



Appeal Decision

Site visit made on 5 April 2022

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 April 2022

Appeal Ref: APP/N2739/X/22/3290420

7 Orchard Close, Monk Fryston, Leeds, N Yorkshire LS25 5EY

- 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 Nigel Spofforth against the decision of Selby District Council.
 - The application Ref 2020/0072/CPE, dated 29 November 2019, was refused by notice dated 6 August 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 storage of building equipment and materials associated with business.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appellant has expressed serious concern, alleging that the representations made by one of the interested parties includes evidence that has been fabricated. In particular my attention is drawn to a photograph purporting to show a view southwards along the western boundary of the appeal site. From information gathered during my visit I am in no doubt that the picture in question depicts a mirror image of a view that was actually photographed looking southwards along the eastern boundary, and which was also submitted as part of the interested party's representations.
3. I have no idea whether the inclusion of a false image was a deliberate attempt to mislead or was somehow accidental in nature, and I make no judgement in this regard. However, as I am unable to rule out the former explanation, the inclusion of the image must be taken to seriously undermine the credibility of representations made by the interested party, which consequently I have not had regard to in reaching my decision.

Reasons

4. Uses and operations are lawful at any time if 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; and provided it does not contravene the requirements of any enforcement notice then in force (s191(2)). I have not been told that there

was any extant enforcement notice relating to the property at the time of this application.

5. In this case, the appellant seeks to rely on the period of time over which the use has continued. The onus of proof rests with the appellant and the standard of proof is the balance of probability. Accordingly it is necessary to consider whether, on the balance of probability, the use of the land for the storage of building materials and equipment has continued for a period of ten years or more prior to the date of the application, that being 29 November 2019, so as to be immune from enforcement.
6. The site is rectangular, bounded to the north, east and west by residential properties including associated garden areas, and to the south by a grassed field. Vehicular access is taken from the Orchard Close cul de sac, via a short driveway link to an opening in the western boundary. From the information provided and my visit, it is evident that the northern boundary of the site is formed by a timber fence, separating it from the semi-detached houses to the north.
7. In support of the application the appellant has provided a series of chronological aerial photographs from 'Google Earth', taken at various times over the period December 2002 to May 2020. He considers that the images help to demonstrate continuity of use of the site for storage purposes over the requisite period.
8. It seems to me that the succession of aerial photographs indicate the physical characteristics of the site have changed over time. The earliest aerial image, from December 2002, appears to show the site as a substantially grassed area, with a few trees or shrubs present. The character of the land immediately to the north of the site appears to be very similar to this, and it is not at all clear that the appeal site was sub-divided from this area by any formal boundary. Rather it appears that the site formed part of a larger parcel of land continuing to the north. Indeed the appellant appears to confirm that the original site was bigger, but included the appeal site.
9. The next aerial image from May 2007 appears to show the site and adjoining land to the north as having become more overgrown, with potentially a small area of bare soil present. Whilst the appellant has referred to storage taking place on the land in 2002 and 2007, the Council does not agree that these photographs demonstrate the same, instead considering the site to have been green and undeveloped then. I concur with the view that these aerial images do not depict storage taking place. The appellant has referred to the presence of a small lock-up garage in the far northeastern corner of the site, as depicted in the 2002 aerial image. However I agree with the Council that the lack of visible track marks in the photograph do not support this claim. Even if this was the case, I am not persuaded that it would represent storage of sufficient scale and continuity over time to justify the grant of an LDC.
10. The Council does not appear to dispute that the aerial photographic record shows that the storage of building materials and equipment has occurred on the site to some degree since May 2013. However, it does not agree that storage has occurred across all of the site throughout this time, given that the southern portion continues to appear grassed for several years. I agree that the photographs provided do not in themselves demonstrate continuous storage on all of the site for at least a ten-year period prior to the LDC

application. Rather they suggest that the southern portion of the site has been largely kept as a grassed area and free from storage over time, even if there has been a degree of storage there at certain points in the past. It is also possible that the images between 2013 and 2015 are showing the storage compound area associated with the construction of the dwellings immediately to the north, rather than the use of the site as a dedicated repository for building equipment and materials in general.

11. Therefore I am not persuaded by the aerial photographs that all of the site has been continuously used for storage purposes, in the form of a builders' yard. These images depict a relatively small number of snapshots over a significant period of time. It does not seem to me that differences in the appearance of the photographs themselves are indicative of continuous use on the balance of probability; it could be just as likely to indicate intermittent use.
12. I have had regard to written correspondence submitted, including from various interested parties. The appellant states that he has used the site to store building materials and equipment since acquiring the land in 2004. Several third parties who appear to be acquaintances of the appellant, and / or local residents and community representatives with previous knowledge of the location, have written claiming that the site has been used as a builders' yard for in excess of the requisite immunity period.
13. However, whilst reference is made to a building business, based behind 33 Main Street, using the site for many years, in general the comments are very vague as to what was being stored, where exactly the storage was taking place, whether this has been continuous and how exactly the person in question has come to view those materials. Some of the supporting statements are also qualified in the terms 'to the best of my knowledge' and none are 'sworn' statements such that sanctions would apply if they were found to be incorrect. This serves to reduce the force and conviction behind the statements. Given that I do not find these statements to be corroborated by the aforementioned photographic evidence I afford them only limited weight.
14. A neighbouring occupier has referred to items progressively being brought onto the site for storage since they moved to their address in 2010. However this too is a vague statement, and the word 'since' does not equate to meaning that storage was actually happening immediately after this baseline date.
15. I am mindful that planning practice guidance states *"In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."* I am not persuaded that the appellant's evidence is sufficiently precise and unambiguous to demonstrate, on the balance of probability, continuous use of the land in question over the requisite timescale. Rather, I cannot rule out that there has been intermittent (and only partial) use of the site, for storage purposes, when considering the ten-year period as a whole.
16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of storage of building equipment and materials associated with business at 7 Orchard Close, Monk Fryston, Leeds, N Yorkshire LS25 5EY 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.

Roy Merrett

INSPECTOR