



Appeal Decision

Site visit made on 28 February 2022

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2022

Appeal Ref: APP/G2245/X/21/3275516

Land North of Hunters Retreat, Shoreham Lane, Halstead, Kent TN14 7BY

- 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 David Barker against the decision of Sevenoaks District Council.
 - The application Ref 20/02389/LDCEX, dated 31 July 2020, was refused by notice dated 8 January 2021.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought has been described as: Storage of roll-on/roll-off bins and skips and portacabin for more than 10 years; and the erection of a building in excess of 4 years.
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Summary of Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the time of my scheduled site visit, the site gates had been left open. Although I was not accompanied, I was therefore able to proceed with my site inspection.
3. In his appeal form the appellant opted for the appeal to be determined by means of written representations, and to which the Council has agreed. The appeal has therefore proceeded on this basis and I am content to determine the appeal on the written evidence already before me, as well as my site visit, and do not consider that injustice would arise.
4. I have adopted the site address and description used by the Council in my banner heading above, as these have been used by the appellant on his appeal form. However, in consideration of the application form and appellant's statutory declaration, he seeks certification for the use of the site for the storage of up to 20 roll-on/roll-off storage bins and 30 skips as well as a building and portacabin. My assessment will therefore be made on the basis of all the evidence before me.
5. As this appeal application relates to lawfulness, planning policy considerations or perceptions of planning harm do not fall to be considered.

Main Issue

6. The main issue is whether the Council's refusal to grant a certificate of lawfulness is well founded.

Reasons

7. In matters such as this the onus is on the appellant to demonstrate his case on the balance of probabilities. The storage use must therefore have subsisted for a continuous period of 10 years prior to the appeal application, and the building/s installed or erected more than 4 years prior (relevant periods). The application was dated 31 July 2020. My assessment is therefore very fact specific, based upon the evidence before me.
8. The appellant has submitted four sworn statutory declarations. His own statutory declaration states that he purchased the site in around 2004 and has used it as an overspill to a waste transfer business, for the storage of between 10 and 20 storage bins and 30 skips. He also explains that he repaired an existing building at the site some 10-12 years prior to the date of his declaration, which is used for secure storage, and that there is also a portacabin which was in-situ when he purchased the site.
9. Whilst I appreciate that a recommendation to grant a certificate had been made, the Council's decision was to refuse the appeal application. There have accordingly been concerns highlighted to me in respect of the appellant's evidence that cumulatively underpins the Council's decision, which I shall therefore consider.
10. The appellant has provided very little evidence in direct response to those concerns.
11. The statutory declarations that were submitted relate to a plan referring to a smaller area of land than that applied for in the appeal application itself. Those declarations therefore only carry weight in respect of that smaller area of land. Given this discrepancy arises in the approximate location of the gated entrance to the site, it does lead to ambiguity in respect of the appellants version of events. Whilst I appreciate this may have been an administrative error, the appellant has still not addressed this evidential shortcoming, which therefore casts doubt in my mind as to the precision of the evidence.
12. During my site visit, the site contained a large number of storage containers. The appeal application provides very limited evidence concerning storage containers which casts further doubt in my mind about the precision of the evidence before me. Moreover, the only building that I was able to observe during my site visit consisted of makeshift walls, and no roof, and with vegetation growing within. The appellant's declaration states a building is used for secure storage purposes. However, in light of the current condition of the building, it casts considerable doubt in my mind as to the precision of the evidence.
13. The portacabin at the site was a small unit which the appellant's declaration states has not been used for any specific purpose. Despite the Council's revised description, I remain unclear as to whether certification is sought for the presence of a vacant building as operational development, or the use of land for the storage of a portacabin. The appeal application is therefore ambiguous in this regard for the purposes of certification.

14. The four statutory declarations are broadly consistent with each other, but it has been raised by interested parties that the level of activity described is inconsistent with their own observations, as residents. Given there is contrary evidence in this regard, the appellant has not taken the opportunity to provide further evidence, such as vehicle logs, to demonstrate on the balance of probabilities the level of activity asserted.
15. A planning application form states the use of the site was vacant when it was made on 5 October 2009, which would appear to contradict the declarations. The appellant has provided very little evidence to explain this discrepancy.
16. There is also a discrepancy between the dates given for the appellant's purchase of the site in his declaration and the planning statement. However, the statement was produced on his behalf, as opposed being a sworn declaration, and the Council accepts that Land Registry documents are consistent with a 2004 purchase.
17. There are aerial photographs before me. However, such evidence will only show a site at a single point in time, and it can then be difficult to ascertain how a use such as this was subsisting. I therefore afford these photographs only limited weight.
18. In considering the evidence in the round, the declarations should be afforded significant weight, but they are undermined by discrepancies and that little evidential response to the Council's concerns, which underpin their decision to refuse the appeal application, are before me. Along with my own observations during my site visit, this culminates to cast significant doubt in my mind.
19. It remains the case that the appellant's own evidence needs to be sufficiently precise and unambiguous to justify the grant of a certificate. As a matter of fact and degree, based upon the evidence before me, the appellant has not discharged the necessary burden of proof to demonstrate his case on the balance of probabilities.

Conclusion

20. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development 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.

Formal Decision

21. The appeal is dismissed.

Paul T Hocking

INSPECTOR

