



Appeal Decision

Site visit made on 25 July 2023

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2023

Appeal Ref: APP/C2741/X/22/3311380

Land to the east of Usher Lane and to the north of Usher Road, Usher Lane, Haxby, York YO32 3RX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr M Lambert against the decision of City of York Council.
 - The application ref 22/00981/CPU, dated 9 May 2022, was refused by notice dated 19 July 2022.
 - The application was made under section 192(1)(a) of the Act.
 - The use for which a LDC is sought is for proposed use of land as car park to serve allotments.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse a LDC was well founded. This turns on whether the proposed use of the appeal site as a car park to serve adjacent allotments would not involve development, so as to be lawful.

Reasons

3. Section 191(2)(a) of the Act provides that 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.
4. The burden of proof is on the appellant and the relevant test of the evidence is the 'balance of probability'.
5. The appellant's case is that the appeal site and the allotments are together a single planning unit, previously used for agriculture (with the proposed parking area previously used for incidental parking of agricultural vehicles). He argues the proposed use for parking vehicles by allotment users would not involve development requiring planning permission within section 55 of the Act because such use would be incidental or ancillary to the allotment use. Hence, there would be no material change of use from agricultural use.
6. Uses such as parking may be ancillary or incidental in some cases but could be primary uses in others. Whether a use should be regarded as incidental is a matter of fact and degree, but the incidental link or relationship must be maintained. The scale of the use can also be relevant.

7. There are 42 individual allotments which would be served by the proposed parking area. The appellant states the parking area would be used by allotment users for purposes such as transporting allotment produce and goods, for example fertilisers, gardening equipment, and the like. Space would also be needed should emergency vehicles need to attend the site. I accept that parking activity can be ancillary or incidental to other main primary uses, including for allotments. However, as set out earlier, the scale of the use is also a relevant factor. I turn to this next.
8. In terms of scale, the appeal site is approximately 987sqm (21 metres by 47 metres) which the Council indicate could allow for parking of 20 vehicles. The appellant has not indicated how many parking spaces would be available on the site. Whilst the Council say it could accommodate 20 spaces it is clear from my observations that 987sqm area could accommodate substantially more. As such, the area to be used for parking use in conjunction with the allotments would be grossly out of scale and disproportionate, both functionally and physically, to the primary use of the land for agriculture. Hence, the parking use would not be ancillary or incidental.
9. The appellant compares the proposed use with agricultural vehicles parked or stored on a farm and refers also to other planning decisions. However, the relationship of parking/storage with agricultural use, and whether such a relationship is ancillary or incidental, is dependent upon the particular facts and circumstances of each individual case. Although the planning decisions referred to support the view that parking can have a functional relationship with allotments, they all relate to instances where planning permission was required.
10. Having regard to all the evidence before me, I find overall on the balance of probability that the area to be used for parking in conjunction with the allotments would be greatly out of scale, both functionally and physically, in terms of serving the primary use of the land for agriculture. As such, the parking use would not be ancillary or incidental, it would instead constitute a material change of use of the land from agriculture to a primary use for parking.

Conclusion

11. For the reasons given above I conclude that the Council's refusal to grant a LDC in respect of a proposed use of land as car park to serve allotments was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

Chris Baxter

INSPECTOR