
Appeal Decision

Inquiry held on 21 and 22 August, 23 and 29 October 2018

Site visit made on 22 August 2018

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2018

Appeal Ref: APP/W1525/C/17/3181909

Land at Old Chase Farm, Hyde Lane, Danbury, Chelmsford, Essex CM3 4LP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Alexander Jubb against an enforcement notice issued by Chelmsford City Council.
- The enforcement notice, numbered 15/00363/ENFB, was issued on 6 July 2017.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land for storage.
- The requirements of the notice are:
 - i. Cease the use of the land for storage.
 - ii. Remove from the land all motor vehicles, caravans, skips and any other item stored on the land.
 - iii. Remove the hardstanding from the entirety of the land.
- The period for compliance with the requirements is three months.
- The appeal was made on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal on ground (a) has been brought, an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
- All oral evidence was given under solemn affirmation.
- At the Inquiry an application for costs was made by Chelmsford City Council against the appellant. This application is the subject of a separate Decision.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variations.

Enforcement notice and grounds of appeal

1. I agreed with the appellant and the Council that a minor correction should be made to the wording of the alleged breach of planning control so that it reads: Without planning permission, the material change of use of the land to use for storage.
2. At the statement of case stage the appellant introduced a ground (d) appeal. The scope of this ground was clarified on day 2 of the inquiry. The inquiry was adjourned to enable the Council to fully consider and respond to the case presented and for the appellant to address any new evidence the Council submitted. Consequently I am satisfied no prejudice was caused to either party in respect of the appeal on ground (d).
3. The Council's compliance with its obligation under section 172 of the 1990 Act and the expediency of issuing the enforcement notice do not come within my

jurisdiction to determine¹. At the inquiry the appellant dealt with the concerns over the excessive nature of requirements within the ground (f) appeal. He did not develop the point made at statement of case stage that the enforcement notice is invalid by reason of over-enforcement.

Reasons

The Land

4. The plan attached to the enforcement notice identifies an L shaped area of land of some 0.53 hectares, where it is alleged the unauthorised storage use is taking place (the appeal site). The land is partly enclosed by a bund, a development that was granted planning permission in 2011. The appeal site forms part of the appellant's property known as Old Chase Farm which extends over a much larger area to the east of Hyde Lane.
5. The site visit in August 2018 confirmed that Old Chase Farm has substantially changed in character and appearance when compared to its days as a smallholding. The activity and use were concentrated on the western and southern parts of the property. More particularly the appeal site was bounded by a bund covered in unmanaged scrub and vegetation. Along the eastern boundary was a track covered in shingle, edged with timber. Fencing along the southern boundary separated the site from the buildings to the south. The compacted ground was covered in hard surface materials, such as shingle. The site was being used for the stationing of trailers and recovery vehicles, the storage of cars in a roadworthy condition and cars that had been involved in accidents, together with caravans of various types. In the north east corner a compound was fenced off and used by a waste company for the storage of skips, a digger and vehicles.
6. The land known previously as caravan area 2 was being used for the storage of containers stacked up to 3 high and also the storage of caravans. Caravan area 1 was enclosed by chain link fencing and used for the storage of containers and caravans. To the east (caravan area 3) the uses, structures and vehicles were more varied and included car transporters, lorries, containers, trailers, waste vehicles, a portacabin (possibly a sales office), two rest rooms, space occupied by a scaffold company. According to the evidence of Mrs Humphrys, this part of the site is used by long distance lorry drivers to park up and rest for a few hours, although no one was allowed to stay overnight. The land to the north was basically cleared land with some piles of stored materials.
7. The internal access road connecting with Hyde Lane was block paved and led to a circulation and parking area outside an office. Access to the storage areas and compounds were gated. The bungalow and garden had good boundary definition, with its own separate gated access and remains a residential plot.

Appeal on ground (c)

8. The appellant presents two lines of argument with a view to demonstrating that the use of the appeal site for storage is not a breach of planning control. The first relies on a Certificate of Lawful Use or Development dated 6 July 2001 (the CLEUD). The second is based on the planning unit.

¹ *Britannia Assets v Secretary of State for Communities and Local Government & Medway Council* [2011] EWHC 1908 (Admin)

Certificate of Lawful Use or Development

9. The main issue is whether the use of the appeal site for storage was certified as being lawful in the certificate of lawful use or development dated 6 July 2001 (ref 01/00524/CLEUD).
10. The details of what must be included in a certificate are specified in section 191(5) of the 1990 Act. A CLEUD is proof that the specified use, operations or breach of planning condition is immune from enforcement action as at the date of the application. The certificate is protection from enforcement unless and until there is a further breach of planning control or some other material change in circumstances occurs. Precision in the terms of any certificate is vital, so there is no room for doubt what was lawful at a particular date.
11. The CLEUD issued on 6 July 2001 by the Council certified that on 15 March 2001 the use of land for the storage of caravans (as described in the First Schedule) was lawful. The CLEUD applies to the land specified in the Second Schedule, Land at Old Chase Farm, Hyde Lane, Danbury, Chelmsford, Essex and edged red on the plan attached to the certificate. Therefore the plan is essential to the identification of the land in question.
12. A copy of a plan, included as a document in the Council's evidence², identifies the land edged red as comprising three areas (annotated caravan area 1, caravan area 2 and caravan area 3). The appeal site adjoins the west and north boundaries of caravan area 2 and is outside the certified area shown on this plan.
13. The Council submitted that the CLEUD applies in respect of the three red line areas only. The appellant's case is that the CLEUD applies to all of the land at Old Chase Farm as shown on the original plan submitted with the application. The appellant maintained that the plan the Council now rely on was substituted for the original plan on the Council's website, which was attached to the CLEUD on the public register.
14. For the purposes of the inquiry the Council reproduced the application file³, from which it is possible to trace the history and progress of the CLEUD application. The background to the application dates back to 1984 when the owner of Old Chase Farm Mr L H Lambert applied for an established use certificate. No formal decision was issued and the file was closed in 1991. The 2001 application was an attempt by Mr Lambert to have a formal resolution on the lawfulness of the use of the land, as set out in a document headed 'Additional information for application for certificate of lawfulness 15.3.2001'.
15. Much of the information submitted with the 2001 application was a copy of that submitted in 1984. The application form described the existing use to which the application related as caravan storage and stated that 3 site plans accompanied the application. A plan date stamped 16 March 2001 by the Council and with the application number 01/00524/CLEUD outlines in red an area encompassing land parcels notated as caravan area, strawberry field, Old Chase Farm and a roadway coloured yellow as the access. A letter dated 27 March 2001 from Mr Lambert to the Council stated that the application would be more accurately described as caravan and car parking and storage and not caravan car parking.

² Mr Harwood's Appendices Document PH5

³ Document PH18

16. The Planning Officer forwarded the application and supporting documentation to the Council's Legal and Business Services on 12 April 2001. Under the heading 'applicant's evidence/documentation submitted' was listed 'site plan showing the precise locations of three specific caravan areas'. A separate file summary sheet stated that after meeting the applicant on site on 8 June 2001 he was to provide a further plan showing a reduced application site and a statutory declaration with history over the last 10 years relating to detailed use of the site with invoices to substantiate. The file summary sheet appears to have been completed by an officer in the Council's Legal and Business Services, who met the applicant with the planning case officer.
17. A letter dated 11 June 2001 from Mr Lambert to the planning officer set out that he enclosed as requested a statutory declaration, revised maps including copies of caravan row plans, sample booking forms and VAT records. The statutory declaration dated 14 June 2001 has the Council's date stamp of 15 June 2001. The declaration referred to an exhibit marked LHL1. This plan outlines in red three caravan areas, giving the relevant rows for each area and outlines in blue the freehold property known as Old Chase Farm. Mr Lambert stated that he had operated a 300 unit caravan storage site on the property since prior to 1984 utilising the areas edged red.
18. Following receipt, the Council's Senior Solicitor sent a note to the authorising officer, the Head of Service. The note stated that a Certificate of Lawfulness was attached for approval/signature and summarised the history leading to the recommendation that a Certificate of Lawfulness be issued. More particularly the second paragraph of the note referred to a site visit, the Council's request for more recent evidence, the statutory declaration and a revised map showing a reduced area in response to the advice given to the applicant. The authorising officer received the note on 5 July 2001, dealt with the matter and signed the Certificate on 6 July 2001. The plan on the back of the signed certificate has the reference number 01/00524/CLEUD (not LHL1) and caravan areas 1, 2 and 3 are outlined in red. Documents dated 9 July 2001 confirmed that the Council's Senior Solicitor sent a Certificate of Lawfulness to Mr Lambert and also to the Council's Town Planning Services for information and record.
19. Having traced the history of the CLEUD application there is no doubt that the Council determined that the use of land for the storage of caravans was lawful in respect of the 3 defined caravan areas outlined in red on the revised plan submitted in June 2001, not the larger area outlined in red on the original application plan. This conclusion is consistent with the advice given to the applicant on the site visit and the train of events thereafter, all of which are recorded in contemporaneous documents.
20. In accordance with section 191(5) of the 1990 Act the Certificate on which the Council relies specifies the land to which it relates, describes the use in question, gives the reason for determining the use is lawful and specifies the date of the application. More particularly, the land is specified in the Second Schedule and is outlined in red on the plan attached to the certificate. As set out above the land outlined in red comprised the three parcels, caravan areas 1, 2 and 3. The plan produced by the Council for this appeal, which it says was the plan attached to the certificate, is consistent with the determination based on the three defined areas.

21. The Council, as local planning authority, is required to keep a register of applications. In 2001 the Town and Country Planning (General Development Procedure) Order 1995 article 25(6) set out the information required to be contained in respect of every application under section 191 or 192 of the 1990 Act. The same requirement of a local planning authority is set out now in the Town and Country Planning (Development Management Procedure) (England) Order 2015. In this appeal the Council has confirmed that at the time the Certificate was issued the planning register contained the paper copy.
22. The legal advice to the appellant from Gotelee and Goldsmith 17 January 2008 (APP6d) was on the proper construction of the CLEUD and pre-dates Mr Jubb's stated receipt of a copy of the CLEUD, together with two plans, from the Council in 2010. The advice from McMillan Williams dated 3 November 2010 (APP6e) and John Steel QC 12 March 2012 (APP6f) was to the effect that the CLEUD was not limited to a specific area but applied to all the land at Old Chase Farm. The advice was based on the information provided to them. As confirmed at the inquiry the advice was made without the benefit of the contents of planning file, which included plans in colour. The advice from Smart Planning 13 February 2013 also was not informed by all the documentation contained in the planning file. The advice includes comments on the validity of the CLEUD and the supporting evidence but it is not open to me to go behind the certificate granted.
23. The Council's planning officer in September 2012 acknowledged that the wording of the decision notice did not identify which of the two plans was attached to the certificate and that neither plan accompanying the CLEUD decision notice was in colour. However, her view was that the area found to be lawful was that on plan 2 and not the larger area. Mr Jubb was advised to submit another CLEUD application in order to have a legal determination by the Council. Mr Jubb chose not to pursue such a course of action. The Council reiterated its position in further correspondence in January 2013, confirming that the contents of the Council's legal file had a revised plan that referred to the three separate caravan storage areas.
24. It is not for me in determining an appeal against an enforcement notice to investigate the adequacy or accuracy of the Council's planning register or the advice provided by Council officers in response to requests for information. I also am not determining whether the local planning authority's decision on 6 July 2001 was well founded. Furthermore, once a certificate is granted the lawfulness of any use, operations or other matter to which it relates is conclusively presumed (section 191(6)). Therefore the appellant's submissions on the plans supplied to him in 2010, the plans on the Council's website, the legal effect of the statutory declaration of Mr Lambert and the absence from the Certificate of any reference to the amended plan have limited significance. In the absence of the actual Certificate sent by the Council on 9 July 2001 to Mr Lambert there is no evidence to contradict the sequence of events and documents contained in the planning application file.
25. There also are several references to the CLEUD in planning and other documents related to Old Chase Farm that assist in establishing the understanding of others of the CLEUD independent of this appeal process.
26. The sales particulars for Old Chase Farm issued by Edwards and Partners stated "Within the whole property, there are three areas which have been

granted a Certificate of Lawful Use for the storage of caravans by Chelmsford Borough Council.” Secondly, advice was provided to the appellant by Richard Wald on the extent of previously developed land (dated 16 July 2013). The Advice, when describing the background, stated that “On 06 07 01 the Council granted a Lawful Development Certificate (Ref: 01/00524/CLEUD) for the use of three areas of land for the storage of caravans”. A footnote explained that those instructing him supplied a coloured and annotated version of the plan which accompanied the CLEUD application, which assisted in understanding the planning history of the site. Various reports prepared by officers of the Council in relation to each planning application also were said to be of assistance.

27. On 23 October 2008 planning permission was granted for improvement to caravan storage facilities, refurbishment of an access road and the creation of two new hardstanding loading/unloading areas (08/01586/FUL). On the decision notice a note to the applicant advised that the Lawful Development Certificate issued at Old Chase Farm “is purely for the storage of caravans in identified areas”, which is consistent with the revised plan submitted in June 2001. The design and access statement accompanying that planning application made reference to the CLEUD dated 6 July 2001 in respect of the use of land at Old Chase Farm for the storage of caravans within defined areas⁴. The originator of the document was Tom Coomber of Joal Leisure (a colleague of the appellant). In March 2009 a similar comment was made in the design and access statement accompanying a planning application for a perimeter bund (ref 09/00284/FUL)⁵.
28. In February 2017 Bidwells, acting on behalf of Mr Jubb, in a request for pre-application advice referred to the planning history at Old Chase Farm. As regards the CLEUD, the plan exhibited is the same as that which the Council say was attached to the Certificate showing the three defined caravan areas.
29. In an appeal decision dated 10 January 2018 the inspector noted that the 2001 CLEUD related to three defined areas, although two join on the southern part of the site⁶.
30. All these sources consistently identify three specific areas where storage of caravans was lawful under the CLEUD, not the wider site. They provide strong evidence to support the conclusion derived from examining the CLEUD application file.
31. In conclusion on the balance of probability the lawful development certificate (ref 01/00524/CLEUD) applies to the land comprising three areas (annotated caravan area 1, caravan area 2 and caravan area 3). The land subject to the enforcement notice is not within the area certified to be lawful for caravan storage. Therefore the appellant is unable to rely on the 2001 CLEUD as an answer to the alleged breach of planning control. On this analysis the appeal on ground (c) does not succeed.

Planning unit

32. The effect of the CLEUD was to describe a use, in respect of the land specified, that was immune from enforcement action on 21 March 2001 (the date of the

⁴ Council’s statement of case document CCC 6

⁵ Council’s statement of case document CCC 8

⁶ Appeal decision ref APP/W1525/W/16/3162344 regarding a proposed development of 59 dwellings and a shop unit on land at Old Chase Farm

application). The certificate is protection from enforcement unless and until there is a further breach of planning control or some other material change in circumstances occurs. As advised by Planning Practice Guidance precision in the terms of any certificate is vital, so there is no room for doubt what was lawful at a particular date, as any subsequent change may be assessed against it. Planning Practice Guidance further advises that where the certificate is granted for one use on a planning unit which is in mixed or composite use that situation may need to be carefully reflected in the certificate because failure to do so may result in a loss of control over any subsequent intensification of the certified use.

33. The planning unit is a concept that has evolved as a means of determining the most appropriate physical area against which to assess the materiality of change to ensure consistency in applying the formula of material change of use⁷. By contrast a CLEUD sets a benchmark against which the materiality of any subsequent change or intensification, even within the same planning unit, can be determined.
34. Where there is a single planning unit in composite use a mere cessation of one use with no increase in the extent of intensity of the other use would not amount to a material change of use. However, if a use absorbs the entire site to the exclusion of the other a material change of use may occur if it is found as a matter of fact and degree a change in character occurs and the change is material.
35. The appellant considered that the planning unit comprised the whole of Old Chase Farm excluding the residential plot from the date in 1984 on which storage became the primary use⁸. Within the context set out above, in my view it is incorrect to conclude that because caravan storage was found to be lawful on particular parcels of land it automatically follows that storage use is lawful across the whole of the planning unit. To reach such a position there would have to be evidence and consideration of such factors as whether the extent of the planning unit had remained constant, the history of the use(s) and whether a more extensive storage use resulted in a material change in the character and use of the planning unit. The onus is on the appellant to prove his case on the balance of probability. No such detailed analysis was undertaken. In any event in order to come to conclusions on such matters it is necessary to consider the evidence on the history of use of land at Old Chase Farm. Accordingly I prefer the Council's approach whereby the lawfulness of storage on the appeal site is explored through the ground (d) appeal.
36. In conclusion, the appeal on ground (c) does not succeed.

Appeal on ground (d)

37. The main issue is whether on the balance of probability a material change of use of the Land to use for storage occurred before 6 July 2007 and whether the storage use continued substantially uninterrupted for a period of ten years thereafter.
38. In general, for a material change of use to occur there has to be a significant difference in the character of the activity or activities compared to what has gone on previously. It is a question of fact and degree in each case. As noted

⁷ Encyclopaedia of Planning Law P55.44 reproduced at Appellant's statement of case APP8a

⁸ Inquiry Document A.7

above, the planning unit is a means of determining the most appropriate physical area against which to assess the materiality of change. A planning unit is normally taken to be the unit of occupation, unless and until a smaller area can be identified where there is physical and functional separation of activity.

Land ownership

39. Mr L H Lambert acquired Old Chase Farm in 1964 from Mr W Rushbrook⁹.
40. After Mr L Lambert died the land passed to his relatives and part of the property at Old Chase Farm was put up for sale in 2006. The sale particulars confirm that the land for sale comprised caravan areas 1, 2 and 3, the residential plot, the access track onto Hyde Lane, the building and adjacent land north of the entrance area and the appeal site. The land was acquired by Joal Leisure, the sale being finalised in 2008. Mr Jubb, who was a director of Joal Leisure, became the sole owner of this land in 2011. At the same time the remaining lands were acquired by Mr Jubb and Old Chase Farm was consolidated into his ownership. These later acquisitions comprised (i) land to the east of caravan area 2 (the strawberry field) and wooded land to the east of caravan area 3, and (ii) the small parcel of land bounded by Hyde Lane, the access track and the residential plot.

Planning history

41. A number of planning applications were made for development at Old Chase Farm over the period 1963 to 2017, full particulars of which are found in the appeal documents.
42. In the early period these included an extension to the bungalow in 1963, the erection of a farm shop for the sale of home grown produce in 1973, proposed residential development on a site covering all the land ownership (which was dismissed on appeal in November 1975) and the erection of a safety cage for the storage of LP gas bottles in 1982.
43. In September 1984¹⁰ Mr L Lambert made an application for an established use certificate. He referred to the parking of empty touring caravans taking place from 1960 to 1983 over the winter months on a very casual and random basis and letters and newspaper cuttings were submitted to illustrate the use. In his statement he described the parking of caravans as a useful sideline, tolerated more than encouraged. Since 1983 he explained more caravans parked and were placed all in one area on the car park to enable supervision. The main source of contrary evidence was from the occupiers of White Elm Cottage, neighbours to the farm, who disputed caravan parking took place before 1983.
44. Post the CLEUD in July 2001 and more particularly after the appellant had an interest in the lands three developments were granted planning permission in October 2008, June 2010 and January 2011. The developments were:
- the improvement of existing caravan storage facilities by laying surface mounted plastic road tiles and the refurbishment of existing asphalt access road and creation of two new hardstanding loading/unloading areas. The proposal did not include any works to the appeal site but was

⁹ PH18 Owner's statement 24 August 1984

¹⁰ PH32. The plans accompanying the application are provided at AJ1 to Mr Jubb's first proof.

focused on caravan areas 1, 2 and 3 and the area immediately south of the appeal site.

- a change of use of the building north of the site entrance from agricultural use to a B1 use to include light industry and office use. A planning condition restricted the use to purposes incidental and ancillary to the use of the adjoining land for the storage of caravans.
- the retention and creation of a 2 metre high perimeter earth bund, sited around caravan areas 1, 2 and 3, the dwelling, access, the building group by the entrance and the appeal site.

45. The documentation associated with the proposed developments provides facts and information about the use of land at the property that supplements the evidence produced by the main parties and their witnesses for this appeal.

Aerial photographs

46. Aerial photographs were included in the evidence of the appellant and the Council. The photographs have to be interpreted with caution not least because they are a snapshot in time. The detail of what may be on the ground may be obscured by vegetation, especially as the images appear to be at times when vegetation was in full leaf. Nevertheless the main parties did not question either the dates or the source of this form of evidence and they are useful information when tracing the character and probable primary uses of the land.

The Appellant's case

47. In summary the appellant's case is that the planning unit is and always has been the wider site at Old Chase Farm, excluding only the residential dwelling. The two phase purchase of Old Chase Farm was a function of financial administration and did not serve to break up the planning unit.
48. The land use at Old Chase Farm was agriculture pre 1935, a mixed agriculture storage use post 1935 – 1983/84 and storage post 1984. Accordingly reliance is placed on a material change from mixed agriculture and storage use to a use for storage in 1983/84. A ten year period beginning with the date of the breach can be shown with continuity of unlawful use throughout that period. Since that date there has been no abandonment or any other supervening event in planning terms which would have brought that use to an end. In the alternative, a 10 year period of use for storage on the appeal site is able to be demonstrated in the 10 year period preceding the issue of the enforcement notice in July 2017.

The Council's case

49. The Council submit that there was no material change of use from agriculture to agriculture and storage in the period prior to 1983/84. During this period the sole primary use of all of Old Chase Farm was agriculture. A material change of use of the three red line areas took place on or by 6 July 1991, but not prior to 1983/84. The change of use resulted in a subdivision of the planning unit, creating three new planning units. The appeal site fell outside of the planning units where the primary use was storage. The primary use of the planning unit in which the appeal site was located was agriculture.

50. In the alternative, if there was no subdivision of the planning unit, the material change of use of the three red line areas to use for storage created a mixed use of agriculture and storage within the single planning unit. However, any immunity from enforcement action which subsequently accrued was lost when within the last ten years a use for parking was introduced that resulted in a material change of use to a new sui generis mixed use.

Assessment

Period 1935 to 1984

51. Old Chase Farm was run as a smallholding by Mr W Rushbrook until he sold the farm to Mr L Lambert in 1964. A reasonable starting point is that the smallholding was a single planning unit. The descriptions provided in the various planning applications around 1964, 1973 and 1974 all state a single primary use as a horticultural holding. The appeal decision in 1975 described the site as consisting of mainly two fields under cultivation and also including a plot of waste land at the south west corner fronting the lane.
52. There were indications that the soft fruit growing business was facing challenges in the early 1970's leading to diversification into the sale of home grown produce and prompting the application for residential development. Nevertheless crops were continued to be grown into the early 1980's, as shown on the aerial photographs. The earliest image dated 1970 shows the farm under cultivation. A closer image dated 1980 provides a more detailed picture with rows of crops being identifiable. The first significant view of caravans occurs on a photograph dated 1986 when they are grouped in caravan area 1, with a single row of caravans in area 3. The rest of the land appears as farmland with no obvious hard surfaced tracks or encroachment of trees into the land holding. The photographic evidence calls into question the reliability and accuracy of the evidence of Mr S Rushbrook, who maintained the farming business was abandoned past the 1970's. I understand this term to mean farming no longer took place rather than the more legal definition under planning law. The evidence of Mr J Lambert, that the land was actively worked on a reduced scale until the early 1990's, is preferred as the more probable.
53. Mr Jubb in his statutory declaration confirmed that to the best of his knowledge "the whole of the site has been used for storage since at least 1935"¹¹. This statement was based to a large extent on the information contained within the 1984 application for an established use certificate, including plans referenced AJ1¹². In particular one of the plans was annotated with general caravan parking areas along the boundaries and winter caravan parking areas, two to the east of the dwelling and one to the west of the reservoir. In his evidence Mr Jubb also referred to the minute books of the Wickford and District Caravan Club as proof that the site had been used for storage since 1937, although the actual documents were not produced to support this view.
54. The oral evidence of Mr Jubb confirmed his interpretation of the evidence that (i) the land was a single planning unit, (ii) people had access and could park their caravans wherever they wished and therefore (iii) all the planning unit was open for storage as set out in Mr Lambert's 1984 application.

¹¹ APP61

¹² Mr Jubb's proof of evidence paragraph 2.3

55. However, balanced against this conclusion is the view of local planning authority regarding the authorised use of the land over the period. Even though the application for the established use certificate was not formally determined there is sufficient documentary evidence to demonstrate that the local planning authority was not satisfied the evidence justified issuing an established use certificate. In 1991 the planning authority advised Mr Lambert that the file was closed.
56. Such a conclusion appears reasonable given the lack of precision in the letters accompanying the application, the contrary evidence of the neighbours and the descriptions included in Mr Lambert's statements. Nothing has been produced for this appeal over 30 years later to lead me to depart from the local planning authority's assessment at the time or to demonstrate that a storage use had become immune from enforcement action. In coming to this conclusion I have taken account of the established use certificate provisions in the Town and Country Planning Act 1968 and the transition to the revised enforcement time limits and the concept of lawfulness.
57. I conclude on the balance of probability that during the period 1935 to 1984 the small holding at Old Chase Farm was a single planning unit, consistent with the area of ownership and occupation. The planning history indicates that the bungalow functioned as the farmhouse serving the small holding and as a matter of fact and degree therefore formed part of the planning unit at that time. Consequently the primary uses within the unit were agriculture and also residential, with the residential use restricted to the curtilage of the dwelling.

Period 1984 to 2006

58. In 1984 the local planning authority visited Old Chase Farm, recorded a minimum of 60 caravans parked or stored on the land and advised Mr Lambert there had been a breach of planning control. As a result the established use application was made. The probability is that the number of caravans stored on the land significantly increased from around the mid 1980's, having regard to the Council's site visit, the statements of Mr L Lambert with the established use application and the statements of Mr J Lambert and Mr A Rushbrook for this appeal.
59. The additional information submitted to support the CLEUD application in June 2001 indicates around the mid 1980s Mr Lambert put in place more formal arrangements to accommodate the increased numbers of caravans. The plans of the rows within the three caravan areas generally correspond with the pattern of caravans seen on the aerial photographs dated 1994, 1997, 1999 and 2000. No caravans are obvious within the appeal site, where increased vegetation was seen near the northern boundary. The photograph attached to the sales particulars (undated) showed a similar pattern of caravan storage. This change to the operation was acknowledged by Mr A Rushbrook, although this witness, Mr S Rushbrook and Ms Roblin were of the view that caravans were stored outside the defined areas too. They also stated that the appeal site was used as an accessway as well as for storage.
60. Mr Jubb suggests that the appeal site would have been required to enable the operation of a 300 unit caravan storage site described by Mr L Lambert in his statutory declaration in June 2001. However, as highlighted by the Council, the 3 defined caravan areas provided space for nearly 300 units. It is also difficult to see why the appeal site would be required to provide access given the

adequacy of access tracks around and within the defined areas. The vegetation cover shown on the aerial photographs provides little support for its continued use for access and turning.

61. Mr Jubb also stated that in 1982 a gas bottle business was established selling to touring customers, which in his view demonstrated that a larger number of caravans must have been present. His evidence links to that of Mr S Rushbrook who stated Mr Lambert ran a caravan accessory shop and a calor gas wholesale business in the 1980's. In contrast, the reason for the erection of a calor gas safety cage given by Mr L Lambert when making the application in 1982 was in connection with the strawberry growing. Mr J Lambert confirmed that reason and the subsequent development of a small business servicing gas heaters in the locality. This is a more probable explanation, bearing in mind that caravan owners would be more likely to purchase gas when touring rather than when their caravan was in store.
62. The booking forms show that pitches could be booked for a year or a lesser period. The VAT record forms show that the vast majority of the bookings related to a specific pitch on the three caravan areas and that more especially after 1990 payments were more often for a year. Turnover of pitches appears to have been limited, with a considerable degree of stability in occupation of individual pitches. The presence of stored caravans throughout the year is indicated by the aerial photographs from about 1990. The marked increase in the numbers of caravans, the formalising of storage arrangements and greater continuity in the use of land were factors that resulted in a material change in the character of activities and hence a change in the use of land from agriculture, certainly by July 1991.
63. When the 2001 CLEUD application was considered by the local planning authority the officers had the benefit of seeing the site on the ground, talking with Mr L Lambert, being familiar with the site history and seeing the original copies of the documents. The potentially new first hand evidence that has come forward with the current appeal is the statutory declarations and oral evidence from people who used the caravan facility or were familiar with the site at the time. I consider that this evidence is not sufficiently precise or unambiguous to challenge the Council's conclusion on the CLEUD application and to extend the lawful caravan storage use across the wider site. That being so the lawful caravan storage use was confined to the three defined caravan areas shown on the plan attached to the CLEUD.
64. These findings are interrelated with defining the planning unit. Referring back to *Burdle Bridge J* pointed out that that there might be almost imperceptible change from one category to another. It seems to me that this observation is applicable to the events at Old Chase Farm. As a matter of fact and degree I consider that initially there was a material change of use of the planning unit from agriculture and residential to a mixed use for agriculture, storage of caravans and residential around the mid 1980s, where component activities fluctuated in intensity over the year and less formal storage arrangements were tolerated. However, by July 1991 the caravan storage had become sufficiently distinct in terms of functional and physical separation. The occupation of the caravan storage areas was for a use unconnected with any agricultural use carried out by the owner of the land. The pitches were defined and contained in specific areas, physically identifiable by the surrounding access tracks. The 3 caravan areas amounted to a new separate planning unit,

a conclusion that is consistent with the 2001 CLEUD. In view of the weak functional links between the dwelling and the land the residential plot became a separate planning unit. The remaining area, constituting a further separate planning unit, reverted to a single primary agricultural use, notwithstanding a possible presence of a very small number of caravans, whether stored or abandoned. Even though farming may have actively ceased at some point, the lawful land use for agriculture was not abandoned.

65. For the period around 2001 to 2006 there is much less detailed evidence. The testimony of Mr A Rushbrook indicates a storage facility for caravans continued to 2004, whilst Ms Roblin described the site being more or less dormant in the early 2000's. Her recollection is reasonably consistent with the evidence of Mr J Lambert, who stated the caravan storage site was closed around 2003 and the aerial photograph for 2003 which showed the 3 caravan areas as grassland the land surrounded by wooded areas and mature hedgerows. A very few caravans were scattered on caravan area 3 and on and near caravan area 2. No caravans are visible on the appeal site on the images dated 2000 and 2005¹³. The Council has not sought to argue the caravan storage use was abandoned and on the balance of probability the planning position remained the same as that in 2001.

Period 2006-2017

66. As a reference point an aerial photograph dated 2005 showed the appeal site was covered in vegetation and there was no indication of any significant storage use taking place there or on the rest of the land holding. Four caravans appear to have been sited just to the east of the boundary to the appeal site.
67. As noted above, after Mr Lambert's death Old Chase Farm was not sold as a single landholding and it was not until June 2011 that the appellant was the owner of all of the land. The appeal site was within the area of land finally acquired in 2008. In view of my conclusions on the extent of the CLEUD and the sequence of events in the preceding periods, the use of the appeal site for storage was not lawful prior to 2006. Therefore in order to succeed on ground (d) the appellant has to demonstrate that after 2006 a material change of use of the site took place followed by a continuous ten year period for storage use before 6 July 2017. Precision in areas involved and dates is especially important in view of the necessary 10 year timescale to gain immunity from enforcement action. The critical cut off date for the alleged breach of planning control is 6 July 2007.
68. Before the issue of the enforcement notice in February 2017 when responding to a planning contravention notice Mr Jubb stated that storage use of the appeal site began 9 years ago, which would be around February 2008. In his evidence for this appeal Mr Jubb in his first statutory declaration¹⁴ said he began to develop the site in 2007 with the permission of the agents. An L shaped area (marked in blue on plan) was levelled and used for access and storage. However, the L shaped area to which he referred extends further south than the appeal site to include the land nearer the site entrance. In his oral evidence the development was dated to early 2007, when the land was cleared to gain better access. Therefore the appellant's evidence was not fully consistent or precise.

¹³ PH11 and PH12

¹⁴ Undated but submitted with the statement of case as APP6(I)

69. Furthermore Mr Jubb's evidence does not tie in well with the evidence of his witness Mr Smith, a contractor who has run his own business for over 20 years. He confirmed in his oral evidence that he began work on the site in the spring/summer of 2008. In his statutory declaration he stated that the appeal site was initially used as an ancillary access road and he finished this area in October 2008. When he returned to the site in March 2016 the L shaped area of land (the appeal site) had been dressed in places with pea shingle and was being fully used for storage. Mr Cussen, the appellant's planning witness, could not assist with precise dates for the completion of works to lay a hardstanding or commencement of a storage use on the appeal site. Ms Tucker confirmed that at no time from 2007 onwards was she aware of any activity taking place on the L shaped piece of land (the appeal site) other than storage or incidental to that use. However she also stated that the L shaped land was initially used as an access road, although items were parked/stored there from time to time. As such her recollections of use lack consistency. Her recollection of site clearance works lacks precision as to timing and area involved.
70. The appellant's commentary to the series of aerial photographs submitted at statement of case stage states that the site was cleared and made ready for use in two stages. By September 2009, the stage 1 position, the L shaped parcel of land subject to enforcement action had been laid to hard core, the land to the far north was not dressed with shingle nor was the top storage area. The earth banks had been installed. The commentary continues that the operational development had been to facilitate movement of stored items at that time. Most of the ground was also covered with a reclaimed plastic grid system to act as a wearing course and keep the gravel in place. This commentary indicates ground preparation was necessary to enable storage use on the appeal site and that the work was not substantially completed until well after the relevant date.
71. Turning to the planning history, it was not until September 2008 that a planning application was made for the improvement of existing caravan storage facilities, the refurbishment of an existing asphalt access road and the creation of two new hardstanding loading/unloading areas. The proposal did not include any works to the appeal site but was focused on caravan areas 1, 2 and 3 and the area immediately south of the appeal site.
72. The Council's evidence includes photographs taken by a planning officer on site visits in connection with the planning applications for improved surfacing. The planning officer who carried out the visit confirmed in a statement of truth dated 10 July 2018 that the photographs were taken at the visit on 15 September 2008. The images showed the appeal site had been levelled but it was not surfaced or being used for storage purposes. The appellant did not seek to directly dispute this account. The same officer also visited on 22 April 2009 in relation to the application for a perimeter bund. He confirmed that photographs taken on the visit showed that the appeal site had been levelled and contained piles of surface materials. Machinery on the site was likely to be used to spread the material and the site was not being used for storage. I consider these photographs have substantial weight and represent the best available evidence on the use and condition of the land at those times. On the basis of this evidence the local planning authority would not have had the justification to issue an enforcement notice against the use of the appeal site for storage at that time.

Conclusions

73. The appellant's evidence is not sufficiently precise and unambiguous and in addition the Council's evidence makes the appellant's version of events less than probable. I conclude that on the balance of probability that a material change of use of the appeal site did not take place before 6 July 2007 and consequently the storage use has not achieved immunity from enforcement action.
74. Taken together with the conclusions for the earlier periods, the appeal on ground (d) fails.

Appeal on ground (a), deemed planning application

75. The deemed application is derived directly from the description of the breach of planning control and therefore planning permission is being sought for the use of the L shaped area of land for storage. The main issues are the effects of the use on:
- the character, appearance and visual amenities of the surrounding countryside; and
 - the rural economy and community.

Context

76. The appeal site is located within the Rural Area beyond the Metropolitan Green Belt.
77. The appellant maintains that the site is previously developed land within the definition of Annex 2: Glossary to the National Planning Policy Framework July 2018 (the Framework). This was disputed by the Council. I have concluded that the lawful use of the land is for agriculture. Until around 2007 the aerial photographs show that the land was covered by trees and vegetation and blended into the countryside landscape. The appeal site was not included in the area covered by the 2008 planning permission for the improvements to the caravan storage facilities and new areas of hardstanding. Having regard to the meaning of a 'building' in section 336 of the 1990 Act I do not consider that the perimeter bund is a structure, rather it is a man-made physical ground feature. It follows there is no lawful associated fixed surface infrastructure on the land in question. There is no evidence that is sufficiently precise and unambiguous to show on the balance of probability that hardstanding of any materiality existed prior to the preparation of the land for the unlawful storage use. On that analysis the site is not previously developed land.
78. The advice on previously developed land obtained in 2013 by Mr Jubb was based on different information and does not assist. The Council's submissions in this appeal are to be preferred. The appellant also relied on the fact that the Council has expressed an intention to include land at Old Chase Farm on its Brownfield Land Register. This follows the re-categorisation of sites at Old Chase Farm from category 2 to category 1 in the Council's Strategic Land Availability Assessment 2018 (SLAA). The available information indicates that the site areas are much larger than the appeal site and therefore this consideration has little weight for current purposes. Also, inclusion of lands in the Brownfield Land Register and SLAA is not a site allocation for housing or other development and has no relevance as a fallback consideration.

79. The 2001 CLEUD did not approve a storage use but confirmed the use of the defined areas of land for the storage of caravans to be lawful on the specified date. However, the certificate did not specify the precise level or scale of use. The evidence of the appellant and the Council on ground (a) was based on the 2001 CLEUD position continuing to be the authorised use of the lands. I will do likewise to avoid any prejudice and hence will not determine whether the storage use continues to be lawful on the certified areas or whether a new chapter of the planning history has occurred.
80. It is common ground between the main parties that the most relevant development plan policies are Policies CP1, CP5 and DC2 of the Chelmsford City Council Core Strategy and Development Control Policies Focused Review adopted in 2013 and Policy CP2 of the Core Strategy and Development Control Policies adopted in 2008.
81. Policy CP1 promotes sustainable development, reflecting paragraph 11 of the Framework¹⁵. Policy CP2 sets out a sequential approach to the development of land, with the focus on using previously developed land within existing built up areas. Policy CP5 is aimed at containing urban growth. Within the rural area beyond the Green Belt the policy protects the intrinsic character and beauty of the countryside whilst supporting rural communities and economies. At a more detailed level Policy DC2 manages development in the rural area beyond the Green Belt with a view to achieving the strategic objectives, allowing for new building and development compatible with the countryside character. Policies CP5 and DC2 are consistent with the Framework in that they contribute to and enhance the natural local environment, whilst sustaining the rural economy and recognising community needs.
82. The appellant also has drawn attention to Policy DC53, Core Strategy and Development Control Policies, that permits the extension of industrial or business premises in rural areas provided all the stated criteria are met.
83. The Chelmsford Draft Local Plan Pre-Submission document January 2108 is at a relatively early stage in the plan-making process. Representations have been made to policies relevant to the Rural Area and changes of use and hence the policies may change on adoption. Therefore the Draft Plan has limited weight and I will focus on the most important adopted policies.
84. The site is in the Woodham Wooded Farmland Character Area, a varied and interesting landscape that has relatively high sensitivity to change¹⁶. An open arable landscape framed by woodland blocks is typical of the context of Old Chase Farm. Trees and hedgerows enclosing fields, dispersed settlement and a network of footpaths also contribute to the overall landscape character.

Character and appearance

85. The design and access statement supporting the planning application for the perimeter bunds explained that the bunds were to be covered with grass and planted with ground cover shrubs with a view to providing a screen to the caravan storage areas, a sound barrier, improved security and a wildlife habitat. In effect the approved plans for the bunds and the improvements to the caravan storage facilities allowed for the appeal site to act as a buffer between the lawful storage area and the boundary of the land.

¹⁵ At the time of adoption, the Policy was derived from paragraph 14 of the previous Framework

¹⁶ Braintree, Chelmsford, Maldon and Uttlesford Landscape Character Assessment 2006

86. The lawful storage areas together result in a relatively large expanse of open land available for storage, a commercial use and land coverage that is out of keeping with the smaller scale landholdings nearby. The associated works, hardsurfacing and the intensity of use emphasise the contrast. The type of storage, predominantly vehicles, containers and caravans, is more extensive and different in its impact to agricultural storage referred to in the Landscape Character Assessment. In this respect I note that in the 2018 appeal decision the inspector described the storage as being more intrusive and of a quasi-industrial nature and hence not akin in character to farmyards in the area.
87. The further expansion of the storage area up to the boundary with residential properties to the west and ancient woodland to the north would increase the impact of the development, be a negative addition to the pattern of land use and detract from the character of the landscape. The change of use to storage would not comply with landscape planning guidelines to conserve the mostly rural character of the area and to respond to the historic settlement pattern. Land management guidelines to restore the hedgerow network on property boundaries and to have margins to protect existing landscape features would be frustrated now and in the longer term.
88. Old Chase Farm features in local views such as from Slough Road to the south, the footpath St Peter's Way, as well as Hyde Lane. However, the appeal site is enclosed by the perimeter bund and woodland to the west and north and by the adjoining uses on the site to the east and south. A storage use on the site, which could be subject to a planning condition restricting the height of stored containers or other items, would not have a harmful visual impact on the area.
89. With reference to the appellant's transport statements, the B1418 Hyde Lane is a single carriageway road of variable width. In the vicinity of the site entrance there are no footways, the road verges are narrow and boundary hedgerows provide good enclosure. Hyde Lane no longer is a B class road to the north of the junction with Maldon Road on the edge of Danbury. The highway becomes narrower and with a character more typical of old roads which originally formed the framework of the village¹⁷.
90. The appellant has reviewed the trip generation potential of the use of the appeal site for B8 open storage use. The indication is that the use would generate up to 8 vehicular trips in the AM peak, 6 trips in the PM peak and a total of 80 trips over a 12 hour day (6 movements per hour). These trips are based on 60% site coverage although I observed on the site visit the intensity of use appeared to be significantly greater. Also, movements are likely to be weighted towards light goods vehicles and heavy goods vehicles, a point made by the appellant in the transport statement supporting a proposed residential development at Old Chase Farm. In that statement, dated December 2015, the existing uses on the wider site were assessed to generate 68 trips in the AM peak and 60 trips in the PM peak.
91. Criterion v) of Policy DC53 highlights not only the volume but also the type of generated traffic, particularly heavy goods vehicles, on the character of rural roads. The Landscape Character Assessment noted that heavy traffic detracts from the overall tranquillity of the area, although the lanes south of Danbury still have a strong sense of tranquillity. Increased pressure on rural and minor lanes was identified as a key planning and land management issue. Hyde Lane

¹⁷ PH16 paragraphs 19 to 21

where it passes the site is not a rural or minor lane. However, the rural road is fronted by residential properties and the site is in reasonable proximity to a more sensitive length of Hyde Lane to the north. The use of the appeal site would generate a relatively low level of traffic but bearing in mind the HGV content the impact would not be neutral and there would be slight harm to the amenity and character of Hyde Lane.

Rural economy and community

92. The appellant drew attention to the Council's Economic Strategy 2017 which had as one of its seven priorities developing the rural economy. Mr Jubb maintained that a need for caravan storage space in the area had increased. In the last 11 years 3 local storage sites had closed down removing over 550 caravan storage pitches, whilst many new housing estates prohibit caravan storage. The development was considered to be well located for the continuation and expansion of an existing service, in compliance with the Framework that supported storage and distribution operations at a variety of scales and in suitably accessible locations. In the appellant's view more storage led to more customers who bring money into the area and support existing staff employed on the site. Self-evidently there was an economic benefit. Mrs Humphrys said there was a waiting list for caravan and container customers and that the site was well placed to the main route network and holiday areas.
93. The use of the land would not be confined to the storage of caravans. The site visit indicated a wider range of storage, including containers and motor vehicles, taking place. Therefore the justification based on an increased need by the community for caravan storage has little weight. No evidence was produced to substantiate the scale of increased benefit to the economy and employment by the use of the appeal site for storage in general. No evidence was brought forward to detail the availability or otherwise of authorised or allocated storage facilities and sites in the district. Accordingly limited positive weight may be attached to this consideration.
94. Paragraph 82 of the Framework states the specific locational requirements of different sectors of the economy should be recognised. The appeal site is located towards the southern end of Hyde Lane with no direct access onto the strategic highway network. When considered as an expansion to an existing storage use, the development would not be in a suitably accessible location or of a scale compatible with the Rural Area.

Other considerations

95. The access to the site is of a suitable standard and traffic may be accommodated without a significant effect on highway capacity or safety. Apart from a small land parcel the site is in flood zone 1 where there is a low annual probability of sea or river flooding. The land is not within the setting of a heritage asset. The effect on the residential amenity of nearby occupiers would be adequately mitigated by the retention of the perimeter bunds and a planning condition to control the height of storage. All these considerations are neutral within the planning balance.
96. There are no statutorily designated nature conservation sites nearby but Slough House Wood Local Wildlife Site is located to the east. Ecological surveys at Old Chase Farm were carried in 2014/15 and in early 2017 in connection with development proposals for residential development and extensions to the

storage areas¹⁸. The areas of compacted gravel hardstandings subject to regular disturbance were considered to be unsuitable for reptiles and to be an unsuitable invertebrate habitat. The 2015 report concluded bats were highly likely to forage and commute along linear boundary features in and around the site. Significantly, in 2017 a 15 metre buffer zone was recommended along the northern perimeter in view of the presence of mature oak trees in the woodland strip bounding the site to the north.

97. In view of this evidence the extension of hardstanding over much of the appeal site probably resulted in a degree of ecological harm, whilst the recent intensification and spread of the storage across the northern limb of the appeal site also would not have been sensitive to protecting and minimising development impacts on biodiversity. Whilst the development would not have an unacceptable effect, having due regard for biodiversity and nature conservation supports maintaining the appeal site as a buffer zone, free of significant storage use.
98. A planning condition regarding the submission of a landscaping scheme for the western and northern boundaries of the site would not adequately overcome or mitigate the identified harm.
99. I have taken account of the evidence prepared for the 2017 appeal, the pre-application advice in 2017 regarding extension of a storage use and comments of the local planning authority when assessing development proposals at Old Chase Farm. However, the views expressed need to be treated with caution because of the different context and development proposals.

Conclusions

100. The site is not previously developed land in the countryside and its use for storage is not consistent with the Borough-wide spatial strategy that aims to focus development in the urban areas and defined settlements. There is conflict with Policy CP2 of the 2008 Core Strategy. The material change of use and associated engineering works have a harmful effect on the character of the countryside in the Rural Area beyond the Green Belt. The development conflicts with Policies CP5 and DC2 of the Focused Review. By reason of the harm to the character of the countryside and the type of traffic generated the extension of business premises in the rural area is not supported by Policy DC53. In view of these conclusions the development is not sustainable and fails to comply with Policy CP1 of the Focused Review. The development is contrary to the development plan when read as a whole.
101. An open, general storage use which has been developed on the site is unrelated to land based rural businesses, offers limited benefit to community service provision and fails to recognise the intrinsic character of the countryside. The development does not amount to sustainable growth and expansion of a rural business and is not supported by policy in the Framework.
102. In accordance with the development plan the deemed planning application should be refused. Other considerations, including the Framework, do not indicate otherwise. The appeal on ground (a) does not succeed.

¹⁸ Appendices 7 and 16 to Mr Cussen's proof

Appeal on ground (f)

103. The issue is whether the requirements of the notice are excessive to remedy the alleged breach of planning control. Having regard to the *Kestrel Hydro* judgement¹⁹ the central consideration is whether the hardstanding was integral to the unauthorised storage use or whether the works were undertaken for some other lawful use of the land in question and capable of being employed for that or some other lawful use once the storage use has ceased. Consideration of this issue is informed by the evidence and conclusions of the legal grounds of appeal as well as the submissions and evidence specific to ground (f).
104. The purpose of the notice is to remedy the breach of planning control and in so doing to remedy the harm to the local environment and to uphold development plan policy. The appellant did not challenge requirements (i) and (ii), in short to cease the use and to remove the items stored from the land. Requirement (iii) is contested – to remove the hardstanding from the entirety of the land, the last step to be taken to remedy the condition of the land. The appellant's case rests on two main points. First it would be excessive to remove hardstanding under the perimeter bund and secondly the operational development undertaken more than four years ago serves the purpose of accessing the lawful use on wider areas of the site.
105. The land to which the requirement relates is the L shaped area (as defined on the plan attached to the notice), the width showing some variation. On the appeal site inspection the surface of much of the western part of the site appeared to be compacted ground with a sandy base. On the northern part of the site the level surface was covered in shingle, apart from the compound area. A perimeter bund, which encloses and forms part of the site, was in place along the western and northern boundaries and was covered in overgrown vegetation and scrub.
106. The perimeter bunds were granted planning permission in 2011. None of the evidence indicates that storage has taken place on the bunds. On a reasonable and straight forward reading of the enforcement notice there is nothing to say that the bund should be disturbed to enable any hard materials at the base to be removed. However, for the avoidance of any doubt I will vary the wording of step (iii) to make clear the perimeter bund and the ground beneath the bund is not affected by the requirement.
107. As to the second matter, the evidence of the appellant and his witnesses included reference to the use/condition of the appeal site when in the ownership of Mr L Lambert. A consistent theme was that the land was used for access when parking and picking up caravans and sometimes for storage and that it was reinforced in places with hard core to make the ground better for moving vehicles on and off. Mr Jubb declared that 'areas of the site were covered with hard core. In places this was so well done as to make digging them up virtually impossible. That is why we laid over most of these areas I would accept that the vast majority of the site was not hardcored in this way'²⁰.

¹⁹ *Kestrel Hydro v Secretary of State for Communities and Local Government and Spelthorne Borough Council* [2016] EWCA Civ 784

²⁰ Statutory declaration dated 10 October 2018 paragraph 18 (which should be read in full and context)

108. The appellant's series of aerial photographs²¹ indicate that in 1999 there may have been a grass track running north/south but the line of the track is just to the east of the appeal site²². On the 2005 image this track is still discernible but a second track within the appeal site is not apparent on the unmarked photograph. The northern part of the appeal site was covered with vegetation.
109. In this earlier period I have concluded that the lawful use of the appeal site was agriculture. Any hard surfacing was not in connection with a lawful use. Moreover, the evidence was not sufficiently precise to confirm that any deposit of hard materials amounted to hardsurfacing, whether any hardsurfacing was confined within the boundaries of the appeal site and not on nearby land or exactly where hard surfacing occurred (if at all) on the appeal site.
110. Turning to the period post 2006, undoubtedly extensive hard surfacing work was carried out on the appeal site, as illustrated by the appellant's aerial photographs and supporting commentary describing a two stage programme of works²³.
111. Mr Jubb provided no detailed specification of the work carried out in 2008 or thereafter. Mr Smith described clearing the land, using hard core on the site and compacting it with a machine. However, even with the benefit of the Council's photographs he was unable to give a detailed account of the work done some ten years ago.
112. The Council's photographs taken in April 2009 show engineering works taking place on the western part of the appeal site involving excavation and laying of a hardcore.
113. I conclude as a matter of fact and degree the work that was carried out to the appeal site was not simply repairing, maintaining or improving an existing hard surface but a pre-planned engineering operation to lay a new hardstanding to facilitate the use of the land for storage. On the balance of probability the hardstanding was integral to the unauthorised storage use and was not undertaken for some other lawful use of the land in question. Consequently the hardstanding is not immune from enforcement action by reason of the 4 year time limit. The requirement to remove the hardstanding is not excessive.
114. The appeal on ground (f) succeeds only in so far as a variation will be made to step (iii) to confirm the bund is not affected.

Appeal on ground (g)

115. The issue is whether the compliance period of three months is less than reasonably should be allowed.
116. The appellant considered the period to be economically punitive and not reasonable given the practical, economic and business constraints. A twelve month period was sought.
117. The appellant confirmed in his second statutory declaration dated October 2018 that the only renting of the land is on a month by month basis and no

²¹ See Statement of case APP 8, paragraphs 8.4 to 8.10 and referenced photographs.

²² See PH4.

²³ See Statement of case APP 8, paragraphs 8.6 to 8.10 and referenced photographs

leases are in place. That being so the occupiers would be aware of the risk of taking a short licence and the possibility of having to relocate or make alternative arrangements in a short period of time. There is no evidence to support the initial claim that at least two of the customers would require at least 6 months' notice to find suitable new premises and negotiate new leases. Moreover, the appellant relied on the ready availability and deliverability of the land in his submissions to the Council in relation to inclusion of lands at Old Chase Farm in the SLAA and in turn the Brownfield Land Register. All existing uses on the sites were said to be subject to one month rolling contracts in the form of licences.

118. The practical matters highlighted in relation to removal of the hardstanding were weather conditions and avoidance of peak hour traffic. The removal of hard materials would be unlikely to be constrained by typical weather conditions and neither are persuasive arguments in the absence of a reasoned explanation. Economic constraints related to the scale of the operation and a large sum of money to complete the works. However, the appeal site covers a relatively small area compared to the adjacent areas within the landholding that have been hard surfaced. Again no evidence was produced to substantiate or support these stated economic constraints.
119. The Framework and Planning Practice Guidance confirm the importance of effective enforcement in maintaining confidence in the planning system. In this case tackling the breach of planning control is necessary to safeguard the amenity of the area in public interest. The appellant considered there to be no need for a rush in securing compliance with the requirements but the key consideration is what constitutes a reasonable period to carry out the required remedial steps in practice.
120. Balancing all the factors the first two steps could reasonably be achieved within two months, allowing time for notification of the tenants concerned. Step 3 should be achievable within two months. Therefore the compliance period will be increased to four months and to this limited extent the appeal on ground (g) succeeds.

Conclusion

121. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations and refuse to grant planning permission on the deemed application.

DECISION

122. It is directed that the enforcement notice be corrected in paragraph 3 by the deletion of the description of the matters which appears to constitute the breach of planning control and the substitution of "Without planning permission, the material change of use of the land to use for storage."
123. It is directed that the enforcement notice be varied:
- In paragraph 5 step (iii) by the deletion of the wording of the requirement and its replacement with "Remove the hardstanding from the entirety of the land except for any hardstanding beneath the perimeter bund authorised by planning permission dated 19 January 2011 ref 09/00284/FUL."

- In paragraph 6 by the deletion of three months and the substitution of four months as the time for compliance.

124. Subject to the above correction and variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Diane Lewis

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr David Hardy LL.B(Hons) B.C.L. (Hons)	Partner, Squire Patton Boggs (UK) LLP
He called	
Mr Nigel Cussen BSc(Hons) DipTRP MRTPI	Director of Pegasus Planning
Mr Alexander Jubb	The Appellant
Mr A R Rushbrook	
Mr A K Smith	
Mr S Rushbrook	

FOR THE LOCAL PLANNING AUTHORITY:

Mr Matthew Henderson	Barrister, instructed by Director of Legal Services Chelmsford City Council
He called	
Mr John Henry Lambert	Son of Mr L H Lambert
Mr Paul Harwood	Planning Officer, Chelmsford City Council

INTERESTED PERSONS:

Mrs Nicola Humphrys	Employee at Old Chase Farm
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DOCUMENTS submitted at the inquiry

- Documents submitted by the Appellant*
- A.1 Landscape and Visual Impact Figure Set
 - A.2 Plan AJ2
 - A.3 Plan to show planning unit
 - A.4 List of planning files on Old Chase Farm
 - A.5 Opening submissions on behalf of the Appellant
 - A.6 Note from the Appellant on ground (d) dated 21 August 2018
 - A.7 Bundle of documents submitted in October 2018 including revised plan of the planning unit, Land Registry Details, list of authorities, extract from the Town and Country Planning Act 1968
 - A.8 Plan attached to Mr S Rushbrook's statutory declaration
 - A.9 *Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment* [1983] WL 880448
 - A.10 *Panton and Farmer v Secretary of State for the Environment, Transport and the Regions* [1999] 78 P & C R 186
 - A.11 *Thurrock Borough Council v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 128
 - A.12 E-mail correspondence and report re Brownfield Land Register
 - A.13 Email re CLEUD application
 - A.14 CLEUD application form, certificate and plans
 - A.15 Closing submissions on behalf of the Appellant
 - A.16 Response to the Costs application by the Council

Documents submitted by Chelmsford City Council

- C.1 Set of photographs PH20
- C.2 Plan of Planning Units
- C.3 Opening statement on behalf of the Council
- C.4 Notification of Inquiry
- C.5 Appeal decision ref APP/W1525/W/16/3143960 dated 17 February 2017 Land north of Ladywell Lane
- C.6 *Kestrel Hydro v Secretary of State for Communities and Local Government & Spelthorne Borough Council* [2016] EWCA Civ 784
- C.7 *R (Searle) v Secretary of State for the Environment and East Hampshire District Council* [2006] EWHC 1908 (Admin)
- C.8 *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207
- C.9 *Westminster City Council v British Waterways Board* [1985] AC 676
- C.10 *Crawley Borough Council v Hickmet Limited* (1998) 75 P&CR 500
- C.11 *Bellmont Riding Centre v First Secretary of State & London Borough of Barnet* [2003] EWHC 1895 (Admin)
- C.12 Planning condition
- C.13 Planning application file for proposed safety cage for storage of L.P. gas bottles (ref 82.1128)
- C.14 Closing submission on behalf of the Council
- C.15 Application for Costs