



Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 05 October 2022

Appeal Ref: APP/V2635/X/21/3276307

The Common, South Creake, Fakenham, Norfolk, NR21 9JB, 587900, 334433

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by South Creake Business Park Limited against the decision of King's Lynn and West Norfolk Borough Council.
 - The application ref 21/00337/LDE, dated 10 February 2021, was refused by notice dated 18 March 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 drainage pits and the storage of industrial machinery, vehicles (including lorries), trailers, straw, waste stone, soil and polythene.
-

Decision

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

Application for costs

2. The application for costs made by the appellant is the subject of a separate decision.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a certificate of lawfulness for the use of the appeal site for drainage pits and the storage of industrial machinery, vehicles (including lorries), trailers, straw, waste stone, soil and polythene was well-founded.
4. In this case the appellant needs to show on the balance of probability that there has been a continuous ten year period prior to the date of the application when the appeal site was used as described in the application, and that any such use has not been lost subsequently (e.g. by way of an intervening use, formation of a new planning unit or abandonment). It is for the appellant to provide sufficient information to support the LDC application. The planning merits of the alleged or any future development are not relevant.

Reasons

5. The appellant's case is that the appeal site was used in connection with carrot processing carried out at an adjoining site now known as Creake Business Park, between the years of 1986 and 2016. They say the drainage pits were used to drain excess water during the process, and that equipment used in the

- business was also stored on the site (i.e. machinery, lorries, trailers, straw and polythene).
6. The appellant is not arguing that the two sites formed one planning unit, and indeed they are not immediately adjoining and are physically separate from each other. The company ceased trading in 2016 and all waste, equipment, machinery and vehicles was removed from the site which has not been used for any other purpose since.
 7. The appellant has provided sworn evidence from the owner of the company and the former owner of the appeal site to support its case. There is a discrepancy in the evidence in that the owner of the land recalls that the lease arrangement began in the late 1980's, whereas the owner of the company states it was 1992. However, this difference is not significant and does not impact in the use of the appeal site during the dates which are closest in time to the application date.
 8. The Council refused the application because the appellant had demonstrated that the land was **not** being used as described on the date of the application. Indeed that is the appellant's case as they accept that the land has not been used for drainage or any other purpose since 2016. The Council have subsequently accepted that a dormant use can be sufficient to establish a lawful use. Whilst the correct legal test was not initially applied by the Council, the question to be determined in this appeal is not whether the Council's reason for refusal was well-founded, but whether the decision itself was well-founded.
 9. Planning Practice Guidance advises that the applicant is responsible for providing sufficient information to support an application. If a local planning authority has no evidence itself, nor from any 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.
 10. The appellants have submitted two statutory declarations to support the alleged use but there is other evidence which contradicts the continuous use as described in the application. The historical aerial photographs are shown dated 1999, 2004, 2006, 2009, 2015 and 2018. All of these photos, with the exception of the last one which is dated after the site was vacated by the carrot processing business, clearly show two drainage pits containing various amounts of water. It is also possible to see the track on the grassed area adjacent to the pits, and the area with the sump pit and concrete pad on some of the photos. However, nothing else stored on the appeal site is visible. It is evident from looking at the other properties shown in the photographs that vehicles, including cars, can be seen. The appeal site is a fairly uniform green colour with clearly delineated edges to the drainage pits and some trees and vegetation around the edges and across the middle of the site. Any man-made materials, or large storage mounds or materials other than vegetation would therefore be visible in the photographs. There is simply nothing shown stored within the appeal site in the photographs.

11. Whilst this does not mean that there were not occasions or periods when such materials were stored on the land, the number of photographs over a 16 year period during which time the business was in operation casts doubt on the argument that the appeal site was used as storage for a substantially uninterrupted period of 10 years. These photographs are only a snapshot of the time that they were actually taken but they do stretch over a considerable time period and consistently show the same thing i.e. that the drainage pits are clearly visible but there is no storage use. In addition, the appellant has not provided any detailed evidence about the level or dates of any storage on the site.
12. The photographs provided by the appellant show sluice gates, a sump pit and a concrete pad which formed part of the infrastructure associated with the drainage. On the appellant's own case none of this has been used since 2016 and the photographs show that it is heavily overgrown with vegetation. I accept that the sluice gates were used to catch waste products including carrots and larger stones, and that the sump pit allowed the silt and mud to settle. This is part of the drainage procedure and not a separate storage use.
13. There is also no evidence regarding the quantity of stone and waste product gathered as a result of the carrot processing, or whether it was subsequently moved off the appeal site. The amount shown on site today, notwithstanding that the business stopped operating in 2016, is de minimis and there is nothing before me to show that a larger quantity of waste stone and soil were produced that required storage in their own right (and no mounds are shown on the historic photos although the sump pit and infrastructure is visible in some of those photos). The infrastructure and associated waste stone and soil are part and parcel of the drainage use.
14. Written representations received from several local residents state that they recollect the site being used for the drainage pits but not for the storage of anything else. This is not sworn evidence, but does accord with the photographic evidence, and which taken together contradicts the appellant's case about the continuous use of the site for storage purposes.
15. Whilst the photographs and representations do not cover the whole period during which the appellant alleges the use, the application is not sufficiently precise and unambiguous regarding the dates of any storage use over a narrower 10 year time scale within the overall period. The appellant has therefore not proven a storage use over a 10 year period prior to the application date on the balance of probability, although it clearly has been proved in relation to the use for the drainage pits.
16. I will therefore modify the description of the existing use to use as drainage pits and the appellant has proven this use on balance for a continuous period of over 10 years prior to the making of the application. However, for the reasons as set out above the appellant has not proven the storage use elements of the description, and the Council's refusal in respect of this use was well-founded.

Conclusion

17. 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 as drainage pits only 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.

Zoë Franks

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 10 February 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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 continuous use as drainage pits has been proven for over 10 years prior to the date of the application.

Signed

Zoë Franks

Inspector

Date: [05 October 2022]

Reference: APP/V2635/X/21/3276307

First Schedule

Use as drainage pits.

Second Schedule

Land at The Common, South Creake, Fakenham, Norfolk, NR21 9JB, 587900, 334433

IMPORTANT NOTES – SEE OVER

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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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: [05 October 2022]

by Zoë Franks Solicitor

Land at: The Common, South Creake, Fakenham, Norfolk, NR21 9JB, 587900, 334433

Reference: APP/V2635/X/21/3276307

Scale: Not to Scale

