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# Appeal Decision

by **D Fleming BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 January 2024

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## Appeal Ref: APP/A3010/X/23/3326348

### Land at Lincoln Road and Broad Gate, East Markham, Notts NG22 0SL

- 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 Alan Broadbent against the decision of Bassetlaw District Council.
  - The application Ref 23/00441/CTL, dated 5 April 2023, was refused by notice dated 15 June 2023.
  - 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 described as "use class: Part 17 Class A (all land areas) and use class: Part 6 Class B (all land areas)".
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. No site visit has been carried out as the appeal can be decided purely on the basis of the technical and/or legal interpretation of the facts. All the information needed is included with the application and appeal documents and so a decision can be reached on the papers.<sup>1</sup> There are no objections from the parties to proceeding in this way.
3. Government advice in the Planning Practice Guidance<sup>2</sup> is that a LDC application needs to describe precisely what is being applied for. The appellant seeks a LDC for an existing use or operation. Section 7 of the application form requires the applicant to state whether the LDC is needed for an existing use, existing building works or a use/building works in breach of a condition. Whilst the applicant ticked none of these boxes, he did state "operational railway land use and agricultural".
4. In answer to Section 8 of the form which deals with the description of the existing use, the applicant stated, "Use class: Part 17 Class A (all land area), Use class: Part 6 Class B (all land area)."
5. The applicant's covering letter quoted section 191(1)(b) of the Town and Country Planning Act 1990 as amended (the 1990 Act), "if a person wishes to

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<sup>1</sup> Certificate of lawful use or development appeals- procedural guide, updated 26 July 2023, states at paragraph 7.2.11.5. "A site visit won't be needed for every appeal. It is for the Inspector to decide whether to conduct one."

<sup>2</sup> Paragraph 005 Reference ID: 17c-005-20140306

ascertain whether- (b) any operations which have been carried out" (my emphasis). He also set out the definition of "operational land" set out in s263 of the 1990 Act.

6. From this information the Council have surmised that the description of development relates to an existing use which is set out on the decision notice as "Proposed lawful development certificate for an existing use or operation for operational/agricultural land".
7. S191(4) of the 1990 Act allows the local planning authority to modify the terms of the application so as to accord with the facts and the evidence and this power can be exercised by an Inspector on appeal. On the basis of the material before me I find that the description set out in the decision notice clearly expresses the existing use sought by the applicant and I shall proceed on that basis.

### **Main Issue**

8. The main issue is whether the Council's decision was well-founded. That turns on whether the appellant can show, on the balance of probability:
  - that the uses either took place more than 10 years before the date of the application (that is from 5 April 2013) or in any other 10 year period;
  - that the uses have either continued until the date of the application without material interruption so as to be immune from enforcement; or
  - in respect to any other 10 year period, that the land has not been put to any other use inconsistent with the use for which the LDC is sought up to the date of the application.

### **Reasons**

9. The appeal site comprises two parcels of land either side of a railway line running north/south through East Markham. The Council were satisfied that it had been demonstrated that both parcels of land had been used for agricultural purposes for the relevant period and I see no reason to take a different view.
10. S191(2)(b) of the 1990 Act is met here as there are no enforcement notices in force in respect of the claimed use. With regard to s191(2)(a), the appellant's evidence is as follows:
  - Site plan;
  - Block plan;
  - Applicant's letter;
  - Applicant's covering letter;
  - Property Register;
  - Demarcation Agreement; and
  - Building drawing.
11. Operational land for the purposes of statutory undertakers is defined by s263 and 264 of the 1990 Act. S263 deals with the meaning of operational land and s264 deals with the cases in which land is to be treated as not operational land.

Section 263(1) states operational land is (a) land which is used for the purpose of carrying on their undertaking and (b) land in which an interest is held for that purpose. S264 applies where an interest in land is held by statutory undertakers for the purpose of carrying on their undertaking and (a) the interest was acquired by them on or after 6 December 1968 or (b) it was held by them immediately before that date but the circumstances were then such that the land did not fall to be treated as operational land for the purposes of the 1962 Town and Country Planning Act (the 1962 Act).

12. The appellant has demonstrated that the land in question was in the ownership of the Great Northern Railway Company in 1852, an undertaker of railway operations and the predecessor to the British Railways Board. The appellant then acquired the land in August 2000. As the land in question was acquired by a statutory undertaker prior to 6 December 1968 it is necessary to consider whether the land would be treated as operational land under the 1962 Act.
13. S221 of the 1962 Act sets out the interpretation for operational land and states that operational land in relation to statutory undertakers is considered to be "land which is used for the purposes of the carrying on of their undertaking and land which an interest is held for that purpose, not being land which in respect to its nature or situation, is compatible rather with land in general than with land which is used, or in which interests are held, for the purposes of the carrying on of statutory undertakers." The definition is similar to that contained within S263(1) and (2) of the 1990 Act.
14. Designated operational land brings with it certain benefits, for example certain categories of development can be carried out with the benefit of permitted development rights. The appellant refers to Part 17 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, which deals with mining and mineral exploration and under Class A, permits extensions and alterations ancillary to mining operations.
15. However, although the appellant has demonstrated the history of land ownership and the benefits of an operational land designation, none of the documents demonstrate that there has been an uninterrupted active use by statutory undertakers for a 10 year period. The Demarcation Agreement dated 22 April 1996 was made between the British Railways Board and Railtrack PLC under the 1993 Railways Act. The agreement states its purpose as being to define property, rights and liabilities being transferred to Railtrack PLC. It does not demonstrate any active use by statutory undertakers of operational land. The proposed weigh office building drawings also do not appear to have been enacted. In my view it is more likely than not that the land was only comparable to land in general rather than operational land or land held for that purpose and not actively used as such by statutory undertakers.
16. To summarise, the appellant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. The onus of proof however is firmly on him to provide evidence which is sufficiently precise and unambiguous to justify the grant of a certificate. I have had regard to all of the appellant's submissions. My conclusion is that he has failed to show, on the balance of probabilities, that there has been any use of the land by statutory undertakers as operational land.

**Conclusion**

17. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of an existing use or operation for operational land 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.

*D Fleming*

INSPECTOR