



Appeal Decision

by **L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04th January 2024

Appeal Ref: APP/C1435/X/22/3309126

Intercon scaffolding Ltd, Rattle Road, Westham, East Sussex BN24 5DS

Grid Ref Easting: 562342, Grid Ref Northing: 104469

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Carl Lynn against Wealden District Council.
 - The application ref WD/2022/1852/LDE is dated 17 July 2022.
 - The application was made under section 191(1)(c) of the Act.
 - The failure to comply with any condition or limitation for which a certificate of lawful use or development is sought is described in the appeal form as: 'Use of premises for self storage as Condition 7 on application WD/1989/1326/F has not been adhered to for excess of 10 years'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. No site visit has been carried out as there is no essential need for me to see the site and its surroundings to determine this appeal on legal matters¹.
3. The Council failed to issue a decision within the relevant timeframe and has confirmed that had it determined the application it would have refused to grant an LDC. In accordance with section 195(5) of the Act, I shall consider this appeal on the basis that the Council decided to refuse the application.

Background and Main Issue

4. Planning permission references WD/89/0985/P and WD/89/1326/P² were granted by the Council for development described as 'continuation of use of land and building for scaffolding business' and 'continuation of use of land and buildings for scaffolding business without compliance with conditions' respectively. Planning permission reference WD/89/0985/P is subject to 10 conditions; planning permission reference WD/89/1326/P is subject to 8 conditions.
5. Each of the above planning permissions has an identical Condition 7, which states: 'Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, the premises shall be used for the purposes stated in the application only and not otherwise'. Planning permission reference WD/89/1326/P does not therefore 'remove' or 'relax' all conditions attached to the scaffolding business use permitted.

¹ Certificate of lawful use or development appeals: procedural guide (December 2022). Paragraph 7.2.11.5. states: A site visit won't be needed for every appeal. It is for the Inspector to decide whether to conduct one.

² Also referred to as WD/1989/0985/F and WD/1989/1326/F by the main parties

6. The Council issued a breach of condition notice (the BoCN) which requires compliance with Condition 7 of planning permission reference WD/89/0985/P on 22 June 2022.
7. The application for an LDC is made under section 191(1)(c) of the Act, as the appellant seeks to ascertain whether a failure to comply with Condition 7 of planning permission reference WD/89/1326/P is lawful. Section 191(3) of the Act states that any matter constituting a failure to comply with any condition subject to which planning permission has been granted is lawful at any time if: (a) the time for taking enforcement action in respect of the failure has then expired³; and (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.
8. Section 191(4) of the Act states: if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the matters described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
9. My decision is therefore based on the facts of the case. For the avoidance of doubt, this means that the planning merits of the use of the site are not relevant to the appeal.
10. Taking the above into account, the main issue is whether the Council's deemed refusal to grant an LDC was well-founded, with particular regard to whether the failure to comply with Condition 7 of planning permission WD/89/1326/P constitutes a contravention of any of the requirements of a breach of condition notice.

Reasons

11. The BoCN was in force at the time the application was made. The use of the site for self storage purposes in breach of Condition 7 of planning permission reference WD/89/1326/P on the date of the application would have been in contravention of the BoCN, even though that notice refers to a different planning permission.
12. With regard to section 191(3)(b) of the Act, the use of the site for storage purposes in breach of Condition 7 of planning permission reference WD/89/1326/P was not lawful at the time the application for an LDC was made. The Council's deemed refusal to grant an LDC was therefore well-founded.

Other Matters

13. I have been referred to Class B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO), which relates to use for storage or as a distribution centre. It is claimed that a scaffolding business and a self storage use both fall within Class B8, meaning that no material change of use requiring planning permission has taken place. However, Condition 7 of the planning permissions referred to above explicitly state that the premises shall

³ With regard to section 171B of the Act, the time for taking enforcement action in this case would be within a period of 10 years beginning with the date of the breach.

only be used for scaffolding business purposes, notwithstanding the provisions of the UCO.

14. It is claimed that the BoCN should not have been issued as the site had been used for storage purposes for more than 10 continuous years, in breach of Condition 7 of both of the above planning permissions, prior to it being issued. Even if this is correct, the evidence shows that the BoCN is in force and the use claimed to be lawful is in breach of that notice. I am therefore unable to issue an LDC as sought.

Conclusion

15. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of the use of premises for self storage 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.

L Douglas

INSPECTOR