The Planning Inspectorate

Appeal Decision

Site visit made on 21 July 2020

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 January 2021

Appeal Ref: APP/B3438/X/20/3248874
Land to the east of Cheadle Road, Forsbrook, Staffordshire

- 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 Mr Lee Brassington against the decision of Staffordshire Moorlands District Council.
- The application Ref. SMD/2019/0748, dated 7 December 2019, was refused by notice dated 3 March 2020.
- 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 storage of a garden landscaper's vehicles, equipment and logs.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is whether the decision to refuse the certificate was well founded.

Reasons

3. The site is a linear area of ground with access off a minor road to the east of Draycott Cross. The access gate leads to a track and hardstanding parking area on the northern part of the site.

4. The site was a former colliery which was purchased by a Mr Bettaney and Ms Winkle from the Coal Board who used it for their haulage business. The date on which the site was purchased is not specified. A letter from Julie Parry, Mr Bettaney's daughter, indicates that for a number of years the land was used for storage and on occasion a lorry was parked on the site, storage containers and other items. The appellant rented the site from Ms Winkle in 2008/2009 and is reported to have been used for the storage of equipment and vehicles by 'X-Cavate Ltd'. The Council report that this business was registered as 'freight transport by road'. The appellant's letter accompanying the application contends that the land was used for the same use as Mr Bettaney for the storage of diggers, lorry's, cars and storage units. The appellant purchased the land from Ms Winkle in 2010 and continued to use it for storage of equipment and vehicles.

5. In 2016 the appellant began a business as a landscape gardener and used the site in association with the business and continued to store vehicles, equipment and logs on the site.

6. The appellant in his appeal submission declares that in 2010 the site was used for his own personal use, where he stored logs, tools and vehicles on the land. He asserts that he did store items for his business when needed but does not want to use the land to operate the current business. He contends that he would use the land for personal use and occasional use for tools for his business.

7. In an LDC appeal the burden of proof is on the appellant and the relevant test is the 'balance of probability'. The Courts have held that the appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted and if the local planning authority have no evidence of their own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify the grant of an LDC.

8. The application in section 5 summarises the history of the site but indicates that in 2016 the appellant became a landscape gardener and that he continued to use the land for the purpose of storage of vehicles, equipment and logs. The Council's summary of the application description is therefore sufficient for the purposes of the application and this appeal. However, the appellant has chosen to describe the existing use in different terms on the appeal form as 'storage of items, vehicles, logs, tools for own private and occasional business use'.

9. S191(1) provides that if any person wishes to ascertain whether any existing use of buildings or other land is lawful; they may make an application for the purposes to the local planning authority specifying the land and describing the use. For an existing use to have been established as lawful at any time, no enforcement action may then be taken in respect of it. The description of what is considered an existing lawful use has changed from the application to the appeal, and I concur with the Council that this fundamental change shows no continuity of use of the land.

10. The information supplied by the appellant in the form of supporting information from Julie Parry contradicts the appellant's present case that the site has been used for the requisite period for private or personal use. There is no compelling evidence presented of this type of use and contradicts the stated existing lawful use contained in the application.

11. The application asserts a storage use in connection with the landscape gardener business comprising vehicles, equipment and logs. This is reported to have begun in 2016 and short of the requisite 10 year period in Section 171B(3). The preceding use for the storage of equipment and vehicles by 'X-Cavate Ltd' registered as 'freight transport by road' business is reported to have run from 2008/2009 to 2016, a materially different character of use of land to that of storage for a landscaping gardener business and short of the requisite 10 year period.

12. The use before 'X-Cavate Ltd' was a small-scale haulage use[1]. There is no information when this began, and whether it was consistently and continuously used for a period of at least 10 years beginning with the date of the breach and without significant interruption. There is no evidence that there was continuity of use from the change-over in business from the haulage use run by Mr Bettaney to that of 'X-Cavate Ltd'. The Council contends that 'X-Cavate Ltd' was a different character of use from its predecessor, nevertheless, a new chapter of land use began in 2016 for which the application seeks an LDC which is short of the requisite period set out in Section 171B(3).

13. I conclude that on the balance of probability the available evidence demonstrates that the use of the land for storage of a garden landscaper's vehicles, equipment and logs has not been consistently and continuously used for a period of at least 10 years beginning with the date of the breach and without significant interruption.

14. It is not too late for the Council to take enforcement action against the use described, and the Council's decision to refuse the certificate was well founded.

15. The appeal should therefore be dismissed.

Iwan Lloyd

INSPECTOR

[1] Julie Parry letter 6 December 2019 – indicating one lorry parked, storage and storage containers in connection with Mr Bettaney's haulage business.