



Appeal Decision

Site visit made on 3 October 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 10 November 2023

Appeal Ref: APP/J1860/X/23/3321746

Land adjacent Pattann, Vehicle Repair Workshop, Wadborough Road, Kempsey, Worcester WR5 3QH

- 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.
 - The appeal is made by Mr Charles Morris against the decision of Malvern Hills District Council.
 - The application ref 21/01338/CLE, dated 8 July 2021, was refused by notice dated 5 August 2022.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the Act)
 - The use for which a certificate of lawful use or development is sought is for the established use of a vehicle repair workshop adjacent to Pattann Bungalow which has been in the same use since 1959. The submitted plans show the boundaries of the workshop site.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Charles Morris against Malvern Hills District Council. This is the subject of a separate decision.

Preliminary Matters

3. An application under Section 191(1)(a) of the Act seeks to establish whether any existing use of buildings or other land is lawful at the time of the application, that is 8 July 2021. Section 191(2) sets out that uses and operations are lawful at any time if: a) no enforcement action may 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); and b) they do not constitute a contravention of any enforcement notice then in force.
4. A certificate of lawful use or development (LDC) is not an application for planning permission and the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the facts and on relevant planning law. The standard for the evidence is one of a balance of probabilities.
5. The application for the LDC at section 4 'description of use, building works or activity' lists the use as B1(c)¹ light industrial. However, it is normally accepted that vehicle repair uses fall within Use Class B2 General Industry, that is a use

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

for the carrying on of an industrial process other than one falling within the uses described in Class E, because of their propensity to harm the amenity of any residential area.

Main Issue

6. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether the appellant can show that the lawful use sought occurred at least 10 years before the date of the application and that use continued without significant interruption thereafter so as to be immune from enforcement action in accordance with s171B(3) of the Act.

Reasons

7. The appeal relates to a site which measures approximately 0.03 hectares and is located on the edge of the village. There is direct access from the public highway via metal gates. Separated from the site and located to one side is a bungalow, "Pattann" which, up until 2015, was in the same ownership as the appeal site. The site is further surrounded by agricultural land. A tall, flat-roof rudimentary building of timber structure, clad with metal corrugated sheeting is located towards the rear of the site. The front of the building has two large doors for vehicular access and there is a pedestrian door on the side elevation. Internally, the building has a concrete floor and electricity is said to be supplied by a generator. There appears to be evidence of an inspection pit, now filled in, part of a hoist and a work bench with a vice.
8. Climbing vegetation clings to the side and rear of the building and some vegetation has grown through gaps to the inside. Apart from a few pieces of office equipment and other materials littering the space, there was no indication that the workshop was currently occupied or being used. To the side of the workshop is a small unit which is annotated on the application plan as an office. To the front of the workshop is a concrete apron which extends to the site access. The remaining land within the site is surfaced with scalplings, rough vegetation and there was a large pile of rubbish containing mostly building materials to one side of the yard.

The evidence

9. The timeline supplied by the appellant in an email dated 30 April 2021, some of which is declared in a Statutory Declaration (SD) dated 25 January 2023, sets out that the land was bought in 1955 by Eric Morris, the appellant's father, and the adjoining bungalow was built soon after. From the late 1950s to 1973 Eric Morris operated the transport company, Morris and Hinton Transport, and ran an increasing number of lorries from the site until he purchased a larger site in Pershore to which he moved most of the fleet. From 1973 onwards the site continued as a satellite depot. Some lorries and trailers were kept at the appeal site as a 'spill over' until the mid-1980s when the business was sold and Eric Morris semi-retired. This is corroborated by Dianne Morris, Eric Morris' widow in her SD dated 25 January 2023 and in a letter dated 18 May 2021 from Pat Butler, Eric Morris' daughter who adds that from 1973 until around 1984 the yard was used by local drivers to park their lorries overnight.
10. An email dated 20 May 2021 from Eric Morris' accountant from 1968 to 2012 confirms that the site was used by the haulage company until it transferred to Pershore in the early 1970s. A business base was retained at the appeal site to

facilitate vehicle parking and maintenance facilities for local drivers and mechanics.

11. Following his retirement in the mid-1980s from Morris and Hinton Transport Ltd, Eric Morris ran two vehicles from the appeal site for Winstanley and Co, two days a week until the early 1990s. The appellant says that he himself ran a 7.5 ton four wheeler from the appeal site between 1986 until 1992. He also claims to have continued to use the workshop on an 'ad hock' basis for repairing and welding kit throughout the period (although this is not qualified, I take this to mean since the mid-1980s when he began to operate from the site).
12. A SD dated 25 January 2023 from Nicholas John Matthews confirms that his late father John William Matthews worked as a vehicle mechanic for Eric Morris at the site from 1961 to 1973 and from 1973 until 1985 part time. Adrian Chipps email dated 7 December 2021 confirms the use of the site for a transport company from the 1950s to the mid-1970s and afterwards as a site where lorries belonging to local drivers were parked and serviced until the mid-1980s. After that time, Charles Morris used the site as a base until 1993. This is supported in a letter from D Smith dated 3 December 2021, in an email from Christopher Sadler dated 8 December 2021 and a letter dated 18 May 2021, from Wayne Barnes. It is said that Eric Morris allowed locals to use the inspection pit in the workshop to do repairs to their vehicles and for storage until Eric Morris' death in 2013. It is also noted that the Morris family continued to use the property for storing and servicing plant and machinery up until it was let in 2020.
13. David Smith, whose family are said to have farmed land opposite the site since the 1950s confirms in a SD dated 25 January 2023 that Eric Morris ran the transport company with a vehicle repair workshop full time from the late 1950s to the early 1970s. Vehicle repairs continued from the site until the 1980s. He states that it is general knowledge that Charles Morris used the yard for servicing and repairs, running his own lorries from the site until 1992. Eric Morris continued to let out the workshop for vehicle repairs when needed, until he passed away in 2013. The writer confirms that he has made use of the workshop, pit and hoist over the years.
14. A letter from Mr J Pullin, dated 6 December 2021, states that he worked for B J Commercials servicing vehicles for local transport companies, including Mr C A Morris who was a customer between 1989 and 1993. He states that the appeal site was a commercial transport yard and workshop from where the vehicles were collected.
15. It is claimed by the appellant that from the mid-1980s to around mid-2000, the workshop was also used by a third party to service cars on an 'ad hock' basis, sometimes every week and sometimes once every couple of months. In addition to the use of the workshop for vehicle repairs and maintenance, it is also claimed by the appellant that through the 1990s and 2000s, Alan Wood kept equipment and kit at the site. 'Equipment' and 'kit' is not defined by the appellant; however, I note from a letter signed by Alan Wood of Ansan Construction that his company rented part of the workshop and yard area from Eric Morris from July 1983 to approximately 2001. Furthermore, Pat Butler describes Alan Wood as a 'local builder' who used the site to store plant and

- machinery. Thus, it seems to me that 'kit' is likely to refer to materials and or equipment used in the building trade.
16. The appellant maintains that from the mid-2000s until the mid-2010s his two nephews kept and serviced 'cold store' equipment at the appeal site, occasionally storing equipment in the workshop. This is clarified in a letter dated 18 May 2021 from Steven Butler, Director SMB Coldstores Ltd (Insulation Engineers), that from November 2001 to July 2015, plant and machinery was 'periodically' stored at the yard. This is said to mainly consist of a large Moffatt Combi Forklift and various materials such as insulating panels used in the construction of cold rooms. Occasional use was made of the workshop to make minor repairs to the forklift and to work on company vehicles. No rental payments were made because of the family connection.
 17. Eric Morris passed away in 2013 and it is said that for about a year or so there was not much movement, which I take to mean 'use' of the site. Planning permission (ref: 14/00887/FUL Erection of 4 bedroomed dwelling) was sought and refused for a house to replace the workshop on the appeal site. I note a further application was unsuccessful in 2016 (ref: 16/00008/FUL 1 No. 4 bed house). This was the subject of an unsuccessful appeal² which described the site as including 'a disused box like utilitarian workshop made of sheet metal'.
 18. The appellant's appeal submissions have also included photographs said to have been taken in 1959, 1960, 1969, 1971, 1973 and circa 1986-1992. These show commercial vehicles parked at the site but not in the process of being maintained. The photograph said to have been taken in 2021 shows a car with its bonnet open in the workshop and elements of vehicle parts, including tyres and oil containers to the side. A street image from Google Maps dated 2009 also provided by the appellant shows land devoid of any activity.
 19. Gathering all the evidence together, it seems to me that Morris and Hinton Transport, the business operating from the site between 1959 and 1973, was primarily a haulage business which operated a fleet of trucks. Although it is likely that there would have been some form of maintenance provided on site, from the evidence provided, this is likely to have been ancillary to the primary haulage use. For planning purposes, the use of the site as a haulage yard would be defined as sui generis, or simply put, in a use of its own. Nevertheless, it is also questionable whether the site was in a mixed use as it is possible that the appellant's land, which included Pattann Bungalow, formed a single planning unit consisting of the haulage business use and the residential use. In these circumstances, this would have been a mixed use which would also be defined as sui generis.
 20. The evidence goes on to suggest that the use of the land for parking commercial haulage vehicles ceased around 1992. While the appellant says that from the mid-1980s to around mid-2000 the workshop was used by a third party to service cars on an 'ad hock' basis, the site was also being used for the storage of building materials and equipment (from July 1983 to around 2001) and for the storage of coldstore equipment (from November 2001 to July 2015). It is also probable that at some point there would have been the creation of a new planning unit separate from the residential use of the adjoining land.

² App/J1860/W/16/3165260 Decision letter dated 12 May 2017

21. In April 2020 the site was occupied by Paul Ford. The yard is said to have been used to store stone and equipment associated with his small groundwork and landscaping business. It would also appear that the workshop had been recently let to a person called Pavel who is said to have been using the workshop to work on cars in the 6 months leading up to April 2021. This is supported by photographs submitted by the occupant of the neighbouring bungalow who has lived adjacent to the site since 2015. Their SD confirms that, among other things, the site was occupied by Paul Ford for his landscape/groundwork business from April 2020 and in March 2021 when it is said that the land appeared to be in use as 'some sort of vehicle recovery, breakers yard and repair workshop'.
22. I acknowledge that there is historical evidence to show that the site has been commercially rated as a vehicle repair workshop and premises for many years. However, while payment of non-domestic rates may indicate an intention to retain a commercial use at the site, it does not demonstrate that the site has been 'used' in that way. Furthermore, listing the site as a vehicle repair workshop and premise for valuation purposes does not define its use in planning terms.
23. Overall, I find that the evidence is imprecise and ambiguous and a case has not been presented to demonstrate that the appeal site has been occupied and used as a vehicle repair workshop for a period of 10 years at some point prior to the LDC application. The evidence suggests that there have been non-related activities as detailed above and even if the use as a vehicle repair workshop had been established, that use would have been supplanted by the use of the site by Ansan Construction, SMB Coldstores Ltd and Paul Ford.

Conclusion

24. For the reasons given above and having regard to all other matters raised, I conclude that the Council's deemed refusal to grant an LDC was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in s195(3) of the 1990 Act as amended.

SA Hanson

INSPECTOR