



Appeal Decision

Site visit made on 13 August 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2021

Appeal Ref: APP/X1545/X/20/3252704

Bridgemarsh Marina, Bridgemarsh Lane, Althorne CM3 6DQ

- 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 Mr John Wilsdon of J&H Wilsdon Agriculture against the decision of Maldon District Council.
 - The application ref LDE/MAL/20/00026, dated 10 January 2020, was refused by notice dated 16 March 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 grass area for boat storage and access to moorings within the trade of Bridgemarsh Marina.
-

Decision

1. The appeal is dismissed.

Reasons

2. An application under S191(1)(a) of the Act seeks to establish whether any existing use of buildings or other land was lawful at the time of the application. S191(2)(a) and (b) sets out that uses and operations are lawful at any time if:
i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force.
3. The main thrust of the appellant's case is that the use began more than 10 years before the date of the application. In an LDC appeal, the onus is firmly on the appellant to make out their case, on the balance of probabilities. Planning merits form no part of the assessment of an application for a LDC under S191 of the Act. The proposed development must be considered in the light of the facts and the law.
4. The appellant has submitted a signed letter from owners of a wheelhouse which, it is stated, is and has been sited along other structures on a grassy bank next to the oyster beds in the Bridgemarsh Marina, as per a Google Earth photograph from 2009. The owners advise they have used the structure for recreational purposes, staying overnight as needed, since then. Whilst this may be true, it points towards the recreational and occasional residential use of the site and does not accord with the description of the application, which is for boat storage and access to moorings.
5. A Google Earth photograph date 1 January 2009, labelled [A] appears to show a boat on the land and a boat adjacent to the land, presumably moored up. An aerial photograph, labelled [D] also appears to show a boat on the land and a boat adjacent to the land. Although evidently taken at different times, the

photograph labelled [D] is undated. Consequently, I do not know what period of time the photographic evidence covers. Furthermore, they represent a snapshot in time and do not show how the site has been used over the relevant period.

6. The appellant has submitted a signed but undated letter by a previous manager of the Bridgemarksh Marina which states that the timber gantry onto the foreshore on the appeal site was made for the boat Deva, which moored there for a while before 2007. Whilst I have no reason to doubt the contents of the letter, it does not identify over what period the boat was moored at the site or how the remainder of the site was used.
7. Case law has established that a use can only become lawful if it continues throughout the relevant immunity period, such that the local planning authority could have taken enforcement action at any time. It is unclear from the evidence submitted how the site has been used over the relevant period. Furthermore, I note comments made by two interested parties which advise they have seen no activity on the site over the last 3 and 6 years respectively.
8. Thus, for the reasons given above, the appellant's evidence is not sufficiently precise and unambiguous and has not demonstrated on the balance of probabilities, that the site has been used for boat storage and access to moorings throughout the relevant period, to the extent that the local planning authority could have taken enforcement action at any time.

Conclusion

9. 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 the site for boat storage and access to moorings within the trade of Bridgemarksh Marina 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.

M Savage

INSPECTOR