



Appeal Decision

Site visit made on 4 February 2026

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2026

Appeal Ref: APP/K0235/X/25/3361725

49A Rookery Road, Wyboston MK44 3AX

- 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 Simon Kruger against the decision of Bedford Borough Council.
 - The application ref 24/00843/LDE, dated 7 May 2024, was refused by notice dated 4 December 2024.
 - The application was made under section 191(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 described as 'The site is a site which contains two former agricultural buildings that are being used for a mixture of uses. Car sales, car repairs and servicing and car storage with associated offices and parking areas.'
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's refusal to grant a lawful development certificate (LDC) is well-founded.

Reasons

3. Section 191(1)(a) of the Act provides that if any person wishes to ascertain whether any existing use of buildings or other land is lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may 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); and ii) They do not constitute a contravention of any enforcement notice then in force.
4. The Planning Practice Guidance (PPG) advises that an application needs to describe precisely what is being applied for and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. The PPG goes on to advise that precision in 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. Where a certificate is granted for one use on a "planning unit" which is in mixed or composite use, that situation may need to be carefully reflected in the certificate.
5. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law. In an application for a LDC, the onus is on the applicant to

demonstrate on the balance of probabilities that the proposed development would be lawful. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

6. The main thrust of the appellant's case is that the use began more than 10 years before the date of the LDC application. As the application was made on 7 May 2024, the appellant will need to show that the material change of use of the land to car sales, car repairs and servicing and car storage with associated offices and parking area began on or before 7 May 2014 and continued without significant interruption for a period of at least 10 years thereafter.
7. When considering whether a material change of use has occurred, it is first necessary to ascertain the correct planning unit, and the present and previous primary uses of that unit. The general rule is that the materiality of change should be assessed in terms of the whole site concerned. The planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes.
8. Three broad categories of distinction have been suggested when considering the planning unit:
 - A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
 - A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and
 - The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.
9. The appellant has provided me with an affidavit, within which they state that their company occupy and operate from the land at 49 Rookery Road. A plan is provided showing the land edged red, which includes the appeal site, the adjoining dwelling (Number 49 Rookery Road) and a substantial area of land to the east of both the appeal site and the dwelling. The appellant states that the old agricultural buildings have been used as mixed use going back to 1987, when they were initially used for light agricultural machinery, gardening equipment repairs and sales of reconditioned units that had been carried out on site.
10. The appellant states that they began their business in the early nineties, which involved vehicle repairs and selling cars. They suggest they began to trade as Wyboston Car Sales in or around 1993 and became a Limited Company in 2005. A number of cars are visible in aerial photographs, dated 2006, 2008 and 2009, which, it is suggested, shows the same use of the site, i.e., mixed commercial associated with car sales since 2006. An online advert, dated 1 October 2008, describes the company as a family run business which has been trading from Wyboston for 15+ years. The appellant states that primarily, the business deals in the sale of cars and that they do minor car repairs and servicing as part of the

preparation to sell the cars they hold. It is asserted that the business has worked in the same way since the early nineties.

11. From the appellant's evidence, it seems the unit of occupation comprises the appeal site, the land to the east and the residential dwelling. No substantive information is given regarding the use of the land to the east, nor is it explained how the overall site functions. While the land to the east and the residential dwelling are located outside the red line boundary of the appeal site, where a site is in a mixed use, it is a single mixed use with specified components. If the unit of occupation comprises a single planning unit that is in a mixed use, then even if some of those activities take place on land outside the LDC application boundary, they would form part of the single mixed use.
12. During my visit, I saw a horse grazing within the land to the east of the appeal site, as well as tape fencing, which is typically used to control where horses graze. Within the appeal site itself, I saw various cars, some with prices, some without, and two buildings, one of which contained offices and a workshop area and the other, which comprised a workshop with a hydraulic lift.
13. Both the land to the east and the residential dwelling, Number 49, are separated from the appeal site by fencing, suggesting physical delineation between the different parts of the site. However, it is not clear whether there is functional delineation between the different parts of the site, such that it is possible for me to conclude that each area has a different primary use and ought to be considered as a separate planning unit, or whether any physical and/or functional delineation has changed over time.
14. The Council issued an enforcement notice on 19 August 2015 alleging without planning permission, the material change of use of the land to use for the storage, sales, repair of motor vehicles, excluding an area shaded pink (which is described as comprising a workshop with an extension, a workshop and office, an area of hardstanding and an area used for car storage). The notice was appealed, reference APP/K0235/C/15/3135090, and the enforcement notice was quashed because, it was held, the allegation was incorrect and the Inspector was not satisfied that it could be corrected without causing injustice.
15. In that case, the Inspector considered the planning unit. The area enforced against was a larger area compared with the appeal site for which an LDC is sought and included the adjacent residential property and the paddock (the land to the east). The Inspector referred to there being dispute as to how the enforcement notice should be corrected, with the appellant suggesting the area be reduced to exclude the paddock to the east, the house and garden and the Council suggesting that the land should not be reduced in extent but that the allegation should refer to all the uses taking place on the Land as a mixed use.
16. There is no evidence to show that a subsequent enforcement notice was issued in respect of the site, or that any dispute regarding the planning unit has been resolved. Indeed, the Council refused the LDC application on the basis that it considered the evidence was insufficient to enable it to understand the nature and extent of the planning unit as a whole or the nature and extent and continuity of the overall use of the unit.
17. While remaining disagreement between the parties is not (of itself) fatal to the appellant's case, ambiguity regarding the planning unit and whether this has

changed over time is problematic, given the way in which a material change of use is usually assessed (i.e., in terms of the whole site concerned) and the need to describe precisely on the certificate what it was that was lawful at the date of the application.

18. It seems from the evidence that the appeal site has been subject to a number of investigations over the years. In support of their case, the appellant has provided me with an email dated 1 June 2004, which is stated to be from a Planning Enforcement Officer (the PEO). The PEO states that they visited the site and 'saw clear evidence that the allegation (a car repair business) was true, including a sizeable workshop and a good deal of machinery and a load of cars.'
19. The PEO refers to the serving of a Planning Contravention Notice (PCN), a copy of which I have been provided. The PCN response details the type and nature of the business being carried out at the site as 'garden machinery, light agricultural machinery and cars' and states the business commenced in approx. 1987-8. There is reference, on what appears to be an extract of a Council log, to 'car repair business without planning permission' which identify the date of the investigation as being closed as of 1 June 2004. However, there is no reference on either document to the sale of cars.
20. I have been provided with a document entitled 'Chronology of activities and operations', which, the Council suggest appears to have been composed by a Council officer in or about 2008. The document refers to a complaint received about a car repair business being run from the site in 2004 and a complaint received regarding the use of the property for the sale of cars and extensions to buildings in 2008.
21. From the 'Chronology of activities and operations' document, it seems an LDC was refused in 2008 for the use of the site for the repair, servicing and selling of motor vehicles. Reference is also made in the document to local taxation, which in 2004 includes an entry for 'workshop' and in 2008 amends it to include 'car storage area'. A conclusion is then drawn within the document, that the land and buildings have been used for a variety of vehicular related activities since at least 2004, though it also suggests it is highly probable that the vehicle and machinery repairs business was small at first and then diversified.
22. I have also been provided with a letter from the Council, dated 7 November 2013, which refers to 'unauthorised car sales and repairs and unauthorised extension'. The author of the letter details their findings in relation to an investigation and confirms that the Council does not intend to take any further action [sic] in respect of the present commercial uses and activities on the areas B, C, D, E and F. These are identified as: B - Car storage; C – Workshop; D – Extension Building; E – Hardstanding Area; and F – Workshop (valeting) and Office.
23. While the appeal site has clearly been the subject of investigation over the years, including investigations which were subsequently closed, or not pursued further, a local planning authority cannot fetter its discretion to issue an enforcement notice by any form of agreement. Although the documents provided give an indication as to the Council's position at the time they were written, they are not determinative that the use applied for was lawful at the date of LDC application 24/00843/LDE.
24. The appellant states that they have been running the business from their Father's property and, due to lack of demand, they ceased trading in agricultural machinery

or garden machinery 'ever since the status of Rockery Road change from horticulture to Private residential' [sic]. The appellant goes on to state that the use of the land by the business has been unchanged for three decades. The appellant states that the business contained two buildings, which they began to utilise for car sales, car repairs and servicing and car storage together with associated offices and parking areas.

25. The appellant states that the business grew and expanded around the turn of the century and has grown since then. While the appellant suggests this does not change the basic use, only the level of use, it is not possible, from the evidence provided, to understand whether there has been a subsequent change in the character of the uses, such that a material change of use has taken place within the last 10 years. Furthermore, this contradicts the appellant's suggestion that the use of the land by the business has been unchanged for three decades.
26. Within their affidavit the appellant states that 'primarily the business deals in the sale of cars'. However, from the evidence provided, it seems the appellant has previously repaired cars which are not intended for sale. For example, a number of letters refer to services. A letter, dated 22 September 2015, refers to viewing cars or 'having work done', which suggests, at that time, repair/servicing may have been carried out independently of car sales. This seemingly contradicts the appellant's suggestion that minor car repairs and servicing are carried out as part of the preparation to sell the cars that they hold.
27. The letters provided are now somewhat dated and will clearly not reflect what has happened at the site during the last ten to eighteen years or so (depending upon the date they were written). It may well be that the way in which the site has operated has changed during that time. Incidental uses may fluctuate without there necessarily being a material change of use of the planning unit. Conversely, the intensification of one element of a mixed use to the exclusion of the other may amount to a material change of use of the unit as a whole.
28. By the appellant's own admission, the business has changed over time. However, whether any such change would have resulted in a material change of use is simply not clear from the evidence provided. Storage, for example, may be incidental to car sales where cars are stored prior to their sale, or may be a primary use where vehicles are stored for some other purpose. Car repairs may also be incidental where repairs are carried out prior to their sale, or may be a primary use, where it is carried out on vehicles which are not then sold at the site.
29. Without a clear understanding of how the site has been used and when, it is simply not possible to conclude that the use has occurred without significant interruption for a period of at least 10 years. It is not sufficient for the appellant to show that a business of some sort has operated out of the site to succeed, what they need to show is that a material change of use has occurred and that it has continued without significant interruption for a period of at least 10 years.
30. The appellant's evidence is not sufficiently precise and unambiguous and does not show, on the balance of probabilities, that the material change of use of the land for car sales, car repairs and servicing and car storage with associated offices and parking areas occurred on or before 7 May 2014 and continued without significant interruption for a period of at least 10 years thereafter. The appeal must therefore fail.

Conclusion

31. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for car sales, car repairs and servicing and car storage with associated offices and parking areas 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 (as amended).

M Savage

INSPECTOR