Planning Inspectorate

Appeal Decision

Site visit made on 7 January 2025

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 31 March 2025

Appeal Ref: APP/P1425/X/23/3335945
Land Adjacent to Magpie Ridge, South Road, Wivelsfield Green, East Sussex RH17 7QS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mrs Anne Cook against the decision of Lewes District Council.
- The application ref: LW/23/0344, dated 31 May 2023, was refused by a notice dated 1 September 2023.
- The application was made under section 191(1)(a) of the 1990 Act.
- The use for which a LDC is sought is a use in connection with a roofing company for storage of roofing materials and equipment and waste materials prior to their removal.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address in the banner heading above is taken from the Council's decision notice as I observed on site that the appeal site is adjacent to a dwelling named Magpie Ridge. There is reference to a Merryworth Cottage in the address on the application form but is little to indicate that this dwelling currently exists.

3. The description of the existing use, in the banner heading above, is taken from the covering letter that accompanied the LDC application. On the application form in section 8 the description of the existing use is *'building contractor's storage building and open storage'*. On the Council's decision notice the description is '*to regularize the land currently being used as part of a contracting business - Class B2/B8'.* However, it is clear from the evidence before me that the description within the covering letter accurately describes the existing use the LDC application is sought for. I have dealt with the appeal on that basis.

4. As stated above, there is reference to Merryworth Cottage within the evidence before me and conflicting evidence as to where that cottage was located. However, that evidence is not relevant to this LDC appeal. There also appears to be a dispute as to where the southern boundary the appeal site lies. However, boundary disputes are not within my jurisdiction.

5. I note that the evidence before me refers to the planning merits of the case. Nevertheless, the planning merits of the development are not relevant in this appeal which relates to an application for an LDC. My decision rests on the facts of the case, on relevant planning law and judicial authority. The test of evidence is made on the balance of probability. The appellant's evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has

no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.

Main Issue

6. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

7. The burden of proof is with the appellant and the appropriate test of the evidence is the balance of probabilities. The onus is firmly on the appellant to show that the use, of the appeal site, in connection with a roofing company for storage of roofing materials and equipment and waste materials prior to their removal, was lawful at the time the application was made. A use is lawful under the provisions of section 191(2)(a) of the 1990 Act if no enforcement action may be taken in respect of it whether because it did not involve development or require planning permission or because the time for enforcement action has expired.

8. The appellant's case is that the use began 10 years before the date of the LDC application, being 31 May 2023. Section 171B(3) of the 1990 Act states that *'in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach'.*

9. It appears that the appellant and her family have owned the appeal site for many years. There is a double garage adjacent to the site access. The site access leads past the garages to a hardsurfaced area that on the day of my site visit contained a skip and numerous items including pallets, various pieces of wood and roofing tiles, a bicycle and a vehicle. There is also a timber shed adjacent to the double garages. This hardsurfaced area, the timber shed and the double garages are within a small part of the overall appeal site that is separated from the remainder of the site by a fence and gate. The remainder of the appeal site is grassed and contains what appears to be 2 vehicles, one under a tarpaulin, and another small timber shed.

10. The evidence before me includes a submitted VAT return for the period 01 Oct 2012 to 31 Dec 2012 for Alec Edward Cook and Robert William Cook, a Self Assessment Statement from HM Revue and Customs (HMRC) for Mr AE Cook dated 25 June 2013 and a Financial Statement for the period 01 October 2015 to 30 September 2016 for AE Cook Roofing. Whilst those documents appear to support the appellant's claim that a business called AE Cook Roofing has been in existence for some years, they do not provide any evidence relating to the use of the appeal site.

11. I have also been provided with what appears to be screen prints of computer records from AM Skip Hire relating to skips hired by AE Cook Roofing between 30 June 2008 and 6 March 2023. There are also 3 invoices from AM Skip & Plant Hire Ltd to AE Cook Roofing. Those invoices are for the rental and exchange of skips at Yard, Wivelsfield Green, West Sussex and they are dated 31 March 2007, 31 August 2011 and 31 May 2023. These records indicate that AM Skip Hire delivered and exchanged skips regularly, between June 2008 and March 2023, to

the appeal site. The instructions on the screen prints state that the field entrance opposite Lambourne Farm is to be used and *'follow to concrete pad. Put on gravel area where marked'.* There are also descriptions of the waste that was either proposed to be or was in the skip when collected. These descriptions are mixed municipal waste, mixed construction and mixed concrete/brick.

12. Four photographs of the double garages and the adjacent timber shed, a skip full of waste material and pallets and other items on the appeal site were submitted with the application. Those photographs are not dated but reflect the condition of the site at the time of my site visit.

13. As such, the evidence before me relating to the use of the appeal site since 2008 only confirms that an empty skip has been regularly delivered to and exchanged for a skip full of waste, be that municipal waste, mixed construction or mixed concrete/brick. Those skips were ordered and paid for by AE Cook Roofing. However, the address for AE Cook Roofing on the invoices is in Haywards Heath. That same address is on the submitted VAT return and HMRC statement. Nevertheless, it is more likely than not that a skip has been stationed on the site continuously between 30 June 2008 and March 2023 for the collection of waste. Moreover, given that AE Roofing paid for the skip hire it is more likely than not that the waste collected in the skip was derived from that company's operations.

14. However, the skips appear to have only been stationed on the hardsurfaced area of the site throughout that time. Moreover, other than the undated photographs and my observations on site there is little evidence to indicate what materials and equipment have been stored on the appeal site, when that storage began and whether it has continued since. Moreover, there is no evidence before me to indicate how the garages, sheds and the grassed part of the appeal site have been used over the 10 years prior to the date of the LDC application.

15. I conclude, on the balance of probabilities, that it has not been shown with sufficient precision and unambiguity that all the appeal site has been used continuously for ten years or more for a use in connection with a roofing company for storage of roofing materials and equipment and waste materials prior to their removal.

Conclusion

16. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for a use in connection with a roofing company for storage of roofing materials and equipment and waste materials prior to their removal is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

D Boffin

INSPECTOR