



Appeal Decision

Site visit made on 14 May 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 June 2019

Appeal Ref: APP/R3325/X/18/3214005

West Farm, West Mudford Road, Mudford, Yeovil BA21 5TL

- 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 Phillip Gunning against the decision of South Somerset District Council.
- The application Ref 18/01767/COL, dated 1 June 2018, was refused by notice dated 17 September 2018.
- 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 was described on the application form as "*Parking on land and servicing within a building of an HGV lorry operating in general haulage, alongside uses specified in LDC Ref 16/03580/COL dated 21 October 2016*".

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. The banner heading description of the use for which an LDC is sought is taken from the application form. However, the appellant amended the description at application stage to refer to two HGVs instead of one. The Council's decision notice refers to the use applied for as including two HGVs. Therefore, I intend to deal with the appeal on that basis.
2. The Planning Practice Guidance¹ makes it clear that planning merits are not relevant at any stage in LDC applications or appeals. As a result, I am unable to take the representations on such matters from Mudford Parish Council and interested residents into account in my decision.

Application for costs

3. An application for costs was made by South Somerset District Council against Mr Phillip Gunning. This application is the subject of a separate Decision.

Main Issue

4. The main issue in this appeal is whether at the time the application was made there was a subsisting lawful use at the appeal site for parking and servicing of two HGVs operating in general haulage alongside use as a mixed contracting business.

¹ Lawful development certificates. Paragraph: 009 Reference ID: 17c-009-20140306.

Reasons

5. The onus is on the appellant to show that use of the site for the parking and servicing of two HGVs operating in general haulage is lawful, the relevant test being on the balance of probability.
6. The site is in open countryside and contains a substantial steel-framed workshop building and adjoining open areas.
7. On 27 April 2016, the Council issued an enforcement notice alleging that there had been an unauthorised material change of use from a mixed contracting business to a vehicle haulage contractor's yard, the manufacture of concrete products and offices associated with those uses. The land affected by the notice includes the site and extends to a large area of adjoining land. I understand that the use as a vehicle haulage contractor's yard involved up to eight HGV tractor and trailer units. The notice was upheld at appeal on 3 November 2017².
8. On 21 October 2016, the Council issued an LDC certifying that the lawful use of the site was as "*...a mixed contracting business and for uses ancillary to the said contracting business comprising an agricultural, general building, ground work, land drainage and irrigation, slurry handling and sewage treatment contracting business; use of part of the building for storage of plant, equipment and drainage materials ancillary to the contracting business; use of part of the building for fabrication and welding ancillary to the contracting business; the outside storage and operation of one heavy goods vehicle, one articulated lorry plus trailer and other vehicles ancillary to the contracting business; the outside storage of drainage materials ancillary to the contracting business*".
9. The appellant claimed that a general haulage use consisting of two HGVs had operated since 1993 alongside the mixed contracting business referred to in the 2016 LDC. Several Statutory Declarations were supplied in support and documentary evidence was also provided in this respect. The appellant did not claim that the use applied for was ancillary to the mixed contracting use, or that it was in a separate planning unit. The Courts have held that where a planning unit contains two or more uses and it is not possible to determine whether one use is incidental to another, the planning unit is in a mixed use³. Consequently, if the appellant's version of events is correct the parking and servicing of two HGVs operating in general haulage would be a primary use that is part of a mixed use that also included the mixed contracting use.
10. The Courts have also held that where there is a material change of use from one mixed use to another, there is a material change of the whole planning unit to a different mixed use. Where individual components of the mixed use have subsisted for more than ten years prior to the issue of an enforcement notice, they nevertheless cannot be treated as separate and unaffected by the new use⁴. Accordingly, the use applied for must be a component of the unauthorised mixed use and it cannot be de-coupled from the totality of the unauthorised use.
11. At s191(2)(b), the Act provides that uses are lawful at any time if they do not constitute a contravention of the requirements of an enforcement notice then in

² Ref: APP/R3325/C/16/3164480.

³ *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207.

⁴ *Beach v SSETR & Runnymede BC* [2001] EWHC 381 (Admin).

force. The notice was in effect at the time the application was made. For the purposes of the above section, a notice being in effect has the same meaning as it being in force. There is little to distinguish the use applied for from the use as a vehicle haulage contractor's yard forming a component of the unauthorised use. In the previous appeal, the Inspector described the vehicle haulage contractor's yard as a general haulage use. Amongst the remedial steps set out in the notice at paragraph 5, step (a) requires cessation of the use of all the affected land, including the site, as a vehicle haulage contractor's yard. Consequently, the use applied for contravenes paragraph 5 step (a) of the notice and it cannot be lawful.

12. Given my findings on the above matter, it is not necessary for me to consider whether the use applied for had been abandoned or whether the application accurately described the existing use of the site, since a certificate could not be issued and the appeal would have been dismissed in any event.
13. Therefore, I find that on the balance of probability, the available evidence does not show that there was a subsisting lawful use at the site for the parking and servicing of two HGVs operating in general haulage alongside the use as a mixed contracting business at the time the application was made.

Conclusion

14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of parking on land and servicing within a building of two HGV lorries operating in general haulage, alongside uses specified in LDC Ref 16/03580/COL dated 21 October 2016 at West Farm, West Mudford Road, Mudford, Yeovil BA21 5TL was 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.

Formal Decision

15. The appeal is dismissed.

Stephen Hawkins

INSPECTOR