



## Appeal Decision

Site Visit made on 19 July 2021

**by M Savage BSc (Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 6 September 2021**

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**Appeal Ref: APP/L3245/X/21/3271407**

**Brookside, B5065 from Cruckmoor Lane Junction to A442 Prees Lower Heath, Lower Heath, Prees SY13 2BT**

- 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 Mark Johnson of FW Johnson against the decision of Shropshire Council.
  - The application ref 20/03064/CPE, dated 30 July 2020, was refused by notice dated 24 September 2020.
  - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended ('the Act').
  - The use for which a certificate of lawful use or development is sought is repair, maintenance and storage of heavy goods vehicles.
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### Decision

1. The appeal is dismissed.

### Reasons

2. An application under section 191(1)(a) of the Act seeks to establish whether any existing use of buildings or other land was lawful at the time of the application. 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.
3. The main thrust of the appellant's case is that the repair, maintenance and storage of heavy goods vehicles (HGVs) began following the appellant's purchase of the site on 30 August 2008 and has continued thereafter.
4. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded. That will turn on whether the repair, maintenance and storage of heavy good vehicles began more than 10 years before the date of the application and continued for a period of 10 years thereafter without significant interruption.
5. In an LDC appeal, the onus is firmly on the appellant to make out their case, on the balance of probabilities. As established in case law, the appellant's evidence should not be rejected simply because it is not corroborated. If a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

6. Planning merits form no part of the assessment of an application for a LDC under section 191 of the Act. The proposed development must be considered in the light of the facts and the law.
7. The appellant purchased the residential property and outbuildings on 30 July 2008. The appeal site historically comprised part of farm complex. However, the land associated with the farm complex was sold off separately and is not within the appellant's ownership. The appellant advises that the appeal site does not have a County Parish Holding number and has not been in active agricultural use since the purchase.
8. The appellant operates a business specialising in the servicing, maintenance and repair of its own fleet of HGVs and the haulage of animal feed and commodities, operating from the Wem Industrial Estate and with a registered address at Cotton. The appellant states in a statutory declaration that, following the purchase of the appeal site, he began using the main workshop building for carrying out vehicle repairs and maintenance to his fleet of vehicles along with general storage of vehicles and associated equipment/supplies.
9. Photographs submitted alongside the appellant's statutory declaration, Exhibit 3, are alleged to show a Volvo which was re-sprayed at the site. Although the photographs are undated, an invoice dated 13 November 2008 does appear to support the appellant's assertion that the works were carried out at the site some time in 2008. An Autoglass invoice for the Volvo truck at the appeal site, dated 31 October 2011 also indicates that the truck was at the appeal site. However, it is not clear whether the vehicle would have been located at the appeal site on a permanent basis, or at the appellant's site at Wem Industrial Estate.
10. The appellant has provided a photograph of a Ford Transit which was purchased in 2009, however, the appellant's statutory declaration does not identify how the vehicle was used. Similarly, invoices for other vehicles and a log book may show that the appellant purchased them but does not show how the vehicles were used, where they were primarily kept or where they were repaired and when.
11. The appellant has provided a number of other invoices which indicate items have been supplied to the appellant, either to the appeal site or other addresses relating to the appellant. Whilst I accept it may have been necessary to utilise an address other than the appeal address on some of the invoices, the number of invoices provided is very limited. Had a material change of use taken place over a ten year period, I would expect to see a much greater range of items being purchased for use on site.
12. The appellant suggests that receipts were not commonplace as the purchase of parts was often last minute, involving a phone call order and immediate collection in person. However, since the activities are alleged to have formed part of a business, I find such an explanation highly unusual as the appellant would have required the receipts for tax purposes.
13. Whilst the appellant may only be required to keep receipts for tax purposes for 5 years, no receipts have been provided for the period after 2014. Although the appellant has provided a number of letters from companies which state deliveries have been made to the appeal site, including fitters visiting the site, there is limited detail as to what these deliveries comprised, how frequently

- they were made, or whether this fluctuated over time and if so, to what degree.
14. A statutory declaration signed by the owner of the adjacent land states that the land has been used since July 2008 for the repair, maintenance and storage of HGVs but does not give any detail as to what the activities comprised and whether these have changed over time.
  15. The appellant has provided an electricity bill dated 9 March 2012 for the appeal site. Although the appellant incurred energy charges of £32.68, this was for the standing charge. Actual energy consumption at the property between 6 December 2011 and 5 March 2012 was zero. This does not therefore support the appellant's case that activity was occurring at the site but rather points towards the site being vacant.
  16. An electricity bill dated 16 August 2013 requests payment of a monthly instalment but does not provide details of energy usage at the site and therefore does not support the appellant's case that that activity was occurring at the site.
  17. An aerial photograph submitted by the appellant, dated 31 December 2009, shows what appears to be an HGV parked by one of the buildings. Although a greater level of activity appears to be occurring within the site compared with an aerial photograph submitted by the appellant, dated 1 July 2008, there are no HGVs evident in the aerial photograph dated 10 November 2010.
  18. Whilst the evidence points towards there being some activity at the site following the appellant's purchase in 2008, the scale and frequency of the activity appears limited initially. For a material change of use to have occurred, there must be some significant difference in the character of the activities from what has gone on previously, as a matter of fact and degree. Even if the site has not been actively farmed since 2008, this does not mean that a material change of use has taken place. Activities which are of a casual intermittent and insignificant nature will not necessarily result in a material change of use of the land.
  19. The aerial photographs submitted, point towards the number of HGVs at the site increasing over time. An aerial photograph dated 28 March 2012, for example, shows what appears to be around four HGVs at the site and an aerial photograph dated 22 April 2015 appears to show around 5 or 6 HGVs within the site. An aerial photograph dated 27 June 2018 appears to show around 11 HGVs within the site.
  20. The Council advise that an operator's license was granted at the appeal site on 12 October 2015 for 8 vehicle(s) and 4 trailer(s). The appellant states that initially, vehicles continued to be parked at Wem Industrial Estate, but by 2015 the fleet had grown to a point where it had become necessary to store some of the vehicles at Brookside overnight and so Brookside was added as an operating centre, in addition to Wem Industrial Estate. The appellant suggests that the haulage side of the business has always been based elsewhere. However, this seems to contradict the identification of the site as an operating centre.
  21. In my view, there is a significant difference between a site that carries out the storage and repair of one or two HGVs and a site which acts as an operating

centre for the overnight parking of a number of HGVs. The vehicle movements and noise and disturbance associated with an operating centre is likely to be far greater than would be associated with the infrequent repair of vehicles and so would alter the character of the land.

22. A number of letters have been submitted by interested parties, including a number of affidavits submitted by occupants of nearby properties, which dispute that the business has operated out of the appeal site for 10 years. The former occupants of The Beeches, for example, state that the appellant started to use the property as a base for running his haulage business after he moved in. A point which is supported by another nearby resident.
23. Whilst the comments made by the interested parties are not identical, the comments generally point towards activity at the site increasing following the appellant's occupation of the dwelling in 2018. Although the workshop buildings open onto the yard to the rear of the site, there are elements of the site which are readily visible from outside the site. Furthermore, given the generally rural character of the area, local residents are likely to notice HGVs being brought to and from the site.
24. Case law has established that a use can only become lawful if it continues throughout the relevant immunity period, such that the local planning authority could have taken enforcement action at any time. It is unclear how many vehicles were repaired or maintained over the 10 year period or how this has fluctuated over the relevant period. Whilst there may have been some activity at the site prior to the appellant moving to the residential property in 2018, the fact that nearby residents did not notice activity at the site prior to this, points towards the activities at the site changing to such a degree as to alter the character of the land.
25. From the evidence provided, it is not possible to conclude whether the activities carried out at the site prior to 2015 constituted a material change of use, or whether the change was *de minimis*, meaning that it is on too small a scale for the law to take account of it. Furthermore, even if I were to conclude that a material change of use of the land occurred in 2008, it is likely that a material change in the use of the land occurred when the site became an operating centre for HGVs.
26. Hence, it has not been demonstrated, on the balance of probabilities that the site has been used for the repair, maintenance and storage of heavy goods vehicles throughout the relevant period, to the extent that the local planning authority could have taken enforcement action at any time.

### **Conclusion**

27. Thus, for the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the site for repair, maintenance and storage of heavy goods vehicles 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.

*M Savage*

INSPECTOR