



Appeal Decision

Inquiry Held on 27 April and 25 May 2021

Site visit made on 28 April 2021

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd July 2021

Appeal Ref: APP/G1630/X/20/3263146

Land at Court Farm, Tewkesbury Road, Twigworth, Gloucester GL2 9PX

- 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 Sean Gorman against the decision of Tewkesbury Borough Council.
 - The application Ref 19/00400/CLE, dated 12 April 2019, was refused by notice dated 15 October 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: The storage of caravans and motorhomes.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Whilst a notification letter was sent to who the Council describe as the 'consultees', it appeared that a site notice had not been displayed as a notification of the time and date of the inquiry. However, prior to the inquiry the Council confirmed that no representations were made at the application stage. Although there are letters in support of the appeal, these were submitted by the appellant and not directly to the Council. Notwithstanding this, at the inquiry the appellant confirmed that he had displayed a site notice relating to the appeal.
3. In view of the possible doubt with regard to the correct notification of the inquiry having been undertaken, I sought the parties' views on whether any interested party would be disadvantaged, including those who support the appeal. All things considered, I am satisfied that there would be no disadvantage caused to any party and I proceeded with the inquiry.
4. The application for the LDC was made for the use of the land for the storage of caravans and motor homes. However, a number of the letters submitted by the appellant, as well as the affidavit of Mr Trevor Warren, refer to the storage of other similar items, including vehicles and plant. Indeed, the Council's aerial photographs from 13 July 2013 onwards¹ show items on the appeal site that are smaller than caravans and motorhomes. Whilst I note the Council's case,

¹ The Council's appendix 6.

that the application was made for a use of the land for the storage of caravans and mobile homes alone, I cannot ignore reference to the storage of other items in the appellant's evidence, particularly as I observed other vehicles on the land at my site visit.

5. Having canvassed the views of the parties on this at the inquiry, I have considered the appeal on the basis of a use of the land for the storage of caravans, motor homes and vehicles, which would include the other items referred to in evidence. Such a modification to the description of the use is not substantive and would not cause injustice to either party.

Main Issue

6. Section 191(4) of The Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the development (a use of the land in this case) are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a LDC was well founded.
7. In appeals of this nature the onus is on the appellant to show, on the balance of probabilities, that the use of the land for which the LDC is sought has been continuous for a period of ten years beginning with the date on which the use commenced². 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.

Reasons

Background

8. This is an appeal relating to a use of land and the appellant has made reference in his case to the planning unit. As such, I have had regard to the case law that has been drawn to my attention, in particular that of *Burdle & Williams v SSE & New Forest DC [1972] 1 WLR 1207*, which is a leading case for determination of the planning unit.
9. I note that the appeal site is set off the highway and is within a larger site known as Court Farm (CF). I also note that the appellant is not the owner, but the occupier of the appeal site and the wider CF. Whilst the wider area of land known as CF might be a single unit of occupation, within it there appears to be a number of other uses, including a dwelling, motor home sales, camping, and the use for this the LDC is sought.
10. With regard to the use that is the subject of the LDC, on site I noted that this occupies an area of land within CF that is well defined and physically separated from the wider CF site. The area of land presently occupied by the storage use can be seen in the Council's most recent aerial photograph dated 16 September

² Section 171B(3) of the 1990 Act.

2020³, in the north west part of the wider CF site. I am satisfied that what I saw forms a single planning unit within the wider CF site.

11. Notwithstanding this, I noted that the boundary of the site identified in red on the site location plan submitted with the application does not align with the planning unit in this case. The red line excludes an area to the east of the appeal site that is within the planning unit, but includes a wedge of the adjoining field (labelled 'caravan site' on the site location plan) that does not appear to be used to store caravans and motorhomes as part of the planning unit.
12. In view of the above, this matter was discussed at the start of the inquiry, where it was agreed that the red line boundary was not an accurate reflection of the boundary of the planning unit in this case. The appellant's agent, having not submitted the application, had no explanation for the rationale behind the position of the red line on the site location plan. Whilst I have considered whether I am able to amend the boundary of the appeal site to better reflect the planning unit, this is not possible as the appellant is not the landowner. Such a change cannot be made without the owner having been notified.
13. Having regard to the above, I have determined the appeal for an LDC for the land identified on the site location plan submitted with the application, on the basis that this land forms part of a slightly wider planning unit, which I identify above, present at the time the application was made.

Evidence

14. The appellant's evidence includes sworn affidavits, photographs, invoices and correspondence from third parties referring to storage of caravans, motor homes and vehicles at CF. The affidavit from the appellant himself states that he has lived at CF since 2002 and that the 'back fields' have always been used for caravan storage, although he does not specify the location by reference to a plan. In their correspondence, many of the third parties also refer to the back fields. Some have provided a plan showing its location, which in most cases includes the appeal site and a wider area to the east, up to the boundary of the CF with the highway. Most refer to caravan storage starting at CF around 2006.
15. An affidavit and attached plan from Mr Trevor Warren identifies the whole of CF as the site that is the subject of his evidence. He sets out his knowledge and use of this land for the storage of his caravan and other vehicles since 2009 or 2010. He specifically recalls one of his vehicles being stuck on the site (identified with a cross on the plan) in December 2010 or January 2011.
16. An affidavit has been provided by Ms Brioni Sharman who says that she has lived (on land adjoining the appeal site) and worked at CF along with her partner, Mr Greville Chard, for around 10 years. Mr Chard's evidence is primarily in the form of photographs and a video of the appeal site and the wider CF, which he spoke to at the inquiry. At the inquiry he dated the photographs from mid to late 2010. The video was confirmed by him to have been taken mid 2012 and not early 2010, as suggested in the written evidence.

³ The Council's appendix 6.

17. The invoices are from 'Court Farm Estates' and refer to payment for caravan storage. These are all from 2012, with the earliest dated April of that year. Reference has also been made in the appellant's evidence to a Google street view photograph of the main entrance to CF showing a sign displayed advertising caravan storage dated May 2009.
18. As for the Council's evidence, this is mainly in the form of a series of aerial and street view photographs of the appeal site and the wider CF, along with extracts of a number of planning applications that have been submitted for CF.
19. With regard to all photographs and the video provided by the parties, whilst clarification was sought on the dates that some were taken, there was no remaining dispute with regard to the dates confirmed for each photograph or the video.

Appraisal

20. Having acknowledged that the boundaries of the appeal site do not follow those of the planning unit that was present at the time of the application, the appellant's case is that the appeal site has formed part of a single planning unit from when the material change of use for storage first occurred, and that the use has been continuous from this time. Although it is suggested that the use has been continuous for 10 years, the appellant has not specified when the use commenced. I have, therefore, considered the evidence chronologically as follows.
21. In his affidavit the appellant indicates that he first occupied CF in 2002. He refers to the back fields and suggest that there have always been caravans on this area. However, in answer to my questions about the appeal site at the inquiry, he suggested that the caravan and motorhome storage use commenced in 2005. This appears to contradict the evidence in his affidavit, and is not specifically corroborated by any third parties, many of whom suggest the use started around 2006⁴. Nor is it supported by the planning application made in 2005 for CF⁵ in which no mention is made of the storage use; the appeal site is described in the supporting documents as a field. Indeed, the Council's aerial photograph dated 17 April 2005⁶ is consistent with this. In this photograph the appeal site appears to be part of a wider field parcel, which the appellant confirmed at the inquiry to be the case⁷, prior to hedgerow planting subdividing the field, which is visible in later aerial photographs.
22. The barn adjacent to the appeal site appears in the Council's aerial photograph dated 1 January 2006⁸, which might have been taken just before the time many of the third parties suggest the use started. The vast majority of the appeal site appears the same in both photographs.
23. I acknowledge that there may have been some form of caravan and motorhome storage within the wider CF site since 2005. Indeed, the appellant confirmed this to be the case in cross examination. The appellant also stated in answer to my questions that the number of vehicles first stored at the site were as low as 4. If numbers remained low in the early years, it is not

⁴ The appellant's appendices CD5i and CD5ii.

⁵ The Council's appendix 4.

⁶ The Council's appendix 6.

⁷ During cross examination.

⁸ The Council's appendix 6.

surprising that these vehicles are not visible anywhere on CF in the 2005 or 2006 aerial photographs. Nevertheless, the evidence so far does not point to the likelihood of the material change of use of the appeal site for a storage use having occurred in 2005.

24. Moving on, I have noted above the third party representations, many of which suggest a storage use taking place from around 2006. However, most have not made a specific reference to the appeal site. Instead they refer to storage taking place on CF (of which the appeals site is only part) or on an area of CF that is far wider than the appeal site (the back fields). Storage on the appeal site and on other areas of CF that is visible in the Council's aerial photographs from 2017, 2018 and 2020⁹ is consistent with the storage described by the third parties. However, the evidence does not persuade me that the extent of storage shown in these images is reflective of the position in 2006.
25. My attention was drawn to the Google street view images in the Council's appendix 6 (photographs 3 and 3A, dated January 2009, as well as 4 and 4A, dated May 2009). In these, a solid means of enclosure is visible to the right of the barn that adjoins the appeal site. On site I noted that some of this enclosure, particularly that directly to the north of the barn, was still in place, whereas only fence posts remained along the line that the enclosure may have previously followed. At the Inquiry the appellant confirmed that the tree and hedge line visible in the above-mentioned images, that appears to be behind the barn, is the western most boundary of the appeal site. The part of the appeal site to the north of the fence and part of the area referred to as the back fields is, therefore, visible in these images. On the occasion of these images being taken, I can see no caravans, motor homes or vehicles within the visible parts of the appeal site or the wider back fields area.
26. At the inquiry the appellant suggested that, in the winter, storage would usually only take place on hard surfaced areas. As there do not appear to be any hard surfaced areas on the part of the appeal site visible in these images, this might explain the lack of any caravans or motor homes visible in the January 2009 images. However, at other times the appellant explained that unsurfaced areas had been used for storage. As such, I would have expected to see caravans and vehicles on the visible parts of the appeal site in the May 2009 images. Instead, I can see only grazing animals.
27. The storage use may have taken place in 2009. Indeed, there is reference to caravan storage on the advertisements at the site entrance seen in the photograph from 2009¹⁰. If so, this is likely to have been elsewhere on CF, or contained in the part of the appeal site not visible in these images (i.e. to the west of the barn, behind the solid fencing). This area is within the part of CF referred to by third parties as the back fields, but is part of the appeal site that appears to be within a defined area to the side and rear of the barn. It is separated from the majority of the appeal site visible in the images, to the north of the fence. This defined area is seen in the Council's aerial photograph from 2011/2012 at appendix 7.
28. Even if caravans and motorhomes had been stored in this area in 2009, this would not assist the appellant in demonstrating that a material change of use of the appeal site as a whole had occurred, as is his case. At this time this part

⁹ Photograph 13, 14 and 15 of the Council's appendix 6.

¹⁰ ID6 – Photograph provided at the end of the appellant's written version of his closing statement.

of the appeal site appears to form part of a defined area around the barn, and is distinct from the remainder of the appeal site.

29. At this point in the chronology I am mindful of the date, 10 years prior to the date of the LDC application, which is 12 April 2009, and note that the May 2009 images are within the relevant 10 year period. I acknowledge that all of the images provided by the Council show a snapshot in time. However, none of the images from 2005 through to 2009 appear to support the claim that a material change of use of the appeal site for a storage use had occurred at the time the images were taken. Furthermore, the appellant has not provided any photographs of his own to corroborate his claim of a use commencing prior to April 2009.
30. Having considered the appellant's evidence that relates to the period up to April 2009, I am not able to conclude that this demonstrates that, on the balance of probability, the material change of use of the appeal site for the storage of caravans, motorhomes and vehicles occurred during this time. I find the untested evidence of third parties to be, on the whole, briefly stated and vague in terms of the extent and location of the storage use. Similarly, the evidence of the appellant himself is not sufficiently precise. Furthermore, the Council's evidence relating to the years up to May 2009 make the appellant's claim of the material change of use of the whole of the appeal site having commenced before April 2009 less than probable.
31. As for the period after April 2009, I note Ms Sharman and Mr Chard's involvement in the site, which Ms Sharman confirmed at the inquiry¹¹ had started with a visit to CF in October 2009. At this visit Ms Sharman confirmed that she only saw an area close to the barn and did not see the wider appeal site.
32. Ms Sharman moved onto CF in June 2010 and refers to caravan and motor home storage having already commenced at this time. This is consistent with Mr Warren's suggestion that he stored vehicles, caravans and plant on the site from 2009 or 2010, as well as Mr Chard's photographs¹², which he confirmed were taken between mid and late 2010, showing the area to the side and rear (west) of the barn. Two of these photographs show the solid fence in the background, referred to earlier. This is also consistent with the Council's aerial photograph at appendix 7, suggested to have been taken the following year (between July 2011 and March 2012), as well as the street view images dated April 2011. Based on the evidence that is before me, it is more likely than not that the storage use of part of the appeal site had commenced, but that this was confined to the area to the west of the barn.
33. At the inquiry Ms Sharman referred to the commencement of her and Mr Chard's involvement in the running of the camp site and storage area, along with their plans from the outset to expand both activities at the site¹³. The expanding or progressive nature of the storage use was also referred to by the appellant¹⁴. The advancement of the use into the wider appeal site is evident from the video provided by Mr Chard from mid 2012, as well as the Council's aerial photograph dated July 2013¹⁵.

¹¹ During examination in chief.

¹² The appellant's appendix CD8 and the photographs shown in ID01.

¹³ During examination in chief.

¹⁴ During cross examination.

¹⁵ The Council's appendix 9.

34. Going forward in the chronology, there is no dispute that the caravan, motorhome and vehicle storage use of the whole of the appeal site is well established in 2017 and is evident in the Council's aerial photographs dated 2017, 2018 and 2020.
35. On a final point before I summarise, the appellant suggests that from the outset he had always intended to use the planning unit present today for the storage use, and that the boundary of this land was established with wire fencing when the storage use commenced. At the inquiry he pointed to fencing comprised of posts and wire that are visible in the second photograph from December 2010 in ID1. Notwithstanding that this photograph was taken after the relevant April 2009 date, the position of any fencing visible in this photograph cannot be established as corresponding to any current boundaries on the appeal site. Furthermore, I am not persuaded that any such enclosure is evident in the earlier photographs. There is some form of delineation in the field running east to west in the 2006 aerial photograph, with the land around the barn having a different appearance to that of the larger field to the north. This line does not, however, appear to correspond with any boundary of the appeal site.
36. Nevertheless, an intention to use an area of land for the storage use does not demonstrate that a material change of use of the land had actually occurred. The evidence points to the likelihood of the storage use commencing in a defined planning unit close to the barn, and then expanding over time to fill the area identified earlier in this decision as the planning unit at the time the application was made, of which the appeal site is part.

Summary

37. As noted earlier in this decision, for the appeal to succeed the onus is on the appellant to show, on the balance of probabilities, that the use of the land for which the LDC is sought has been continuous for a period of ten years beginning with the date on which the use commenced. In this case, the appellant must demonstrate that it is more likely than not that the material change of use of the appeal site to a use for the storage of caravans, motorhomes and vehicles occurred before 12 April 2009.
38. Having regard to all findings above, I conclude that the appellant has not demonstrated that, on the balance of probability, the material change of use of the appeal site as a whole to a use for the storage of caravans, motorhomes and vehicles occurred before 12 April 2009. I conclude, therefore, that it is less than probable that the land for which the LDC is sought has been in continuous use for a period of ten years beginning with the date on which the use commenced.
39. I note the Council's suggestion that the use of the appeals site was somehow concealed so that it could not be detected. However, in view of my conclusions above, it is not necessary for me to consider this matter in this case.

Conclusion

40. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the appeal site for the storage of caravans and motorhomes 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.

J Moss

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

David Bevan MRTPI AMIMA Of HLF Planning Limited

He called:

Sean Gorman	Appellant
Brioni Sharman	Witness
John Chard	Witness
Trevor Warren	Witness

FOR THE LOCAL PLANNING AUTHORITY:

Jeremy Patterson Principal Planning Lawyer Tewkesbury Borough Council.

He called:

Paul Smith BA(Hons) BSc(Hons) Town Planner at Tewkesbury Borough Council.
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INTERESTED PERSONS:

Victoria Stone	Senior Planner at Tewkesbury Borough Council.
Becky Brown MRTPI	Observer

INQUIRY DOCUMENTS

- ID1. Email from John Chard dated 16 February 2021.
- ID2. Extract of Sweet and Maxwell's Planning Law – The Concept of Continuousness.
- ID3. Summary of Thurrock BC v Secretary of State for the Environment, Transport and the Regions 2001.
- ID4. Copy of *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207
- ID5. Copy of *R. (on the application of Searle) v Secretary of State for the Environment, East Hampshire District Council* 2006.
- ID6. Google street view image provided at the end of the appellant's written version of his closing statement.