



Appeal Decision

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 February 2023

Appeal Ref: APP/N2739/X/22/3300121

Crystal Car Sales, 72 Ousegate, Selby, North Yorkshire YO8 4NJ

- 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 Ian Campey against the decision of Selby District Council.
 - The application Ref 2021/0709/CPE, dated 03 June 2021, was refused by notice dated 28 October 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 Change of Use from car parking area to Class A sui generis car sales area.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Having regard to the nature of the application, the matters in dispute and the evidence that has been presented I considered that it was unnecessary for me to visit the site in this case. Neither the appellant nor the Council have objected to the appeal proceeding on this basis.
3. I have taken the site address from the Council's decision notice as agreed on the appeal form.
4. For the avoidance of doubt the planning merits of the case, including whether there would be any economic benefits deriving from the use for which a certificate is sought and the argument that there are similar uses located nearby, are not before me for consideration in a case of this type.

Reasons

5. Uses and operations are lawful at any time if no enforcement action may be taken in respect of them, whether because they did not involve development, require planning permission or because the time for enforcement action has expired (s191(2)).
6. There is a further proviso that the development must not contravene the requirements of any enforcement notice then in force. I have not been told that there was any extant enforcement notice relating to the property at the time of this application.

7. In this case the appellant is relying on the argument that there has not been a breach of planning control. For completeness, I have also considered whether the development would be immune from enforcement action due to the passage of time. Accordingly it is necessary to consider whether, on the balance of probability, there has been a material change of use of the land requiring planning permission, and secondly whether the use of the site as a car sales area has continued for a period of ten years or more prior to the date of the application, therefore since at least 3 June 2011, so as to be immune from enforcement. The onus rests with the appellant to demonstrate their case on the balance of probability.
8. The Council has referred in its statement to the past uses of the site. It sets out that earliest records indicate a car sales showroom use to have been present there. This was followed by a furniture retail use from the early 1990s. The site was subsequently used as a nightclub / venue from about 2013/14 in association with the adjoining pub, before the main building on the site was demolished in January 2019.
9. Council tax records reveal that subsequent to the demolition the vacated site was utilised as a car park for around 2 years. Latterly the site has been used for car sales, the appellant's application form indicating that this use commenced in March 2021. The appellant does not dispute the aforementioned planning history of the site and I have no reason to take a contrary view.
10. In terms of whether the car sales use represented a material change of use it is undisputed that there would have been no use of the site prior to the aforementioned demolition works that would assist the appellant's case in this regard. Again I have no reason to take a contrary view.
11. The appellant's case, in essence, is that both car sales and the former car parking uses would be classified as 'sui generis' land uses, and that accordingly there has not been a material change of use. 'Sui generis' is a Latin term that translates as: 'of its own kind'. In a planning context, the term is used to describe a use that does not fall within any of the collective use classes specified in Schedules 1 or 2 of the Use Class Order¹ (UCO). Therefore, it is incorrect to interpret 'sui generis' as an individual use class of its own. Rather it describes a variety of unique uses with material characteristics that distinguish them from the broad classes specified in the UCO.
12. Notwithstanding this it is still necessary for me to consider whether a specific change of use from car parking to car sales would be material. For a material change of use to have occurred, there must be some significant difference in the character of the activities from what has gone on previously, as a matter of fact and degree. It seems to me that the change from use as a car park to a car sales compound would be noticeable by way of a reduction in the frequency of vehicles entering and leaving the site; also potentially in terms of the site appearing to be occupied by vehicles at all hours, and also by the type of signage and advertising deployed.
13. Irrespective of whether the change would or would not result in more positive impacts on the surrounding area, I am in no doubt that the change of use would be noticeable and therefore significant and material. Accordingly

¹ The Town and Country Planning (Use Classes) Order 1987, as amended

planning permission would be required to change from a car parking use to a car sales use.

14. Notwithstanding this, even if it could be successfully argued that there was not a material change of use between the two, there is no suggestion that the car parking use was granted planning permission or did not need permission. It would therefore still be necessary to demonstrate, on the balance of probability, that the car sales and parking uses had continued on the site, without any material break, for at least a 10-year period in order to demonstrate that the use had become lawful through the passage of time. Reference to the Council's undisputed records above shows that the car sales use (for which the certificate is sought), when considered either in isolation or together with the previous car parking use, has not continued for the requisite 10-year immunity period. Furthermore I am in no doubt, with reference to the aforementioned undisputed records, that a material break occurred in the use of the land between the original and present car sales uses, for example because of the intervening furniture retail use.
15. I am mindful that planning practice guidance states *"In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from 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."* Given the Council's undisputed contradictory evidence, on the balance of probability the appellant's case falls significantly short of being able to demonstrate continuous use of the land in question over the requisite timescale.
16. Therefore, for the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of Change of Use from car parking area to Class A sui generis car sales area 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.

R Merrett

INSPECTOR