



Appeal Decision

Site visit made on 15 June 2021

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2021

Appeal Ref: APP/H0520/X/20/3264918

Taylor Dredging Site, Bromholme Lane, Brampton PE28 4NE

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Richard Boother, RPS against Huntingdonshire District Council.
 - The application (Ref. 20/01088/CLED) is dated 18 June 2020.
 - 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 a storage site within Class B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended) in association with a river dredging business.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development (LDC) describing the use which is found to have been lawful on the date that the application was validly made.

Main Issue

2. Had the Council determined the application, it would have refused to issue an LDC and the main issue is whether that would have been a well-founded decision. This turns on whether the appellant can demonstrate, on the balance of probability, that the use of the site for storage is lawful due to the passage of time. The evidence should show the use began on or before 18 June 2010, the relevant date, and continued thereafter for not less than 10 years without significant interruption.

Reasons

3. In an LDC appeal the burden of proof is on the appellant to produce evidence. However, if no other evidence contradicts or otherwise makes his version of events less than probable, there is no good reason to refuse the appeal.
4. The southern and central sections of the Taylor Dredging Site (the TDS) were certified as having a lawful use for storage within Class B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the Order) in association with a river dredging business in 2019¹ and 2020² respectively.

¹ 18/02599/CLED, issued 26 February 2019

² 19/01070/CLED, issued 16 June 2020

5. The appeal site comprises the remaining northern section of the TDS. The appellant considers that the 3 sections comprise a single planning unit and have been used as part of the same operation. Accordingly, it is contended that a materially different land use could not have existed on the appeal site during the past 10 years and use as a storage site within Class B8 of the Order in association with a river dredging business is lawful.
6. The planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and/or occupied for different and unrelated purposes. To assist in this, the High Court identified 3 broad categories of distinction in the *Burdle* case³:
 - A single planning unit where the unit of occupation has a primary use and any other activities are incidental or ancillary.
 - A single planning unit in a mixed use because the land is put to two or more activities and it cannot be said that one is incidental to another.
 - The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area with its own primary use should be considered as a separate planning unit.
7. The Court added that it may be a useful working rule to assume that the unit of occupation is the appropriate planning unit unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.
8. The application is accompanied by a statutory declaration, made by the Managing Director of the company that owned the TDS until 2018. However, the statutory declaration and its commentary do not relate solely to the appeal site but in some instances refer to activity on other parts of the TDS, for which LDCs have already been granted. Because of this, it is unclear whether some references to "the site" in the statutory declaration mean the appeal site or another part of the TDS. Nevertheless, the Director confirms that the appeal site was not separated from the rest of the TDS by any form of enclosure during that time.
9. The statutory declaration includes commentaries on 10 aerial images taken between 1999 and 2017. Objects can be seen on the appeal site in the images from 1999, July 2006 and July 2013. Commentaries only identify the objects in the latter 2 images, confirming that they were weed cutting boats under tarpaulin and wheeled bins respectively. References to the appeal site indicate it was used to manoeuvre vehicles involved in storage of plant on the adjacent part of the TDS and to load and unload stored items between 1999 and 2006, although it is not stated how frequently.
10. The commentaries on images from October 2008 and April 2010 describe activity that occurred outside the appeal site. While an area where grass had been lost when materials were burnt extends into the appeal site in the former image, burning materials is not, of itself, a storage use.
11. The company has had a contract to supply wheeled bins to the East of England Showground since 2010 and the statutory declaration indicates that bins were

³ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

stored on the appeal site between October and March each year and then taken to the Showground in April. Wheeled bins can be seen stored on the appeal site and on adjacent land in an image from July 2013. While this did not appear to have any association with river dredging, it has been demonstrated to be a storage use and not a different character of use.

12. The statutory declaration refers to storage that cannot be seen in the aerial images because it had become overgrown. However, because the statutory declaration describes some activities elsewhere on the TDS as well as on the appeal site, the evidence is not precise about where that storage took place.
13. Notwithstanding the above ambiguities, and having regard to the overall layout of the TDS, while storage primarily occurred on the southern and central parts, it has been demonstrated that some also occurred on the appeal site, according to the ebb and flow of the business. Furthermore, it has been demonstrated that vehicles delivering or collecting plant and machinery stored on the adjacent land have needed to manoeuvre on the site. Such manoeuvring is integral to that storage use.
14. Significantly, the appeal site has never been physically separated from the adjacent parts of the TDS and there is no evidence that it has been used for different and unrelated purposes at any point. In these circumstances, while storage activity may have fluctuated at relatively low levels, the appeal site was an integral part of the TDS site and was not used for separate purposes.
15. Accordingly, and on the balance of probability, a functional connection with the rest of the TDS has been demonstrated. The evidence, in particular the commentaries in the statutory declaration, shows that this included use of the appeal site for storage purposes between 1999 and 2013 at least. While the items changed from river dredging plant and machinery to wheeled bins between 2010 and 2012, the use remained storage and continued to be as part of a single planning unit with a primary storage use and in which any other activities were incidental or ancillary.
16. It has therefore been demonstrated, on the balance of probability, that the use of the appeal site for storage purposes within Class B8 of the Order was instituted before 18 June 2010 and continued thereafter without significant interruption for a period of at least 10 years.

Conclusion

17. For these reasons I conclude, on the evidence now available, that a refusal to grant an LDC in respect of a storage site within Class B8 of the Order in association with a river dredging business would not have been 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.

Mark Harbottle

INSPECTOR

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 18 June 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red and abutting the land edged blue 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 for storage purposes within Class B8 of the Order was instituted before 18 June 2010 and continued thereafter without significant interruption for a period of at least 10 years.

Signed

Mark Harbottle

Inspector

Date: 13 July 2021

Reference: APP/H0520/X/20/3264918

First Schedule

A storage site within Class B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended) in association with a river dredging business.

Second Schedule

Land at Taylor Dredging Site, Bromholme Lane, Brampton PE28 4NE

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: 13 July 2021

by **Mark Harbottle BSc MRTPI**

Land at: Taylor Dredging Site, Bromholme Lane, Bampton PE28 4NE

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Not to Scale

