



Appeal Decision

Site visit made on 28 November 2023

by D Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 15/12/2023

Appeal Ref: APP/F1610/X/23/3324272

Gable Lands, Main Road, Oddington, Gloucestershire GL56 0UP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr John Aldridge against the decision of Cotswold District Council.
 - The application Ref 23/00030/CLEUD, dated 4 January 2023, was refused by notice dated 23 March 2023.
 - The application was made under section 191(1)(a) of the 1990 Act as amended.
 - The use for which a certificate of lawful use or development is sought is outdoor storage or distribution (Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987).
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence in matters such as an LDC application is the balance of probabilities. The planning merits of the use are not relevant, and they are not an issue for me to consider in the context of an appeal under s195. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.

Background and Main Issue

3. I must decide whether the use of the land for outdoor storage or distribution would be lawful if it were instituted on the date of the application. This turns on whether the appellant has shown, on the balance of probabilities, that a material change of use of the land took place 10 or more years prior to the date of the application and that use continued after the date of change without significant interruption, such that it is now too late for the Council to take enforcement action.
4. The main issue is whether the Council's refusal to grant an LDC was well-founded.

Reasons

Evidence

5. The evidence includes a Statutory Declaration¹, dated 28 November 2022, submitted by the appellant. This states that the land subject to the application (the Land) has been used continuously for the outdoor storage of vehicles and equipment since May 2009.
6. Supporting evidence has been provided by way of aerial photography extracted from 'Google' maps. In 2005 and 2006, there appears to be some storage of vehicles or equipment on the Land, but the majority of the Land is paddock. In 2009, the photograph shows trucks, containers or other equipment scattered across a much larger area and an area of hardstanding has been created. The storage had increased in the image dated 2015 and has been largely maintained at that level in 2019, 2020 and 2021.
7. During my site visit, I saw that the Land was occupied by haulage trucks, vehicles, scrap or waste materials and shipping containers. I also noted that two caravans were sited in the north-west corner of the Land. One of which seemed to be occupied for residential purposes. The caravans are shown clearly on the 2021 aerial image, and first appear on the 2019 image.

Analysis

8. The Statutory Declaration has been duly signed and witnessed and this carries significant weight, which I note accords with the weight attached to sworn evidence in the other appeals referenced by the appellant². The Statutory Declaration explains that the Land has been used and occupied for the outdoor storage of vehicles and equipment, and this is supported by evidence from aerial photographs. However, the caravans that I saw on the Land are not mentioned and their presence is not explained. The inference is that these are also stored but, as set out above, I saw that one appeared to be occupied for residential purposes.
9. The siting of a caravan for residential use would be a primary use of the Land. This would mean that the Land would have been put to a mixed use, which is two or more primary uses operating within the same planning unit. In addition, there were some items that may be considered waste or scrap as opposed to being stored, and some of the vehicles may be parked rather than stored. Parking means leaving a vehicle while it is in current use, whether long or short term. It is a temporary cessation from when the vehicle is in motion, and it is still in use when it is parked. Storage takes place when something is put away for a period of time because it is not needed, or its use is not contemplated in the short term. It is not clear whether the vehicles I saw on the Land were parked or stored. Overall, I am not satisfied that the lawful use sought, outdoor storage or distribution, is an accurate description of the uses taking place on the Land.
10. I also have some concerns about the planning unit, which is the starting point in considering whether a material change of use has taken place. The planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and

¹ Statutory Declarations Act 1835.

² APP/L5240/X/22/3302273 and APP/Z5060/X/20/3256796.

occupied for different and unrelated purposes. The concept of physical and functional separation is key.

11. The application Land forms part of the wider holding which is owned by the appellant. It includes stables, paddocks and a barn. I saw that the outdoor storage of vehicles and equipment extends across a wider area, and it is not confined to the Land shown by the plan accompanying the application. The aerial photographs also show haulage vehicles and other equipment within the adjoining yard area and in front of the barn, along with a number of vehicles that may be parked. Consequently, the area identified in the application and the uses that are taking place on that Land are not separate and distinct from adjoining parts of the wider land. As such, I am not satisfied that the planning unit has been identified correctly.
12. The appellant refers to an appeal³, in which the Inspector commented on whether a storage use necessitated a business element. The appeal does not assist in this instance as the matters at issue concern the planning unit and the primary uses of the Land in question.
13. I consider the evidence is not sufficiently precise and unambiguous. It has not been shown, on the balance of probabilities, that a material change of use of the Land to outdoor storage or distribution took place 10 or more years prior to the date of the application and that use continued after the date of change without significant interruption, such that it is now too late for the Council to take enforcement action. For these reasons, the appeal must fail.

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of outdoor storage or distribution 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.

D Moore

Inspector

³ APP/Z1510/X/17/3170733.