
Appeal Decision

Site visit made on 21 November 2022

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 12th JANUARY 2023

Appeal Ref: APP/Y9507/X/21/3272637

Land East of Pony Farm, Findon BN14 0RS

- 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 in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Peter Leach against the decision of South Downs National Park Authority.
 - The application Ref SDNP/19/04459/LDE, dated 12 September 2019, was refused in part by notice dated 20 December 2019.
 - 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 'the use of part of the property (including the buildings that have been erected on it) for the storage of building materials, plant and equipment (Use Class B8 as set out in the Town and Country Planning (Use Classes) Order 1987 (as amended))'.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application referred to in my banner heading also sought to confirm the lawfulness of operational development described as 'the creation of hardstanding across part of the property in 2006'. The Authority's decision notice as referenced above confirmed this operational development to be lawful. As such, this appeal relates only to the lawfulness of the use described in my banner heading above.

Main Issue

3. The main issue is whether the Authority's refusal in part to grant a lawful development certificate ('LDC') was well founded. This will turn upon whether the land has been used for the storage of building materials, plant and equipment since on or before 12 September 2009 and continued for ten years without significant interruption.
4. In seeking a LDC, the onus of proof is firmly on the appellant to demonstrate that the use claimed was lawful at the date of the application. The standard of proof is on the balance of probabilities. If there is no evidence to contradict or make the appellant's version of events less than probable, and their evidence alone is sufficiently precise and unambiguous, a LDC should be granted.

Reasons

5. The site of the claimed use relates to a roughly rectangular piece of land on which two buildings are sited – one in the north east corner and one in the north west, along with a hard surfaced area in front of and between these buildings. The appellant is also the owner of additional land to the south of the LDC appeal site.
6. Evidence from the appellant includes two statutory declarations - one is from the appellant who is the current owner and this seeks to evidence the claimed use from the period of his purchase of the property in 2016. The appellant also provides an Operations Statement setting out the details of types of items stored on site around the time of the LDC application, along with the frequency of visits to the site and vehicles used for transportation.
7. The other statutory declaration provided is from a former owner of the site who states that he was the freehold owner of the property between 2012 to 2016 but that the land was owned by his family from 1959. The former owner attests to the claimed storage use since his mother's ownership from 1990 up to his sale of the site. He states that the claimed storage use covered both open land and the buildings referred to above.
8. I acknowledge that the statutory declarations represent first hand evidence sworn on oath. However, even without taking into account the presence or absence of any contradictory evidence, the appellant's evidence is significantly lacking in precision as to the factual detail of the claimed storage use such as nature, quantities and location of materials over a claimed ten year period.
9. Whilst such detail is provided within the appellant's Operations Statement as outlined above, this appears to reflect only the position over a relatively short period leading up to and around the time of the LDC application. I acknowledge that many items referenced in the Operations Statement were referred to by an Inspector in a previous appeal¹ as being on site at the time of his site visit, and that these were recognised as building materials and not waste materials. The same Inspector also took the view that the Authority's case officer photographs from around 2016 to 2019 showed both building materials, plant and equipment and also building rubble/waste on the wider site. Further, photographs from the appellant show only the position around 24 September 2019. This additional evidence even together then covers a relatively short part of the required ten year period.
10. The Operations Statement clarifies that the 'amount and precise materials will change from time to time'. This does not though alter the fact that I have before me very little detailed factual information as to the materials stored other than over a relatively short period. Similarly, references in other planning application documentation over the years to the existing or 'established' use of the site being for the claimed storage use represent weak evidence, lacking in substantive factual detail.
11. The appellant also draws my attention to a comment by the Inspector in appeal decisions dating from 1996² that 'the lawful use of the land concerns the storage of materials placed there prior to 1988...' ³ in support of its position.

¹ Ref: APP/Y9507/C/20/3251190 ('2020 Appeal')

² Refs: APP/C/95/C3810/638181 and APP/C3810/A/95/252993 ('1996 Appeals')

³ See paragraph 9 of the 1996 Appeals decision letter

However, in my view and in the context of the relevant paragraph of the appeal decision and the subsequent paragraph, the Inspector was merely restating the appellant's submissions, rather than commenting upon the site's lawful use.

12. I acknowledge that the 1996 Appeals decision also makes reference⁴ to 'building materials' which were 'stored in piles on the hardstanding', but this reflects only the position on site at that time and therefore is of very limited assistance in demonstrating the required ten years' continuous use.
13. Thus, I find the evidence relied upon by the appellant to be sparse as to the factual detail of the use claimed over the required ten year period and so not sufficiently precise and unambiguous to justify the granting of a LDC.
14. As regards the Authority's evidence, I acknowledge that Google Earth photography submitted shows only the position at specific points in time and presents difficulties in terms of the quality of the photos as regards identifying what items can be seen on the land. Plainly, these photographs also cannot evidence what items may or may not have been stored in the buildings and would not show objects covered by vegetation.
15. Nonetheless, in the absence of detailed explanation from the appellant as to the images submitted by the Authority, these photographs do potentially draw into question whether there has been some interruption in the claimed use, with, for example, the 2018 image appearing to show the absence of any quantity of items in open air storage beyond a de minimis amount.
16. The appellant draws my attention to apparent discrepancies between evidence contained in a statutory declaration from an objector, and comments made by the same objector in a Design and Access Statement dating from 2013. The appellant also comments that the land has not, to their knowledge, ever been in equestrian use. These matters do not though alter the fact that the appellant's evidence is not sufficiently precise and unambiguous as to demonstrate ten years' continuous use on the balance of probability.
17. I acknowledge that the comment from my colleague Inspector at paragraph 17 of the 2020 Decision that he had 'no reasons to depart from the earlier LPA conclusion on the LDC application' did not represent an adjudication on the use claimed in this appeal. I note also that the Authority's decision was expressed as 'on balance'. Neither of these matters alter my assessment above.
18. For the reasons given above, I conclude that the Authority's refusal in part to grant a certificate of lawful use or development in respect of 'the use of part of the property (including the buildings that have been erected on it) for the storage of building materials, plant and equipment (Use Class B8 as set out in the Town and Country Planning (Use Classes) Order 1987 (as amended)' 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.

V Bond
INSPECTOR

⁴ At paragraph 6