



Appeal Decision

Site Visit made on 1 September 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 October 2021

Appeal Ref: APP/X3540/X/21/3270081

The Chestnuts, Martlesham Road, Little Bealings IP13 6LX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended ('the Act') against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Matthew Eley against the decision of East Suffolk Council.
 - The application ref DC/20/4969/CLE, dated 3 December 2020, was refused by notice dated 22 January 2021.
 - 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 use of the site edged blue on the plan by parking vehicles.
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Decision

1. The appeal is dismissed.

Reasons

2. An application under section 191(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. Section 191(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 parking of cars within the appeal site has not resulted in a material change of use of the land. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded. This will turn on whether or not a material change of use has occurred.
4. 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 section 191 of the Act. The proposed development must be considered in the light of the facts and the law.
5. The appeal site comprises a substantial dwellinghouse set in generous grounds, which is accessed from Martlesham Road. The appellant runs an online business selling cars. The parking of cars at the property is in association with that use, with between five and fifteen vehicles parked on the site at any one time. The business is run by the appellant, with no other staff employed.
6. Section 55 (1) of the Act sets out that development includes the making of any material change in the use of land. Section 55(2)(d) of the Act states that the

use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such, does not involve development of the land for the purposes of the Act.

7. Whether or not a use is incidental for the purposes of section 55(2)(d) must be considered with regard to the primary residential use and the type and size of the dwellinghouse and its curtilage, as well as the scale and nature of the claimed incidental activity. Case law has established the functional relationship between a primary use and incidental use should be one that is normally found and not based on the personal choice of the user.
8. The Planning Practice Guidance (PPG) advises that planning permission will not normally be required to home work or run a business from home, provided that a dwelling house remains a private residence first and business second. Notable increases in traffic, disturbance to neighbours, abnormal noise or smells or the need for any major structural changes or major renovations may all be taken into account.
9. The area within which the vehicles would be located occupies a significant area in a prominent position to the front and side of the main dwelling. While there are no significant views of the site from the public domain, views into the site are possible when the gates are open. Furthermore, from my inspection of the site, I consider it highly likely that the parked can be viewed from the first floor of No 1 Beacon Lane.
10. Although no employees access the site, the use will generate vehicle movements when vehicles are delivered to and from the site. However, I have no information on the frequency with which the cars are brought to site, how long cars are parked at the site before they are taken off site, or how are the cars prepared prior to sale. The appellant suggests that up to two customers visit the site per week to view or purchase vehicles for sale and that the comings and goings average far less than 1 a day. However, since the site has been operating for some time, I would have expected this assertion to be supported by documentary evidence.
11. Furthermore, it is not clear what happens during a visit. For example, I presume a prospective purchaser would wish to take one or more vehicles for a test drive. Given the generally rural character of the area, I consider it highly likely that prospective purchasers would access the site by private vehicle. This could result in a number of vehicle movements to and from the site in a relatively short space of time.
12. The appellant suggests that there have been no physical alterations to The Chestnuts to facilitate the business activity. However, within emails submitted by the appellant, a number of individuals make reference to the installation of fencing and electronic gates which have 'hidden the vehicles' and 'prevents people just wandering in'.
13. I note a number of individuals have expressed support for the activities, which points towards the use not causing harm to living conditions. However, such comments are not determinative of whether a material change of use has occurred.
14. Although the activity of selling cars and other items privately is not unusual in a residential area, it is the scale of the activities which is unusual. Even though

there is no signage or advertisements relating to the sale of the vehicles within the site, the number of vehicles, in my view, is significantly greater than would be parked as a result of the residential use of the site.

15. I acknowledge that the occupant of the dwelling could choose to keep classic cars, incidental to the enjoyment of the dwelling house. However, such an activity is unlikely to generate visits to the site by third parties. Furthermore, whilst I have no detail as to the frequency of deliveries and turnover of vehicles at the appeal site, I consider vehicle movements generated by a classic car enthusiast are likely to be less. Consequently, the keeping of classic cars is, in my view, not comparable to the appeal scheme.
16. The appellant has drawn my attention to *Hertfordshire CC v SSCLG* [2012] EWHC 277, which considered the matter of intensification. However, the sale of cars does not constitute an intensification of a residential use. Although both activities involve the parking of cars, they are different uses. Indeed the Town and Country Planning (Use Classes) Order 1987 (as amended)(UCO) identifies residential uses as C3 whereas it states that no class specified in Schedule 1 or 2 includes use for the sale or display for sale of motor vehicles.
17. The appellant has drawn my attention to a number of appeal decisions. APP/D0121/C/19/3225137 was an appeal against an enforcement notice alleging the material change of use of land from residential to mixed use of residential and business use for sale and repair of vehicles. Whilst I don't have full details of the appeal before me, I do not consider a total of 2 or 3 vehicles to be comparable to the appeal scheme before me, which could involve the parking of up to 15 vehicles at any one time.
18. APP/N1920/W/19/3221875 was a section 78 appeal described as a retrospective application for unauthorised business use. The Inspector did not need to consider whether the use would have been lawful and so this cannot be considered comparable to the appeal scheme before me.
19. APP/G2245/C/18/3215848 was an appeal against an enforcement notice alleging the unauthorised change of use to mixed use for residential and hair and beauty salon, amongst other things. While I note the Inspector in this case found that there had been no material change of use, I do not have full details before me and cannot be sure it is comparable to the appeal scheme before me.
20. The appellant has drawn my attention to a number of businesses in the locality which the appellant suggests, appear to be operating without planning permission. However, I do not have full details and cannot be sure that they are either comparable to the appeal scheme before me.
21. I accept that commercial activities at a residential property will not necessarily result in a material change of use. While there are various judicial decisions and appeal decisions which have considered the lawfulness of commercial uses at residential properties, such as dog kennels, home hair dressing and child-minding, I must consider the appeal on the evidence before me.
22. I recognise that the Covid-19 pandemic has resulted in a greater shift towards working from home and accept that business activities can be appropriate in residential areas. However, the acceptability of an activity will depend upon the details of the case. Furthermore, the appeal before me is not an application for

planning permission and so I cannot consider the planning merits of the appeal scheme.

23. While I agree that there is only one planning unit, because the site has not been subdivided and the activities are carried out by the occupants of the dwelling, I am not persuaded on the evidence provided that the activities are incidental to the enjoyment of the dwellinghouse or that a material change of use has not occurred.
24. Thus, I consider the appellant has failed to provide sufficient evidence to demonstrate, on the balance of probabilities, that a material change of use has not occurred. Consequently, the appeal must fail.

Conclusion

25. 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 parking of vehicles 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