



Appeal Decision

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an Inspector appointed by the Secretary of State

Decision date: 05 November 2025

Appeal Ref: APP/A1530/X/24/3341913

52b Bourne Road, Colchester CO2 7LT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr David Thursting against the decision of Colchester City Council.
- The application ref 231486, dated 26 June 2023, was refused by notice dated 20 October 2023.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The use for which an LDC is sought is 'building as a double lock-up garage'.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Determination of the appeal requires an assessment of documentary evidence. In these circumstances visiting the site is unnecessary. The appeal has been determined without undertaking a site visit.
3. The use for which an LDC is sought was amended by the Council, with the agreement of the Appellant, to be 'use of a building as a double lock-up garage for commercial purposes'. The appeal will be determined on this basis.

Reasons

4. The Appellant's land is about 0.1 hectares and has a frontage to a back lane off Bourne Road. On the land are a static caravan, a touring caravan, an amenity block and the garage that is the subject of the appeal, which has been on the land for several decades and is therefore lawful as a building. The Appellant purchased and moved on to the land in September 2021, and in July 2024 planning permission was granted, on appeal, for 'continued use of the site for the provision for traveller accommodation including one static caravan, a tourer caravan and an amenity block'.
5. For the commercial use of the garage to be lawful it must have subsisted continually as a use for the ten year period prior to the date of the application. The onus of proof is on the Appellant who must provide sufficient precise and unambiguous evidence to justify, on the balance of probability, a conclusion that the commercial use did subsist continuously for that ten year period. The previous owner, Mr J Parker, has provided a statutory declaration, signed in the presence of a Solicitor on 30 August 2023, in which he confirms what he stated in a letter dated 3 July 2021 "...regarding the use of land and storage buildings at 52b Bourne Road as a builders yard between the years 2003 and 2021 for both Russell James Builders Ltd and Camulus Builders Ltd...".
6. Mr Parker's statutory declaration does not specifically refer to the lock-up garage and only refers to "...the use of land and storage buildings...", of which there were

others. The full width up and over garage door in the building faces towards the back lane and included in the Officer's report on the application is a photograph of the building taken from the lane. The Appellant has not doubted the September 2017 date of the photograph. In front of the garage door, and close to it, was a likely self-seeded small tree in the rough ground between the lane and the garage. Given the proximity of the tree to the garage door and the size of the tree the door had clearly not been opened for an extended period of time.

7. In another similar photograph dated November 2020 the tree had gone but the rough ground in front of the garage door was significantly overgrown. If vehicles were loading or unloading commercial items from or into the garage even on an irregular basis the ground would not have been so overgrown. Evidence does indicate that the land was in use as a builders yard between 2003 and 2021 but there is no evidence that the lock-up garage was used for commercial purposes in association with the use of the land. The Appellant's use of the garage in association with his landscaping business is not doubted, though there is no evidence to justify a conclusion that he has used the garage solely for commercial purposes. In any event, this use only covers less than two years of the ten year period needed for the use to have gained immunity.

8. The planning history of the land, the answers to questions in a Planning Contravention Notice, and letters from neighbours have been taken into account. None of this evidence alters the conclusion that there is insufficient precise and unambiguous evidence, even on the balance of probability, to indicate that the double lock-up garage has been continuously used for commercial purposes in the ten year period prior to the date of the application.

9. For the reasons given above, and on all the evidence now available, the Council's refusal to grant an LDC for 'use of a building as a double lock-up garage for commercial purposes' at 52b Bourne Road, Colchester was well-founded and the appeal fails. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector