

Appeal Decision

Site visit made on 27 August 2024

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 17 September 2024

Appeal Ref: APP/A3010/X/24/3344615

Land at Broad Gate, Lincoln Road, East Markham, Nottinghamshire NG22 0SL

- The appeal is made by Alan Broadbent under section 195 of the Town and Country Planning Act 1990 against a refusal by Bassetlaw District Council to grant a lawful development certificate.
 - The application Ref: 24/00309/CTL, dated 14 March 2024, was refused by notice dated 7 May 2024.
 - The application was made under section 191(1)(a).
 - The development for which the certificate is sought is the use of the land as "operational land adjacent to the East Coast main line".
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Decision

1. The appeal is dismissed.

Reasons for the decision

2. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on the lawfulness of the use at the time of the application. The planning merits of the use are not relevant to the appeal and there is no planning application before me.
 3. The land consists of two plots on Lincoln Road and Broad Gate on each side of a fenced-off railway line, in a location where there was until 1976 a through road over a level crossing. Railway operations began here in the 19th century with statutory authorisation. The appellant maintains that the use of the plots is statutory undertakers' operational land because rights of way and service media easements exist over the plots for railway purposes. The appellant's ownership of the plots is subject to these rights and easements, which were entered into by him and Mrs Broadbent when they acquired the land from the statutory undertakers in 2000.
 4. The Council refused the application for the following reason:

"The information contained in the supporting documents has failed to demonstrate that the land in question constitutes 'Operational Land' for the purposes of statutory undertakers, as defined by Section 263 of the Town and Country Planning Act 1990."
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5. An application for a certificate under section 191(1)(a) can only be granted in respect of an existing use. The two plots are unused and overgrown. Their use for railway purposes ceased when the level crossing was closed and the railway paraphernalia on the plots was removed. The plots were later transferred as surplus land to the appellant and Mrs Broadbent. In these circumstances it is reasonable to conclude that the use of the plots as statutory undertakers' operational land has been abandoned. The mere retention by the undertakers of rights over the plots does not amount to an existing use of land for the purposes of section 191(1)(a).
6. The onus is on the appellant to make out the case for the certificate to a standard based on the balance of probabilities. The available evidence does not achieve that standard and I am therefore satisfied that the Council's refusal of the application is well-founded. The appeal has therefore been dismissed.

D.A.Hainsworth

INSPECTOR