



Appeal Decision

Site visit made on 12 September 2023

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2023

Appeal Ref: APP/H0520/X/23/3319777

Unit 11, Little America Industrial Estate, Moor Road, Great Staughton

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the Act) as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Little America Limited against the decision of Huntingdonshire District Council (the LPA).
 - The application ref 21/02698/CLED, dated 26 November 2021, was refused by notice dated 30 June 2022.
 - 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 existing use as B2 (General Industrial) and B8 (Open Storage).
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Little America Limited against Huntingdonshire District Council. This application is the subject of a separate decision.

Preliminary Matters

3. On 25 January 2022 the LPA issued an enforcement notice alleging the material change of use of the appeal site to B2 General Industrial use, being charcoal manufacture and wood heat treatment, and expansion of the use beyond the planning unit onto previously undeveloped/unused land and associated B8 open storage. An appeal against the notice is subject to a separate decision.
4. Little America Limited is the landowner, and originally made the LDC application for B2 use of a wider area of land. On 14 February 2022 the appellant sought to reduce the scope of the LDC application. The description was revised and site limited to land associated with Unit 11. As the LPA's determination related to the revised application, I have considered it on the same basis.
5. Section 191(5)(b) of the Act states that, where the existing use is within a class specified in an order¹, the LDC should describe the use by reference to that class. However, the Planning Practice Guidance (PPG) advises that '...a certificate for existing use must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall

¹ i.e. The Town and Country Planning (Use Classes) Order 1987

within a use class². The LDC application refers only to use as B2 (General Industrial) and B8 (Open Storage), without description of the actual uses said to have occurred. In the submitted Statutory Declarations the use of the site is described as, “general industrial use and associated storage” and for “undertaking the production and drying of firewood for onward sale, the production of charcoal, along with external storage of materials and equipment in connection with this business”. I have therefore considered the appeal on the basis that the LDC seeks to establish that the mixed use of the land for the production and drying of firewood for sale and the production of charcoal, with associated external storage of materials and equipment was lawful at the date the application was made. Whilst the appellant has referred to a mix of B2 and B8 uses, the courts have established that a mixed use does not fall within any use class.

Main Issue

6. The main issue is whether the decision of the LPA to refuse the LDC was well-founded.

Reasons

7. Under Section 191(2) of the Act, 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 or require planning permission, because the time for enforcement action has expired, or for any other reason); and, they do not constitute a contravention of any of the requirements of an enforcement notice then in force. There is no evidence of there being an enforcement notice in force at the time the application was made. The case therefore rests on whether enforcement action may be taken in respect of the use.
8. Section 171B(3) of the Act sets out that, in the case of a breach of planning control comprising a material change of use, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
9. It is necessary, therefore, for the appellant to demonstrate, on the balance of probabilities, that the material change of use of the land for the production and drying of firewood for sale and the production of charcoal, with associated external storage of materials and equipment took place on or before 26 November 2011 and continued for 10 years thereafter.
10. In establishing whether a material change of use has taken place, it is first necessary to identify the planning unit.
11. The appellant advises that the appeal site lies within a single unit of occupation by the tenant, Forestry Fuels Ltd. There is no indication that any part of the site is physically or functionally separate.
12. The land was once associated with the former RAF Little Staughton airbase, which closed in the 1950s. Some of the buildings and land associated with the airfield have been used for commercial purposes at times over the years, and a certificate of lawfulness has been issued for parts of the estate. However, there are no planning history records associated with Unit 11 prior to the submission of the application, and no evidence that industrial use had been established

² PPG on Lawful Development Certificates: paragraph 17c-010-20140306

previously in relation to the appeal site. There is, therefore, little to determine what the previous use of the land was prior to the material change of use subject to the LDC application.

13. The principal difference between the parties is when the material change of use took place, and the appellant has submitted evidence in the form of payment ledgers, receipts, invoices, leases, payment records, photographs and Statutory Declarations.
14. A Statutory Declaration of Mr Jonathan Hull states that the tenants first occupied the site on 25 November 2011. Prior to that date, the site was prepared for storage and fabrication, with the clearing of loose rubble and laying of a hardcore base where the fire damaged part of the building had stood. As sworn first hand evidence, the Statutory Declaration carries significant weight. However, I note that, while Mr Hull says occupation commenced on 25 November 2011, occupation, however, does not necessarily demonstrate commencement of the use.
15. In terms of use, the preparation of wood with chainsaws did not begin until December 2011. Moreover, although it is said that a 'deposit' was paid to Robinson & Hall land and property consultants on 25 November 2011, that amount shows in the submitted cash book as rent paid on 1 December 2011 for the period for 1-31 December 2011. The Statutory Declaration also contains a tenancy agreement to lease 'The Ironworks' which is signed and dated by the appellant on 25 November 2011. However, it is not dated, and has not been signed or dated by the landowner. Furthermore, the plan accompanying it also indicates a smaller area of land than the appeal site.
16. An extract of a completed lease is also held by the LPA in relation to a Planning Contravention Notice (PCN). It is dated 6 February 2012, albeit the plan accompanying it has not been provided and I therefore cannot ascertain that it relates to the exact same area of land. In August 2021, in response to a second PCN, the tenants stated that, "Forestry Fuels took occupation of the land during the month of October 2011 to clear the site. The first tenancy agreement gave the licence from 1 November 2011 but was dated 25 November 2011."
17. However, a certificate of occupation completed by the tenant for local taxation purposes states that occupation commenced on 25 February 2012. It is said that this relates to the first use of the building, rather than the land, but that is not evident from the certificate. A second rental payment to the landlord is shown in the accounts on 18 January 2012, and then on the first of each month thereafter.
18. The aerial photography provided is of little assistance in demonstrating the use for much of the relevant period, with a large gap between October 2008 and May 2020. Other aerial photographs provided by an interested party dated between 2013 and 2017 show how the use developed, but do not assist in establishing when the material change of use took place. Although the appellant has provided photographs of the site prior to occupation in 2011, the earliest showing any activity on the land are dated from February and April 2012, all of which relate to the land east of the building. As it is, there is no imagery depicting the use of the land prior to February 2012.

19. In terms of invoices and receipts, payment was made for the purchase of a ring kiln on 25 November 2011, chainsaw training on 30 November 2011, and chainsaw equipment and PPE on 2 December 2011. In a Statutory Declaration the tenant's director states that timber was first delivered to the site on 5 December 2011 for splitting, and that from December 2011 chainsaws were used to prepare the wood.
20. Therefore, on the appellant's own evidence, the delivery of wood to the site, and cutting and splitting, first took place in December 2011. And the evidence shows the first sales of firewood from the site occurred on 12 December 2011.
21. The appellant states the kilns were in use in December 2011. However, while payment for the purchase of a ring kiln took place on 25 November 2011, there is no evidence of the date it arrived on the site. The Statutory Declaration also makes clear that wood first arrived on site on 5 December 2011 for preparation, and that prepared wood must be dried for several weeks before use in kilns.
22. Although the appellant advises the chopping of wood is the first stage of charcoal production, chopped wood was also being sold in December 2011, and I have not seen evidence that charcoal production had commenced at that time. There is also no evidence of the use of a kiln until February 2012, at the earliest, as shown in the photographs. Indeed, those photographs appear to show a stocked, but not operating, kiln, and there is an absence of sand and residue on the ground as can be seen in later photos. Therefore, the evidence shows the earliest use of the land for charcoal production, was February 2012.
23. Case law has established that if there is no evidence to contradict the appellant's version of events, or make it less than probable it should be accepted. However, that can only apply where the appellant's evidence is sufficiently precise and unambiguous. That is not the case here.
24. As a result, the appellant has not demonstrated, on the balance of probabilities, that the material change of use of the land for the production and drying of firewood for sale and the production of charcoal, with associated external storage of materials and equipment took place on or before 26 November 2011. It therefore follows that it cannot be demonstrated that the use continued for a period of ten years before the LDC application was made.
25. Consequently, at the date the LDC application was made, enforcement action could have been taken because the time limit for doing so under Section 171B(3) of the Act had not expired. I conclude, therefore, that the use of the land for the production and drying of firewood for sale and the production of charcoal, with associated external storage of materials and equipment would not have been lawful in the context of Section 191(2) of the Act at the date of the LDC application.

Other Matters

26. I note the appellant's concern that the LPA made its decision without affording the opportunity to respond to some evidence not previously made available to them. Paragraph 17c-006-20140306³ of the Planning Practice Guidance states that, if a local planning authority obtains evidence, this needs to be shared with

³ Paragraph: 006 Reference ID: 17c-006-20140306

the applicant who needs to have the opportunity to comment on it, and possibly produce counter-evidence. Nevertheless, the appellant has been afforded an opportunity to address this evidence through the appeal process, and I am satisfied that they have had an opportunity to make their case fully.

27. The appellant also advises that the records from 10 years ago are not exhaustive, and that the tenant did not knowingly operate without planning permission. It is said that they were not retaining records with a view to submitting a LDC application after 10 years. However, the onus is on the appellant to provide evidence in support of an LDC.

Conclusion

28. 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 use of the land for the production and drying of firewood for sale and the production of charcoal, with associated external storage of materials and equipment 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.

Peter White

INSPECTOR