



Appeal Decision

Site visit made on 18 February 2020

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 05 March 2020

Appeal Ref: APP/N0410/X/19/3229281

Mercers Farm, Thorney Mill Road, Iver SLO 9AR

- 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 Brian Smiles against the decision of South Bucks District Council.
 - The application Ref PL/19/0577/EU, dated 21 February 2019, was refused by notice dated 1 May 2019.
 - 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 use of the land and buildings for various industrial and storage uses.
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Decision

1. The appeal is dismissed.

Main Issue

2. Where, as in this case, a material change of use has occurred without planning permission, a local planning authority has a period of 10 years from the date on which the material change of use began to take enforcement action if it considers it expedient to do so. The main issue therefore is whether the use for which the LDC is sought began not later than 21 February 2009 (the material date) and continued substantially uninterrupted for any 10-year period thereafter.

Reasons

3. In appeals of this nature the onus is on the appellant to show, on the balance of probabilities, that the development for which the LDC is sought began not later than the material date and continued substantially uninterrupted thereafter. If the Council has no evidence itself, nor any from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal and refuse to grant the LDC, provided the appellant's evidence alone is sufficiently precise and unambiguous.

The evidence

4. The appellant's evidence includes a statutory declaration solemnly and sincerely declared by the appellant pursuant to the Statutory Declarations Act 1835 before, and witnessed by, a commissioner for oaths or solicitor

empowered to administer oaths. Also included are a number of 'to whom it may concern' letters from previous occupiers of the site and customers of those enterprises; what purports to be a Goods Vehicle Operator's Licence for the period July 2007 to July 2017 identifying Mercers Farm as the operating centre; what purports to be a photograph of the appellant's waste licence number GBDU136278 with Mercers Farm as the place of business; and a plan showing the layout of the site and the uses of various parts of it.

5. In this case, the Council has little evidence of its own. It did receive a consultation response from the Parish Council. This stated that the Parish Council kept records of all 'O' licences issued by the Traffic Commissioners and it had no record of one for the storage/operation of HGVs associated with Mercers Farm. The Council also investigated the Environment Agency web site. It found a waste licence with reference number **C**BDU136278 with a registration date of 9 September 2019. Its principal conclusion however was that the appellant's evidence was not sufficiently precise and unambiguous and thus refused to grant the LDC sought.

Appraisal

6. Where a LDC is sought for a use of land and buildings, an understanding of the planning unit is essential. The guiding principles were established in *Burdle*¹.
7. Applying those principles, it seems clear to me that Mercers Farm is a single unit of occupation. It has been owned by the appellant's family since 1978. There is a single access to the highway. This leads to a yard and, beyond a substantial gate, the main yard and the buildings.
8. At the date of my site visit there was no physical separation of the site into different areas of use. That said, the site was virtually cleared while work was being undertaken to some of the buildings. Apart from some skip storage both on an open part of the site and within a building at the far end, a pile of concrete which may have come from the site itself or elsewhere and some storage of machinery and items in another building nearer to the entrance, there was very little evidence of activity.
9. While their precise nature may have varied over time, I have little doubt that the appeal site has been used for what might properly be termed waste management uses since 1979. That is the appellant's evidence in the statutory declaration and it is to an extent corroborated by other evidence such as the waste licence which, it is said, the appellant renews every three years.
10. However, the appellant's evidence is that the site and buildings have been used for a significant number of other uses since 1991 or possibly 1987. One of these was another waste management use, K Lee Grab Services. However, this was a name under which the appellant traded from 1986. That seems to me either ancillary to or functionally related to the appellant's father's waste business which continued until 1991.
11. The other uses include repairing and spray painting of all types of vehicles since 1987; repairing of commercial and industrial machines and equipment since 1987; storage of vehicles, machinery and plant; storage of three lorries for a haulage firm; storing of new cars by a Peugeot dealer; and use by Mercers Haulage and Plant Hire.

¹ *Burdle v Secretary of State for the Environment* [1972] 3 All ER 240, 244

12. None of these uses has any obvious functional relationship either to the family's waste management use of the site or to one another. While some appear to have taken place in one of the buildings, others have used part of the open site while yet others may have used both. The clear functional and physical separation required before a smaller planning unit can be identified within the overall unit of occupation has not been shown. Applying the *Burdle* principles, my fact and degree conclusion is that at the LDC application date, the appeal site was a single planning unit in a mixed or composite use.
13. For the appeal to succeed, the appellant must show on the balance of probabilities that the same or a fundamentally similar mixed use persisted for a substantially uninterrupted period of 10 years beginning not later than the material date. In short, the appellant's evidence does not do so.
14. Where a planning unit is in a mixed use the addition or subtraction of uses from the mix gives rise to a new mixed use. Whether that results in a material change of use and thus a new chapter in the planning history of the planning unit requires a 'before and after' assessment of the planning effects of the change. This is the gist of the court judgement provided by the Council.
15. In this case, the character of the various uses is different. Their impact on, for example, levels of traffic generation and therefore highway safety issues and/or their impact on the living conditions of neighbouring occupiers from odour and noise could also be different.
16. While I have no evidence from the Council to suggest that the site has not been occupied by the users identified by the appellant, there is simply not enough information from the appellant to understand how long each of the enterprises operated from the appeal site or what the mix of uses was at any given point in time.
17. It is therefore simply not possible to undertake the assessment required to establish whether or not the changes in the mixed use that have taken place amount to a material change of use and a new chapter in the planning history of the site. It is the responsibility of the appellant to provide the clear evidence to enable that assessment to be undertaken. The appellant has not done so in this case and the appeal must therefore fail.
18. The appellant has indicated that an LDC for the use of the land for, in effect, waste management uses and repairing and spraying of vehicles would be acceptable. However, there is no evidence that such a mixed use has persisted for any continuous period of 10 years prior to the LDC application date. Indeed, the appellant's evidence is that at various but unspecified times, these have not been the only elements of the mixed use of the site. An LDC in those terms would not therefore be appropriate.

Conclusion

19. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of the land and buildings for various industrial and storage uses 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 as amended.

Brian Cook

Inspector