



Appeal Decision

Site visit made on 10 June 2024

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2024

Appeal Ref: APP/Z1510/X/23/3325975

Land adjacent to 1 Tricketts Lane, Hedingham Road, Wethersfield, Essex CM7 4EJ

- 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.
 - The appeal is made by Mr Kerry Feveryear against the decision of Braintree District Council.
 - The application ref 23/00798/ELD, dated 23 March 2023, was refused by notice dated 5 July 2023.
 - 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 for storage.
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Decision

1. The appeal is dismissed.

Procedural matter

2. The description of the existing use, building works or activity on the application form for which a certificate is sought is long and gives some of the reasons why the appellant believes a certificate ought be granted. While I have taken account of that in reaching my decision, a description simply for 'storage' is clearer and has been stated by the appellant on the appeal form. It is clear from the evidence that this is the use for which a certificate is sought, so I have referred to that, straight forward, description in my heading above.

Reasons

3. Section 191(2)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act) sets out that a use is lawful at any time if no enforcement action may be taken in respect of it (whether because it did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason). Where there has been a breach of planning control, section 171B(3) of the 1990 Act clarifies that no enforcement action may be taken after the end of the period of ten years beginning with the date of a breach consisting in the change of use of land.
4. The burden of proof is on the appellant and the standard of proof required is the balance of probabilities. If the evidence is sufficiently clear and precise and there is no evidence to contradict the appellant's version of events or make it less than probable, then their evidence should be accepted and a certificate of lawful use or development should be issued.

5. The planning history with which I have been provided indicates that, during the 1980s planning permission was granted for a storage shed, first on a temporary and then permanent basis. The planning permissions required that the building should only be used for the storage of domestic implements and, while some commercial uses might have occurred at times on the wider land, there is nothing in the evidence to suggest that the use of the building may not have been consistent with the permission for it.
6. The appeal site is a self-contained parcel of land with an access from the highway at one end. At the time of my site visit, the majority of the land had a gravel surface. Between the access and the storage shed, the land was open apart from a discrete fenced area that appeared to be in use for vegetable growing. Beyond the building was an enclosed area housing chickens and 3 containers. One of those was also housing chickens, one contained a car, and the other contained assorted items including motorbikes, bicycles and tools. Outside the buildings, containers and enclosures, were some small sheds, a picnic table, trailers, and some children's play equipment and toys.
7. The layout and general arrangement of the site that I saw appeared to be broadly consistent with that shown in an aerial photograph that accompanied the application, suggesting that this was likely to have been the situation at the date of the application.
8. Statutory declarations and statements from the previous land owner indicate that the land was used for the then owner's personal storage for some considerable time. It may be that a change in the character of use, with the introduction of some commercial activity in the early 1990s took place, but whether or not that was the case, the evidence is that there was a reversion to personal storage activities soon after that until the land was sold to the current owner in 2020.
9. If the storage use by the previous owner was in breach of planning control, the suggestion that it had been carried on for in excess of 10 years is not countered by any detailed evidence. I am, therefore, content that, on the balance of probabilities, a use of the land for some form of storage would have been lawful by the time it was sold to the current owner.
10. Since that time, the aerial photographs and testimonies of others indicate that there has been an appreciable change in the appearance of the site, and the current owner may visit the site more frequently than their predecessor. I understand that the hard surfacing has been laid during this time, and fencing and new gates have been erected around the site. Despite these changes, none of this has been shown to have resulted in a material change of use of the land.
11. A statutory declaration of one of the current owners indicates that storage uses have continued since the change in ownership of the land. However, As described above, I saw that the land is also being used for the keeping of chickens and growing of vegetables. As noted, from the available evidence, this appears to be consistent with the use of the site at the time of the application and so the appellant's evidence does not clearly and unambiguously explain all of the activities that appear to be going on at the site.
12. While the chickens and vegetables may belong to the appellant, the introduction of these other uses do not appear to be connected with storage

uses. The appellant asserts that this is all within the lawful use, but there is no analysis of it to allow that conclusion to be drawn. These uses are of a different character to the storage use that had been going on previously on the land and it has not been shown how they might be incidental to any storage use.

13. Mindful that the burden of proof is with the appellant, I find that at the date of the application, on the balance of probabilities, there had been a material change of use of the land away from a storage use to a mixed use of the site containing storage and other uses. Such a material change of use would mean that any established storage use of the site had been lost.
14. My decision on the appeal is based on the evidence before me. It is not an indication that what has been applied for is unlawful, but for the reasons given I am unable to confirm that it is. Therefore, for the reasons given, I conclude that the Council's refusal to grant an LDC in respect of the use of the land for 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 1990 Act.

M Bale

INSPECTOR