



Appeal Decision

Site visit made on 5 March 2024

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2024

Appeal Ref: APP/G5180/X/22/3313676

Land to the south of Trunks House, Trunks Alley, Swanley, BR8 7QL

- 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 (LDC).
 - The appeal is made by Mr S Bardo against the decision of London Borough of Bromley.
 - The application ref DC/21/04426/ELUD, dated 26 August 2021, was refused by notice dated 15 September 2022.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
 - The use for which a certificate of lawful use or development is sought is vehicle storage and mechanical and bodywork repairs with associated external parking.
-

Decision

1. The appeal is allowed in part and attached to this decision is a certificate of lawful use or development for the northern part of the site describing the existing use which is found to be lawful.
2. The appeal is dismissed in part and a certificate of lawful use or development is refused for the southern part of the site.

Preliminary Matters

3. An application under s191(1)(a) of the 1990 Act seeks to establish whether, at the time of the application, any existing use of buildings or other land is lawful. S191(2)(a) explains that uses are lawful if no enforcement action may be taken in respect of them because they did not involve development or require planning permission or because the time for enforcement action has expired.
4. The burden of proof lies with the appellant and the relevant test is 'the balance of probabilities'. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, that is enough. Evidence should not be rejected simply because it is uncorroborated.
5. The Council's officer report raises concern that the signed letters from four individuals submitted with the application were not sworn and did not include plans to specify which parts of the site they relate to. In an attempt to address those concerns, the appellant has submitted with the appeal four sworn affidavits from those same individuals. Having considered the same, the Council has decided that it no longer wishes to contest the appeal. Nevertheless, I still need to be satisfied of the lawfulness of that sought, before a certificate can be issued.

6. Based on the reasoning set out below, I advised the parties that I was considering granting a LDC for part of the site. To that end, I requested the appellant to submit a revised plan where the southern edge of the site boundary is commensurate with the southernmost part of the southernmost open fronted building, and then follows the line of the track to join with the eastern boundary of the site.
7. The appellant provided a plan delineated accordingly and the Council was given opportunity to comment on its accuracy. No response was received.

Main Issue

8. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. From the evidence before me, that turns on whether the use of the site for vehicle storage and mechanical and bodywork repairs with associated external parking materially changed at least ten years before the date of the LDC application (26 August 2011) and then continued without material interruption for a period of at least ten years thereafter, so as to meet the immunity period from enforcement action under s171B(3) of the 1990 Act.

Reasons

9. The site comprises land and buildings located to the south of Trunks House. The appellant states that the buildings have been used for vehicle storage and mechanical and bodywork repairs, whilst the external areas have been used for vehicle storage and car parking.
10. A number of the buildings within the site appear to have been granted a LDC in August 2001¹. They are referred to as the stables, wood store and extended former piggery buildings. A LDC was also granted in September 2002 for the change of use of the former piggery buildings to vehicle storage and mechanical and bodywork repairs with associated external parking².
11. All four of the sworn affidavits submitted with the appeal are largely consistent with the earlier submitted letters and refer to 'the property' as marked on exhibited plans, the boundary of which corresponds with the appeal site boundary.
12. The sworn affidavit from Mr Keith Hutchings confirms that he rented space at the property for a period of 19 years between 2001 and 2020. He states that in the whole time he has been associated with the property he has known it to be used for motor trade and storage.
13. The sworn affidavit from Mr Darren Bullock confirms that he worked at the property since 2000. He says that to the best of his knowledge the property has remained in the 'same condition of use'. However, the nature and extent of that use is not explained.
14. The sworn affidavit from Mr Lloyd Richards confirms that he has rented a small area of the appeal property for storage for the past 10 years. However, it is not explained where that small part is within the site. Although he further states that 'in this time the outlay of the property has remained the same', I am unclear as to what that means. He may have meant to refer to layout rather

¹ Ref: DC/01/00147/ELUD

² Ref: DC/02/01259/ELUD

than outlay but I cannot make that assumption as he has stated the same both in his original letter and in the subsequent sworn affidavit.

15. A sworn affidavit from Mr Nicholas Jupp states that he has rented 'a few spaces' to work and restore vehicles at the appeal property over the past 20 years. Although that use is consistent with part of that sought in the LDC, it is not clarified what 'a few spaces' actually equates to within the site. Mr Jupp further states that in that time (the past 20 years), to the best of his knowledge, the land, buildings and layout have not changed significantly. However, he does not explain how the land and buildings were used, beyond that for his own purposes.
16. The appellant refers to a series of aerial photographs, purported to be taken in various years between 2003 and 2021. The first two photographs, from 2003 and 2006, are purported to be taken in December, but that seems unlikely as all of the trees are in leaf.
17. That aside, the 2003 image shows several buildings on the land as well as numerous vehicles spread across most of the site. The image from 2006 shows the same buildings but the vehicles are restricted to the northern part of the site, whilst the southern part appears overgrown/revegetated.
18. The extent of the buildings and vehicles remains largely the same in the 2007, 2012 and 2013 images. In the image from 2015, the vehicles extend a little further south but the use appears more regimented with a greater concentration of vehicles. The southern part of the site appears to be degraded and largely devoid of vegetation, in contrast to the earlier images. A similar arrangement is shown in the 2017 image.
19. There are lesser vehicles by 2018 and the main activity remains in the northern part of the site. That is similarly so in the 2019 image, save for two larger vehicles positioned further into the southern part of the site. The 2020 image is largely the same. By 2021 there are more vehicles on the southern part of the site as well as what appears to be discarded or tipped items.
20. The aerial photographs therefore provide clear corroborating evidence that that the northern part of the site was being used for external vehicle storage and parking prior to August 2011, and that the use continued to March 2021.
21. It is not possible to ascertain the use of the buildings from the aerial photographs but the aforementioned LDC for the use of the former piggery buildings for vehicle storage and mechanical and bodywork repairs is consistent with the LDC now sought.
22. However, whilst the 2003 photograph shows vehicle storage/parking in the southern part of the site, that use appeared to have ceased by 2006 and did not resume prior to the material date in August 2011.
23. The photographs, which the appellant refers to as a vital part of the evidence base, do not therefore show that the southern part of the site was used for car storage or parking. Moreover, as there are no buildings in the southern part of the site, it is very unlikely that the land was being used for mechanical and bodywork repairs. Indeed, the photographs do not indicate such activities taking place.

24. The appellant has submitted 25 photographs of the appeal site. However, they all appear to be dated 16 January 2022, which is later than the date of the application. Although it is unlikely that the use of the land and buildings as shown in the pictures would have evolved to that state in a short period of time, the pictures do not assist in demonstrating how the land and buildings were used on or before the material date in August 2011.
25. The appellant refers to the officer report from 2017 relating to an application for a four-bedroom detached chalet bungalow on land to the south of Trunks House³, which confirms that particular application site was visited by the case officer. However, the position of that site in relation to the current appeal site is not shown. Based on what I saw and the information before me, including the appeal decision discussed below, it is likely that the site is to the north of the appeal site. Consequently, the officer would not have had to pass the appeal site to reach the application site, therefore limiting the opportunity to make observations of it. I therefore attach only limited weight to the inference that the officer would have been cognizant of the activities at the appeal site and that the Council subsequently decided that no enforcement action was to be taken.
26. The appellant also seeks to highlight that the appeal decision⁴ for that refused application refers to an 'adjacent commercial use to the south'. The decision also refers to the site as forming 'a significant open gap between the nearby residential properties and commercial use' and finds that 'the proposed development would not represent limited infilling as it would not occupy the majority of the space between the nearby developments and structures'.
27. Although the 2017 appeal decision does not get into the particulars of the observed commercial use, it does further support the appellant's case for the adjacent northern part of the site.
28. I note the appellant's reference to a LDC concerning land to the north-east of the appeal site, but that does not assist his case.
29. Pulling the above together, and in the absence of any contradictory evidence, I find the appellants evidence to be sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that a material change of use of the land and buildings in the northern part of the site to vehicle storage and mechanical and bodywork repairs with associated external parking, occurred more than ten years before the date of the application, and continued thereafter without material interruption.
30. Whilst I appreciate that the Council has decided not to contest the appeal following the submission of the sworn affidavits, I do not find the appellant's evidence to be sufficiently precise and unambiguous to demonstrate that a material change of use of the southern part of the site for vehicle storage and/or mechanical and bodywork repairs with associated external parking occurred at least 10 years prior to the date of the application, on the balance of probabilities. Indeed, the appellant's aerial photograph provide clear contradictory evidence that it did not.

³ Ref: 16/04888/FULL1

⁴ Appeal Ref: APP/G5180/W/17/3176968

31. Consequently, I find that the northern part of the site is a planning unit in itself and, as a matter of fact and degree was physically and functionally separate from the southern part of the site on the material date.
32. Under s191(4) of the 1990 Act, any LDC granted must describe the existing use or development found to be lawful. That may not be exactly what was written on the application form, and so s191(5) enables a local planning authority to modify the description. An Inspector may exercise that power on appeal and is indeed obliged to issue an LDC for any existing use or development that is shown to be lawful on the facts and evidence.
33. In this case, the application form describes the use as B2 general industrial, but vehicle storage is evidently a Class B8 use (storage or distribution). The LDC for the northern part of the site should therefore be described as a mixed use for vehicle storage and mechanical and bodywork repairs with associated external parking.

Conclusion

34. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a LDC in respect of the northern part of the site was not well-founded and that the appeal should succeed in part. I will exercise the powers transferred to me under s195(2) of the 1990 Act as amended.
35. For the reasons given above I also conclude that the Council's refusal to grant a LDC in respect of the southern part of the site was well-founded and that the appeal should fail in part. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Richard S Jones

INSPECTOR



The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 26 August 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

It has been demonstrated, on the balance of probabilities, that the mixed use of the northern part of the site for vehicle storage and mechanical and bodywork repairs with associated external parking, had taken place for a period of more than ten years without material interruption by the date of the application so the time for taking enforcement action under s171B(3) of the Town and Country Planning Act 1990 as amended, had expired.

Signed

Richard S Jones

INSPECTOR

Date: [28 March 2024]

Reference: APP/G5180/X/22/3313676

First Schedule

Mixed use for vehicle storage and mechanical and bodywork repairs with associated external parking.

Second Schedule

Land to the south of Trunks House, Trunks Alley, Swanley, BR8 7QL

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: [28 March 2024]

by Richard S Jones BA(Hons), BTP, MRTPI

Land at: Land to the south of Trunks House, Trunks Alley, Swanley, BR8 7QL

Reference: APP/G5180/X/22/3313676

Scale: Not to Scale

