



Appeal Decision

Site visit made on 25 June 2024

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th September 2024

Appeal Ref: APP/P1805/X/23/3332759

Primrose Nurseries, Fairfield Road, Bournheath, Worcestershire B61 9JJ

- 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 Banham against the decision of Bromsgrove District Council.
 - The application ref 23/00728/CPE, dated 11 July 2023, was refused by notice dated 18 September 2023.
 - 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 B8 - Storage or distribution.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An application under Section 191(1)(a) of the 1990 Act seeks to establish whether any existing use of buildings or other land is lawful at the time of the application, that is 11 July 2023. Section 191(2) sets out that uses and operations are lawful at any time if: a) no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and b) they do not constitute a contravention of any enforcement notice then in force.
3. 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 use they shall issue a certificate to that effect; and in any other case they shall refuse the application. An LDC is not an application for planning permission and the planning merits of the matter applied for do not fall to be considered. The decision is based strictly on the facts and on relevant planning law. The standard for the evidence is one of a balance of probabilities and the onus of proof rests with the appellant.

Main Issue

4. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether the appellant can show that the use of the site for storage or distribution (Use Class B8 of the Town and Country Planning (Use Classes) Order 1987 as amended (the UCO), occurred at least 10 years before the date of the application and that use continued without significant

interruption thereafter so as to be immune from enforcement action in accordance with s171B(3) of the Act.

Reasons

5. The appeal relates to a parcel of land on which are sited metal storage containers, lorry bodies, chalet style structures, industrial style buildings, a polytunnel and a portal frame agricultural building. Many of the units are in a dilapidated state. At the time of my accompanied visit, there were some cars and vans parked on the site and several Heavy Goods Vehicles (HGVs), some of which were parked in an open fronted building. I was not granted access to any of the enclosed buildings or structures.
6. The appeal site was purchased by the appellant in April 2004. The site had historically been used as a plant nursery and by 1984 the manufacturing of plant pots and containers is said to have become the principal activity on the site. An LDC dated 8 November 2000 was issued on appeal¹ which established the existing use of three buildings on the site for the production of glass-fibre mouldings, finishing and associated use. The plan for the 2000 LDC (dated 8 November 2000) shows the planning unit at that time to encompass a larger area than the subject LDC appeal, incorporating land that has since been put to an equestrian use. It excludes the house and its garden area.
7. The appellant states that since 2000, the factual position and ownership has changed. The appeal LDC plan shows the site divided into three areas. The house and garden; the inner parcel of land to which the appeal relates; and an area beyond which is annotated as equestrian. From my observations and from the presented evidence, I have no reason to dispute that the appeal land as indicated on the plan is functionally and physically separate from the remainder of the site and that it forms a separate planning unit.
8. From 2004/2005 the appeal site is said to have been used commercially with buildings rented out and for parking of heavy goods vehicles (HGVs). The notarised statutory declaration (SD) from the appellant states that the site has been continuously used commercially since purchase. A notarised statutory declaration dated 20 June 2023 from the appellant's wife confirms the appellant's SDs to be true regarding the commercial use of the site and that she and her husband began occupying the site in summer 2004. There is no explanation of what the commercial use involved. While figures from the appellant's accountant show a variable annual income generated from 'commercial renting' of the site from 2005-2020, they show just a total for each year and provide no further information that defines the use of the site. I therefore find they are of limited value.
9. The appellant has supplied an annotated block plan and a corresponding list of the individuals who have utilised the units on the site from 2004 to 2021 or the 'present day'. The list provides the names of tenants for each of the 34 units, including 2 areas identified for parking, and the years of occupation. I note that 4 of these units are not within the appeal site but are within the area of land which is described as equestrian.
10. Evidence has also been supplied in the form of statements from 12 tenants. Signed witness statements are of a standard form, stating a name, business

¹ APP/P1805/A/00/1043877

name and that they have used the unit for storage. The statements are dated May and June 2023 and describe uses including: tree surgery, landscape and general maintenance; plumbing, heating and general maintenance; domestic and commercial landscaping and ground maintenance; vintage vehicles. They also state the year when they began to occupy the unit.

11. The appellant's submissions and each statement from the tenants refer to HGV parking taking place on the land. The presented evidence suggests that HGV parking is part of the claimed B8 use for storage or distribution. When I visited, I observed some 18 HGVs on the land. These appeared to me to have no functional connection with the individual tenants or their businesses that are said to occupy the units. There were other HGVs with sign writing which clearly linked them with the appellant's business.
12. There is a distinction between parking and storage in planning terms. While parking of vehicles belonging to tenants would likely be considered incidental to the primary use of the planning unit, HGVs that have no apparent connection with the activities on the site cannot be said to be functionally related to the claimed use of the land as storage or distribution.
13. In *Crawley BC v Hickmet Ltd*² the Court of Appeal found that parking means leaving a vehicle while it is in current use, whether that is for short or long term. Storage takes place when something is put away for a period of time because its use is not contemplated in the short term. A storage use falls within Class B8 of the UCO. A car park does not fit within any category of use class and is therefore considered to be a sui generis use. In this case I find nothing to demonstrate that the HGVs are stored on the land rather than parked. Indeed, the tenants' statements refer to fluctuations in parking depending on the time of day and it being 'transitory'.
14. Consequently, I consider that the use of the appeal site is indicative of a mixed use rather than a use incorporating storage or distribution. Section 191(4) of the Act allows the description of the use to be modified and in these circumstances, to establish the lawful use of the site, it would be necessary for the appellant to demonstrate that the mixed use as identified has occurred for a continuous 10 year period prior to the LDC application.
15. There is little evidence to show that the parking of HGVs that are not incidental to the claimed storage uses, has occurred for the requisite period. With reference in the evidence to an enforcement case dated 2023 concerning the HGVs on the site, it suggests that this activity could be relatively recent. I am also mindful of the Council officer's report of their visit in August 2021 where there is a description of the site and no reference made to HGVs.
16. I acknowledge the Council officer's report dated 26 January 2022 which refers to a site visit carried out in August 2021 which found that buildings and cabins were predominantly used for storage. I also note that the officer considered that it was very likely that the storage use had taken place for more than 10 years. However, the application was for the proposed use of the site for residential development and not an application for an LDC. Moreover, there is no mention of HGVs being parked on the land.

² *Crawley Borough Council v Hickmet Ltd* [1998] 75 P&CR 500

17. Based on the facts and evidence provided, while I have no reason to dispute that the agricultural/horticultural use of the land has long ceased and that the land has generated an income from another source, I am not satisfied that the appellant's evidence is sufficiently precise and unambiguous. While tenants are named and some businesses are referred to, there is limited information to demonstrate how the appeal site has actually been used. Although I accept that the appellant might not engage in written tenancy agreements, I would have expected further evidence to support their claim, such as information relating to business rates and insurance, photographs and aerial images, and accounts that show a breakdown of rental income. Even if the HGV parking had not been decisive as to the mixed use, the evidence of a continuous storage use, HGV parking aside, over the requisite period has not been established on the balance of probabilities.

Conclusion

18. For the reasons given above and having regard to all other matters raised, I conclude that the Council's deemed refusal to grant an LDC was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in s195(3) of the 1990 Act as amended.

S A Hanson

INSPECTOR