

Appeal Decision

Site visit made on 31 October 2024

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

Decision date: 20th November 2024

Appeal Ref: APP/W3005/X/23/3330233

Land opposite 151 Derby Road, Kirkby-in-Ashfield, Nottinghamshire

- The appeal is made by Steven Brealey under section 195 of the Town and Country Planning Act 1990 against a refusal by Ashfield District Council to grant a lawful development certificate.
 - The application Ref: V/2023/0111, dated 23 February 2023, was refused by notice dated 15 May 2023.
 - The application was made under section 191(1)(a).
 - The development for which the certificate is sought is the use of the land for commercial storage purposes.
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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 Council refused the application for the following reason: -

"It is considered that insufficient evidence has been provided to demonstrate that the land has been used for commercial storage purposes for a continuous period of 10 years. The information provided does not provide evidence beyond reasonable doubt to substantiate the case made by the applicant, therefore on the balance of probability a Certificate of Lawfulness cannot be granted."
 4. I have assessed the available information relating to the claimed 10-years' use for commercial storage purposes.
 5. The appellant states that he bought the land in 2015 and has used it since then to store building materials, mobile welfare facilities, plant and machinery. He has paid business rates since 2021. For his application to succeed he needs to show that his use is lawful because the time for enforcement action has expired. The time expires at the end of the period of ten years beginning with the date of the breach of planning control. In this instance, that date therefore has to be earlier than the date when the appellant started to use the land.
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6. The land has been consistently referred to by the address "Storage land opposite 151 Derby Road" on the Council's online planning database. The Council do not know why. The actual planning documents available on the database do not give this address for the land: they either give it as land at Derby Road or land opposite 151 Derby Road. These documents do not show that the land was ever in use for storage except for storage incidental to its main use, which in 1975 was a piggery, in 1990 was a horticultural enterprise and in 1993 was a market garden or smallholding.
7. The appellant has supplied several images. The views looking up from the railway line c1960-1970 and again in 1998 are long-distance shots that show buildings on the site, but not what they were used for. The screengrab from the website Property Data relates to a wider area with a use described as sui generis and it was downloaded after 17 February 2021. The image taken from the 'for sale' advertisement when the appellant bought the land in 2015 describes the land as 'storage land' in the heading but as 'a plot of open land' in the text. It states that a firm has had a licence to occupy the land to store plant and machinery since November 2006. No further details of the licence have been made available. The image shows only unused land with what appear to be a few abandoned objects on it. Google Streetview imagery from October 2008 to June 2015 does not show any significant activity taking place on the land.
8. The appellant has not provided any further relevant information relating to the claimed 10-years' use for commercial storage purposes.
9. 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 information does not achieve that standard. I am satisfied that the Council's refusal of the application is well-founded. The appeal has therefore been dismissed.

D.A.Hainsworth

INSPECTOR