



Appeal Decision

Site visit made on 1 March 2023

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2ND MAY 2023

Appeal Ref: APP/J0405/X/21/3285955

Land at Normills Yard, Aylesbury Road, Aston Clinton HP22 5AG

- 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 Mr Derek Spittles of Derek Spittles Engineering against the decision of Buckinghamshire Council.
 - The application ref 21/03272/ACL, dated 13 August 2021, was refused by notice dated 19 October 2021.
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
 - The failure to comply with any condition or limitation for which a certificate of lawful use or development is sought is described in the application form as: for the existing general industrial class B2 use of engineering workshop, in breach of condition number 10 of planning permission reference 09/01145/APP, which was granted upon appeal on 15 October 2010 (appeal reference APP/J0405/A/10/2120060/NWF), for the erection of a building for use as an engineering workshop and for storage.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Derek Spittles of Derek Spittles Engineering against Buckinghamshire Council. This application is the subject of a separate decision.

Procedural Matters

3. The appellant has raised a number of procedural matters, some of which will be considered later in this decision. Whilst I note the appellant's comments with regard to the introductory paragraph of the decision notice, it would be unreasonable to read the decision notice in any way other than that the Council has refused to grant a LDC for the development listed in the first schedule.
4. As for the description of the development, my determination of the appeal will be based on the description of the development given in the application form for which the LDC was sought. That the Council has used a slightly varied description in the decision notice is of no consequence to my determination of the appeal. Neither is the error in the post code for the application site given in the decision notice. The decision notice clearly relates to the appeal site. Nevertheless, I have used the address given in the LDC application form.
5. Whilst the details of the application in the planning register may be incorrect, this is a matter that is not within the remit of this appeal and is of no consequence to the determination of this appeal.

6. The appellant has referred to the Council's consultation of the Parish Council during the application stage and suggests that it was not consulted on the appeal. Whilst this may be the case, there is no statutory requirement to consult such parties in this appeal.

Main Issue

7. Section 191(4) of The Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. The main issue is whether the Council's decision to refuse to grant a LDC was well founded.

Background and Main Considerations

8. Planning permission was granted at appeal on 15 October 2010¹ for 'the erection of a building for a use as an engineering workshop and for storage' on land identified on the plan attached to the appeals decision. The land to which those appeals relate is the same as that subject of the appeal before me.
9. Condition 10 of the permission granted states as follows:

'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) the building shown hatched black on the plan annexed to this decision shall only be used as an agricultural engineering workshop and for no other purpose (including any other purpose in Class B2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).'
10. I will hereafter refer to this condition as 'Condition 10'.
11. I note the parties' submissions with regard to what must be demonstrated in order for the appeal to succeed. To be clear, the appellant must demonstrate that on the date the LDC application was made (i.e. the relevant date in this case), the building in question had been continuously used for a period of ten years or more in breach of Condition 10. The relevant time limits in this case are those set out in section 171B(3) of the 1990 Act.
12. Condition 10 requires that the building shall only be used as an agricultural engineering workshop and for no other purpose. There is no dispute that the building has been used in breach of Condition 10. The main consideration in this case is, therefore, whether or not the use of the building for a purpose other than as an agricultural engineering workshop has been continuous for a period of 10 years beginning with the date of the breach.
13. For the avoidance of doubt, whilst I note the appellant suggests that 'no agricultural engineering' has taken place in the workshop since 1 May 2011, it would be of no consequence if it had. What is important is whether or not the

¹ Appeals reference APP/J0405/C/10/2122481 and APP/J0405/A/10/2120060.

appellant is able to demonstrate that the building has been used continuously for 10 years or more for a purpose other than as an agricultural engineering workshop. This is regardless of whether or not the other purpose to which the building has been put is in addition to, or instead of, the permitted agricultural engineering purpose.

14. The burden of proof is on the appellant, and the test of the evidence is the balance of probabilities. Paragraph 006 of the Planning Practice Guidance document on Lawful development certificates advises that, 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.

Reasons

15. I start with the previous appeal decision. The appellant in that case is the same as the appellant in the case before me. In her appeal decision the previous Inspector records the evidence of the appellant, which is of the use of the site for an agricultural engineering business operated from the site since 11 August 1999. Whilst there is reference to other businesses being run from the site in the fields of general engineering, building maintenance and welding, the Inspector says that this was prior to the 1999 date. The decision notice records the appellant's account of his agricultural engineering business as the preparation, fabrication and alteration to steelwork. Also, the erection and repair of agricultural buildings. The Inspector says that the building has been used on a daily basis for both storage and as a workshop. In giving her reasons for the imposition of Condition 10, the Inspector says that the appellant did not object and that the condition 'reflects the manner in which the business has historically operated'.
16. In the evidence before me the appellant does not dispute any of the above, including how the building was used at the time of the previous appeal. However, in his statutory declaration he says 'no agricultural engineering has taken place in the workshop since 1 May 2011', which is almost 5 months after the date of the previous appeal decision. He says that at that time he was 'solely running his other general industrial businesses from the workshop'.
17. In this case it is important to understand the nature, type and purpose of these other general industrial businesses. Clarity in this matter is important for the following reasons.
18. The permission granted at appeal was for the erection of a building for a use as an engineering workshop and for storage. Condition 10 limits the use of the building to an agricultural engineering workshop and for no other purpose. The 'other purpose' claimed by the appellant in this case is a use that is consistent with the description of the building (i.e. an engineering workshop) permitted by the previous Inspector. Indeed, a use as an engineering workshop and a use as an agricultural engineering workshop are likely to fall within the same use Class, which is Class B2 (General Industrial) of Part B, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended. The difference between these two uses is brought about in this case by the condition. There is, therefore, no need for me to find that there is a material difference between the use of the building as an agricultural engineering workshop and the use of

the building as a general industrial/engineering workshop. Indeed, it may well be the case that there is no material difference between the two. Instead, I must be satisfied that the general industrial/engineering activities that the appellant relies on in order to demonstrate that the breach of Condition 10 is lawful are for some purpose other than for agriculture.

19. With this in mind, I turn to the appellant's evidence. The appellant refers in his LDC application form and at various points to a 'general industrial' use, a 'general engineering workshop', 'general engineering, welding and steelwork businesses', and 'heavy vehicle engineering'. The appellant's statutory declaration is briefly stated. Other than reference to the cessation of agricultural engineering in the building in May 2011, the appellant states that 'my employees and myself have used the workshop building for general industrial engineering business'. He goes no further than to refer to the activity in the building in the most general terms and makes no comment with regard to the continuity of these activities over the 10 year period claimed.
20. I find these descriptions of how the building has been used since May 2011 to be particularly vague. There is very little explanation of what is meant by these general descriptions. I agree that the appellant is best placed to provide evidence of how the building has been used for the relevant 10 year period. However, the evidence before me lacks sufficient detail to describe the activities the appellant has carried out at the site since May 2011, including details of the type and purpose of items manufactured and/or engineered within the building over the relevant 10 year period. Neither does the evidence refer in sufficient detail to the type of customers of the business since May 2011, such that I could conclude that the items engineered or manufactured in the building since that time were for a purpose other than agriculture. Additional detail of the type of activity taking place in the building and evidence of it taking place continuously over the course of the relevant 10 year period is important to demonstrate the continuity of the breach.
21. I note the appellant's reference to the provision of a three-phase electricity supply to the site and the suggestion that this marks the start of heavy engineering work taking place in the workshop. I acknowledge that this demonstrates a shift in the type of activity undertaken at the site; that more of the appellant's work was carried out at the site, rather than at his clients' premises. Indeed, I note the list of machinery for which the electricity supply is sought. However, this is of limited assistance in this case without an understanding of the use to which the machinery was put. For example, the type of items worked on or made using this machinery and the purpose of those items.
22. In his appeal statement the appellant refers to 'heavy vehicle engineering', but does not say the purpose of these vehicles. The description of 'heavy vehicles' could clearly apply to vehicles used in agriculture, such as tractors, diggers, etc. This evidence does not, therefore, demonstrate that the work the appellant carried out at the site to these vehicles was more likely than not for purposes other than agriculture.
23. The photographs taken in 2015² provide limited support of the appellant's case. They show only a moment in the relevant 10 year period and show only land to the front of the building. Furthermore, the detail in these photographs is so

² The appellant's appendix W.

limited that I cannot conclude that they demonstrate no evidence of agricultural engineering taking place within the building, as suggested by the appellant.

24. The declaration of Yvonne Mary Spittles is also briefly stated. It refers to the self-assessment tax returns that she has completed for 'Derek Spittles Engineering'. The appellant has emphasised the importance of the name and description given for the business since May 2011 in referring to the extracts of the on-line advertisements. He says that when undertaking agricultural engineering activities, he advertises his business as 'Derek Spittles Agricultural Engineering'. The suggestion is, therefore, that the lack of reference to an **agricultural** engineering business since 2011 supports his case that the building has not been used for these purposes.
25. This is not, however, entirely consistent with the evidence considered in the previous appeal. Paragraph 19 of the appeal decision refers to the evidence of Yvonne Spittles' regarding the use of the building and/or site 'from 11 August 1999 to the present time', which we know is a period when the principal use of the site was for agricultural engineering. However, the Inspector records that Yvonne Spittles' evidence about this period of the site is with reference to 'Derek Spittles Engineering Services', rather than to an agricultural engineering service or business.
26. Notwithstanding the above, the name of the appellant's business and how his services have been advertised since May 2011 provides limited assistance in demonstrating that, on the balance of probability, the activities at the site were for purposes other than for agriculture, as suggested by the appellant. This is not least because the permitted activity in the building also involves engineering services, such as welding. Furthermore, if it is the case that there is a marked shift in how the appellant's business was advertised in May 2011, I have no evidence of how his business at the appeal site was previously advertised in order for me to make an informed comparison.
27. With regard to the property valuation³, there is no evidence that the author of the valuation report has an intimate knowledge of the site, such that I could conclude that his description of the use of the building is from his own observations during the history of the use of the building, rather than from what he has been told for the purposes of a property valuation. Indeed, there is little evidence in the report of any research of the planning history for the site which might have provided a context to his description of the use of the building, such that it would be of more assistance for the purposes of this appeal.
28. The officer's report for the LDC application subject of this appeal suggests that the support of the Parish Council is stated verbatim. Whilst this support is noted, it is of little assistance in demonstrating the lawfulness of the breach of Condition 10. Similarly, the business rates valuation for the building way well be greater than other comparable premises with an unfettered use. This does not, however, assist in demonstrating the actual use of the appeal building during the relevant period.
29. The appellant points to the visit to the site by the planning enforcement officer in 2011. Whilst he suggests that a breach of Condition 10 was taking place at

³ The appellant's appendix X.

the time of the visit, there is no evidence to confirm that this was observed by the officer. Nevertheless, the Council do not make the case that there has never been a breach of Condition 10. Even if the officer observed a breach at the time of their visit, this would have been towards the start of the 10 year period claimed. This single visit is not, therefore, sufficient to demonstrate the continuity of the breach since that time.

30. I note the other decisions that have been drawn to my attention. However, I have not been provided with all the evidence that was before the decision maker in those cases. I am, therefore, unable to make an informed comparison with those cases and that before me. Notwithstanding this, the principal matters considered in those cases related to a material change of use of the land. As I have already indicated above, this is not a consideration in the case before me. Nevertheless, I have determined this appeal on the basis of the evidence before me and having regard to the relevant judicial authority.
31. I note the Council's concerns regarding the statutory declarations provided. In view of my conclusions with regard to the evidence they contain, whether or not these have been provided in accordance with the relevant legislation is of no consequence to my determination of the appeal.
32. I acknowledge that there is little evidence from the Council or any party to contradict the appellant's version of events in this case. However, I am not satisfied that he has discharged the burden that is upon him. The appellant's evidence lacks the detail I have referred to above, which might demonstrate the actual use of the building over the relevant period in breach of Condition 10. I consider such detailed evidence to be necessary in this case, having regard to the condition in question, the permitted use of the building, and the use of the building relied on by the applicant to demonstrate the lawfulness of the breach. Accordingly, I do not find the appellant's evidence to be sufficiently precise and unambiguous to demonstrate that, on the balance of probability, the building has been continuously used for a period of 10 years or more in breach of Condition 10.

Conclusion

33. 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 existing general industrial class B2 use of engineering workshop, in breach of condition number 10 of planning permission reference 09/01145/APP, which was granted upon appeal on 15 October 2010 (appeal reference APP/J0405/A/10/2120060/NWF), for the erection of a building for use as an engineering workshop and for storage 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.

J Moss

INSPECTOR