



Appeal Decision

Inquiry opened on 9 February 2021

Site visit made on 15 February 2021

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 19 February 2021

Appeal Ref: APP/P1805/X/18/3209389

Dolfor, Sandy Lane, Wildmoor B61 0QR

- 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 James Williams against the decision of Bromsgrove District Council.
 - The application Ref 17/0211, dated 14 March 2017, was refused by notice dated 21 June 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 composite mixed use comprising residential and commercial use for the importation, processing by crushing and sorting and distribution of aggregates, soils and demolition materials.
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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.

Procedural matters

2. The Inquiry opened on 9 February and sat for three days. Evidence was heard on the first two days. The third morning was devoted to closing submissions.
3. All of the oral evidence was taken under general affirmation or, in the case of Mr Kelly, oath.
4. The application was made and refused by the Council as set out in the summary details above. On 13 September 2018 Worcestershire County Council (WCC) issued an enforcement notice in respect of exactly the same site. The breach of planning control alleged is:

Without planning permission, change of use of the land from mixed use as a single private dwelling house (C3) with sale of aggregates use (B8) to a mixed use as a single private dwelling house (C3) and as a waste transfer station (sui generis)

5. An appeal was made against this notice on the grounds set out in s174(a), (c) and (f) of the Act. The two appeals were conjoined to be heard at the same Inquiry. However, it seemed to me from the appellant's statement of case for the s174 appeal that, first, he considered the breach to be wrong in that he was not operating a waste transfer station and that, second, the (correctly

- described) use that was persisting at the date when the notice was issued had been operating for at least 10 years and was thus immune from enforcement action at the issue date. These seemed more akin to appeals on grounds (b) and (d) respectively than an appeal on ground (c).
6. In a pre-Inquiry note I suggested to the parties that it may be a more efficient use of Inquiry time to resolve the use (lawful or not) of the appeal site at March 2017 by way of the s195 appeal so that each party could then consider the implications for their positions in respect of the s174 appeal and Inquiry. That was agreed although it was acknowledged that there would inevitably be some reliance on evidence submitted for the s174 appeal in dealing with the s195 appeal.
 7. In a further pre-Inquiry note I expressed some reservations about the wording of the use for which the LDC is sought. I was concerned that it was not sufficiently clear and would not establish the baseline required against which the materiality of any further changes in the mixed use could be assessed.
 8. Having heard the bulk of the appellant's evidence on the first day, and mindful of my duty under s191(4) of the Act, I put forward the following form of words for the LDC without prejudice to the evidence that the Council had yet to call:
Mixed use of residential and use for the importation and processing with mobile plant and equipment of land-won sand and gravel and construction, demolition and excavation materials and storage and sale of building materials and recycled aggregates and soils (and parking of associated vehicles) Use in parentheses only required if not considered to be ancillary to the mixed use
 9. In closing, the appellant agreed with this construction and invited the grant of a certificate in those terms. Anticipating, wrongly as it turned out, that the appellant may not be satisfied with such a description, the Council in closing highlighted certain uses which would, on the face of it, be precluded by a LDC in those terms.
 10. I purposely used the term 'materials' rather than 'waste' in the suggested form of words. The appellant has registered T5 and S2 exemptions under the Environment Permitting (England and Wales) Regulations 2016 (EPR). These allow, subject to the conditions set out, waste to be handled without the need for a full environmental permit. However, I understand that an application for such a permit is with the Environment Agency. Furthermore, Wildmoor Grabaway, which operates from the appeal site, advertises itself as a licensed and approved waste carrier and states that all 'waste' is disposed of and recycled responsibly. Among the services offered are 'muck away' and 'waste removal'.
 11. However, the appellant does not consider the materials brought to the appeal site to be waste. That view would have been the subject of legal submissions from both parties. However, as it was agreed that this appeal did not turn on the definition of 'waste' the matter was not pursued.

Main issue

12. The appellant's case is that at the application date, the period during which the Council could have taken enforcement action against the use for which the LDC is sought had ended. The main issue for the determination of this appeal is

whether the use for which the LDC is sought (or some other use) had been continuing for a substantially uninterrupted period of at least 10 years prior to the application date. The latest date that any such use could have begun is therefore 14 March 2007.

Reasons

The appeal site

13. The appeal site is a broadly triangular-shaped area of land accessed from Sandy Lane to the north. Broadly to the east and south of the appeal site is farmland. To the west is a sand quarry which now has a range of uses in addition to limited mineral extraction. Until 6 June 2011, the quarry was owned by the Williams family who established it in the late 1920s. The appeal site comprises a residential property (Dolfor) and its grounds.

The evidence

14. Where an LDC is sought, the appellant's own evidence does not need to be corroborated by independent evidence and, unless the local planning authority has evidence of its own or from others to make the appellant's version of events less than probable, there is no good reason to refuse the certificate provided that the appellant's evidence alone is sufficiently precise and unambiguous on its own to justify the grant of the certificate on the balance of probabilities.
15. The appellant's written evidence includes a statutory declaration and addendum from himself and others sworn by Chris Johnson, Graham Whitehead (who was unable to give oral evidence) and Jon Williams. It also includes statements from Darren Lynes, Wayne Hoskins, Dave Gamble and Simon Gamble which they all confirmed were true to the best of their knowledge when they gave their sworn oral evidence. Other documentary evidence comprised letters from customers, various documents from the Environment Agency and others and a number of aerial and other photographs from the 1960s to date.
16. The Council has almost no evidence of its own. Mr Kelly has not visited the site and his evidence amounts to an interpretation of the planning history, the appellant's submissions and the aerial photographs, some of which were provided by the Council. No criticism is meant or implied by this since it seems to me that most of the activities at the appeal site and the quarry fall with the remit of WCC as 'county matters'. Indeed, the Council appears to have relied heavily on the representation of WCC in framing the reason for refusing to grant the LDC sought.
17. Mr Lane only became aware of a potential breach of planning control at the appeal site in March 2016 and quite fairly did not offer any personal knowledge of the site prior to that. Mr Roberts however has personal knowledge of the appeal site since 2005. Since that time, he has undertaken monitoring visits at the waste transfer station (WTS) within the quarry, at various activities within the quarry itself and, since 2012, at the appeal site.

The planning unit

18. It is agreed by the parties that a proper understanding of the correct planning unit is important to the determination of this appeal. They further agree that

identification of that planning unit is a fact and degree assessment for me on the evidence. Finally, they agree that on the sale of the quarry in 2011, the appeal site became a separate planning unit.

19. The Council's position is that the appeal site has always been a single planning unit in a residential use until around 2012 when the current uses began to take place.
20. In contrast, the appellant's position is that prior to the 2011 sale, the whole site (quarry and appeal site) was a single planning unit. Put simply, the activities that were taking place across the whole of the planning unit including part of the appeal site became, on the sale of the quarry, concentrated within the appeal site alone. There has been a subdivision of the planning unit but that has not given rise to a material change of use since the activities for which the LDC is sought have been undertaken since at least 1998.
21. When considering the planning unit, the well-known principles for doing so were established in *Burdle*¹. It is worth recalling that Bridge J. suggested three broad tests for determining the appropriate planning unit, which, whilst not intended to constitute a rigid code, have become the standard approach to adopt in analysing planning unit matters:

First, that whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered ... But, secondly, it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time but the different activities are not confined within separate and physically distinct areas of land.

Thirdly, however, it may frequently occur that within a single unit of occupation 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 (together with its incidental and ancillary activities) ought to be considered as a separate planning unit.

22. The commentary in the Encyclopedia of Planning Law and Practice goes on to say that the unit of occupation is the most convenient starting point in identifying the planning unit, because that is normally the largest unit in which there is being carried on a set of functionally and physically interdependent activities. It is only normally possible to select a smaller unit in the same occupation where there is a functional and physical separation of activity.
23. Referring to composite uses, the commentary continues that both functional and physical separation are required before a smaller unit can be identified, since without functional separation the ancillary link remains; and without physical separation there is no smaller physical area which can be identified as a separate unit.

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

24. Applying all these principles in this case, it is my judgement that the Council's position is correct for the following reasons.
25. Turning first to the occupier's use of his land. The Williams family has owned the appeal site and the adjoining quarry since the late 1920s when the quarry was opened and Dolfor built. In terms of ownership, that situation continued until 2011 when the quarry was sold and the appeal site retained by the family in the form of Brian Williams, the appellant's father who now lives at Dolfor.
26. The quarry produced foundry sand, the market for which began to decline. The evidence is that from around the 1990s parts of the quarry area were rented to other users. These included the WTS (ultimately to City Waste Limited), car sales and, later, motor cycle sales, a motorbike practice track at varying locations both around the quarry and in a building for both family and, on Saturdays and some evenings, paying public use, a truck repairs business servicing vehicles both from the quarry and the general public, a small haulage yard and Accumix aggregates. In closing, the appellant accepted that the WTS, while operational, amounted to a separate planning unit in its own right.
27. None of these occupiers were using land within the appeal site. Until around 2003 when the two storage bays were constructed at the northern end of the appeal site near to the entrance from the highway, the only uses said by the appellant to be related to the quarry were the part-use of the workshop for vehicle and plant maintenance, a munitions store which Jamie Williams implied was in the house but which Jon Williams confirmed was concealed in the grounds and the use of Dolfor itself as a quarry office.
28. Considering occupation alone, it might be argued therefore that the whole site, quarry and appeal site, is a single planning unit in a composite use. However, that argument cannot hold once physical and functional considerations are taken into account.
29. Aerial photographs have been provided with the appellant providing most of those that show the history of the land.
30. It is difficult to discern a great deal from the 1960s image. The 1970s image shows a single entrance to the land from the highway with three routes available immediately thereafter. One turns right to what appears to be a parking area for the lorries. One goes to an area above the mill shed and, on my understanding from the site visit, down to the quarry face although that is not shown in the image. The third turns left and leads only to Dolfor. Jamie Williams confirmed that gates were not installed across this entrance to the house until around 2005.
31. Also clear and confirmed by my site inspection, is that Dolfor stands on ground considerably higher than the quarry. In this 1970s image there is a line of trees on what is an ever-steeper bank above the roadway down to the quarry. What appear to be more recently planted trees are shown on the level ground between Dolfor and the quarry edge. Although Jamie Williams said there was no particular purpose to the planting of these trees, his uncle (living there at the time) said they were deliberately planted for two purposes. First, he understood there to be a nationwide initiative to plant trees at this time and the Council was encouraging it and, second, his mother was 'getting fed up' with the dust from the quarry. He agreed when it was put to him that they were to screen the quarry from the house. There is also what may be a track

- through the trees to the quarry. Jon Williams said this was used as, in effect, a short cut to the house from the quarry but it is not clear how long this track was in place. There was certainly no evidence of it at the date of my site visit.
32. Up to the image from 2003 there is very little change evident. All of the images appear to have been taken during the summer months since the trees are in full leaf and the extensive grassed areas around the house are verdant. If anything, the installation of the gates in 2005 reinforce the physical separation of the appeal site from the quarry that is already evident from the topography, the presence of the tree line and the absence of any activity other than residential at least until 2003. Indeed, the tree line was enhanced by the family to minimise the environmental impact of the quarry on the residential occupiers of Dolfor.
33. In my judgement, the appeal site is clearly physically separate from the quarry
34. The appellant's case for any functional relationship between Dolfor and the quarry is tenuous in my view.
35. The principal case is that the house served as the quarry office. In opening, the appellant suggested that the house had been built to support the quarry and that it had not been used for self-contained residential purposes.
36. To my mind the evidence contradicts that contention. Perhaps of most importance, Jon Williams described a normal family life taking place in the house which at that time had been extended and sub-divided to provide homes for both his parents and grandparents. He said that business meetings sometimes took place in the house but confirmed that all visitors to the quarry reported to the office by the weighbridge. This was confirmed in the evidence of Mr Roberts who explained the booking in process at the site office at the weighbridge that he followed whenever he visited the site. Even today, when the entire business is confined to the appeal site, I was asked to report to the portacabin office, not the house, at the start of my site inspection.
37. Related to this, although several letters and other official documents have been submitted in evidence, prior to 2011 none are unambiguously addressed to Dolfor as the address of the business. Statutory warning letters from the Environment Agency are addressed to J&B Williams Brothers Ltd for the attention of the company secretary at a Birmingham address, suggesting a registered company office, with others being to 'The Quarry', Sandy Lane, etc.
38. Any business use of Dolfor does not therefore amount, in my judgement, to a level above that which should properly be considered ancillary to the residential use of the property.
39. As secondary arguments, it was said that the workshop just to the north of the house was used to service quarry lorries and, possibly, plant. However, the frequency or regularity of this activity was not explained. Nor was it explained how this activity related to that of the building within the quarry provided for that purpose.
40. It was also said that being on site was important for security and that without the house, specific security arrangements would have been required. I find this difficult to accept as a matter of practical reality. The house is located at some distance from any part of the operational quarry. Moreover, the trees which Jon Williams said had been planted, in part, to screen the quarry from

the house effectively prevent the quarry being overseen from it. That remains the case today, as I saw during my site visit, even though some of the trees appear to have been removed. I do accept however that any incidents could be responded to more quickly by living on site once they had become apparent. However, in the face of all the other contrary evidence, I do not consider that this alone can establish a functional link between Dolfor as a residential property and the operational quarry.

41. For all these reasons, I consider that the appeal site is and always has been physically separate from the quarry and that there is and was no functional relationship between the two. Although in the same ownership, identification of the appeal site as a single planning unit separate from the quarry is consistent with and justified by *Burdle* principles.

Use of the planning unit (appeal site)

42. It is common ground that, in addition to quarrying and the other activities referred to above taking place within the quarry site, the Williams family has operated an aggregates sales business. There are two elements to this business.
43. First, quarried sand and gravel is imported in bulk before being bagged and sold at a margin. The machinery used in this activity was never clearly explained but is likely to include some form of mechanical shovel.
44. Second, construction, demolition and excavation (CDE) materials are imported, sorted, crushed and screened using mobile plant and equipment and sold as recovered soils and recycled aggregates.
45. It is clear from the evidence and the aerial photographs that both elements of the aggregates sales business have taken place within the quarry. Precisely where within the quarry varied over time depending on the space available and the area being quarried at any time.
46. What is beyond dispute is that none of this activity was taking place on the appeal site up to and including 1999. The image from this date quite clearly shows the whole of the grounds surrounding the house laid to grass and trees. Jon Williams' evidence about the 'grounds' of Dolfor being cleared of grass in 1998 for the storage of aggregates and other materials is inconsistent with the aerial photograph although what he meant by 'grounds' may have included the quarry since the appellant's primary position is that the quarry was in the family's 'back garden'.
47. Thereafter, the way the appeal site has been used is not really in dispute and may be summarised as follows.
48. The appellant's sworn evidence is that aggregate sorting/storage bays were constructed in 2003 although the month is not given. They are not shown in the 2003 aerial image supplied by the Council, but the date of that image is not known either. The aerial photograph does not therefore conclusively contradict the appellant's evidence.
49. By 2005 a not insignificant part of the appeal site was being used for a non-residential activity. The whole of the grassed area shown in the 1999 image to the left-hand side (east) of the access way between the entrance and the workshop building to the north of the house is, by this date, given over to

vehicle parking and what appears to be storage of imported sands and gravels. Two storage bays can just be picked out and these appear to be in the same position today. Also apparent are a large number of tonne bags similar in appearance to a far greater number stored around the buildings immediately to the west within the quarry.

50. This is confirmed by the evidence of Mr Roberts who started to visit the quarry in 2005. His evidence was that the whole of the appeal site could be seen from the site entrance referred to above (by this time there was another entrance further along the highway). I confirmed during my site inspection that this was the case. He confirmed seeing sand and gravel stored and bagged up in tonne bags. The sand was of a different type to that quarried at the site as evidenced by its colour; foundry sand from the quarry being red, this sand being lighter in colour. He was aware that sands and gravels were imported and then sold on and characterised this as an overflow area from the main quarry.
51. In my opinion, the aerial images up to and including 2010 do not show anything materially different from what is described in 2005 although the storage bays appear to be on a different orientation. There are fewer, if any, tonne bags shown and no machinery is evident in any of the images. However, it must be noted that these are snap shots on a particular day and not therefore conclusive either way in these respects.
52. In fact, Mr Roberts confirmed that he was aware of these activities as a result of his regular visits to the quarry and the WTS for monitoring purposes. However, he was of the view that the materials were clearly imported sands and gravels. As such, they were not waste materials and were not therefore within the remit of the Environment Agency as no potential pollution issues would arise from their handling and storage.
53. The next aerial photograph is from 2011, the year in which the quarry was sold. That sale was completed in June but, again, the month of the image is not known so whether it was before or after the sale cannot be determined. There are certainly more vehicles parked on the appeal site and the grass areas do not appear as verdant. It is not possible in my judgement to say if CDE materials are being stored in addition to the sands and gravels still evident near to the entrance.
54. By June 2012 circumstances had changed. Following a report that wastes and aggregates were being screened without a permit or exemption in place, Mr Roberts visited the site. He noted inert soil, rubble and road scalpings being deposited, stored and treated by screening at the appeal site. Photographs taken show a small blue mobile screener. At the Inquiry Mr Roberts agreed that the material was much the same as that he had seen being screened previously in the quarry. He also commented that different machinery was used at different times to screen the material including a screen that attached to the arm of the 360° digger. At the date of my site visit, this was the type of screen being used.
55. WCC began an enforcement investigation in 2014 following the then planning enforcement officer observing waste material being brought onto the site. This investigation eventually led to the notice that is the subject of the conjoined s174 appeal being issued.

56. The aerial photographs from 2016 and 2017 simply show an ever-greater area of the appeal site being given over to the storage of CDE materials and the parking of vehicles. In my judgement, this is consistent with the transfer of the appellant's business from the quarry to the appeal site following the sale of the former in 2011. This expansion appears to have continued since to the point where at the date of my site visit the whole of the area to the front of the house is used for the appellant's business.

Conclusions

57. From the above assessment of the evidence I believe the following conclusions can be drawn on the balance of probabilities.

58. First, the appeal site is a single planning unit separate from the quarry. Although in the same ownership and occupation, the appeal site was both physically and functionally separate from the quarry. The *Burdle* principles for the identification of a separate planning unit are met.

59. Second, until 2003 the appeal site was a planning unit in a single residential use.

60. Third, in 2003 (or by 2005 at the latest) the use of the appeal site became a mixed use of residential and the importation, storage and processing of quarried sands and gravels for sale. This is mixed use 'A'.

61. Finally, by, on the balance of probabilities, 2011 and certainly no later than June 2012, a further use (use 'B'), namely the importation, storage and processing by use of mobile plant and equipment of CDE materials for the sale of recovered soils and recycled aggregates, was added to the previous mixed use. The use of the appeal site thus became mixed use 'A + B'.

62. In the aerial photographs there are what appear to be a considerable number of vehicles parked around the appeal site although it is not possible with certainty to identify what they are. During my site inspection it was clear that some vehicles were associated with the business component of the mixed use while others (boats, camper vans, etc) related to the residential component. Parking of all is therefore ancillary to the mixed use as a whole and does not, in my view, need to be separately identified within the description of mixed use 'A + B'.

63. In her closing submissions for the Council Ms Clover referred to two authorities, *Beach*² and *Belmont*³ and contends that a change in the components of a mixed use will always stop the enforcement clock. In my opinion, this misrepresents both judgements, including the paragraph she, in part, quoted.

64. At paragraph 18 of *Beach* it says:

In my judgment, the law is as follows: where in respect of one planning unit a use comprising uses A, B, and C together is joined by use D, there is a change of use, which may or may not be a material change of use to uses A, B, C, and D. But whether there is a material change of use or not involves a comparison of uses A, B and C with uses A, B, C and D. (emphasis added)

² *Beach v Secretary of State for the Environment, Transport and the Regions & Runnymede BC* [2002] JPL 185

³ *Belmont Riding Centre v First Secretary of State and another* [2003] EWHC 1895 (Admin)

65. At paragraph 31 of *Belmont* it says:

In examining use classes the focus must be on the relevant use for the purposes of s.55, which in this case is the mixed use as a whole, rather than on individual components of a mixed use. A change in components will involve a change in the mixed use itself and, subject to the question of materiality, will amount to development. It is that line of reasoning, rather than the mere fact that a new planning unit was to be created, which leads inevitably in my judgment to the rejection of Belmont's application (emphasis added)

66. There is no doubt in my mind that the change from a purely residential use to mixed use 'A' represents a material change of use and thus development requiring planning permission. The sands and gravels would be brought to the site, in bulk, by vehicle and be either tipped directly into the storage bays on the appeal site or moved there later by machinery. Similar machinery would then be used to fill the bags and load them onto other vehicles to be taken off site following sale. That is fundamentally different to any use normally associated with a residential planning unit.
67. There is no evidence of any break in the continuity of this mixed use. In fact, the aerial photographs and the evidence of Mr Roberts is to the contrary. As already mentioned, the use was in plain sight from the entrance to the appeal site and could therefore have been seen as taking place by any enforcement officer at any time.
68. Consistent with both *Beach* and *Belmont* and s191(2)(a) this appeal therefore turns on whether comparing mixed use 'A + B' with mixed use 'A' reveals a further material change of use from mixed use 'A' or simply the introduction of an additional use of materially the same character.
69. There is no evidence that any of the CDE materials arrive at the appeal site in skips. Rather, the evidence is that they arrive by lorry, as do the sands and gravels. The CDE materials are stored in the open, as are the sands and gravels, and are sorted into separate piles of recovered and recycled materials for sale and distribution by vehicle; again, as with the sands and gravels.
70. The means of processing the CDE materials to produce the recovered and recycled materials appears to be different to the way the sands and gravels are prepared to be suitable for sale. Essentially, crushing and/or screening is required for the former. However, the machinery actually used does not appear to be significantly different and the screen that I observed operating was surprisingly quiet in my experience of similar activity on other sites. The noise from the 360° digger would be no different to that from the same machine being used to move sands and gravels.
71. In my judgement therefore, mixed use 'A + B' is not materially different in character from mixed use 'A'. Applying *Beach*, comparison of use 'A + B' with use 'A' does not reveal a material change of use of the planning unit (appeal site). As already noted, no case was made that since the mixed use began there had been any substantial interruption in the continuity of the use.
72. At the outset (2003 or 2005) the residential component of the mixed use was the dominant in terms of the area used. By 2017, that position had reversed. As noted above, by the time of my site visit, most of the appeal site was occupied by the aggregates sales business. Nevertheless, such fluctuations in

the different components of a mixed use are consistent with the principles established by *Burdle* and do not affect the integrity of the mixed use by and of themselves. In any event, I do not understand the Council's case to be claiming a material change of use by intensification.

73. I therefore conclude that the appeal site has been in a mixed use begun not later than 2005 and, possibly, as early as 2003. That mixed use 'A' was joined by materially the same mixed use 'B' to become mixed use 'A + B' does not, in my judgement, alter that conclusion. Either date is more than 10 years before the application date of March 2017 and therefore the period during which enforcement action could have been taken had passed at that date.
74. I therefore conclude that a LDC should be granted but in terms different to those for which the LDC was sought. As set out above, s191(4) of the Act grants the power to issue such a certificate.

Implications for the s174 appeal

75. The effect of this appeal decision is to certify that at the 14 March 2017 the use of the appeal site described in the certificate appended to this decision was lawful. As set out above, the notice issued in September 2018 describes a different mixed use as the breach of planning control alleged. It will be for WCC to consider if that notice is to be pursued or withdrawn or if a new notice is to be issued.

Overall conclusion

76. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of a mixed use of residential and the importation, storage and processing of quarried sands and gravels for sale and the importation, storage and processing by use of mobile plant and equipment of construction, demolition and excavation materials for the sale of recovered soils and recycled aggregates was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Brian Cook

Inspector

APPEARANCES

FOR THE APPELLANT:

Ian Rees Phillips of counsel

He called

Jamie Williams

John Williams

Chris Johnson

Wayne Hoskins

Dave Gamble

Darren Lynes

Simon Gamble

Appellant

Appellant's uncle

Quarry assistant manager

Former employee at the quarry

Former motor cycle shop manager and employee
at Wildmoor Aggregates

Employee of Jerry Norton

Former employee at Wildmoor Aggregates

FOR THE LOCAL PLANNING AUTHORITY:

Sarah Clover of counsel

She called

David Kelly MSc, MA,

MTP, MRTPI

Mark Lane

Mark Roberts

Planning Officer with the Council

Planning Enforcement Officer with Worcestershire
County Council

Waste Technical Specialist Officer with the
Environment Agency

DOCUMENTS

- 1 Closing submissions on behalf of the appellant
- 2 Closing submissions on behalf of the Council
- 3 *Belmont Riding Centre v First Secretary of State and another*
[2003] EWHC 1895 (Admin) submitted by the Council

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 14 March 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 mixed use described in the First Schedule began in 2003 or, at the latest, 2005 and did not materially change in 2011 or, at the latest, 2012 when an additional component was added to the mixed use. The period (namely 10 years) during which enforcement action could have been taken by the appropriate local planning authority had therefore ended by 14 March 2017.

Signed

Brian Cook

Inspector

Date 19 February 2021

Reference: APP/P1805/X/18/3209389

First Schedule

A mixed use of residential and the importation, storage and processing of quarried sands and gravels for sale and the importation, storage and processing by use of mobile plant and equipment of construction, demolition and excavation materials for the sale of recovered soils and recycled aggregates

Second Schedule

Land at Dolfor, Sandy Lane, Wildmoor B61 0QR

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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 February 2021

by Brian Cook BA (Hons) DipTP MRTPI

Land at: Dolfor, Sandy Lane, Wildmoor B61 0QR

Reference: APP/P1805/X/18/3209389

Scale: not to scale

