



Appeal Decision

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th September 2021

Appeal Ref: APP/F4410/X/20/3274241

Land adjacent 58 Beckett Road, Wheatley, Doncaster DN2 4AJ

- 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 Nigel Wroe against the decision of Doncaster Metropolitan Borough Council.
 - The application Ref 20/01214/CPE, dated 4 May 2020, was refused by notice dated 12 February 2021.
 - 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 tyre storage and stock for retail tyre business.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development (LDC) describing the use which is found to have been lawful on the date that the application was validly made.

Preliminary Matters

2. The description of the use set out above is taken from the application form but the Council's decision notice and the appeal form both gave alternative descriptions. The parties have now agreed that the use for which an LDC is sought is 'open-air tyre storage facility ancillary to the tyre fitting business'. I shall consider the appeal on the basis of the agreed description of the use and on the understanding that the tyre fitting business is that at 52 Beckett Road.
3. The agreed description is consistent with the use that was found to be immune from enforcement action in 2 appeal decisions dated 20 June 2021¹. While I have had regard to those decisions, I have reached my decision in this appeal based on the evidence presented.
4. With the agreement of the parties, a site visit was not undertaken.

Main Issue

5. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether the appellant can show, on the balance of

¹ APP/F4410/C/20/3255529 and APP/F4410/C/20/3255614

probability, that the open-air tyre storage facility ancillary to the tyre fitting business is lawful due to the passage of time. The evidence should show the use began on or before 4 May 2010, which is the relevant date, and has continued thereafter without significant interruption.

Reasons

6. In an LDC appeal the burden of proof is on the appellant to produce evidence. However, if there is no other evidence to contradict or otherwise make his version of events less than probable, there is no good reason to refuse the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
7. The appellant's statutory declaration confirms that the appeal site was under the sole control of his late father until February 2007 and has been under his personal control since. In a separate statutory declaration, the appellant's brother confirms that he has traded as South Yorkshire Tyre Centre Limited (SYTC) from 52 Beckett Road and has stored tyres and stock in trade on the appeal site continuously since 1990, albeit with fluctuations in activity. Until 1997 the land included a building, which SYTC also used for storage.
8. The appellant confirms that, after a fire destroyed the building in April 1997, SYTC used the land for open storage of tyres and stock. It entered a formal lease with the appellant for storage of tyres and stock in trade of the tyre business on the land on 1 August 2007. The appellant's brother confirmed, in a statutory declaration dated 23 June 2020, that he continued to lease and use the land for those purposes.
9. While the lease arrangements do not appear to have been documented prior to August 2007 there is no evidence before me to make the sequence of events outlined in the statutory declarations less than probable.
10. Even allowing for the possibility of a brief period of inactivity following the fire, there is no evidence to suggest that the land was not in use for storage at any time during the period described above. Accordingly, the Council could have taken enforcement action at any time, but it did not do so until 27 May 2020, more than 10 years after the relevant date.

Conclusion

11. For these reasons I conclude, on the evidence now available, that the refusal to grant an LDC in respect of an open-air tyre storage facility ancillary to the tyre fitting business at 52 Beckett Road was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Mark Harbottle

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 4 May 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use of the land as an open-air tyre storage facility ancillary to the tyre fitting business at 52 Beckett Road was instituted on or before 4 May 2010 and continued thereafter without significant interruption.

Signed

Mark Harbottle

Inspector

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First Schedule

Open-air tyre storage facility ancillary to the tyre fitting business at 52 Beckett Road

Second Schedule

Land adjacent 58 Beckett Road, Wheatley, Doncaster DN2 4AJ

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: *****

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Not to Scale

