



Appeal Decision

Site visit made on 1 August 2022

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2022

Appeal Ref: APP/L3815/X/22/3291559

Land West of Walton House, Main Road, Bosham PO18 8QB

- 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 Daniela Becker against the decision of Chichester District Council.
 - The application Ref BO/21/02354/ELD, dated 29 July 2021, was refused by notice dated 30 November 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: Use of the land for the storage of boats, boat trailers and sundry items.
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Summary of Decision

1. The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Preliminary Matter

2. The parties opted for the appeal to be determined by means of written representations and did not identify injustice that would otherwise arise. I am content to determine the appeal on the written evidence that is already before me, and do not consider that injustice would arise.

Main Issue

3. The main issue is whether the Council's refusal to grant a certificate of lawfulness for the existing use of the land for the storage of boats, boat trailers and sundry items (the use) was well founded.

Reasons

4. In matters such as this, the onus is on the appellant to demonstrate her case on the balance of probabilities. Accordingly, she must demonstrate that at any time during a continuous 10-year period, prior to the date of the appeal application on 29 July 2021 (a relevant period), the Council could have taken enforcement action against the use.
5. The appellant contends the site has been used for the storage of boats, trailers and sundry items since around 2006/7. She purchased the site in March 2011 and this use has been continuing all year round since.

6. In support of her contention the appellant has provided two statutory declarations of her own, two from an individual who stores boats on the land as well as an affidavit.
7. These declarations describe the appellant's purchase of the site and that she allowed existing boats to remain stored, as well as storing her own. It is then estimated that around 12 boats are always stored on the land as well as various trailers and other items. They also describe the construction of the access gate in 2011 and that because this is not used daily, only in connection with the storage of boats, vegetation sometimes grows. It is consequently not always possible to see tyre tracks in the vicinity of the gateway or grassed areas.
8. Boats are then taken from the site and used for a day before being returned, which has been the case since 2009 in respect of the evidence contained in the other sworn documents.
9. In assessing the evidence, the Council considered it to be somewhat helpful but not sufficiently precise or sufficiently unambiguous to justify the grant of a certificate as there was a lack of evidence for a 10-year period. It has however also described the statutory declarations as 'strong'. The Council then has very little evidence to dispute the appellant's version of events.
10. In considering the evidence in the round the appellant describes the use of the appeal site since at least March 2011, and therefore a relevant period, in detail, and this is corroborated by other statutory declarations and an affidavit. These do not lack detail and I do not accept they are insufficiently precise or unambiguous as a consequence. Indeed, I afford this sworn evidence considerable weight.
11. Whilst the photographs provided potentially concern a more recent period in time, the absence of older or date stamped photographs does make the appellant's version of events less than probable given the sworn statements and weight I have afforded to them. For the same reasons the aerial photographs, given there are tree canopies obscuring parts of the site, does not cast doubt in my mind. The photographs before me therefore do not provide contradictory evidence.
12. As a matter of fact and degree the appellant has therefore demonstrated on the balance of probabilities the asserted use for a relevant period and so has discharged the necessary burden of proof. The Council accordingly would have been in a position to have previously taken enforcement action against a material change of use, and so a certificate of lawfulness should now be granted.

Conclusion

13. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the land for the storage of boats, boat trailers and sundry items was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

14. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Paul T Hocking

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 29 July 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in pink on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The appellant has demonstrated the lawful use of the land for the storage of boats, boat trailers and sundry items on the balance of probabilities for a relevant period.

Signed

Paul T Hocking

Inspector

Date: 16 August 2022

Reference: APP/L3815/X/22/3291559

First Schedule

Use of the land for the storage of boats, boat trailers and sundry items

Second Schedule

Land at Land West of Walton House, Main Road, Bosham PO18 8QB

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 16 August 2022

By Paul T Hocking BA MSc MRTPI

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Scale: DO NOT SCALE

