



Appeal Decision

Site visit made on 21 December 2021

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2022

Appeal Ref: APP/C1435/X/20/3256915

Land rear of Havenswold, Hempstead Lane, Hailsham BN27 3PR

- 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 Ms M Killick against the decision of Wealden District Council.
 - The application Ref WD/2019/2568/LDE, dated 27 November 2019, was refused by notice dated 31 January 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 or distribution.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The main issue in an appeal under Section 195 of the Town and Country Planning Act 1990 as amended (the Act) is whether the refusal of the LDC was well-founded.
3. The application for an LDC seeks to demonstrate that, at the date of application, no enforcement action could be taken in respect of the use of the land for storage and distribution purposes under use class B8 of the Town and Country Planning (Use Classes) Order 1987. The use of the land would become lawful were it to have continued for a period of ten years beginning with the date on which the use started (the relevant period).
4. The burden of proof for an LDC is on the appellant, with the relevant test of the evidence being on the balance of probability. Case law indicates that evidence does not need to be corroborated by independent evidence to be accepted, but does need to be precise and unambiguous, even if there is no evidence to contradict it.

Reasons

5. At my site visit, I saw that Havenswold comprises a bungalow with stables to the rear. Beyond the stables and to one side of the bungalow are a series of yards, divided by close boarded or chain link fences. To the opposite side of the bungalow is an access track leading to the yards at the rear and a number of

- other properties. The application for an LDC relates to these yards but does not include the bungalow or stables.
6. The yard fronting Hempstead Lane comprises a concrete surfaced yard. During my site visit I noted that within the yard area were parked two coaches, a lorry and what appeared to be an old forklift truck. To the rear of the yard was a close boarded fence and to the side furthest from the bungalow was an access track that continues to the rear of the property, but was blocked by one of the coaches, the lorry and the forklift truck.
 7. Within this yard are buildings and lorry bodies. One building is enclosed and appears to be used as a workshop. Another is open fronted and appears to be used for storage and parking. It is unclear whether the lorry bodies are in use. On my visit I noted that there was another single storey building with a small section of yard divided from the rest that appeared to be used in association with the bungalow.
 8. Beyond the fence to the rear of the front yard and behind the stables I saw a hard surfaced yard accessed from the drive behind the bungalow. There was a close boarded fence surrounding a mobile home. It is unclear what the mobile home is used for and whether it is occupied. The open fronted building referred to above continues into this area and appears to be used for parking. The remainder of the yard has a hard surface and appears to also be used for parking and with skips containing manure, presumably from the stable yard.
 9. There are two areas to the rear of that containing the mobile home. These are enclosed and divided by chain link fencing. Both appear to contain parked or stored vehicles, some of which appear to have been partly broken up, other metal within skips and on the ground, a container and a lorry body. The evidence submitted, signage on the yard and vehicle parked within it indicate these yards are used in association with the scrap yard on the opposite side of the access track. That would not comprise a storage and distribution use but would be sui generis.
 10. The evidence submitted in support of the appeal comprises the statements prepared by the appellant's agent and details of business rates. Aerial photographs are included within the statement dating from the period 2004 to 2019. There is limited description of how the site has been used to support those photographs. The aerial photographs vary in terms of what appears on the site, but they appear to be large objects, possibly vehicles. I note that business rates have been paid since 2009 relating to 'land used for storage and premises', which is unclear. It appears to indicate a storage and distribution use, although is not determinative as to whether there was an active use and does not provide details of the use.
 11. My attention has been drawn to the judgement in the case of *Burdle & Williams v Secretary of State for the Environment & New Forest RDC* [1972] 1 WLR 1207 that sets out how to define a planning unit. This is usually the unit of occupation unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes. The concept of physical and functional separation is key.
 12. The yard at the front of the site contains coaches, other parking and maintenance activities. The submitted evidence suggests that it is open to the yard behind. However, I saw that it was separated from the remainder of the

appeal site by a fence, such that it is physically separate and distinct from the other yards I have described above. The Council concluded that it is used for storage or parking of horse trailer and restoration projects as well as in relation to coaches. I have limited information on the horse trailer parking and restoration uses, nor the use of the area that appears to be used in relation to the bungalow. However, these appear to be separate activities that are not incidental to each other.

13. The appellant acknowledges that this yard has not been used in relation to the coaches for a period in excess of ten years on the date of application. Coaches are used for school transport during the week in term time, leaving in the morning and returning in the afternoon. Between journeys, they are parked, cleaned and maintained on this site. During the term time, the parking is only overnight and at weekends, so the coaches are left for a relatively short period. At other times they are parked for more substantial periods, such as during the school holidays. I note that the site lacks some of the facilities normally present in coach depots, such as parking for drivers' cars and welfare facilities, and the public do not visit this site. Nevertheless, taking account of the evidence presented and the judgement in the case of *Crawley Borough Council v Hickmet Ltd* [1998] 75 P. & C. R. 500, I consider that use is as a coach depot.
14. Taking account of the above, the yard next to the bungalow and fronting Hempstead Lane appears to be in a mixed use that includes the coach depot and other uses. I am not clear what those uses comprise. In addition, it is clear that the coach depot has not been in use for the whole of the relevant period.
15. The yards to the rear have a separate entrance and appear to be used independently of the front yard. Limited evidence has been provided to describe their precise use over the relevant period. It appears that includes a sui generis scrap yard use, but there may be additional uses that would result in a mixed use. On the balance of probability, I consider that the rear yards are physically and functionally separate to the front yard, such that they are either a separate planning unit, or more than one planning unit. Given the limited evidence I am unable to conclude on the lawful use of this area.
16. Limited description has been provided as to the use of the land, other than the area used as a coach depot. Consequently, the evidence relating to the use of the site is not precise, nor unambiguous. As such, it is not possible to conclude, on the balance of probability, what are the correct planning units or what are their lawful uses.
17. For the above reasons, the refusal of the LDC was well-founded and the appeal should be dismissed.

AJ Steen

INSPECTOR