
Appeal Decision

Site visit made on 30 January 2025

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 6 February 2025

Appeal Ref: APP/E2001/X/24/3342032

Land north of Stoney Carr Farm, Stony Lane, Newport, East Riding of Yorkshire HU15 2RA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by GBP Skips against the decision of East Riding of Yorkshire Council.
 - The application Ref 23/03155/CLE, dated 18 October 2023, was refused by notice dated 14 December 2023.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is use as a waste recycling facility.
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Decision: the appeal is dismissed

Procedural Matters

1. The appellant is named as 'GBP Skips' on the Application form and Council's Formal Decision Notice, but as 'GB Skips' on the Appeal form. The appellant has subsequently confirmed that it is the former, and accordingly I have recorded that in the header above.

Reasons

2. Section 191(4) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operation or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.
3. The Planning Practice Guidance (PPG) advises that precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it...a

certificate for existing use must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a use class... the description needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to spell out the characteristics of the matter so as to define it with precision. This is particularly important for uses which do not fall within any use class"....'. In terms of an LDC, this means that the description of the development found to be lawful will be the benchmark against which the materiality of any subsequent change in the character or intensity of the certified use.

4. In this case, the application form describes the development for which the LDC is sought simply as 'waste recycling'. Further detail on the use considered by the applicant was set out in a Supporting Statement, but the description of the development itself went no further than the two words 'waste recycling'. That term could encompass a wide range of activities having a variety of definable characteristics and environmental impacts. The description of the development for which the LDC is sought, as stated on the application form, therefore does not accord with the requirement for precision set out in the PPG.
5. The Supporting Statement submitted with the application does describe the use for which the LDC is sought in some detail. I note the use involves, in part, the sorting of waste by into larger recyclable items: for example, hard plastic, soft plastic, cardboard, metal, and wood, and anything not recyclable. Those items are then separated into large metal skips and taken to recognised recycling companies for further processing and recycling. The non-recyclable material is taken to waste disposal sites, leaving the remainder of the waste comprising soils, bricks, concrete, etc to be put through a trommel, resulting in 'fines' and hardcore being produced. These materials are transported from the site for re-use or further processing.
6. Article 2 of the Town and Country (Use Classes) Order 1987 (the UCO) defines "industrial process" as: "a process for or incidental to any of the following purposes: (a) the making of any article or part of an article, (b) the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article; or (c) the getting, dressing or treatment of minerals; in the course of any trade or business other than agriculture and other than a use carried out in or adjacent to a mine or quarrying". On the basis of the use described in the Supporting Statement, and from my observations at the site visit, I am satisfied the use constitutes an industrial process.
7. The appellant contends that this use falls within Use Class B2 of the UCO, defined there as being use for the carrying on of an industrial process other than one falling within class B1. The UCO defines Use Class B1 as an industrial process being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit¹. Given the potential for the generation of noise and dust arising from the for which the LDC is sought, I am satisfied on the balance of probability that this is a use that does fall within the B2 Use Class.

¹ This now falls within Use Class E.

8. However, this does not necessarily mean that an LDC should be granted in this case. Two difficulties arise.
9. Firstly, there is the description of development for which the LDC is sought as simply 'waste recycling'. It is widely accepted that waste management applications can fall within Use Class B1, B2 or B8 and should not automatically be regarded as a *sui generis* use. The corollary is that the description as simply 'waste recycling' could in theory be any of those. It is equally not the case that a use described as 'waste recycling' would automatically be regarded as falling within the B2 Use Class.
10. The second difficulty is with the evidence of the use of the appeal site before GBP Skips took occupation and commenced activities. The appellant explains that prior to GBP Skips taking occupation, the site was used as a machinery and plant repair service centre by a company called S & C Rescue Services. As described by the appellant, that business operated whereby customers would bring their vehicles eg: tractors, lorries, horseboxes and other machinery to the yard and these would be repaired, subject to pre-check and repair for MOT, and other associated repair and maintenance activities. The appellant explains that this business commenced in 1999 and ceased operating in 2018: i.e the business is said by the appellant to have been operating comfortably in excess of ten years. Two points flow from this.
11. Firstly, the only evidence before me in this respect is the statement of a Mr Stephen Albert Ward Elliott dated 18 October 2023. It is neither a Sworn Statement nor an Affidavit. The statement is not supported by any documentary evidence: for example, invoices, copies of MOT Certificates issued by the business, references from customers, utility bills or details of business rates paid. Absent that and/or other information, I am not in position to reach an informed conclusion as to whether the business operated continuously throughout that period.
12. By way of example, I have no details about the transition from the use operated by S & C Rescue Services and that operated by GBP Skips. This raises questions such as whether there was a significant period of time between the use by S & C Rescue Services finishing and that operated by GBP Skips commencing later that same year? Although both are stated as taking place in 2018, that still leaves a 'window' of 12 months in which potentially no use of the site could actually have taken place. It follows that if there was a period during which the use for 'waste recycling' was not taking place during this transition period, the local planning authority would not have been in a position to initiate enforcement action if considered expedient to do so. Details such as that go to whether the 'use' can be considered to have been continuous.
13. Moreover, although the use by S & C Rescue Services is described in general terms, it is not described in detail. I am therefore not in a position to make an informed assessment as to whether, as a matter of fact and degree, the use operated by S & C Rescue Services did fall within Use Class B2 or whether the impacts were so low-key in terms of noise, vibration, smell, fumes, etc that the use is more properly described as having fallen within Use Class B1.

14. For these reasons, I find that the appellant's evidence is not sufficiently precise and unambiguous to show on the balance of probability that, on the date on which the LDC application was submitted, a use falling within Use Class B2 had been taking place at the appeal continuously for a period of the years or more, such that it would be immune from enforcement action pursuant to section 171B(3) of the 1990 Act.
15. In conclusion, I am not satisfied on the balance of probability that the use for which the LDC is described there with sufficient precision to indicate that the use falls within Use Class B2. In any event, on the balance of probability, I am not satisfied that the appellant has shown that a use falling within Use Class B2 has taken place for a period of ten years, such that it would be immune from enforcement action. Accordingly, I conclude that the decision of the Council not to issue a LDC was well founded.

Paul Freer
INSPECTOR