Appeal Decision

Site visit made on 20 August 2013

by John Whalley

an Inspector appointed by the Secretary of State for Communities and Local Government

Date 25 October 2013

Appeal ref: APP/U4610/X/13/2192764
108a Station Street East Coventry CV6 5FN

- 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 by Coventry City Council to grant a certificate of lawful use or development, (LDC).
- The appeal was made by Mr Faizal Patel.
- The application, No. LDC/2012/1824, dated 18 September 2012, but recorded by the Council on 21 September 2012, was refused by a notice dated 12 December 2012.
- The application was made under s.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 for use of the site for motor vehicle repairs and servicing with ancillary vehicle storage and sales.

Summary of decision: The appeal fails. An LDC is not issued.

Appeal property

1. The appeal property, 108a Station Street East, Coventry, comprises a yard and buildings behind semi-detached houses which front onto the road. Access is along a narrow roadway between Nos. 106 and 108. The larger building, sited behind houses Nos. 112 to 118, was an open workshop, with a heavy duty rolling crane. Cars were being serviced when I was there, although there were few tools to be seen. The other building was an unused store with a vacant office above.

Submissions

2. The Appellant, Mr Patel, said in a Statutory Declaration that he and his wife bought the appeal site in 2006. He said it was being used as a car vehicle/body repair/rebuild business with ancillary storage and sale of vehicles. He used the site from April 2006 to March 2009 for mechanical and body repair of motor vehicles, with ancillary storage and sales trading as A & A Cars Limited.

3. Statutory Declarations were put in by Shahid Ilyas and Mariana Martini. Shahid Ilyas said he leased the site from April 2009 to January 2011, continuing a vehicle repair and sales business. Mariana Martini said she had been renting the premises from January 2011 until now, trading as TA Martins Garage. Local residents also supported the assertion that the appeal site had been used for car repairs for at least 10 years before the LDC application was made.

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4. The Council said planning permission ref: 17206 was granted in 1961 for use of the appeal site for machining tool reconditioning. A condition restricted uses to those falling within Class III of the Use Classes Order 1950. That use was classified in the Order as "light industrial". The Council said that was a B1 use. They accepted, however, that during the 1990s and 2000s the site had gained an established B2 use by virtue of the site having been used for car repairs and servicing during that period. The Council report on the LDC application accepted that the site had been used for car repairs, (a B2 use), for at least 10 years prior what they said had been a change of use to a B8 storage use.

5. The Council said that in October 2006, an enforcement officer visited the site to investigate an alleged use for car sales, but found no evidence of such use. In March 2007, following another complaint alleging car sales, a visit showed no evidence of such a use. The enforcement case investigation was closed. However, another investigation was started in late 2008, following allegations of car sales.

6. In a sworn statement, a Council investigating Officer said she visited the premises on 14 November 2008, 5 December 2008 and 22 January 2009. On each occasion, cars were seen stored on site, but no repairs or sales were being offered. During the 22 January visit, the Council Officer interviewed the occupier, Mr Haider, who said that the company called 24/7, operating from the appeal site, was a recovery and storage business. It picked up accident damaged cars, brought them to the appeal site and stored them prior to their transportation elsewhere for repair.

7. The Council’s conclusions on those visits were set out in their letter to Mr Patel dated 19 February 2009. That said that a change of use from the lawful B2 use to a permitted B8 use had taken place. The letter pointed out that the vehicle storage use did not constitute a material change of use and that no breach of planning control had occurred. The Council’s appeal statement said that a vehicle storage use was a B8 use, (Town and Country Planning (Use Classes) Order 1987 (as amended)). The change of use from what they described as an established B2 general industrial use to a B8 storage use was permitted by the Order.

**Considerations**

8. I deal first with the results of the Council’s visits in October 2006 and March 2007 which showed no activity on site. The Council accepted that the appeal site had a lawful B2 use at least up to late 2008, when they said a change of use took place to a B8 use. It follows that periods of inactivity recorded by the Council prior to that change of use did not mean that the 10 year period to gain immunity for the car repair use would have to re-start because they were not interruptions of an unlawful use. They were interruptions of the lawful B2 use, which was not lost at that time, *(Panton & Farmer v SSETR & Vale of White Horse DC [1999] JPL 461; Thurrock BC V SSETR & Holding (CoA 27.2.02)).* 

9. However, the result of the Council’s enforcement investigations in late 2008 and early 2009 decide this case against the Appellant. There appears to have been no dissenting response to the 19 February 2009 letter. What Mr Patel, the Appellant, now says is that the Council’s view expressed in that letter that there had been a change of use from a B2 to a B8 use was based only upon a snapshot of a couple of visits. Mr Patel did not recall a Mr Haider and did not know why he would have made such comments.
10. There is some conflict of evidence in that Mr Patel said in his Statutory Declaration that the site was used by him between April 2006 and March 2009 for mechanical and body repairs of motor vehicles and the ancillary storage and sales of motor vehicles belonging to his company A & A Cars Limited. That includes the period at the end of 2008, and early 2009, when the Council said their visits showed Mr Haider managing a damaged car storage business on the appeal site.

11. The Council’s report on their 2008/9 site visits and the interview with Mr Haider weighs heavily in coming to the view that a change of use of the appeal premises had taken place by the end of January 2009. The contemporaneous notes made by the officer showed a car storage use of the premises, a B8 use different from the lawful B2 car repair use. The scale of what seems to have been a single storage use and the period of that use, from at least 14 November 2008 to 22 January 2009, is such that it was reasonable for the Council to have concluded that a change of use from the lawful B2 use to a B8 use had taken place.

12. As the Council pointed out, whilst a change of use from a B2 use to a B8 use does not require planning permission, a change, back in this case, from a B8 use to a B2 use requires specific planning permission. That means that the lawful B2 use had been superseded and could only be restored by a grant of planning permission.

13. The Appellant, Mr Patel, correctly pointed out that in cases such as this, the test of the evidence is made on the balance of probabilities, *(Thrasyvoulou v SSE No 1 [1984] JPL a732)*. But the burden of proof lies with an appellant, *(Nelsovil v MHLG [1962] 1 WLR 404)*. In relation to the B2 to B8 change of use, I consider that Mr Patel did not discharge that burden.

**FORMAL DECISION**

14. The refusal of Coventry City Council to issue a Certificate of Lawfulness for the use of the premises at 108a Station Street East, Coventry CV6 5FN for use for motor vehicle repairs and servicing with ancillary vehicle storage and sales was well founded. The appeal fails. The powers transferred by s.195(3) of the 1990 Act as amended are exercised accordingly.

**John Whalley**

**INSPECTOR**