such an approach is appropriate and would not prejudice either party.

Main Issue

5. The main issue is whether the Council's refusal to grant a certificate of lawful use certifying a storage use as the primary use of Area 1, is well founded.

Reasons

6. In cases such as this the onus is on the appellant to demonstrate his case on the balance of probabilities.
7. The site adjoins a garden centre and consists of a large number of structures comprising glasshouses, sheds and portacabins. The majority of the site is then set to hardstanding, but there are some limited planted areas.
8. There is no dispute between the parties concerning the planning unit that has been identified, being Area 1, nor the evidence of fact described by the appellant, and that this has continually subsisted for a relevant period of 10 years preceding the date of the application. Rather, it is the assessment of those facts and whether those activities amount to a primary storage use, as contended by the appellant for a continuous period of 10 years, or, a storage use ancillary to a sui generis use, as contended by the Council. In support of its contention the Council cites case law¹ which I shall use to inform my assessment.
9. The evidence concerns an event hire business which provides for hire floral displays, plants and props, amongst other things, to national sporting and cultural events. A part of that business also involves landscape maintenance, but I heard during the Inquiry that this only amounted to some property management comprising cutting and strimming. It was highlighted that this accounts for only a small proportion of business activities. The evidence therefore supports that this is not a core activity.
10. During the relevant period the administration of the business has been undertaken from the site. This happens in a portacabin and there is a very small office structure as well. There are also canteen and toilet facilities. The evidence was that twice daily briefings were also undertaken at the site, with its small number of employees.
11. The evidence of the appellant is that the business only operates from this site and no third-party storage has taken place. The site is used for the storage of the event hire plants, props and equipment. Whilst my site visit only represents a snapshot in time, and falls outside of the relevant period, it nevertheless gave an impression as to how the site has been used.
12. The difficulty posed by the activities taking place is that plants are not benign. The evidence is they naturally require watering, pruning and moving as means of care and maintenance and to limit deterioration, and, when they have

¹ In particular: *London Residuary Body v Secretary of State for the Environment* [1988] J.P.L. 637; *Main v Secretary of State for the Environment* (1998) 77 P. & C.R. 300; [1999] J.P.L. 195

finished serving a useful purpose for the business, they are largely disposed of, in a skip, located at the site. By means of further example, it is also necessary for plug plants to be potted in order to provide replacement plants, so that the business has a continual supply of affordable plants to hire, in order to meet customer expectations at the events. There are therefore various horticultural related activities taking place at the site.

13. Examples of a number of storage uses were cited during the Inquiry, but none were of direct relevance, given the activities here, relating to plants. Some contextual analysis can however be taken from the Ocado example, which is predominantly an online food retailer, but as a retailer, the premises from which it largely operates would then be described as falling within the storage and distribution use class. The storage of vintage cars was also cited, where cars require some care and maintenance to limit deterioration, and therefore maintenance is ancillary to their storage.
14. That the business could not function without an office at the site, and which in any event was disputed by the appellant, does not assist in the assessment of the character of the land use. The administrative affairs are integral to the running of the business, but in land use terms this is ancillary to the character of the primary use at the site, much like the provision of a canteen or toilets.
15. In response to my questioning of the Council's witness, nothing further was brought to my attention as relevant to my assessment in respect of the aerial photographs provided, nor, the sites planning history.
16. The assessment is therefore finely balanced; however, taken in the round, the evidence demonstrates on the balance of probabilities that the character of the activities carried out is a storage one, whether that be the plants, props, equipment, or the like. This then enables the business to operate, as it requires storage between events. Whilst between events, and in order to ensure the continual supply of suitable quality plants, maintenance of the plants is required, and they will clearly continue to grow, this is merely a functional relationship ancillary to the storage use taking place at the site, much like the canteen and office are ancillary to the primary storage use.
17. There is very little evidence to support the contention that there are a range, or even just two, unrelated uses taking place at the site, such to demonstrate on the balance of probabilities a composite use. Such a contention would artificially distinguish between different ancillary components.
18. The primary use of the site is therefore a storage use. In light of my site visit I am firmly of the view that if the storage use were to cease, the character of the land use would change. That the storage use is for the sole purpose of facilitating the business is not a case of the tail wagging the dog. That the storage use covers the largest part of the site is not determinative in my assessment either, as I have considered matters in the round.
19. As a matter of fact and degree the appellants evidence demonstrates on the balance of probabilities that the primary use of the site is a storage use. Whilst it might be regarded as a more unusual storage use, it is nevertheless not distinguishable from an ordinary storage use. It is not therefore a sui generis use with ancillary storage. Whilst this is a finely balanced assessment, the evidence is sufficiently precise and unambiguous and with it the appellant has discharged the necessary burden of proof.

20. During the Inquiry a revised description of the use was arrived at based upon the evidence from the appellant's witnesses and my questioning thereof. I therefore intend to adopt this for the purposes of certification, as this most accurately describes the lawful use of the site, on the balance of probabilities.

Conclusion

21. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use certifying a storage use as the primary use of Area 1, was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under sections 195(2) and 195(4) of the 1990 Act as amended.

Formal Decision

22. The appeal is allowed and a certificate of lawful use is issued, in the terms set out below in the Formal Decision.

Paul T Hocking

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Scott Stemp of Counsel, instructed by Lasseter Downie Planning

He called	Mr Nicholas Kirby	Co-owner of Hanging Garden Limited
	Mr Steve Poole	Appellant
	Mr Ian Lasseter	Planning Agent

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jack Parker of Counsel, instructed by Basingstoke & Deane Borough Council

He called	Mr Phillip Richards	Senior Planning Officer
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DOCUMENTS

1. Four aerial photographs provided on behalf of the Council
2. Opening submissions on behalf of the Appellant
3. Opening submissions on behalf of the Council
4. Copy of letter dated 26 July 2019 provided on behalf of the Appellant
5. Closing submissions on behalf of the Council
6. Closing submissions on behalf of the Appellant

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 10 January 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red and green on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The appellant has demonstrated on the balance of probabilities that the primary use of Area 1 is a storage use and therefore a modified certificate should be issued.

Signed

Paul T Hocking

Inspector

Date: 27 May 2021

Reference: APP/H1705/X/20/3261911

First Schedule

Storage of equipment, landscaping materials, props, plants and floral decorations in connection with an event hire business involving floral displays and other plants and props and other displays, and landscape maintenance business, with ancillary offices and parking (edged in red and annotated as 1 on the attached plan). Offices for a graffiti removal company and associated parking with ancillary storage and training facilities (edged in green and annotated as 2 on the attached plan).

Second Schedule

Land at: Hanging Garden Ltd, Wildmoor Lane, Sherfield-On-Loddon RG27 0HL

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 27 May 2021

By: Paul T Hocking BA MSc MRTPI

Land at: Hanging Garden Ltd, Wildmoor Lane, Sherfield-On-Loddon RG27 0HL

Reference: APP/H1705/X/20/3261911

Scale: DO NOT SCALE

