



Appeal Decision

Site visit made on 25 June 2024

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2024

Appeal Ref: APP/P1133/X/23/3332650

**Teignbridge Level Crossing, Teignbridge Sidings, Exeter Road,
Newton Abbot TQ12 3QJ**

- 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 Mark Palmer (M T Store) against the decision of Teignbridge District Council.
 - The application ref 22/00407/CLDE, dated 22 February 2022, was refused by notice dated 21 June 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 described as "Storage - Vehicle Repairs - Domestic use".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the existing use on the application form is as I have set it out above and is similar to the description used by the Council on the decision. I have taken, from the context of the submissions, the use of the word "domestic" in the description to mean residential occupation of the appeal site. The Council decision refers to the application having been dated 11 July 2022 however the application form is dated as 22 February 2022 which I have therefore used as the date of the application. The appellant has referred to the Council not reaching a decision within the relevant statutory period. The Council did make a decision albeit after the deadline and without the agreement of the appellant. However, these matters do not affect the merits of the decision. I carried out an unaccompanied site visit viewing from publicly accessible land near to the appeal site.

Main Issue

3. The main issue is whether the Council's decision to refuse the LDC was well founded. The onus is upon the appellant to demonstrate their case and planning merits are not relevant to consider. Although I did not enter the appeal site, this does not prevent me from reaching a decision which needs to be made on the basis of the evidence presented, on the basis of the circumstances at the time of the application and on the balance of probabilities.
4. As confirmed in the Planning Practice Guidance (PPG), an application needs to describe precisely what is being applied for and the land to which the application relates. Without sufficient or precise information, a local planning

authority may be justified in refusing a certificate. This does not preclude another application being submitted later, if more information can be produced. It has also been held in well-established legal authorities that if there is no evidence to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse a LDC provided the appellant's evidence is sufficiently precise and unambiguous.

Reasons

5. There are various elements to the uses that are claimed across the appeal site. The Council has referred to the site being in a mixed use and the appellant has not expressly disputed that although neither party has entirely engaged with the factors that may affect that. A mixed use is where one of two or more primary (or main) uses co-exist within the same planning unit. One is not incidental to the other, although there may be incidental uses associated with each primary use. If a mixed use has occurred, it would be necessary to consider whether the mix has existed without having materially changed for 10 years prior to the date of the application. Therefore, that specific mix of primary uses would need to have commenced by 22 February 2012 at the latest and continued since then in the same manner without materially changing. Alternatively, it may be that the appeal site is divided into separate planning units and if that is the case, it would be necessary to determine whether each of the primary uses in each of the individual planning units has occurred continuously since 22 February 2012.
6. My starting point for assessing the issue of lawfulness is the extent of the planning unit or individual planning units based upon the evidence presented. It has been held that 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 occupied for different and unrelated purposes. The concept of physical and functional separation is key to this.
7. The evidence submitted concentrates on what has happened within a large proportion of the land within the red line shown on the site plan. That red line however also includes a cottage building with no detail of what it is used for and also a building and outdoor area used as a café. I didn't go inside those or any other private land. I did see that the café, which had customers sitting outside at that time, is at the north-western end of the application site and outside of metal gates which provide the entrance to the area where the uses described within the application are carried out.
8. Neither main party has addressed the way in which the café and any use within the cottage are taking place and whether they have any relationship functionally with the rest of the site apart from the sharing of the pedestrian and vehicular access that I could see. The application form under the heading "reason for lawful development certificate", does refer to "café/takeaway" which does raise a question about whether that should be a further primary use within a mix of uses or whether it may be within a separate planning unit.
9. Whilst my role in this appeal is primarily to consider the matters in dispute between the main parties, these factors provide ambiguity and lack of precision in the terms of what has been applied for and what the appellant is attempting to demonstrate. If there is a mixed use, elements within a mixed use cannot be disaggregated. An individual element of a mixed use would not be lawful even if it were carried on for 10 years, if another part of the mix had not been

carried out for that length of time. The submissions do not entirely address these concepts including how uses have been inter-related or not, over the 10 year material period.

10. Notwithstanding the above, the Council accepts that the site has been used for storage historically, possibly from around 2010, and this is currently taking place. They accept that this has included storage of vehicles. The submitted evidence includes a rental agreement dated and signed in May 2009 between 'MT Storage' the landlord and Mr David Chambers as the tenant. This states in part 2 of the agreement that "the premises rented in this agreement is to include an open yard for storage of portacabin and vehicles for restoration." The header to the agreement underneath 'MT Storage' states "all kinds of storage solutions" which is clearly a very broad term. The plans show where containers are positioned and the appellant refers to the rest of the site being divided into "compounds" but there is no description or evidence to demonstrate how this arrangement operates. For instance, there appear to be multiple occupiers and it is not explained whether the compounds or parts of the site are used in any distinctly separate way operationally by the different occupiers.
11. The applicants refer to the site having been used in the past as a vehicle operating centre for light goods vehicles which is backed up by evidence with operators' licence application details which go back as far as 2005. The evidence doesn't make it clear whether the vehicle repairs are separate from this or as part of the use as a base for those vehicles. It is also not disputed by the Council that vehicles have been on site for the material period both as the commercial base and also private use. I would expect such use to have a degree of ancillary repairs when vehicles based there need it. However, the application seems to be made on the basis that vehicle repairs are a primary rather than just an ancillary element. The submissions do not clearly describe how that has occurred or back it up with evidence.
12. The residential use is stated as having occurred within mobile homes although reference is also made to one unit being a portacabin. The evidence does not explain or show whether they each would fall within the definition of caravans. The Council refers to the lack of confirming documentary evidence in the form of Council Tax and utility bills as well as rental agreements. However, their evidence should not be rejected simply because it is not corroborated, if there is no evidence to contradict their version of events, or make it less than probable. The suggestion as well by the Council that the mobile homes may have not been in the same positions for 10 years on the site may not be fatal to the appellant's claims if they have remained as caravans or at least are potentially mobile. Mobile homes by their nature are not buildings and moving them around may not affect the continuity of the use of the planning unit within which they are stationed, if the residential use continues and they are not used for other primary purposes. The evidence does seem clear that some residential occupation of the site overall has taken place since 2006 although the precise form and continuity of that is not clear.
13. There are clearly elements of use that has applied for which have been continuous for more than 10 years prior to the date of the application. However, there is insufficient evidence to explain the nature of the vehicle repairs, whether that is a primary use or an ancillary part of another use or uses and also the nature of the residential use. The evidence overall is not

sufficiently precise and unambiguous to enable me to reach a view about whether there is an overall mixed use of the site which has continued without material changes for 10 years. In the alternative, the evidence does not demonstrate if there are a number of separate planning units each being used for primary uses some of which may have been continuous for 10 years.

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 storage, vehicle repairs and domestic use, was well founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Andy Harwood

INSPECTOR