

Appeal Decision

Inquiry held on 20 and 21 November 2024, 18 December 2024 and virtually on 19 December 2024

Site visit made on 22 November 2024

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th January 2025

Appeal Ref: APP/P1615/X/24/3348297

Chapel Cottage Playley Green, Redmarley, Gloucester GL19 3NB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Clayton Williams against the decision of Forest of Dean District Council.
 - The application ref P1574/23/LD1, dated 22 November 2023, was refused by notice dated 18 January 2024.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which a LDC is sought is a mix use of land as a dwelling (class C3) with ancillary amenity land, and; commercial use for the repair, maintenance and tuning of motorcycles and other small engine vehicles and equipment (class E), together with use ancillary thereto.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. For the sake of brevity and clarity I have taken the address of the appeal site from the appeal form.

Main Issue

3. The main issue is whether the Council's decision to refuse a LDC was well founded.

Reasons

4. Section 191(2)(a) of the Act provides that uses and operations are lawful at any time if no enforcement action may then 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.
5. With regard to use of land, section 171B(3) of the Act states that no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach. Therefore, in this case, in order to be lawful the use described must have commenced at least 10 years before the application date (hence before 22 November 2013) and continued without any significant interruption thereafter for at least a 10 year period of time.
6. The burden of proof is on the appellant and the relevant test is the 'balance of probability'. If the local planning authority has no evidence itself to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse the application, provided that the applicant's evidence alone

is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities. It is therefore necessary to consider whether, on the facts of the case and relevant planning law, the specific use for which a certificate is sought was lawful at the date of the application.

7. The appellant contends that the appeal site is a singular planning unit, that the use of the site comprises one singular mixed use and that the use of the site has accrued immunity from enforcement action over the passage of time. The appellant claims that the use of the site commenced prior to November 2013 with evidence to establish this including photographic evidence, aerial images, history of planning applications and enforcement investigations, correspondence with the council, vehicle registration documents, invoices, company incorporation certificate and various letters and witness statements including from architects, solicitors, accountants and local residents. Evidence was also given at the Inquiry from the appellant's witnesses. This evidence is examined in the following paragraphs.
8. The appellant explains, in the submitted timeline document, that Chapel Cottage was owned from 1983 by Mr A. E. Williams & Mrs Y. Williams and then occupied from 1997 onwards by the appellant with commercial use ancillary to the residential occupation of Chapel Cottage commencing April 1998. The timeline further states that the appellant and his company, Willpower Racing, had a trading relationship with Martin's Rubber Company from 1998 onwards. A letter from Martin's Rubber Company dated 1 March 2022 states '*we have dealt with Willpower Racing since 1998 in connection with motorcycle racing engines which are tuned, repaired and rebuilt as required*'. Whilst this letter gives an indication that Willpower Racing has had dealings with Martin's Rubber Company, there is no substantial evidence as to the frequency of works undertaken by Willpower Racing and to whether these works were undertaken as a commercial operation from the appeal site for a continuous period of 10 years.
9. Planning permission¹ for erection of detached private car garage with attached garden store was granted in June 2000 and the appellant details that maintenance and repair of motorcycles and other machinery from Chapel Cottage continued from summer 2000. An invoice from Willpower Racing dated 11 March 2004 has been provided which has the appellants name and address of Chapel Cottage on it. This invoice does not provide compelling evidence that a commercial use has been undertaken from the site for a continuous period of 10 years.
10. The appellant states that Willpower Racing was incorporated as a Limited Company with evidence submitted detailing a Certificate of Incorporation of a Private Limited Company from Companies House, dated 31 March 2004. A letter dated September 2023 which claims to be from an accountant's firm called Azets states that they have acted as accountants and advisors for the appellant and Willpower Racing since 2004. The Companies House certificate does not indicate that Willpower Racing operated from the appeal site with the evidence provided stating that the registered office for Willpower Racing Ltd was an address in Evesham, Worcestershire. This same address is also detailed on the Azets letter. The submitted evidence in this regard does not provide substantial evidence that a commercial use has been operating from the appeal site. The Azets letter does not provide sufficient evidence, such as annual accounts, that a commercial use has been operating from the appeal site for a continuous period of 10 years.

¹ Local Planning Authority Reference: DF6710/A

11. Retrospective planning permission² for change of use from agricultural land to residential curtilage was granted in December 2005. The land to the north of Chapel Cottage referred to by the main parties at the Inquiry as 'the field' was rented by the appellant from around spring 2007 and then subsequently purchased in 2009. At the Inquiry, I heard that the dividing fence between Chapel Cottage and 'the field' was removed around 2009. The appellant claims that 'the field' commenced use ancillary to Chapel Cottage from spring 2007.
12. At the Inquiry, I initially heard from the appellant, Mr Williams, that he used the whole of the appeal site on a daily basis for purposes of residential and commercial use including testing of machinery/vehicles that he repaired and stored. He explained that due to limited space in the workshop, items were stored on the rest of the site including lawnmowers and the lorry, in which items were also stored within this lorry. Mr Williams described that machinery was consistently tested in 'the field' as well as riding of vehicles all over but in different places and he also explained that 'the field' was cut to keep the grass low. He explained that regular family events took place on 'the field' including camping and that motorbike riding and dog walking also took place. Mr Williams went on to further clarify that testing of motorbikes, lawnmowers, chainsaws and machinery may be tested to up to 20 minutes at a time but sometimes just a quick rev up. He further stated that this testing was not every day but mostly weekly but not necessarily every week. Mr Williams also told the Inquiry that big parties were held around 6-7 times a year which would spill in to 'the field' and also that camping took place but not every year. Given the level of activity described, I am not satisfied that this shows a continuous 10-year period of a mixed use of commercial and residential.
13. I heard from Mr Priday, Mr Windsor-Clive, Mr Loynes, Mr Crawford and Mr Tufnell at the Inquiry and numerous written statements have been received from interested parties. They all give accounts of their observations of the appeal site, in particular 'the field', which included obstacles and items in the site such as the lorry, trampoline, tractors, lawnmowers, the animal sculpture, caravans, swimming pool, bike tracks, cones, trenches. Some of these witnesses also explained that they had observed testing of motorbikes and machinery, recreational motorbike riding, social gatherings and bonfires. Mr Bainton, a former enforcement officer of the Council, also provided evidence that he recalled an assortment of play equipment in 'the field' as well as a lorry and an animal sculpture. Some of the witnesses detailed that the appellant has repaired vehicles/machinery for them, although there is minimal clarification as to how many times this happened and whether this formed part of a commercial operation. I am not convinced from the evidence provided in this regard that a mixed use, for commercial and residential as described, has taken place at the appeal site uninterrupted for a continuous 10-year period.
14. Photographic evidence and aerial images have been submitted with the majority of the witnesses at the Inquiry giving evidence on these. These photographs and images range from around 2005 to 2023 and show various items and activities at the appeal site such as motorbike riding, motorbike jumps and a trench, lawnmowers in a lorry, a trampoline, young children playing, hay bales, animal sculpture, various vehicles, caravans, trailers, a burnt area in the ground and track marks in 'the field'. These photographs and aerial images relate to specific dates and hence are snapshots in time of those particular dates, and other than some items such as the lorry and the animal sculpture, they do not consistently show the same items at the

² Local Planning Authority Reference: P1678/05/COU

site or in the same location. Some of the items and activities seen in the photographs and aerial images have been described as residential in nature. Other items and activities have been described as commercial, although there is no clear evidence that they do form part of a commercial operation and could alternatively be described as items and activities that form part of a hobby. Nevertheless, the photographs and images do not show the site as a mixed use of residential and commercial for a continuous uninterrupted period of 10 years from November 2013.

15. Accordingly, having regard to all of the evidence before me, I find as a matter of fact and degree and on the balance of probability, that the whole of the appeal site has not been in a mix use as a dwelling and; commercial use for the repair, maintenance and tuning of motorcycles and other small engine vehicles and equipment for more than 10 years before the date of the application.

Other Matters

16. The Council have accepted that the building adjacent to the residential property, described as the workshop, has been used for at least 10 years prior to the submission of the application for both commercial and residential use. Mr Colegate acknowledged at the Inquiry that a LDC could be issued in respect to this part of the appeal site. However, the evidence submitted with this appeal is not substantially clear with regards to the operation of a commercial use on any part of the appeal site, including the workshop. From the submitted information and what I heard at the Inquiry it appears that the appellant does repair, maintain and tune motorcycles, small engine vehicles and other equipment, however, there is no convincing evidence that this is done as a commercial operation. On this basis, I cannot issue a LDC with respect to part of the site.
17. I have had regard to all the submitted evidence including the Council's enforcement investigations, previous appeal decisions and planning applications. These matters do not alter my findings detailed above.

Conclusion

18. I conclude on the balance of probability, that the Council's refusal to grant a LDC in respect of the mix use of land as a dwelling (class C3) with ancillary amenity land, and; commercial use for the repair, maintenance and tuning of motorcycles and other small engine vehicles and equipment (class E), together with use ancillary thereto, was well-founded and that the appeal should fail. I exercise accordingly the powers transferred to me under section 195(3) of the Act.

Chris Baxter

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Leanne Buckley-Thomson of Counsel

She called

Clayton Williams	Appellant
Gavin Loynes	Local Resident
William Windsor-Clive	Local Resident
Robert Crawford	Local Resident
Ian Priday	Local Resident
Nick Bainton	Former Senior Planning Enforcement Officer of Forest of Dean District Council
Peter Tufnell	Planning Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Peter Wadsley of Counsel

He called

Trevor Short	Local Planning Authority
Clive Reynolds	Local Planning Authority
Roland Close	Local Planning Authority
Stephen Colegate	Local Planning Authority

INTERESTED PARTIES:

Jonathan Brierley	Local Resident
-------------------	----------------

Documents submitted at the Inquiry:

1. Appellant's opening statement
2. Council's opening statement
3. Statement from Jonathan Brierley
4. Notification letter of Inquiry details and neighbour notification list
5. Correspondence from Mr Gregory
6. Council's closing statement
7. Appellant's closing statement