



Appeal Decisions

Site visit made on 1 August 2024

by A U Ghafoor BSc (Hons) MA MRTPI ACMI fCMgr

an Inspector appointed by the Secretary of State

Decision date: 25 November 2024

Three Appeals at Bushy Hill Communication Centre, Edwins Hall Road, Chelmsford, CM3 8RU

- The appeals made under sections 78 and 195 of the Town and Country Planning Act 1990 (as amended) ("the Act").
- The appeals are made by Mr Roger Bigwood on behalf of Supported Business Holdings Ltd against the decision of Chelmsford City Council.

Appeal A Ref: APP/W1525/X/22/3303778

- The appeal is made under section 195 of the Act against a refusal to grant a certificate of lawful use or development (LDC).
- The application ref 22/00644/CLEUD, dated 30 March 2022, was refused by notice dated 25 May 2022.
- The application was made under section 191(1)(a) of the Act.
- The use for which a LDC is sought is described in the application is security accommodation which is ancillary to the primary activity of the Class B1 operations.

Appeals B and C Refs: APP/W1525/W/22/3303781 and 3329288

- The appeals are made under section 78 of the Act against a refusal to grant planning permission.
- The application refs are 22/00022/FUL (Appeal B) and 22/02252/FUL (Appeal C).
- In Appeal B, the development proposed is permanent retention of mobile home to provide accommodation for security guard on basis of 24 hours per day for 365 days per year.
- In Appeal C, the development proposed is new footpath link to the pre-existing footpath to the south of the site.

Decisions – Appeal A, B and C

1. All the appeals are dismissed.

Appeal A – LDC for an existing use

2. Section 191(2)(a) of the Act explains that uses and operations are lawful at any time if either no enforcement action may be taken in respect of them, because they did not require planning permission or because the time for enforcement action has expired, or they do not constitute a contravention of any of the requirements of any enforcement notice then in force. The latter does not apply in this case as far as I am aware and there is no dispute that planning permission would normally be required for the stationing of a caravan¹ for security accommodation, which the appellant says is ancillary to the primary activity of the Class B1 operations.
3. The stationing of a mobile home on the land does not normally amount to operational development and is a use of land. It is therefore imperative to describe, with precision, the use to which the mobile home is put. The relevant time limit relating to when enforcement action may be taken in respect of an unauthorised use of land such as this

¹ The expression "caravan site" means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed having regard to Sections 1(4) and 29(1) of the Caravan Sites and Control of Development Act 1960, as confirmed in Section 336(1) of the Act.

is set out in s171B(3) of the Act and is 10 years. From the written submissions, the appellant seeks an LDC certifying that the existing use of the mobile home for security accommodation which is ancillary to the primary activity of the Class B1 operations is lawful, due to the passage of time.

4. The burden of proof is upon the appellant and the standard is on the balance of probabilities. It therefore follows that the appellant needs to show, that the stationing of a caravan for security accommodation, which they say is ancillary to the primary activity of the Class B1 operations occurred on or before 30 March 2012 and has continued for a period of 10 years without significant interruption. Any continuous 10-year period is relevant.
5. The Council refused the application on the basis that the siting of a mobile home constitutes a change in the use of the land. Strangely, the reason for refusal also states the following: "The mobile home is not considered to be proportionate accommodation for a security guard and is not therefore ancillary to the overall use of the site for Class E (office). Planning permission is therefore required". An appeal against a refusal to grant an LDC is confined to reviewing the Council's decision, to establish whether the refusal to grant a certificate was well founded; that is, the decision itself, not necessarily the reasons for it.
6. I have carefully examined all the written submissions. However, the appellant's own evidence is lacking in detail, because it does not clearly explain when the mobile home was stationed on the land and when it was first used in connection with security accommodation ancillary to the primary activity of the Class B1 operations. It does not clearly show how it has been used thereafter without significant interruption. In fact, the appellant's own evidence is imprecise and contradictory. For example, a letter accompanying the application clearly states that the mobile home was placed on site in October 2020, which is within the relevant period. On the appellant's own evidence, immunity from enforcement action has not been achieved and so the existing use is not lawful.
7. I conclude that the appellant has failed to discharge the burden. The decision to refuse the LDC was well-founded, but for different reasons.

The s78 Appeals B and C

8. The appeal site contains buildings and structures connected with its previous use as a radar testing facility. That use has now ceased, and it is used as office space. The site sits on top of a hill and contains several buildings within a cluster. The site sits outside any identified settlement and is within the countryside², and it is accessed from Edwins Hall Road: a narrow country lane to the north. The road is also a protected lane which is a non-designated heritage asset and situated to the site's north, is a Grade II* listed building. Bushy Hill local wildlife site surrounds the site and there is a woodland in the distance. An informal path is located on the south. The path is bendy, narrow, unlit and links to a public path.
9. Policy S7 of the Chelmsford Local Plan adopted in 2020 relates to the spatial strategy. The previous Inspector found that residential development of the site conflicts with local and national planning policies which seek to coordinate this kind of development in suitable and sustainable locations.

² APP/W1525/W/20/3266141 for the demolition of the existing buildings, structures and masts; redevelopment to provide 7 detached dwellings together with landscaping, roads, footpath and other infrastructure and ancillary works, dismissed 21 December 2021.

10. However, in this case, the appellant rejects the notion that the mobile home has been or would be used for human habitation. Despite its internal layout and available facilities for day-to-day domestic existence, the unit is used in connection with the security of the complex. It has an ancillary purpose as it is used in connection with the commercial use of the site. For instance, it is used by security personnel between 1800 to 0600 daily. There is evidence to indicate security concerns given the rural location of the site.
11. The Council is also incorrect in claiming the use of the mobile home would have an adverse effect upon the Crouch & Roach Estuary Special Protection Areas and RAMSAR sites. This is because the nature of the non-residential use is highly unlikely to generate recreational pressure on these protected sites.
12. The complex has several buildings and is accessed via a gated driveway: there are guard dogs roaming the site. The evidence presented does not clearly show existing buildings within the complex cannot accommodate the needs of security personnel. On the available evidence, I am not satisfied alternatives have been adequately or properly considered nor is there satisfactory explanation as to why an existing facility is not available. The retention of the mobile home conflicts with the aims of Local Plan S7.
13. In Appeal C, the appellant's statement case refers to a separate refused application and subsequent appeal for outline planning permission for demolition of existing structures and construction of 7 detached dwellings, including internal road and private drives. For clarity's sake, the appeal under local planning authority reference 22/02235/OUT was withdrawn and closed on 28 September 2023 (appeal ref 3329279). It is not before me.
14. The appellant seeks planning permission for new footpath link to the pre-existing footpath to the south of the site. It is a standalone application which could be approved if the residential scheme were not able to come forward. The claim is that the new footpath is to take a logical route down the hill and has been designed by a structural engineer. Lighting could be included although a rural path, such as the proposal, are unlit. Surfacing material sympathetic to the rural setting of the footpath would be used.
15. However, I am concerned about the location and scale of the new footpath. Given the setting of the locality, the footpath is likely to be noticeable in views from the surrounding area. It would be seen as an obtrusive feature on the landscape because of its positioning. The proposed path would link an office site to a 'dead-end' public right of way route, thus would not improve, or enhance the existing public right of way network in the area. There would be no public benefit to outweigh the potential visual harm to the character and beauty of the countryside. The proposal would be contrary to Strategic Policy S11 and policies DM10 and DM23 of the Local Plan.

Conclusions

16. For all the reasons given above and having regard to all other matters, I conclude that the Appeal A should be dismissed in accordance with the powers transferred to me in section 195(3) of the Act. I conclude that Appeal B and C should not succeed.

A U Ghafoor

Inspector