



Appeal Decision

Site visit made on 24 January 2023

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 February 2023

Appeal Ref: APP/D1265/X/22/3308324

The Orchard, Fishers Place, Ringstead Bay, Dorset DT2 8NG

- 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 Johnnie Russell against the decision of Dorset Council.
 - The application Ref P/CLE/2022/00790, dated 4 February 2022, was refused by notice dated 30 August 2022.
 - 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: The use of Area A for storage (B8).
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Summary of Decision

1. The appeal is dismissed.

Preliminary Matters

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, as well as my site visit, and do not consider that injustice would arise.
3. Since the determination of the appeal application, the Council has issued certificates in respect of operational development at the site. My assessment will therefore be confined to the use of Area A only and which I have reflected in the banner heading above.

Main Issue

4. The main issue is whether the Council's refusal to grant a certificate of lawfulness is well founded.

Reasons

5. In matters such as this the onus is on the appellant to demonstrate his case on the balance of probabilities that a B8 storage use was the lawful use of the site, annotated as Area A on the submitted plans, on 4 February 2022, being the date of the appeal application. The site itself consists of a narrow strip of land and structures.
6. The parties agree that between 2005 and 2015 the site was in a B8 storage use. The Council then contends that from 2009 there were some ancillary

- repairs and sales of items, but this intensified from 2015 which is considered to have amounted to a material change of use to a mixed use for storage and sales.
7. The appellant refutes the notion of a mixed-use from 2015. The statutory declaration of Mrs Charles is silent in respect of the sales use, as indeed is the appellants. It however took specific questions to be raised about sales taking place from the site before some details were revealed. That response is then not in the form of a sworn document. Notwithstanding, even though there were then no set opening hours or items displaying prices, the fact a sign would invite people to come in when trading casts significant doubt in my mind that sales were merely ancillary to the storage use that has otherwise been agreed by the parties. Indeed, coupled with sales acknowledged as taking place for some years, it demonstrates a specific and continuous use which had permanence sufficient to change the character of the site.
 8. Furthermore, whilst the evidence of interested parties vary to some degree, and similarly are not sworn documents either, it adds further weight to my concerns that the sales use, which included the renovation and repair of items, was not merely ancillary to the storage use. Indeed, there are some detailed accounts of the items sold from the site and periods of opening, as well as recollection of cars and trailers parking in the road to collect items. This contrasts with the rather brief and ambiguous response provided on behalf of the appellant.
 9. I therefore do not accept that the sales were a relatively low-key use. That the sales were only seen to be a hobby has little bearing on whether it was a primary or ancillary land use, in the context of this planning unit, and thus whether a mixed use was taking place in planning terms.
 10. The appellant has therefore not demonstrated on the balance of probabilities that a new planning chapter did not arise from the sales taking place from the site, amounting to a mixed-use, as opposed being merely ancillary to a storage use.
 11. Whilst for the purposes of certification an assessment may not just be confined to the 10 years preceding the date of the appeal application, the appellant has failed to demonstrate on the balance of probabilities that there has not been a subsequent material change of use, being the mixed use described. The case law¹ cited by the appellant therefore does not assist him.
 12. Moreover, given the Council has not issued an enforcement notice against the mixed use, the appellant cannot avail himself of section 57(4) of the Act to revert to a previous use or to claim certification of that previous use. The Courts have recognised that this outcome might be anomalous but believed that it was the clear effect of the statutory provisions².
 13. It remains the case that the appellant's own evidence needs to be sufficiently precise and unambiguous to justify the grant of a certificate. As a matter of fact and degree, based upon the evidence before me, the appellant has not discharged the necessary burden of proof to demonstrate his case on the balance of probabilities.

¹ R (Ocado) v Islington LBC [2021] EWHC 1509 (Admin)

² Planning Encyclopedia (P57.08)

Conclusion

14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use 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.

Formal Decision

15. The appeal is dismissed.

Paul T Hocking

INSPECTOR