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# Appeal Decision

Site Visit made on 26 July 2021

**by Sarah Dyer BA BTP MRTPI MCMI**

**an Inspector appointed by the Secretary of State**

**Decision date: 8 September 2021**

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**Appeal Ref: APP/J0405/X/20/3257090**

**Land at Calvert Road, Steeple Claydon, MK18 2HF**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mrs M Keswani against the decision of Buckinghamshire Council - Aylesbury Area.
  - The application ref 20/00776/ACL, dated 2 March 2020, was refused by notice dated 9 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 B8 storage and distribution with ancillary light industry.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The appellant indicated on her appeal form that she was submitting her appeal under section 192 of the Act. However, this section deals with certificates of lawfulness of a proposed use or development and the evidence submitted by the appellant relates to what she regards as being an existing use of the land. Certificates for existing uses fall under section 191 of the Act and the appellant has subsequently confirmed that the application and the appeal relate to an existing use. Consequently, I have considered the appeal under section 191 of the Act.
3. The Council referred to evidence in its case officer report, but this was not provided as part of the Council's appeal submissions. Following my query, the Council supplied its evidence which took the form of photographs taken on 9 March and 16 March 2020, aerial photos and confirmation from the Council's rating and recovery manager that the site was not rated for the payment of business rates.
4. The appellant has had the opportunity to comment on the submissions by the Council. She confirmed that she has not been able to obtain business rates information herself as the businesses have since gone into liquidation and she did not control them. She also pointed out that the photographs had been taken after the acquisition of the site by the HS2 project team but that she had no historical photographs of her own.
5. I have given the appellant the chance to respond to the additional information submitted by the Council. Consequently, no party would be prejudiced if I were to take it into account in reaching my decision on the appeal.

6. 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 (the Act), as amended, 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.
7. The onus is on the appellant to make out her case to the standard of the balance of probabilities. If there is no evidence to contradict the appellant's version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

### **Main Issue**

8. The main issue is whether the Council's decision to refuse the application for a Lawful Development Certificate (LDC) was well-founded.

### **Reasons**

9. The appellant has set out on her application form that she is seeking a certificate for Class B8 storage and distribution with ancillary light industry. Therefore, the appellant must show that this use has been in operation for at least 10 years prior to the date set out on the application form (2 March 2020). 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 provided two Statutory Declarations (SD), both of which have been signed by a solicitor and contain the necessary form of words set out in the Statutory Declarations Act 1835. As such the contents of the SDs can be treated as sworn first-hand evidence.
11. The appellant's own SD states that she has owned the site since 1996 and that it has been in use as B8 storage and distribution with ancillary light industry since 2007 through agreements with three companies between 2007 and 2018. The second SD has been signed by an individual who owned two of the companies and was the father of the owners of the third company to which the site was licensed/leased. He states that the site has been used as described by the appellant and that the site was let to the companies with which he was associated. The plans attached to the SDs show the same area of land and this coincides with the application site plan.
12. Copies of one licence and two leases have also been provided. The licence permits use of the site only as a storage facility from 6 June 2007 for four years i.e., until June 2011. This includes part of the period ten years prior to the date of the application. One of the leases begins on 6 July 2011, is for a period of 20 years and permits use for light industrial and distribution purposes only (the 2011 lease). The second lease is signed but not dated, is for a period of 10 years beginning on 16 July 2018 and permits use for light industrial, storage and distribution purposes (the 2018 lease).
13. On 25 July 2018 a notice of temporary possession of the land was served on the appellant in connection with the High Speed Rail HS2 project. At the time of my site visit the site and adjacent land was a secure site in use by the HS2 project team. However, I was able to walk around the site accompanied by a team member who was not associated with either the Council or the appellant.

14. The Council has provided photographs taken in March 2020. Save for the entrance to the site it is not clear which parts of the site are shown on the photographs. Thus, they are of limited value in terms of demonstrating the use of the site over a ten year time period. The aerial photographs are by their nature snapshots in time. However, save for some features that may be stored materials along the access in 2015 they show that between 2009 and 2018 the land retained a natural, treed appearance and there is no evidence of development.
15. The appellant says that some of the businesses using the site were landscape and construction companies and that the site was used for the storage of building materials and landscape materials. As a consequence, she argues that the storage of materials took place without the removal of vegetation. She also contends that because of the transitory nature of the storage the use is not readily evidenced by the aerial photographs.
16. The Council has also confirmed that business rates have not been paid in connection with the use of the site, and the appellant has not been able to demonstrate that such payments were made.
17. Taken together, with the exception of the lack of any records of business rates, the Council's evidence does not robustly contradict the appellant's description of the use of the land.
18. During my site visit I did not observe any evidence of storage and distribution use. Parts of the site were undergoing change as a consequence of the HS2 project, but large areas remained planted with limited capacity below trees for storage to take place. There was some evidence of fly tipping. Access to the site has been changed since the photographs were taken by the Council to some extent but in any case, this point is not decisive in demonstrating the use of the site.
19. Drawing all of these strands together I do not find that there is evidence to contradict the appellants version of events. However, the onus is on the appellant to provide evidence which is sufficiently precise and unambiguous. In this case the licence/leases show that agreements were entered into but there is no evidence to show those uses commenced. There is no evidence of any business activities on the site in terms of business rates or to show that the payments referred to in the leases were made on an annual basis as required by the lease.
20. The SDs upon which the appellant relies are very limited in scope and rely on the licence/leases. The 2018 lease which was entered into is undated and the term of the lease began only 7 days before the site was acquired by the HS2 project. At the same time the 2011 lease appears to be still in force and the plan attached to the lease identifies a different area of land to the 2018 lease. This introduces a level of ambiguity about which business was operating from which part of the site.
21. The licence to occupy refers to 'Former Goods Yard, Calvert Station' and the same address appears on the 2018 lease. However, the 2011 lease refers to 'Land at Calvert'. There is no plan attached to the licence, but the plan attached to the 2018 lease appears to show the Former Goods Yard as comprising the access and land immediately adjacent to the railway line. By

contrast the land identified on the plan attached to the 2011 lease shows a much larger area which coincides with the application site plan.

22. The inconsistencies between the plans undermines the statements made in the SDs that the whole site has been used for the purposes described since 2007. The evidence which has been provided by the appellant is neither sufficiently unambiguous or precise to demonstrate that the use has been carried out within the area identified on the application site plan for a period of 10 years.

### **Conclusion**

23. 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 B8 storage and distribution use with ancillary light industry at Land at Calvert Road, Steeple Claydon, MK18 2HF 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