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## Appeal Decision

Site visit made on 8 December 2021

**by Elaine Gray MA(Hons) MSc IHBC**

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

**Decision date: 25 January 2022**

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**Appeal Ref: APP/Z4718/W/21/3273836**

**Tyremaster, 57 Wasp Nest Road, Fartown, Huddersfield HD1 6HA**

- 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 Mr Nadeem Aslam against the decision of Kirklees Metropolitan Borough Council.
  - The application Ref 2020/CL/93421/W, dated 28 September 2020, was refused by notice dated 4 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 vehicle repairing and servicing.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The issue of an LDC depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority. The onus of proof lies on the appellant, whose evidence must be sufficiently precise and unambiguous so as to justify the grant of an LDC on the balance of probability<sup>1</sup>.

### Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

### Reasons

4. For lawfulness to accrue, the appeal site must have been used continuously for the relevant period for such purposes with an intensity, regularity and frequency that is more than de minimis, so as to have triggered a material change of use. The appellant therefore needs to demonstrate on the balance of probability that the appeal site was in continuous use for vehicle repair and servicing for 10 years or more prior to 28 September 2020, which is the date of the LDC application.
5. An initial step in a use application case is to consider the appropriate planning unit following the guidance in *Burdle v Secretary of State for the Environment*

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<sup>1</sup> National Planning Policy Guidance, Paragraph: 006 Reference ID: 17c-006-20140306

[1972] 1 W.L.R. 1207, considering the unit(s) of occupation, range of activities carried on and their relationship one to another. This will assist in determining whether or not the change of use constitutes a material change of use requiring planning permission.

6. In February 2001, planning permission (ref: 2000/93410) was granted at the site at 57 Wasp Nest Road for 'Use of land for siting of static caravan to use as radio control taxi office, storage of vehicles and erection of boundary fence.' The Council have provided a copy of the approved site plan layout associated with this permission. This shows a static caravan for use as a taxi office building. Beside the taxi office is shown five car parking spaces, with a further seven spaces shown adjacent to Wasp Nest Road.
7. The Council's evidence includes a number of aerial images of the wider site at No 57. The image from 2006 appears to show the static caravan, although it is set back slightly from the permitted location. A number of vehicles appear to be parked on the site. The 2009 image shows that the static caravan has been removed from the permitted location, and is either elsewhere on the site or not present at all. The 2012 and 2018 pictures show the caravan back in place, with a range of vehicles on site. On the basis of the available evidence, the Council are satisfied that the whole site has been used in conformity with the 2001 permission.
8. The site plan submitted by the appellant has a blue line around approximately half of the site, excluding the taxi office and its forecourt. The red line relates to a building, including an inspection pit, at the back of the site, roughly where the five car parking spaces were shown on the site layout plan approved in 2001. Of the photographs submitted, only the 2018 image appears to show a building in the location of the appeal site.
9. The Council contend that the planning unit comprises the whole of the plot at 57 Wasp Nest Road, and not just the site within the current red line boundary. They assert that the use of the appeal site for vehicle repairs has not been independent from the remainder of the site and is in fact ancillary to its use.

#### *The appellant's evidence*

10. I note that the application form gives a date of 1 January 2012 for the commencement of the use or activity in question. The appellant offers little explanation for this discrepancy.
11. Nonetheless, in support of the initial application, the appellant produced a number of photographs showing the construction of the inspection pit. However, these photographs are undated. The Council submit that the photographs are relatively recent, as they include images of advertisements that they say were not there before May 2018. It is notable that, of the photographs submitted by the Council, only the 2018 image appears to show a building in the location of the appeal site.
12. The appellant disputes the Council's evidence, stating that the photographs of the pit were taken several years prior to May 2018. Nevertheless, he does not give a precise date for them. That being the case, these photographs do not assist the appellant in demonstrating ten continuous years of usage.
13. On their request for further evidence, the Council received a letter dated 4 December 2020 from the owner of Bassi Travel, who owns the site at No 57.

I note the references in this evidence to the site across the road at 53 Wasp Nest Road. However, the Council have reached the view that No 53 forms a separate planning unit. From the evidence before me, I have no basis on which to take a different view.

14. The letter confirms that after the 2001 permission, taxis, mini-buses, busses and coaches were parked on the land at No 57. Furthermore, as part of the operational requirements, repairs were carried out to the vehicles on the land.
15. The letter goes on to state that Bassi Travel was registered at No 57 in 2010 and started operating coach and bus services there from 4 May 2011. The owner confirms that since operating these services, they have used the east side of the plot mainly to park vehicles and to carry out some repairs, vehicle checks, washing and associated works. The rear area of the plot, where the inspection pit is located, was mainly used for vehicle and bus repairs, tyre changing, and some washing and parking.
16. The appellant also produces five receipts, spanning from 18 February 2010 to 20 August 2015. Although he maintains that the appeal site has been used for vehicle repairs services to the general public, the evidence falls short of demonstrating that this occurred on any kind of regular basis.
17. He says that his ability to produce the necessary evidence has been limited due to the passage of time. However, this does not explain satisfactorily the lack of documentation. It would be expected that a business that had been carried on continuously for 10 years or more would be able to produce considerably more than five receipts. In any event, the submitted receipts cover a timescale of around five years and not the required ten.

### *Consideration*

18. Drawing these strands together, I am satisfied that the appellant has not produced enough precise, unambiguous evidence to demonstrate a vehicle repair and service use has been carried on continuously at the appeal site for ten years, such that a material change of use has occurred.
19. Instead of being an independent use forming a separate planning unit, the repair and servicing activities appear from the available evidence to have been ancillary to the lawful use of No 57. The letter from the owner of Bassi Travel seems to confirm this. Furthermore, three letters of support from nearby residents indicate that No 57 has been used for running buses, taxis and vehicle repairs for approximately 20 years, which appear to corroborate this situation.

### **Other matters**

20. I note that the appellant wishes to expand his business, which has suffered a detrimental effect due to the ongoing coronavirus pandemic. He also states that his livelihood will be at stake if the LDC is not allowed. However, these matters go more to the planning merits of the case, which unfortunately cannot be taken into consideration in deciding an LDC application or appeal.
21. I note that the appellant sets out his statement of case as a witness statement, with a form of words similar to those required in the making of a statutory declaration. However, it is essential that a statutory declaration should be witnessed and counter signed by a solicitor or commissioner of oaths. As this

has not been done, I cannot give this document the added weight that a formal statutory declaration would attract.

**Conclusion**

22. For the reasons above, I conclude that the Council's refusal to grant an LDC in this case was well founded. The appeal is therefore dismissed.

*Elaine Gray*

INSPECTOR