
Appeals Decisions

Site visit made on 3 December 2024

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

Decision date: 16th December 2024

Appeal A: Ref: APP/J3015/X/23/3330869

Land and buildings at Ropewalk Farm, Anchor Road, Eastwood, Nottingham NG16 3RU

- Appeal A is made by John Braddock under section 195 of the Town and Country Planning Act 1990 against a refusal by Broxtowe Borough Council to grant a certificate of lawful use.
 - The application Ref: 22/00912/CLUE, dated 19 November 2022, was refused by notice dated 11 April 2023.
 - The application was made under section 191(1)(a).
 - The use for which the certificate is sought is the existing mixed use of Ropewalk Farm as a residential dwelling and as a builder's yard and for the parking of commercial vehicles.
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Appeal B: Ref: APP/J3015/X/24/3340483

Building and land at Ropewalk Farm, Anchor Road, Eastwood, Nottingham NG16 3RU

- Appeal B is made by John Braddock under section 195 of the Town and Country Planning Act 1990 against a refusal by Broxtowe Borough Council to grant a certificate of lawful use.
 - The application Ref: 23/00898/CLUE, dated 6 December 2023, was refused by notice dated 23 February 2024.
 - The application was made under section 191(1)(a).
 - The use for which the certificate is sought is the existing use of a building and land at Ropewalk Farm as a dwellinghouse within Class C3 of Part C of Schedule 1 to the Town and Country Planning (Use Classes) Order 1987.
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Decisions

Appeal A

1. The appeal is allowed and attached to this decision is a certificate of lawful use relating to the existing mixed use, which I consider to be lawful at the time of the application.

Appeal B

2. The appeal is allowed and attached to this decision is a certificate of lawful use relating to the existing use as dwelling house, which I consider to be lawful at the time of the application.
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Reasons for the decisions

Introduction

3. Section 195 requires assessments to be made as to whether the Council's refusals of the applications are or are not well-founded. The assessments are based on the lawfulness of the existing uses at the time of the applications. The planning merits of the existing uses are not relevant to the appeals and there are no planning applications before me.
4. The reasons given by the Council for the refusal of application 22/00912/CLUE are as follows:
 - "• Insufficient evidence has been made available to the Council to satisfy that the uses referred to in the First Schedule are established and have continued for a period of ten years prior to the date of the application and are therefore lawful.
 - The time for the Council to apply for an order under s.171BA(1) of the Town and Country Planning Act 1990 has not expired."
5. The reasons given by the Council for the refusal of application 23/00898/CLUE are as follows:
 - "• Insufficient evidence has been made available to the Council to satisfy that the use referred to in the First Schedule is established and has continued for a period of four years prior to the date of the application and is therefore unlawful. *[sic]*
 - The time for the Council to apply for an order S171BA (1) of the Town and Country Planning Act has not expired."
6. As to the second reason for each refusal, the Council's application for an order under section 171BA(1) had an initial hearing in court but was withdrawn afterwards by the Council without an order having been made. By virtue of section 191(3A), the time limit referred to in the first reason for each refusal still applies. The Council have nevertheless referred in their appeal statements to cases under section 171BA involving deliberate concealment. The Council's first reason for each refusal was based on the sufficiency of the available evidence; deliberate concealment was not alleged to have occurred and it is not a matter for further consideration in these appeals.
7. The 'residential dwelling' referred to in application 22/00912/CLUE is the same building as the 'dwellinghouse' referred to in application 23/00898/CLUE and the material submitted by the parties in relation to the use of this building is the same in both appeals.

Assessments

8. The information supplied by the appellant consists of a supporting statement, four statutory declarations, letters from a neighbour, other users of the premises, employers and a firm of solicitors, and some emails, including messages from service providers. The appellant maintains that the information

supplied demonstrates that the building in the north-west corner of the site was converted into residential use in 2012 and has been occupied continuously as such since then; that the secure compound in the south-east corner of the site has been used as a builder's yard since around 2012; and that the central part of the site has been used for the parking of commercial vehicles since 2006.

9. The Council have not produced any evidence that contradicts the information supplied by the appellant. Instead, they seek to make the appellant's case less than probable by pointing to what they consider to be a shortage of information and a lack of 'paperwork' and to the absence of any records of Council Tax or business rates payments, registration on the electoral register or arrangements for refuse collection. On this basis, the Council conclude that the appellant's evidence does not show on the balance of probabilities that either the mixed use or the residential use has taken place for the required period.
10. The evidence supplied by the appellant is detailed and corroborated. It contains personal and incidental particulars that go beyond the rudimentary supply of information. The letter from the firm of solicitors confirms that the current occupiers of the building have a residential tenancy agreement dating from 2016. I would not expect the nature of the use of the remainder of the site to be supported by further transactional documentation. The absence of official records is not unusual in cases of this nature; it could be due to various reasons, including efforts to 'keep a low profile', but in this instance the appellant's evidence is sufficiently precise and unambiguous on its own to withstand the adverse inference that this could convey.
11. For the above reasons, I have concluded on the balance of probabilities that the time for enforcement action has expired in relation to both appeals. I am satisfied that the Council's refusals of the applications are not well-founded. The appeals have therefore been allowed and certificates have been granted under section 191 in relation to both the mixed use and the residential use, as described in the applications and to the extent supported by the evidence.

D.A.Hainsworth

INSPECTOR