



---

## Appeal Decision

Site visit made on 20 October 2020

**by Richard S Jones BA (Hons), BTP, MRTPI**

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

**Decision date: 19 November 2020**

---

**Appeal Ref: APP/N1730/X/19/3235064**

**Oakfield Farm, West Green Road, Hartley Witney, Hook, RG27 8JL**

- 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 D and A Hicks against the decision of Hart District Council.
  - The application Ref 18/02323/LDC, dated 12 October 2018, was refused by notice dated 22 July 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 described as: 'The continued use of land as identified on Plan OF1 annexed to this application and thereon identified as areas A to F with the individual uses as follows:
    - (i) Area A on plan – used for the storage of domestic materials, redundant garden equipment and redundant agricultural equipment,
    - (ii) Area B – building materials and redundant agricultural equipment storage,
    - (iii) Area C – hatched and hatched area in red – storage of building materials, domestic items, loose boxes and touring caravans and caravan,
    - (iv) Area D Hardstanding – storage of building materials and touring caravans,
    - (v) Area D Remainder – storage of building materials, domestic items, loose boxes and touring caravans and caravan,
    - (vi) Area E – open hard surfaced area used for the storage of building materials, scaffolding,
    - (vii) Area F – storage of building materials and garden equipment.'
- 

### Decision

1. The appeal is allowed in part and attached to this decision is a certificate of lawful use or development for Area A describing the existing use which is found to be lawful.
2. The appeal is dismissed in part and a certificate of lawful use or development is refused for Areas B, C, D, E and F.

### Preliminary Matters

3. During the determination of the application the appellants requested that the description of the LDC be amended to include 'mixed' between the words 'continued' and 'use' (in the first line). The Council declined because of the stage of the application and because the mix of uses was not defined.
4. As part of the appeal, the appellants have reiterated their request for the description to be amended in the same way. The appellants have also emphasised that it is 'absolutely essential' to my consideration and determination of the appeal that the entirety of the application description is employed.

5. S191(4) of the Town and Country Planning Act 1990, as amended, (the 1990 Act), allows me to modify the description of the application, granting a LDC in the terms that accord with the facts and evidence. In this case, I have not found, for the reasons explained below, that the evidence reflects the description in its entirety or that it would be appropriate to amend the description to refer to the 'continued mixed use of land...'
6. I understand that a further LDC application<sup>1</sup> has been made by the appellants for the same uses. I have not seen that application and make no comment on it as to do so would usurp the local decision-making process. I shall only deal with the matters currently before me.

### **Background and Main Issue**

7. An application under s191(1)(a) of the 1990 Act, seeks to establish whether, at the time of the application, any existing use of buildings or other land is lawful. S191(2)(a) of the Act explains that uses are lawful if no enforcement action may be taken in respect of them because they did not involve development or require planning permission or because the time for enforcement action has expired.
8. From the evidence before me, the main issue is whether the use(s) took place without material interruption for a period of at least ten years before the date of the LDC application, so as to be immune from enforcement action under s171B(3) of the 1990 Act. It follows that the use must have commenced by no later than 12 October 2008 and that is the material date for this appeal.
9. The burden of proof lies with the appellant and the relevant test is 'the balance of probabilities'. If there is no evidence to contradict or make the appellants' version of events less than probable and the evidence alone is sufficiently precise and unambiguous, that is enough. Evidence should not be rejected simply because it is uncorroborated.

### **Reasons**

10. The LDC application refers to Plan OF1 which splits the appeal site into six parts (A-F), according to the specific use(s) set out in the description. Counsel's Advice<sup>2</sup> for the appellants refers to a mixed use of the planning unit, comprising a number of identified uses within 'sub-areas' A-F. However, the appellants confirm that the application is 'clearly formulated and presented as a range of mixed storage uses of different types'. The legal Opinion<sup>3</sup> submitted in support of the application also clarifies that 'the essential basis of the subject use is the storage of domestic items, redundant farm equipment and building materials'.
11. Therefore, even if there is a mix of items being stored within the sub-areas, there is only one use, and that is storage. To amend the description to include 'mixed use' would not be correct and would not reflect the terms of the application.

---

<sup>1</sup> Reference: 19/02440/LDC

<sup>2</sup> Advice – Scott Stemp, 3 May 2019

<sup>3</sup> Paragraph 5 of Opinion of Harry Wolton Q.C., dated 5 October 2018

12. The appellants state that the land forms part of Oakfield Farm, where they have lived continuously since 1988, but that the agricultural use ceased in Area C in 1997, in Area F in 2002 and altogether in 2005.
13. In June 2008 the Council granted a LDC<sup>4</sup> for the use of land at Oakfield Farm (including mobile homes, caravan and outbuildings) as residential land. Part of that land extends into the appeal site. In June 2010 planning permission<sup>5</sup> was granted for the demolition of existing temporary homes and associated residential outbuildings and erection of two new dwellings. The appellants say that the one of the homes was completed in November 2010 and the other, which is lived in by them, in December 2011.
14. The appellants contend that cessation of the agricultural use was accepted by the Council in 2008 by the grant of the aforementioned LDC and that the cessation of any functional agricultural use is reinforced by the planning permission granted for two dwellings, which are not subject to any tie or restriction to agricultural occupancy. I accept this to be the case for the land subject to the residential LDC and planning permission. However, those are distinct planning units with only a minimal incursion into the current LDC site. Consequently, it does not necessarily follow that the agricultural land use has ceased for the remainder of the appeal site.
15. The Council's view is that although functional farming stopped in 2005, it does not mean that the land lost its 'designation as agricultural land'. Although I do not agree with the terminology used, the principles are correct, insofar as the land use does not change simply because the land has stopped being used for agricultural purposes. However, any storage use of the land cannot be ancillary to an agricultural use if that agricultural use has ceased. Thus, ancillary or incidental use rights do not continue after the cessation of the primary use.
16. Critically for the purposes of the LDC, there must be a material change of use of the land to trigger a new chapter in its planning history (ceasing a use does not in itself, necessarily do so) and that use must have continued without material interruption for a period of 10 years, prior to the date of the application. I note the appellants' argument that the quantity of goods stored is irrelevant to the question of a change of use. However, whether there has been a material change of use is a matter of fact and degree; there needs to be some significant difference in the character of the activities from what has gone on previously. Site coverage and intensity of the use can therefore differentiate between that which is material and that which is *de minimis*.
17. It is the appellants' case that the uses, which began in 2005, became immune from enforcement action in 2015. In support of the application, Amy Hicks (one of the appellants) has submitted two statutory declarations (SDs), the first of which makes reference to each of the six sub-areas (A-F). I note the apparent criticism of the Council in the advice of Scott Stemp<sup>6</sup> over it assessing the extent of change within each area, instead of assessing the extent of change of the site across the entire planning unit. However, the former approach largely reflects how the application has been presented, both in the description and supporting SDs. Nevertheless, I will consider the overall extent of change for the entire planning unit which I consider comprises the appeal site as a whole

---

<sup>4</sup> Reference: 08/00566/LDCEX

<sup>5</sup> Reference: 10/00285/FUL

<sup>6</sup> Dated 20 October 2019

given that it is in single occupation without physical sub-division. Therefore, in view of how the evidence has been presented, I shall consider the submissions in respect of each area before arriving at a conclusion on whether there has been a material change of use of the site which had become immune from enforcement action.

18. It is stated that Area/Building A (a barn) has been used since 2005 to store former farm implements no longer required for agricultural use and for the storage of domestic materials and equipment.
19. The Council's contention is that there has been no material change of use. However, if the farm implements being kept in the barn are no longer being used in connection with an agricultural use, then the building is being used for storage purposes. In any case, the items listed in the declaration are not all related to agriculture. It is therefore mixed storage, which does not fall within the definition of agriculture set out in s336 of the 1990 Act. Consequently, a material change of use has occurred.
20. I have no other substantive evidence to contradict the SD, which is sufficiently precise and unambiguous. I therefore find, on the balance of probabilities, that following the cessation of the agricultural use in 2005, there was a material change in the use of the barn for the storage of domestic materials, redundant garden equipment and redundant agricultural equipment and that use has continued for a period of at least 10 years, without material interruption.
21. The SD states that Area/Building B, a former piggery, has been used continuously, both inside and outside, since 2005 for the storage of building materials, including from the mobile homes that were demolished and building materials used for the construction of the two houses and by acquaintances in the building trade.
22. However, dates are not provided as to when the mobile homes were demolished or for when building materials for the construction of the houses were brought to the site. As noted above, planning permission was not granted until June 2010 for the demolition of the temporary homes and associated residential buildings and the erection of the two dwellings. If Mrs Hicks is referring to differing materials from different mobile homes, that isn't made clear.
23. The Council say that the temporary storage of materials on site would have been permitted development during the construction phase under Schedule 2, Part 4, Class A of the GPDO<sup>7</sup>. Consequently, prior to the completion of the dwellings there was no breach of planning control.
24. However, Class A permitted development rights are for *the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land* – rather than the storage of building materials. Consequently, any breach of planning control arising from the storage of building materials is not delayed until such time as the dwellings were completed. Nevertheless, it appears very unlikely that materials used for construction of the two homes would have been stored at the site two years before planning permission was granted.

---

<sup>7</sup> The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

25. On the balance of probabilities, any storage associated with the demolition of the mobile homes and the construction of the dwellings has not been in place for at least 10 years, and those aspects are removed from the overall intensity of the use on the material date.
26. This leaves only the building materials stored for acquaintances in the building trade as capable of going back 10 years. However, it is unclear whether such storage is some form of business arrangement or out of goodwill. If it is the former, no payment or contract evidence is provided. Even if it is the latter, no details are provided of the acquaintance(s) in the building trade or the dates, duration and extent of the storage. Whilst evidence should not be rejected simply because it is uncorroborated, confirmation of such matters, by the said acquaintances, would assist in addressing the imprecision and ambiguities of the SD.
27. I note that the application description also refers to Building B being used for the storage of agricultural equipment, but this is not confirmed in the SD other than in reference to two harrows left over from 2005. This would be *de minimis* within the context of a building of the size of the former piggery.
28. I therefore find that it has not been demonstrated, on the balance of probabilities, that Area/Building B has been used for building materials and redundant agricultural equipment storage for a period of at least 10 years at the time of the application.
29. Plan OF1 delineates two parts of Area C. The SD states that the hardstanding area contained a domestic workshop and home gym in 2008, which was previously used as a chicken house until the agricultural use ceased. It is stated that the former building collapsed in December 2010 and since then the concrete slab has been used for the storage of materials used for the construction of her house and for parking touring caravans and other open storage of building materials for acquaintances in the building trade.
30. Therefore, by the appellants own admission, the use of the slab for storage only occurred in 2010, some two years later than the material date for this appeal. Therefore, even if a change of use of the land had taken place, it would not meet the required 10 year period. This issue is not resolved in the additional SD provided by Mrs Hicks.
31. The first SD states that the cross-hatched part of Area C has been used continuously since 2005 for the storage of materials used for the construction of the houses in 2010, domestic storage such as loose boxes or touring caravans, materials for the building trade, two trailers and plastic sheeting.
32. For the storage of materials used in the construction of the houses in 2010, the above same conclusions apply in that they are very unlikely to have been stored for at least ten years before the date of the LDC application.
33. I also agree with the third-party submissions that the aerial photographs from 31 December 2005, 18 Sept 2008 and 3 June 2013 indicate an absence of any kind of touring caravan in this area. The same conclusion can also be reached from the appellants' aerial photograph from 2017. However, it should be noted that I have applied limited weight to the December 2005 aerial photograph on the basis that I have concerns over the accuracy of that date as all of the trees are in leaf.

34. There appears to be very few other items in the cross hatched area in the 2008 photograph. The June 2013 photograph does appear to include, in part of the area, a white object which is difficult to identify. The remainder of the area appears overgrown and devoid of any storage. Similarly, little or no external storage is evident in the 2017 aerial photograph. There appears to be a touring caravan close to or occupying a small part of the hatched area in the 2018 aerial photograph.
35. I appreciate that the aerial photographs provide a snapshot on a particular day but cumulatively they do contradict the SD evidence provided Mrs Hicks. Moreover, the aforementioned residential LDC that was granted in June 2008 also appears to include both parts of Area C. I have noted the additional SD provided by Mrs Hicks which seeks to clarify her sworn declaration made in respect of that 2008 application. In this regard, whether the agricultural use of that land ceased in 1997 or 2005 is a moot point because a residential use is confirmed for the hardstanding area for the period up to 2010 and the other parts of Area C until 2008.
36. I therefore find, on the balance of probabilities, that Area C has not been used for the storage of building materials, domestic items, loose boxes and touring caravans and caravan for a period of at least 10 years prior to the date of the application.
37. The application description for Area D refers to two areas – the hardstanding and the remainder of the area. This distinction is not made on plan OF1 or in the SD of Mrs Hicks. The SD refers to Area D as an open hard surfaced area, which has been used since 2005 for the storage of materials for acquaintances in the building trade, one or two caravans (unoccupied), materials used for the construction of the two houses and other domestic storage including the parking of a touring caravan and a horse box.
38. Again, my findings on the materials used for the construction of the houses and issues relating to storing materials for acquaintances also apply to Area D. Moreover, there do not appear to be any caravans in the 2008 and 2013 aerial photographs in Area D. There are some largely peripheral items in the 2008 photograph but not to the extent which reflects the SD. Whilst this is not fatal to the appellants case, because the photograph is taken prior to the material date of 12 October 2008, it does contradict the SD in that it has been continuously used for storage since 2005. Moreover, 18 September 2008 is very close to the material date so the situation would needed to have changed significantly in a short space of time.
39. The aerial photograph from 2013 does show what appears to be discarded materials around the periphery of the area, close to the barn and former piggery, which could be left over from the houses built in 2010/2011. The scattered nature of the materials does not suggest they were being stored for future use by acquaintances in the building trade. There is a white object to the north of the barn, which could be a horsebox. There are other objects positioned closer to the former chicken shed hardstanding area, but it is not clear what they are.
40. There is clearly a caravan and other items positioned in Area D in the 2017 aerial photograph. In the 2018 aerial photograph the area appears to be largely clear save for the area adjacent to the hardstanding of the former chicken

house. These items could include a horse box and building materials but the touring caravan that can be seen appears to be positioned in Area C.

41. I therefore find that the evidence does point to some informal and intermittent storage use of Area D but it has not been demonstrated that the area, taken as a whole, has been continuously used as per the application description since the material date of 12 October 2008 – on the balance of probabilities.
42. Area E comprises a relatively large part of the site and includes areas marked W, X and Y on plan OF1. It is described in the SD as an open, partly hard surfaced area used, since 2005, for the storage of materials for the construction of the two houses (in the areas marked W and Y) and for other open storage, including materials from the building trade by acquaintances.
43. Again, it is more likely than not that the storage of building materials for the construction of the two houses would not achieve a minimum of 10 years. My precision and ambiguity concerns over the storage of materials for acquaintances also apply to Area E.
44. The SD states that in the location marked X, the appellants lived in a mobile home between 2010 and 2011 whilst their house was under construction. The stationing of a caravan is normally considered to facilitate a change of use of land. However, in this case it is a residential use, rather than a storage use and the stated period would not be sufficient to be immune from enforcement action, so as to include residential as part of a mix of uses at the site. Moreover, the period stated would amount to a significant interruption within the 10 year period of any storage use of this part of the site.
45. I have noted the reference in the SD to a mound made up of soil, bricks, brushwood and building rubble in Area E. However, the appellants' SD is contradicted by the aerial photographs from 2005, 2008, 2013, 2017 and 2018 which show a significant majority of Area E to be devoid of any stored items.
46. I therefore find, on the balance of probabilities, that Area E has not been used for the storage of building materials and scaffolding for a period of at least 10 years.
47. The SD states that Area F was used by Mrs Hicks from 2002 as part of a vegetable garden for domestic use. She says that she was allowed to harvest the crop in 2008, 'after which it not used initially [sic] once the adjacent new house and garden was completed and fenced off'. Since then it is stated that the land has been used for the storage of materials used in the construction of her house in 2010 and after that for other storage. Consequently, by the appellants' own admission, the use of Area F for the storage of building materials and garden equipment has not occurred for a period of at least 10 years, even if it were accepted that a change of use took place.
48. Bringing the above together, I find the appellants evidence to be sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that Area A on plan OF1 has been used for the storage of domestic materials, redundant garden equipment and redundant agricultural equipment for a period of more than ten years before the date of the application, and without material interruption.

49. I acknowledge that the application form states that the use sought is not within an identified Use Class of the UCO<sup>8</sup>. However, I see no reason why the use of Area/Building A does not fall within Use Class B8. Therefore, in accordance with Planning Practice Guidance<sup>9</sup>, I have specified the same in the description.
50. I fully appreciate that the evidence provided by the appellants include signed statutory declarations witnessed by a solicitor. However, for the remainder of the planning unit, comprising Areas B – F, I find, taken both individually and as a whole, that the storage is either at a level that is *de minimis*, such that a material change of use has not occurred, or that the evidence is not sufficiently precise and unambiguous to demonstrate that a material change of use to storage occurred at least 10 years prior to the date of the application, on the balance of probabilities.

### **Other Matters**

51. I have noted the comments made by interested parties on issues such as highway safety, conflict with development plan policies and whether the site should be used for storage purposes. However, planning merits form no part of an assessment of an application for a LDC, which must be considered in the light of the facts and the law.
52. I have read comments from interested parties that the application is a precursor to pursuing further residential development at the site but the appellants reasons for making the LDC application is not a matter for me to consider or speculate.
53. Reference is made by an interested party to conditions attached to previous planning permissions which have not been complied with. However, I have not been provided with details of the same to consider any particular relevance to the matters currently before me. I note the requests that enforcement action be pursued against the appellants but that is a matter for the Council.
54. In the interests of fairness to all parties I have considered all representations made in respect of the application and appeal on its own merits. I appreciate the location of the objectors in relation to the appeal site, but I do not agree that their submissions should be ascribed no weight because of that.

### **Conclusion**

55. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a LDC in respect of Area/Building A was not well-founded and that the appeal should succeed in part. I will exercise the powers transferred to me under s195(2) of the 1990 Act as amended.
56. For the reasons given above I also conclude that the Council's refusal to grant a LDC in respect of Areas B-F was well-founded and that the appeal should fail in part. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*Richard S Jones*

### **INSPECTOR**

---

<sup>8</sup> The Town and Country Planning (Use Classes) Order 1987 (as amended) – as in force on the date of the application

<sup>9</sup> Paragraph: 010 Reference ID: 17c-010-20140306



The Planning Inspectorate

---

## 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 date of application the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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:

It has been demonstrated, on the balance of probabilities, that the use of Area/Building A for the storage of domestic materials, redundant garden equipment and redundant agricultural equipment, had taken place for a period of more than ten years without material interruption by 12 October 2018, and so the time for taking enforcement action under s171B(3) of the Town and Country Planning Act 1990 had expired.

Signed

*Richard S Jones*  
Inspector

Date 19 November 2020  
Reference: APP/N1730/X/19/3235064

### **First Schedule**

Storage of domestic materials, redundant garden equipment and redundant agricultural equipment (Use Class B8)

### **Second Schedule**

Land at Oakfield Farm, West Green Road, Hartley Witney, Hook, RG27 8JL

## 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: 19 November 2020

by **Richard S Jones BA (Hons), BTP, MRTPI**

**Land at: Oakfield Farm, West Green Road, Hartley Witney, Hook, RG27 8JL**

**Reference: APP/N1730/X/19/3235064**

Scale: NTS

