



Appeal Decision

Inquiry Held on 9 November, 1, 2 and 8 December 2021

Site visit made on 9 November 2021

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2022

Appeal Ref: APP/D0121/X/20/3252913

The Old Forge, Bristol Road, Felton BS40 9UR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) 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 Gregory Wedlake against the decision of North Somerset Council.
 - The application ref 20/P/0204/LDE dated 20 January 2020, was refused by notice dated 30 April 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) The amalgamation of three former planning units into one from 2006 with the Forge accommodation, Lulscott, Siverridge and the uses formerly approved at the Old Forge area of the Site becoming one enterprise,
 - b) The building known as Lulscott is lawful and has a holiday accommodation use;
 - c) The use of the former Silveridge area of the Site for the placement of 2 static caravans used for holiday accommodation and the retention of the building to the rear of the former Silveridge area of the Site as holiday accommodation;
 - d) The use of the land across the Site for the parking of vehicles in association with the uses on the site, namely; holiday accommodation, office, car repair, garage and car hire.
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Decision

1. The appeal is dismissed.

Applications for costs

2. At the Inquiry, applications for costs were made by Mr Gregory Wedlake against North Somerset Council and another by the Council against Mr Gregory Wedlake. These applications are the subject of a separate Decisions.

Preliminary Matters

3. All evidence at the inquiry was given on oath. I opened the inquiry on 9 November but had to adjourn to allow for the compilation of further evidence by the Council regarding alleged satellite parking sites and then to give the appellant the opportunity of considering that information. I did visit however on that first day.
4. It was not possible to finish by the end of the third day but all of the evidence had been given. We resumed again on 8 December but as a virtual event with the only remaining matters being closing submissions and costs applications.

5. I have taken the description of what the appellant wishes to establish as being lawful from the application form that is marked as a draft "not valid for submission". It was agreed at the inquiry that this description is correct.

Main Issue

6. This appeal relates to the refusal of an application for a LDC and turns on matters of law rather than the planning merits of the proposal. The onus of proof is upon the appellant to demonstrate their case on the balance of probabilities. The main issue is whether the Council's decision to refuse the LDC was well-founded.
7. The application was submitted to seek confirmation of the appellant's view that the matters set out in the description of the application were at the time of the application lawful. These matters would be lawful if [s191(2) of the Act] at any time if:- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Reasons

8. The appeal site is made up of what have previously been 3 separate parcels of land which have been referred to in the inquiry as The Old Forge, Lulscott and Silverridge (also referred to inconsistently within documentation as 'Silverridge' and 'Silver Ridge'). These separate areas have been the subject of enforcement action in the past with 3 separate enforcement notices covering the site and which therefore need to be considered. Taken together, these areas of land are often referred to generically as 'The Old Forge' as they have been amalgamated according to the appellant since he took over ownership of The Old Forge and Lulscott from his father and then, purchasing separately, Silverridge in 2004 albeit he had also leased it since 2003. It was clarified in the inquiry that the site is actually owned by a company (Forge Accommodation Ltd) that is run by the appellant.
9. The Old Forge building is in the south-west corner of the site and Lulscott is opposite with a hard-surfaced area between providing access through to the buildings on the south-east corner where there is a reception area and also 2 buildings with roller-shutter doors. To the north is the more open Silverridge area with 2 caravans and a substantial building close to the eastern boundary.

Nature of the current uses across the site

10. In order to assess the lawfulness or otherwise of uses on a site it is necessary to consider what the relevant planning unit is and what use it is being put to or was being put to when the application was made. This will enable me to consider whether there are breaches of the requirements of the enforcement notices and if not, whether the use or uses are otherwise immune from planning control.
11. It has been held that 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 as well as occupied for different and unrelated purposes. The concept of physical and functional separation is key to this. In this case, the whole site is owned by one legal interest which is the limited

company controlled by the appellant although there are separate business interests within the site as well. The parties agree that the whole of the appeal site is the planning unit for considering what is the lawful use of the site.

12. It is also agreed that the use of the site at the time of the application was mixed. However, the application description is formulated in a manner that refers to amalgamation of the units but then also refers to each element separately. The nature of a mixed use is that of a composite of primary uses across the relevant planning unit which are not separated.
13. The most obvious use across the site is the parking of vehicles. These are mainly cars although when I visited there were also some commercial vehicles including a mini-bus with "Green Motion" and "Forge Motel" sign-written on it and also some larger vans and transporters that were not sign-written.
14. The appellant offers bed and breakfast accommodation within the caravans and building on the Silverridge site along with the rooms in Lulscott and those in The Old Forge. It was clarified when the appellant gave evidence, that there are 27 bed and breakfast rooms available within the combined sites. He refers to this together with the parking of many of the vehicles as "with accommodation" parking. He says that this involves people who are going to be flying from Bristol Airport, taking a room on a bed and breakfast basis, then leaving their vehicle on the appeal site until they return. As such, the appellant considers that the primary use is the accommodation with the parking being incidental or ancillary to that.
15. In terms of the number of spaces available, the appellant in giving evidence said that whilst the site overall site could accommodate a maximum of around 200 vehicles, it would be impractical to have that many on site at any one time. Doing so would make it difficult to manoeuvre around. He also said that the number of "with accommodation" customers depends upon the time of year but that it is generally around 70 to 80. When I viewed the site and taking account of the aerial photographs that have been submitted, the estimate of around 130 total spaces across the whole site appears to me to be a reasonable assessment of the capacity for parking across all the whole area of the appeal site.
16. Furthermore, according to the appellant, people tend, on average, to be away from the site for between 3 and 7 days staying the night before they travel. At times the appellant's case has stated that parking is allocated but it has also been confirmed that these customers park where they want to and if there is no space outside The Old Forge they will park elsewhere. The land around Silverridge is the most open area to park where a high proportion of the spaces used are located. Vehicle keys are left on the site within a reception, that is shared with other businesses on the site, in order that cars can be moved whilst customers are away. The fluidity of parking of vehicles around the overall site is consistent with there being a mixed use.
17. The appellant also explains the "with accommodation" as being like a "motel". However, my understanding of that type of accommodation is that in general, the guests arrive in their cars, stay in that accommodation and then leave in their cars or are based at those premises for a length of time with their vehicle also being parked on site. A hotel, motel or generally bed and breakfast accommodation would not in the normal sense of that type of accommodation

- involve an intervening journey or staying in accommodation elsewhere whilst their vehicle remains at the original site for a significant period.
18. Whether the 'with accommodation' parking is incidental to the bed and breakfast activities is a matter of fact and degree. The term "incidental" with respect to the ordinary meaning of the word as defined in the Concise Oxford Dictionary, is "casual" and "not essential (to)." An incidental use is one which is functionally related to the primary use and cannot be one that is integral to or part and parcel of the primary use.
 19. The 'with accommodation' parking takes up a large amount of the space available on the overall appeal site. Only up to approximately 27 of those vehicles are likely to be owned by people staying at the site at that moment in time, assuming one vehicle per unit. The remainder of the vehicles attributed to this activity would be there in the most part whilst their owners are not on the site. If an owner of a vehicle is not staying on site, the primary reason for their car being there is because it needs to be stored. Such use is not a casual off-shoot of staying on the site in my view. The appellant refers within his proof of evidence to a "policy" allowance of 3 vehicles per unit and he also refers to "Policy DM30" but that is of little significance when considering whether that use is primary or a mere incidental matter.
 20. The parking of a vehicle whilst using the airport is the essential element of why that person has entered into an arrangement with the appellant's company along with the shuttle bus service and those services come with what appears to me to be an added advantage that they can stay if they want to. Whilst marketing highlights that the costs are for accommodation and "free parking", that description cannot reasonably over-ride the logic of this being primarily a parking operation. The accommodation is the more casual element of the arrangement. As a matter of fact and degree, I consider that a primary use of the site appears to be vehicle parking which relates to the position of the site close to Bristol Airport.
 21. Parking of cars awaiting hire also takes place across the site although this is often close to the building at Lulscott, with the office and reception area being within the building to the east of The Old Forge. Mr Strelling within his statutory declaration (he did not give evidence to the inquiry) refers to his business having grown from an initial stock of 15 to 20 vehicles but within 2 months a further 30 were added and he now has a fleet of between 160 to 300 vehicles. He estimates that he has up to 50 cars on the appeal site at any one time. Whilst the area for parking hire cars is indicated by signage as being to the south of Lulscott, I understand that there is more flexibility than this. Mr Strelling refers to his cars originally being parked "wherever on site". This is clearly a further primary use within the overall mixed use.
 22. There is little evidence about the nature or scale of car-repair activity but it is also not disputed that this takes place primarily in one of the buildings with a roller-shutter door in the south-east corner of the site. The appellant has referred to the car-repairs involving up to 5 traffic movements from staff and customers per day. There were not many vehicles on site awaiting repair when I visited but there was a vehicle within the building. This would appear to me to be a minor part of the use of the site but nevertheless on the balance of probabilities, a primary use which is not merely incidental to the other uses.
 23. Although there is some separation of the uses in practical terms the lack of

physical demarcation of areas for specific uses, I agree with the parties that there is presently a mixed use across the site. As a matter of fact and degree, I consider that the parking of vehicles for airport customers is a primary use amongst that mix. That happens along with the other uses which are bed and breakfast accommodation (with some parking ancillary to that), the car-hire business and car-repairs.

The enforcement notices

24. On 15 October 2003, 2 enforcement notices were issued in relation to The Old Forge and Lulscott. 'Notice A' relates to The Old Forge and covers accommodation within buildings along the southern part of the site, the commercial buildings to the east as well as the land around these buildings. Immediately adjoining the land covered by 'Notice A', is land covered by 'Notice B' which is a roughly rectangular area of land extending up to the eastern boundary of the site, along with the buildings at Lulscott.
25. 'Notice A' and 'Notice B' were both the subject of an appeal which was determined on 20 October 2004. Following the appeal decision, a successful High Court challenge was made but only in relation to the decision to uphold 'Notice A' with corrections. That notice only therefore, was subject to a redetermined appeal decision that was issued on 21 December 2006. Both of these notices were corrected by the respective inspectors.
26. 'Notice A', as corrected, alleged *"without planning permission, the change of use of the land from a mixed use of residential, bed and breakfast and vehicle repair uses to a mixed use of residential, bed and breakfast and vehicle repair and vehicle parking, including vehicle parking reception facility for airport passengers and other paying customers"*. The original requirements of the notice were also corrected and replaced with *"cease the use of the land as a vehicle parking reception facility, for airport passengers and other paying customers"*.
27. 'Notice B' had also been corrected by the first Inspector in her decision which was not challenged with respect to this notice. The corrected allegation is *"without planning permission, change of use of the land from residential to a mixed use of residential and vehicle parking, including vehicle parking reception facility, for airport passengers and other paying customers."* The corrected requirement is *"cease the use of the land for vehicle parking and as a vehicle parking reception facility for airport passengers and other paying customers. Remove all hard standings and the decked area introduced to facilitate the use and restore the land to a condition suitable for residential use."*
28. A further notice, 'Notice C', relates to the land along the northern part of the present site which adjoins Lulscott and is known as Silverridge. This was not subject of an appeal or challenge. The allegation on that notice is *"without planning permission, a change of use from a caravan site for one gypsy family with conditions restricting the number of caravans to two to a caravan site and vehicle reception facility with office for vehicle parking."* The requirements of that notice are:

"1) cease the use of the land for the parking of vehicles unconnected to the authorised use of the land"

2) remove all vehicles from the land which are unconnected to the authorised residential caravan use

3) cease the use of the land as a reception centre for the operation of a vehicle parking business. This includes use of the land, for receiving vehicles for parking, for the distribution of those vehicles, for the transportation of peoples leaving their vehicles at the site, for peoples returning to the site to retrieve their parked vehicles and as a base for the vehicles necessary for the transportation of peoples leaving vehicles at the reception centre

4) remove all portable buildings brought on to the land in connection to the unauthorised use enforced against."

29. The appellant "casts doubt"¹ over whether the appeal in relation to 'Notice B' was correctly determined due to the acceptance in the previous decisions and the High Court case that Lulscott and The Old Forge operated together. Section 285(1) of the Act makes it clear that the validity of an enforcement notice shall not, except by way of an appeal, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought. The validity of a notice cannot for example be questioned if court proceedings are undertaken to prosecute a breach of that notice. It is clearly not for me in this appeal to consider the validity of that previous notice.
30. In my view therefore, I should not need to look behind the notices because, on the face of the documents, they told the recipients what had been done wrong and what needed to be done in order to comply with them. The previous appeal decisions do however provide some context for the present arguments of the main parties. If the uses currently taking place can be considered as a breach of any of those notices, by reason of s191(2) of the Act, those activities cannot be considered to be lawful.

Lawfulness or otherwise of the present mixed use

31. Early on in the inquiry, I posed a number of questions or points that I considered were potentially important to deciding this case and interpreting the effect of the notices. Part of what I considered was important to know is what the baseline planning status is for my assessment of each part of the site.
32. One of my questions related to whether the requirements of the notices had been complied with. If that had occurred, that would, due to the provisions of s173(11), in effect grant planning permission for any works or activities which could have been required to be removed or ceased. However, if the notices or any of them in particular had not been complied with, the situation would be less clear. It may be reasonable to take at face value the uses existing as described as occurring prior to the breaches in those cases as being potentially lawful. The provisions of s57(4) of the Act also provides for the reversion to the lawful use prior to the use enforced against.
33. 'Notice C' covers the largest area of the current appeal site where the majority of vehicles are parked. The first requirement of this notice is to "cease the use of the land for the parking of vehicles unconnected to the authorised use of the land". Looking at the area of the notice, to be considered lawful, the parking of vehicles on this part of the site would need to be "connected" to the "authorised" use of the site.

¹ Appellant closing submissions paragraph 13

34. It is therefore necessary to consider what the "authorised" use of this part of the site is. The notice itself refers to a change of use "from a caravan site for one gypsy family and conditions restricting the number of caravans to two". Furthermore, the requirements of 'Notice C' do not require the cessation of the use of that land as a "caravan site" and if the notice was complied with by reason of s173(11) that use would also have been authorised at that time.
35. The appellant's evidence indicates that the previous mixed use of this land ceased when he withdrew his appeal against 'Notice C' and the buildings relating to the vehicle reception facility were removed as required by the notice. If that were the case, the authorised use of the site covered by this notice is a "caravan site". The appellant also says that he converted the caravan site "day room" which had also been used as a chicken shed and the previous owner's accommodation into the 5 units as exist on site now, in 2004. This building was not part of any allegation within the notice or any of the requirements but its use as separate accommodation cannot be considered within the scope of a "caravan site". Furthermore, the appellant confirms that he has not operated a "caravan site" as such but rather he has used the site as part of the wider activities across the site.
36. Even if the bed and breakfast occupation of the caravans were considered potentially lawful by reason of the authorised caravan site use, this and the use of the separate building for accommodation is part of a broader use of the site which is mixed amongst other primary uses. The mixed use is not the "authorised" use. Whether I look at this matter in relation to the previous lawful use or the use of the site as allowed to remain by reason of s173(11), the parking of vehicles on this part of the site is not connected to any authorised use of the site and is therefore in contravention of the requirements of this enforcement notice.
37. Looking at 'Notice B', the appellant in his appeal statement refers to the Lulscott area of the site as being "technically in breach of the 2004 decision". It is clear that commercial parking is taking place in relation to the car-hire business mainly directly in front of the building on that part of the site. Furthermore, vehicles parked there and to the east of the area covered by 'Notice B' include those related to the broader activities on the site which includes storage of cars whilst their owners are away. Notwithstanding how the appellant chooses to advertise the 'with accommodation' parking, those vehicles are there as part of the mixed use of the site and are not there just as an incidental part of the occupation of Lulscott. The enforcement notice relating to Lulscott, requires the cessation of the use of the land for "vehicle parking". Whilst this would not interfere with incidental or ancillary parking related to Lulscott, the commercial parking element of the mixed use is therefore in contravention of the requirements of this enforcement notice.
38. Compliance with 'Notice A' by reason of s173(11) would approve the use of that land as residential, bed and breakfast vehicle repairs and vehicle parking. If compliance was achieved, this is therefore the only part of the overall current appeal site that has any potentially authorised vehicle parking that could constitute being a primary use in its own right. This does not explicitly authorise parking over any broader area than just within the boundary shown for 'Notice A'.
39. The amalgamation into a single planning unit could at best only be considered

to have parking as an authorised primary use for a small number of vehicles – those that can reasonably park alongside the buildings at The Old Forge part of the site which is around 12 – 15 according to aerial images and what I saw at my site visit, as many as 20 according to the redetermined appeal with respect to 'Notice A'. The number that could park within The Old Forge site is therefore far less than the 70 to 80 vehicles parked on site which the appellant said related to his 'with accommodation' parking.

40. There is no reference on any of the enforcement notices to the car hire business. I asked the appellant about this and he explained that in the past his father had undertaken a different kind of car hire activity before 2003. This was described as "hire-buy", meaning that vehicles were in effect leased with an option to purchase at the end of the lease period. Mr Strelling has run the activity here since July 2010 in a different way. The appellant has also confirmed within his own statutory declaration that this business started on site in July 2010. He also refers to the previous car hire business '1Car1.com' that had been active on site between 2008 to 2010.
41. The Inspector within the redetermination decision with respect to 'Notice A', refers the car hire business and says that it "appears to have been somewhat casual" and that was based on the appellant indicating that a vehicle for sale would be hired if the demand arose. That seems to be consistent with the "hire-buy" operation. The Council however accepts that car-hire use has subsisted in its present form across the site for more than 10 years, although I have limited evidence about how that operated between 2008 and 2010.

Conclusion regarding the use

42. It has been held that where a mixed use has occurred, it is not appropriate to attempt to disaggregate the uses or parts of the site. A mixed use relates to the whole planning unit. Furthermore, when the mix of uses commences, that would normally be considered as a material change of use of the whole planning unit. In an instance where 3 separate planning units are amalgamated into 1, it would not however necessarily involve a material change in use of the whole site unless it resulted in a demonstrable change in character of the overall use.
43. In this case, the planning unit appears to have been formed as it is now at some point since the issuing of the notices 'A' and 'B' across the site. The expansion of vehicle parking across the whole site which in my view is a primary activity in itself, appears to have occurred more than 10 years ago, probably following compliance with 'Notice C'. There is limited evidence about the car-hire activity that took place before Mr Strelling's occupation of the site in July 2010. This has not been intensively scrutinised by the Council. On the basis of the evidence presented to me, that car-hire activity probably commenced around 10 years before the application but was also a further primary use that was added into the mixed use. These activities along with the residential accommodation, including for bed and breakfast purposes and car repairs, therefore did in my view constitute a material change in use of the land to a single mixed use of the site.
44. Even if the present mix of uses has continued in this form for at least 10 years, whether or not the planning unit has at times altered or satellite parking has been operated from this site, a substantial amount of land is being used for activities which have been in contravention of the requirements of existing

enforcement notices. As such, the mixed use as existed when the application was submitted was unlawful and the certificate applied for cannot be issued.

45. I have also considered whether a different form of LDC could be issued. I cannot consider issuing a LDC however for something completely different from that applied for but s191(4) allows some discretion. Even if elements of the mixed use could be lawful, they cannot be disentangled from the existing unlawful mixed use of the site. I do not consider that it would be appropriate to issue a different form of LDC through this appeal or to disaggregate the mixed-use by issuing a LDC for part of the land under the provisions of s193(4) of the Act.

Operational development

46. On the first morning of the inquiry, I sought clarification of what plans were submitted with the application. None were submitted identifying in detail which buildings were being applied for. Planning Practice Guidance makes it clear that an application for a LDC needs to describe precisely what is being applied for and furthermore that without sufficient or precise information, a local planning authority may be justified in refusing a certificate. The description used on the application refers to the buildings at Lulscott and that to the rear of the former Silverridge area but mere reference to them on the application does not satisfactorily detail what is being sought.
47. The appellant in the appeal documents and in submissions to the inquiry has referred to previously submitted applications that were withdrawn but it is insufficient in my view to try and incorporate elements of previous applications by association with the present application. Those documents were submitted as part of one of the bundles at the inquiry but were not part of the application that was publicised. It should not be necessary for anyone to have to look behind the application to the previous planning history in order to ascertain what is being applied for.

Conclusion

48. 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: "The amalgamation of three former planning units into one from 2006 with the Forge accommodation, Lulscott, Silverridge and the uses formerly approved at the Old Forge area of the Site becoming one enterprise, b) The building known as Lulscott is lawful and has a holiday accommodation use; c) The use of the former Silverridge area of the Site for the placement of 2 static caravans used for holiday accommodation and the retention of the building to the rear of the former Silverridge area of the Site as holiday accommodation; d) The use of the land across the Site for the parking of vehicles in association with the uses on the site, namely; holiday accommodation, office, car repair, garage and car hire" 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.

A Harwood

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mrs Sutherland

Solicitor instructed by Mr G Wedlake

She called:

Mr G Wedlake, the appellant

Mr D Wedlake

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Anderson

Solicitor to the Council

She called:

Mr E Persse BSc (Hons) MRTPI Planning consultant

DOCUMENTS

- 1 Bundle from the Council with satellite site information
- 2 Documents from previous Lawful Development Certificate applications
- 3 Aerial photos from the Council in relation to appendix 3a