



Appeal Decision

Site visit made on 5 December 2023

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2023

Appeal Ref: APP/M1595/X/23/3318888

Land to rear of 2 to 20 Hillcrest Avenue, West Thurrock

- The appeal is made under section 195 of the Town and Country Planning Act 1990 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 J Kennedy against the decision of Thurrock Borough Council.
 - The application Ref 22/01162/CLEUD, dated 28 August 2022, was refused by notice dated 24 November 2022.
 - The application was made under section 191(1)(a) and (b) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described on the application form as: Parking of vehicles for recreational hobby use on leased land from May Hart Properties.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application form described the development for which a Certificate of Lawful Use or Development (CLUED) was sought in the manner set out in the banner heading above. During the course of the application the Council altered that description to the following, "Lawful application to regularise the storage and hobby use of the land with the erection of palisade fencing". It is not clear if that change was made with the consent of the appellant. However, on the appeal form the appellant has used the description given by the Council and he seems satisfied to proceed on that basis.
3. On reading the Council's amended description I am not entirely satisfied that it accurately describes the use for which a certificate is sought because it refers to storage in a general sense, without specifying what is being stored, and it refers to a hobby use, without stating what that hobby actually is. Having read the documentation a more accurate way of describing the matter would be that a CLUED is sought for "the existing use of the land for the storage of vehicles and associated hobby use in association with the collection and restoration of those vehicles and the associated erection of palisade fencing to secure the land". In my view that represents a more accurate description of the use and development for which a CLUED was sought and I have made my decision on that basis.

Main Issue

4. A Certificate of Lawful Use or Development is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities are lawful. Therefore, for the avoidance of doubt, I make clear that the planning merits of the development are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority. The main issue is whether the Council's decision to refuse to grant a certificate was well-founded.

Reasons

5. In line with section 171B(3) of the Town and Country Planning Act 1990 (the Act) where a material change of use of land has occurred, no enforcement action may be taken following the end of a period of ten years, beginning with the date of the breach. It follows that if the existing use of the land resulted in a material change of use, that use cannot be lawful unless that use had continued for a period of at least ten years.
6. Although the appellant does store a large number of vehicles there is no evidence that there is any commercial activity taking place and the use does appear to be a hobby or personal pursuit, even if at quite an extreme scale. There was little evidence of any significant restoration going on at the time of my visit and many of the lorries appear to have been purchased and stored, with equipment and associated items within the three storage containers on the site.
7. By his own admission, the appellant accepts that the current use had only been continuing for a period of 8 years prior to the application being made. Consequently, if the use involved a material change from any previous use, the current use cannot be lawful because the requisite 10 year period has not elapsed.
8. Little information is presented regarding the previous use of the land. The Council indicate that there is no record of any planning history prior to the current use. The land is owned by a company who also own land within the industrial/ retail estate at the foot of the chalk cliff which is immediately to the rear of the site. There is no evidence of the rear gardens having direct access onto the land and it appears to historically have been used in relation to the land to the north, as opposed to being an access way to serve the rear gardens of the dwellings.
9. The cliff is present as a result of quarrying which was the historic use of adjacent land, with a narrow strip being retained to the rear of the dwellings at Hillcrest Avenue, presumably on the basis that it was not structurally safe to extract any further towards the residential properties. Consequently, information regarding any prior lawful use is limited and inconclusive. Immediately prior to the current use it had been the subject of fly tipping and was apparently overgrown with no specific use or purpose.
10. What is clear is that the storage and hobby use has resulted in a material change in the character of the land. The volume of lorries and associated material, plus the storage containers has a significant visual impact and there is potential for greater noise and disturbance associated with repairs and work being carried out to those vehicles. Compared to the little used former state of

the strip of land it seems clear that the present use amounted to a material change of use.

11. It is not clear if the appellant or his representative have misunderstood the nature of a CLUED application in that the appeal statement recognises that the use has been continuing for less than ten years but states that the grant of a CLUED would be justified. I cannot take other matters into account in determining the appeal, for example, the fact that the appellant has removed a substantial amount of material that had been fly-tipped on the land. Plus, the fact that he does not appear to be running a business is not a factor in determining whether the storage and hobby use is lawful.
12. I can only determine the appeal on the facts of the case which are that a material change of use has occurred, that use has carried on for less than ten years such that it has not gained immunity as a result of the passage of time. In planning terms the use is not lawful and there are no grounds to grant a CLUED in relation to it.
13. The fence and entrance gates were erected more than 4 years ago, as agreed by the parties. If viewed in isolation the fence and access gates would be immune from enforcement action under the terms of s171B(1) of the Act. However, it seems likely that the works were undertaken in connection with the material change of use of the land, in order to provide a secure storage space for the appellant's vehicles. No other explanation has been provided.
14. Caselaw has held that an enforcement notice that is directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or they would be PD or immune from enforcement¹. In that sense I am not satisfied, on the balance of probabilities, that the fencing can be considered lawful, having regard to established caselaw.
15. In reaching that conclusion I make no comment about whether it would be expedient for the Council to take any action – the merits of the matter would be for them to determine. I note that they decided to take no further action in 2018. However, for the purposes of the present appeal, I am not satisfied that the fencing can be considered lawful and cannot, therefore, grant a certificate in relation to it.
16. In view of the above, the Council's decision to refuse to grant a CLUED was well-founded and I shall dismiss the appeal.

Chris Preston

INSPECTOR

¹ *Murfitt v Secretary of State for the Environment and Another* (1980) 40 P. & C.R. 254