



Appeal Decision

Site visit made on 11 August 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2022

Appeal Ref: APP/W3520/X/21/3284571

Grange Farm Lodge, Potash Lane, Wyverstone, Suffolk, IP14 4SL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Gee Warner against the decision of Mid Suffolk District Council.
 - The application ref 3946/15, dated 5 November 2015, was refused by notice dated 22 January 2016.
 - 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 described as 'fabrication motor engineering, the building, storage of cars and other vehicles and storage in buildings of archive objects'.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Gee Warner against Mid Suffolk District Council. This is the subject of a separate decision.

Preliminary Matters

3. An officer of the Council wrote to the appellant on 10 December 2015 to confirm that 'The fabrication of parts for use in the restoration of motor vehicles, repair of modern classic motor vehicles, storage of cars, storage of car parts and storage of a trailer.' sets out the various uses at the site and was in keeping with the evidence submitted. The appellant confirmed they were happy with the suggested wording on 10 December 2015. I shall therefore deal with the appeal on this basis.

Reasons

4. An application under S191(1)(a) of the Act seeks to establish whether any existing use of buildings or other land was lawful at the time of the application. S191(2)(a) and (b) sets out that uses and operations are lawful at any time if:
i) 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 or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force.
5. The Council refused the LDC application on the basis that the use is contrary to a Planning Enforcement Notice dated 29 October 2015, which came into effect without challenge on 10 December 2015 and is not lawful pursuant to section

- 191(2)(b) of the Act. While the Council did not produce an officer report, its reason for refusing the application is clear from the wording of the letter it issued.
6. The main thrust of the appellant's case is that, on the date of the LDC application, the use applied for had been taking place in excess of 10 years and did not contravene an enforcement notice then in force.
 7. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded. In an LDC appeal, the onus is firmly on the appellant to make out their case, on the balance of probabilities. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted. Planning merits form no part of the assessment of an application for a LDC under S191 of the Act. The appeal must be considered in the light of the facts and the law.
 8. An enforcement notice, dated 29 October 2015, alleged 'without planning permission, the change of use of agricultural land to a mixed use of agricultural land and for the stationing of caravans for both permanent and temporary use beyond permitted development rights; the use of the land ancillary to the residential use; the use of the land for the storage of used/occasionally used and unused caravans beyond permitted development rights, storage of vehicles being principally non-agricultural in nature and some being in a semi-ruinous stated of repair and other items not associated with the normal husbandry associated with a purely agricultural unit and the siting of a toilet/shower block.'
 9. The enforcement notice was not appealed and so came into effect on 10 December 2015. Section 285 of the Act sets out that the validity of an enforcement notice shall not, except by way of an appeal under Part VII, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.
 10. Requirement 3 of the notice requires the recipient to 'remove from the land all vehicles (including campervans/motorhomes) which are unrelated to the use of the land for agriculture or ancillary to the use of land for a site under Caravan Sites and Control of Development Act 1960' and requirement 7 required the recipient to 'cease the use of the land for the storage of all items unrelated to the lawful use of land for agriculture including the removal of caravans as above, car parts, timber, gas bottles and general rubbish.'
 11. The appellant states that the wording of the 2015 enforcement notice makes no reference to uses on the site for the repair of vehicles and has drawn my attention to correspondence from the Council, which advised it considers that the core uses listed in the LDC application were not covered by the 2015 enforcement notice. However, the Council's advice did not constitute a determination under section 191 of the Act and so I must draw my own conclusion on the evidence before me.
 12. The notice describes the land to which the notice relates as 'Land at and adjacent to Grange Farm Lodge Buildings, Potash Lane, Wyverstone, Stowmarket, IP14 4SL as shown edged red on the attached plan.' The red line extends around a parcel of land which the appellant states is no longer within his ownership as well as the land which is the subject of the LDC.

13. The appellant asserts the 'old and scrap vehicles' were located on an area of land to the west of Potash Lane which he no longer owns and were removed following the enforcement notice. However, the enforcement notice does not distinguish between the different parts of the site in this way.
14. The appellant also contends that requirement 3 is a clear reference to vehicles ancillary to residential use mentioned in requirement 1. However, the notice specifically identifies the storage of vehicles within the breach and does not differentiate between those related to the use of the residential caravan and other non-agricultural vehicles stored within the site.
15. Since the use of the site for the fabrication of parts for use in the restoration of motor vehicles, repair of modern classic motor vehicles would involve the storage of cars and car parts, the use would have contravened the requirements to remove all vehicles unrelated to the use of the land for agriculture or ancillary to the use of land for a site under Caravan Sites and Control of Development Act 1960 and cease the use for the storage of car parts.
16. The appellant submitted a LDC application to the Council, dated 10 October 2015. The application is date stamped 5 November 2015 and a number of the 'sworn statements' are dated 2 November 2015, suggesting that the application was not submitted until at least this date. Whether I consider the October date or the November dates, they are all before the 10 December 2015, which is the date upon which the enforcement notice came into effect.
17. The appellant states the Council did not comply with section 39(7) of the Town and Country Planning (Development Management Procedure)(England) Order 2015, which requires local planning authorities to, as soon as reasonably practicable, send to the applicant an acknowledgement of the application in the terms (or substantially in the terms) set out in Schedule 1.
18. An officer of the Council advised the appellant in an email, dated 10 May 2017, 'As the description on the application was invalid, receipt from Mr Warner of a valid description was received on 10 December 2015, the date the enforcement notice took effect.' However, while the Council requested the appellant agree to an amended description, this did not, in view, render the application invalid.
19. Section 171B(1) of the Act sets out the time limits for taking enforcement action. Section 171B(3) would apply in this case, and states that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. Section 171B(4) goes on to state the preceding subsections do not prevent (b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.
20. Although the enforcement notice was not in force on the date of the LDC application, since the Council had taken enforcement action¹, section 171B(4) provides that the taking of enforcement action in respect of the breach of control is not prevented by the operation of section 171B(3). However, this would only prevent the issue of an LDC in this case if the enforcement action taken was itself taken within the periods set out in section 171B(3) of the Act.

¹ As defined by section 171A(2)(a) of the Act.

21. Given the above, it is necessary for the appellant to show that the use began on or before 29 October 2005, namely 10 years before the local planning authority took enforcement action and continued for a period of 10 years thereafter without significant interruption. A use can only become lawful if it continued throughout the relevant period, to the extent that the local planning authority could have taken enforcement action at any time. If the use ceased during that period, as a matter of fact and degree, the time could not count towards immunity.
22. The appellant states on the LDC application form that the site has been used by his family for many years and by him personally for over 20 years. However, the appellant also identifies that the use or activity was begun on 1 January 2000. Given the date of the application, 10 October 2015, these dates appear inconsistent.
23. The appellant has provided a plan showing the area which is owned by the appellant, the area which is the subject of the LDC, and an area which has now been sold. The appellant confirms in the appeal form that there were multiple uses on the site and states that the use applied for in the LDC was the 'base long term and lawful use', namely the repair of rally cars and other classic cars as part of a motor sport hobby by multiple family members. However, the appellant has not provided any substantive details of the 'multiple uses' on the site and so it is not possible to determine whether the use was ancillary to some other use within the planning unit or a primary use in its own right, or whether this changed over time.
24. The appellant has provided a series of written statements to support his appeal. While I have no reason to doubt the authenticity of the statements, they do not include reference to a plan. Furthermore, it is not clear from either the appellant's submission or the statements what the character of the use was during the relevant periods. For example, a 'sworn statement' dated 6 October 2015, confirms that the individual worked for the Warner family and, after setting up their own business, dropped various vehicles off and collected vehicles on their recovery truck. This points towards the use being a commercial use, and not a hobby, as suggested by the appellant.
25. A photograph, stated to have been taken circa 1990-1992 shows a number of buildings which were stated to be used for car preparation. Given the number of cars visible within the site at that time, it seems unlikely that the use was limited to a hobby.
26. The appellant asserts that the Council knew about the historic use of the site for his hobby of preparing and driving rally cars and I note that the Council advise that it would be minded to grant a certificate should the appellant resubmit the application. However, were the appellant to resubmit the application, the date for determination would be the date that application is submitted, not October or November 2015.
27. Moreover, it would be wrong to grant an LDC if the matter in question is not lawful. There is a paucity of documentary evidence to show that the use continued throughout the relevant period, such that the Council could have taken enforcement action at any time.
28. For the reasons given above, I find that the appellant's evidence is not sufficiently precise and unambiguous and has not demonstrated, on the

balance of probabilities, that the use of the site for the fabrication of parts for use in the restoration of motor vehicles, repair of modern classic motor vehicles, was lawful at the date of the LDC application.

Conclusion

29. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use for the fabrication of parts for use in the restoration of motor vehicles, repair of modern classic motor vehicles 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.

M Savage

INSPECTOR