



Appeal Decision

Site visit made on 8 August 2023

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2023

Appeal Ref: APP/P0119/X/23/3320141

Sturden Lodge, Hambrook, Bristol, BS16 1SQ

- 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 Anquale Ltd against the decision of South Gloucestershire Council.
 - The application ref P22/05669/CLE, dated 23 September 2022, was refused by notice dated 8 February 2023.
 - 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 use as outdoor storage area including siting of a metal storage container.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Initially this appeal was scheduled for an Inquiry but following a Case Management Conference on 10 July it was agreed by the main parties that it could be acceptably dealt with by written representations and by an accompanied site visit.

Main Issue

3. The main issue is whether the Council's refusal to issue an LDC for the use of the land as outdoor storage area (Class B8) including siting of a metal storage container was well founded.

Reasons

4. Under s191(1)(a) of the 1990 Act, any person who wishes to ascertain whether any existing use of buildings or other land is lawful may make an application for the purpose to the local planning authority specifying the land and describing the use. S191(2)(a) of the 1990 Act specifies that for the purposes of the Act, uses and operations are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason).
5. The time limit relevant for taking enforcement action under s171B(3) of the 1990 Act regarding the use of buildings or other land is the end of ten years beginning with the date of the breach. The ground under which the appellant applied for the LDC was that the use began more than ten years before the date of the application, which would be 23 September 2022 in this case, and has continued since at least that date to the present time. The burden of proof

- falls squarely on the appellant to demonstrate that conclusively, on the balance of probabilities.
6. The use for which an LDC is being sought is the use of the land as outdoor storage area including siting of a metal storage container, albeit the Council on the refusal notice has described it as for Class B8 (storage) including the metal storage container. In terms of the circumstances here the difference in description is not important because, as a matter of fact, the appellant is using the land now for outdoor storage in connection with its business.
 7. The substantive evidence provided by the appellant is in the form of six statutory declarations, signed by a Company Director and the Company Secretary (Mr & Mrs Mattravers), three employees and a self-employed carpenter who has carried out regular work for it since 1990 (sic). The Company Director and Secretary state in their declarations that they set up Anquale Ltd in 1992 and remain in their company posts now.
 8. The Company provides demolition and related services, principally inside buildings, which often requires cutting precision holes for internal works in concrete structures with diamond-tipped sawing blades on heavy drilling or sawing machines. Two of the three employees have been employed continuously since 1999 and 2001 respectively, one as a drilling technician and qualified digger driver. The third was employed from 1998 to 2012, when he retired, as a drilling technician.
 9. These declarations refer to three Google Earth (aerial) photographs named JR1-3. The declarations all say the same, except for that of the employee who retired in 2012, who makes no mention of what happened on the land after December 2009 and doesn't refer to photo JR3, which the other declarations state show the land in July 2013.
 10. The land, the appeal site, comprises a former small stone quarry and the access track leading south to it from Bristol Road, the access point onto the road being immediately south of the tall viaduct carrying the main railway line. This is a small part of the wider site (circa 1.9ha) controlled by the Mattravers family and lies roughly in the middle of their landholding, this wider site comprising a squashed triangle shape with the viaduct to the north, Bradley Brook to the west, Bristol Road to the east and a southern fence line through which an access flows to the houses on the lower part of the site.
 11. It is this wider landholding that was the subject of the enforcement notice issued on 19 March 2019, which alleges operational development for the erection of a B8 storage building, the laying of hardstanding and the siting of the metal storage container on the appeal site, all still currently present on the land. The notice required the demolition of the storage building, removal of the hardstanding and metal container and the return of the land to its condition prior to the breach taking place, albeit the requirement to remove the metal storage container was waived under powers granted by section 173A (1)(b) of the Act on 8 July 2021. The notice was upheld on appeal in 2020, subject to the compliance period being raised from 9 to 12 months.¹ In that appeal the Inspector says: 'The appellant states that the appeal site is in a mixed use of C3 residential, B1 business and B8 storage that has existed for over 25 years.'²

¹ APP/P0119/C/19/3227019

² Ibid paragraph 18

12. In principle the appeal site – the former quarry and its vehicular access – could have a separate and discrete open storage use. But to do so it would need to comprise a separate planning unit. Clearly it doesn't because, as I was able to see during my site visit, many of Anquale's vehicles (mechanical diggers and breakers of various kinds) are stored on the concrete yard next to Mr & Mrs Mattravers's house at the higher level or in the underground storage accessed down a ramp from this higher level where the business's repair workshop is situated.
13. In other words, the wider site, encompassing both the appeal site and these facilities, as well as Mr & Mrs Mattravers's house, the dwellings occupied by their son and daughter and their families on the lower level, and any office space associated with the business, are part of the mixed C3, B1 (now Class E) and B8 use as described by the appellant at the enforcement appeal. There clearly isn't a separate planning unit because the business has used for many years and still uses various parts of the site and is run by the Mattravers family who also live on the wider site.
14. The onus is on the appellant to evidence any 10-year continuous period of the appeal site itself being used for open B8 storage prior to the date of the application. The reference in the statutory declarations to a single Kobelco Digger in photo JR1 (in July 2005) is of itself insufficient to evidence that the appeal site was separately used for B8 open storage – the mere parking of this vehicle here does not amount to a material change of use. That is even if JR1 shows such a digger. Due to the photo's small scale and resolution and distance from the quarry site, which is predominantly shielded with tree foliage, I cannot make out anything in particular and certainly no digger on the site.
15. Photo JR2 (allegedly dated December 2009) shows a larger quarry site, implying that some of the trees might have been cleared. The appellant claims that this photo shows the digger within the storage area and the metal container in the yard area. But again, due to the photo's scale, resolution and distance away from the site, I disagree that it shows anything at all stored on the quarry site.
16. Photo JR3 (allegedly dated July 2013) shows something stored there but it is impossible to say what it is. It would seem that this is the same photo referred to by the enforcement appeal Inspector in paragraph 6 of his decision: 'That image dated 13 July 2013 appears to show two features that do not appear on the earlier aerial photographs....One of the features might be a container with what could be a tank on its roof but it is too indistinct and ambiguous to confirm with the required degree of certainty what the feature actually is.' Whether or not JR3 is the same photo as that photo, it is very unclear what JR3 shows for the same reasons – because what it shows is indistinct and ambiguous.
17. In conclusion, photos JR1-3 do not conclusively show any B8 storage occurring on the appeal site between June 2005 and July 2013 and there are no other aerial photos provided since that date that evidence such continuous use to the date of the LDC application on 23 September 2022.
18. Regardless of the aerial photos, the appellant points out that the statutory declarations all state (in their paragraphs 2 and 4) that the quarry was used by the company to store large machinery including the Kobelco digger purchased

in 2001 and for outside storage from 2009 onwards and that the Council has nothing to refute this declaration. The Council's three photos of the quarry rockface on 13 and 29 September 2010 show: nothing, a few random bits of metal and piping, and a small digger and what appear to be a pile of boarding respectively – insubstantial evidence of a discrete B8 open storage use – although I accept that the large machinery could have been absent from the site during the working day.

19. However, in summary, the evidence in support of a distinct B8 use before 2013 is clearly insufficient and there is no evidence of a continued use after July 2013 apart from when the green-clad storage building was erected and the hardstanding laid in the last five years or so, as attacked by the enforcement notice.
20. In any case, for the reasons I set out above, it seems clear to me that the wider site in the Mattravers family ownership still operates as a single mixed use planning unit and consequently no discrete B8 open storage use exists on the appeal site, even though much B8 storage obviously now takes place there. The increased activity in the quarry within the last five years or so has occurred significantly less than for a continuous 10-year period needed to establish a distinct B8 open storage use, even if it was deigned to be such a discrete B8 use. Equally, although the Council does not now seek the removal of the metal storage container from the land, given its waiving of that requirement from the enforcement notice, that does not in itself confirm the lawfulness of a separate B8 open storage use on the appeal site.

Conclusion

21. For the reasons given above I conclude that the Council's refusal 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.

Nick Fagan

INSPECTOR