



Appeal Decision

Inquiry opened on 18 June 2019

Site visit made on 17 June 2019

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 10 July 2019

Appeal Ref: APP/M1595/X/17/3186765

Land at Hovels Farm, Vange Park Road, Vange, Basildon, SS16 5LA.

- 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 Alan Gifford against the decision of Thurrock Borough Council.
 - The application Ref. 17/00076/CLEUD, dated 21 January 2017, was refused by notice dated 4 May 2017.
 - 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: Enclosed storage yard (as highlighted in green on Drawing No. HF-17-02) for business purposes including change of use (B8 storage and distribution).
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Preliminary matters

2. In addition to the appeal detailed in the header above, the Inquiry was dealing with two appeals against an enforcement notice issued by the Council. The notice was directed, to all intents and purposes, at the development the subject of the LDC application. After hearing all of the evidence the Council decided to withdraw the enforcement notice. It also invited me to allow this appeal and issue an LDC in the terms agreed at the Inquiry, which clarified what was sought and clearly identified the extent of the land involved. It remains the case however that for the appeal to succeed I must be satisfied that the Council's decision to refuse to issue the LDC was not well founded.
3. As will be evident below, the business related uses of the appeal site, which I will describe in more detail, were not in fact storage and distribution as envisaged by Use Class B8 of the Use Classes Order. In most cases the businesses using the site were both keeping their equipment and materials there and also operating the businesses from there. It was agreed by the parties that an accurate description of the use of the land comprising the LDC appeal site at the time of the application was: "Mixed use comprising business storage and operations and the keeping of horses." Section 191(4) of the 1990 Act provides for a modification or substitution of the description, and I have determined the appeal on that basis.
4. All oral testimony at the Inquiry was made under oath or affirmation.

Reasons

5. Hovels Farm is a long-standing residential agricultural holding, but it is evident that other uses have taken place on the holding over the years. The main building complex includes blocks of stables and barns now let for livery or business purposes, and most of the land appears to be in equestrian use. The original holding was severed by a re-alignment of the A13 and the appellant now owns the land on the north-western side. He has had an interest in that land since 2006. The appeal concerns a strip of land alongside the A13 in the south-western corner of the current holding that is served by a separate access from Vange Park Road, which terminates at the farm. This land has been referred to as the "Front Yard", so I adopt that for the purposes of this decision.
6. The appellant gave evidence, corroborated by other witnesses, that when he took over running the holding in September 2006 the Front Yard was being used for keeping horses and for businesses storing materials, equipment, machinery and vehicles. The 3 tenants he inherited from the previous owner were a fencing company who stored materials outside and in a shipping container, a courier who kept his lorry and trailer there and a log company which kept vehicles, machinery and some materials there, including wood chippings.
7. At that time the business activities mainly used the part of the Front Yard nearest the access. A track running along the centre line of the yard led to a grass paddock at the far end which, along with other small paddocks on the northern side of the track, was used for horses that needed to be restricted for one reason or other. The rest of the land was open and used as need be for business purposes or uses related to the running of the farm.
8. The businesses using the Front Yard changed over time, a small scaffolding company operated from there for a time and a groundworks company, A Staunton Ltd, established operations from there in October 2006. From 2008 the equestrian use also included the establishment of an isolation unit, comprising a small stable and paddock. However, the pattern of use appears to have remained much the same until May 2012, when Barclay Scaffolding started operating from the site. By then A Staunton Ltd had grown considerably, having secured a significant contract in 2011. It became evident that the two businesses did not function well from the shared yard, so Mr Staunton approached the appellant seeking alternative arrangements. Subsequently, in June or July 2012 A Staunton Ltd moved all of its operations to what had been the paddock at the south-western end of the Front Yard. That part of the site was enclosed and gated and A Staunton Ltd has had exclusive use of the compound thus formed since then. The only other change of note subsequently was the enclosure of another of the small paddocks by Barclay Scaffolding to use as a secure compound for equipment storage.¹
9. This account of how the Front Yard has been used since at least 2006 is not disputed. The appeal site however is not the whole Front Yard, it is the yard less the former paddock now used by A Staunton Ltd. I am satisfied that the evidence indicates, on the balance of probability, that this appeal site was being used for a mixed use comprising the keeping of horses and business storage and operations, a use that is materially different to agricultural use, at the application date and that it had been so used for a period of at least 10 years prior to that date. There has been some fluctuation in the intensity and location of the components of this use, but I am satisfied that the overall character of the use has remained the same throughout that period, as a matter of fact and degree.

¹ This is the "Enclosed storage yard" referred to in the application.

10. The question that arises therefore concerns the appropriate planning unit. The “*planning unit*” is a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of changes of use. The starting point for the identification of the most appropriate planning unit is the principles set out in the case of *Burdle*². The unit of occupation must be considered first. This could of course be interpreted as the whole farm, but given that the Front Yard is a physically separate and distinct area, having a different access and otherwise not accessible from the wider farm, I consider that it has been a materially different unit of occupation within which, until mid-2012, the component activities fluctuated in their intensity from time to time, but the different activities were not confined within separate and physically distinct areas of land. In other words it fitted squarely with the second of the *Burdle* categories, that of a single mixed or composite use within a unit of occupation.
11. *Burdle* also recognised, however, that within a single unit of occupation it may be that two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose should be considered as a separate planning unit. I consider that the establishment, in mid-2012, of its own separate and exclusive yard area by A Staunton Ltd at the south-western end of the front yard amounted to a new unit of occupation used solely for business storage and operations. In other words a new planning unit was formed, and this changed the extent of the Front Yard planning unit as it had existed since at least 2006.
12. A change in the extent of the planning unit is capable of comprising a material change of use resulting in the commencement of a new chapter in the planning history of a site. If that was so in this case, the practical effect would be that the use of the appeal site, despite not having materially changed, could not be considered as having subsisted for the requisite single 10 year period to gain lawfulness through immunity from enforcement. In the circumstances however I consider, as a matter of fact and degree, that the change in the extent of the planning unit did not comprise a material change of use because neither the change in extent nor the establishment of the A Staunton Ltd yard constrained or inhibited the continuing use of the appeal site for the same purposes and in substantially the same manner. The character of the use remained the same, albeit on a smaller area.
13. Section 191(2) of the 1990 Act provides that a use of land is lawful if no enforcement action may be taken in respect of it, whether because it did not involve development or require planning permission or for any other reason. In this case I am satisfied that on the application date the appeal site had been used for a mixed use, comprising business storage and operations and the keeping of horses, for a continuous period in excess of 10 years. This was a material change of use but it was immune from enforcement by virtue of section 171B(3) of the 1990 Act. It follows therefore that the Council’s refusal to grant a certificate of lawful use or development in respect of the use, as amended, was not well-founded. The appeal succeeds accordingly, and I shall therefore exercise the powers transferred to me in section 195(3) of the 1990 Act as amended.

Paul Dignan

INSPECTOR

² *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207

APPEARANCES

FOR THE APPELLANT:

Matthew Green	Planning consultant
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He gave evidence and called

Mark Murrell	Vet
Perry Scott	Tenant, Hovels Farm
Tracey Richards	Tenant, Hovels Farm
Darren Burgess	Tenant, Hovels Farm
Anthony Staunton	Tenant, Hovels Farm
Alan Gifford	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Giles Atkinson	Of Counsel
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He called

Jacqueline Ford	Planning Officer
Jonathon Keen	Principal Planner

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Amended Enforcement Notice plan.
- 2 Appellant's signed witness statements (Murrell, Scott, Richards, Burgess, Staunton, Gifford).
- 3 Email dated 15 November 2016 from Marilyn Ager (TBC) to Alan Gifford
- 4 Pre-application "Existing Site" plan submitted to TBC by Green Planning Studios
- 5 Up-dated site plan (Drawing No. 17-849-002 Rev B)



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 21 January 2017 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black 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 described in the first schedule, being a material change of use, has taken place on the Land described in the Second Schedule for a period of more than 10 years prior to the date of the application and is immune from enforcement action by virtue of section 171B(3) of the 1990 Act.

Signed

Paul Dignan

Inspector

Date: 10 July 2019

Reference: APP/M1595/X/17/3186765

First Schedule

Mixed use comprising business storage and operations and the keeping of horses.

Second Schedule

Land at Hovels Farm, Vange Park Road, Vange, Basildon, SS16 5LA

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 described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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: 10 July 2019

by **Paul Dignan MSc PhD**

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