



Appeal Decision

Site Visit made on 21 September 2021

by **Sarah Dyer BA BTP MRTPI MCMI**

an Inspector appointed by the Secretary of State

Decision date: 25 October 2021

Appeal Ref: APP/W0530/X/21/3274840

Hill Trees, Babraham Road, Great Shelford, CB22 3AD

- 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 Fleet Stother Cooke against the decision of South Cambridgeshire District Council.
 - The application ref 20/04582/CLUED, dated 20 October 2020, was refused by notice dated 27 January 2021.
 - The application was made under section 191(1)(a) and 191(1)(c) of the Town and Country Planning Act 1990 as amended.
 - The use, and the failure to comply with any condition or limitation, for which a certificate of lawful use or development is sought is car sales and repairs.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant indicated in his application form for an LDC that it was for an existing use and for an existing use, operation, or activity in breach of a condition. However, there is no information regarding the planning permission or planning condition which he is referring to as having been breached. On this basis I shall follow the same approach as the Council and deal with the appeal on the basis that it relates to an application for an LDC for an existing use for car sales and repairs.
3. The Council's decision notice identifies the location of the site by reference to the address which is set out in the Second Schedule and a plan attached to the certificate. I have not been provided with the plan, which was attached to the certificate. However, it is clear from the reasons and the reference to the submitted location plan that the decision relates to a plan identifying the site in red and other land in blue, which the Council has provided. The blue land is annotated as Plot C existing use from 2003 approx. (Plot C).
4. In Part F of the Appeal Form the appellant refers to the use of Plot C for 15 years for sales and repairs of cars and small vans. However, this land does not form part of the red edged application site to which the Council's decision relates. Consequently, the existing use of Plot C is not before me for consideration. Even if the appellant demonstrates that the use of Plot C for car sales and repairs has been carried out over the relevant period, I would not be able to grant an LDC in respect of it.
5. The appellant provided additional information in support of his appeal after the deadline for the submission of documents, including further information in

relation to Plot C. I have given the Council the opportunity to comment on these submissions, therefore, neither of the main parties would be prejudiced by my consideration of them as part of my determination of the appeal. However, I have not had regard for the information submitted as it relates to Plot C for the reasons set out above.

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 his 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.
8. On the basis of the information which has been submitted, it was not necessary for me to enter the site during my site visit, but I did establish the site context through observation from Babraham Road.

Main Issue

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

Reasons

10. The appellant is seeking a certificate for car sales and repairs. Therefore, he must show that this use has been in operation for a 10 year period prior to the date set out on the application form (20 October 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'.
11. In the application form for a certificate the appellant refers to the use of the site since approximately 2003 for car sales and repairs and to an enforcement notice for storage but not sales or repairs. The appellant says that after the enforcement notice being imposed for many years, an injunction has been in force since January 2015 relating to storage.
12. The appellant has not provided any evidence to demonstrate how the land which is the subject of his application has been used from 2003 or to support the contention that it has been used for car sales and repairs from that date. In his submissions the appellant refers to the use of the land for storage continuously from 2002 and at a time when legal action was pursued by the Council in November 2015. These statements are at odds with his argument that the site has been used for car sales and repairs from 2003.
13. The Council's Delegation Report includes information which the Council says contradicts the appellant's version of events. The aerial photographs referred to in the report are said to show a break in the use of the land in 2003 and 2008 when there were no vehicles stored on the land. However, these documents have not been provided to me.

14. There is also reference to an inspection of the site in January 2016, after an injunction approved in November 2015, which confirmed that unauthorised motor vehicles had been removed. I have not been provided with any evidence regarding this site visit.
15. The Council's evidence in the form of its reference to aerial photographs and a site visit, does not support the appellants argument that the land was being used for storage or car sales and repairs from 2003. However, aerial photographs and the reference to a singular site visit can only provide a 'snapshot' of the way in which the site was being used at that point in time.
16. The Council has provided a copy of the front page of an appeal decision (Appeal Ref. APP/W0530/C/01/1057198) which relates to an appeal against an enforcement notice which it served in respect of the use of the land for storage, including of motor vehicles and operational development. The appeal was dismissed, and the enforcement notice upheld. There is however no information to demonstrate that the enforcement notice was complied with.
17. The Council has also provided a copy of an order for an injunction which it obtained against the appellant forbidding him from, amongst other things, using land identified in the order for motor vehicle sales or repair without express planning permission. This order was made in March 2018 and relates to land which is the subject of this appeal. It is not clear whether the appellant ceased the use following the injunction.
18. This is a complex case, particularly given that the appellant is seeking to establish a use for car sales and repairs over the time period when he also says that the site was in use for storage. However, the Council's evidence is not sufficiently comprehensive to establish that the site has not been used for car sales and repairs for a 10 year period.
19. Drawing all of these strands together I find that there is limited specific evidence to contradict the appellant's version of events. However, the onus is on the appellant to provide evidence which is sufficiently precise and unambiguous.
20. In this case the appellant has not been clear about the timescale during which he says the car sales and repair use has been carried out and has provided conflicting information about how the site has been used since 2003. To that extent the appellant's evidence is neither sufficiently precise nor unambiguous to demonstrate that the use for car sales and repairs has been carried out within the area identified on the application site plan for a period of 10 years.

Conclusion

21. 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 sales and repairs at Hill Trees, Babraham Road, Great Shelford, CB22 3AD 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