The Planning Inspectorate

Appeal Decision

Inquiry held on 26 July 2022

Site visit made on 27 July 2022

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 6 September 2022

Appeal Ref: APP/J0405/X/20/3249823
Land to the North West of Plough Orchards, Plough Orchards, Weston Turville, HP22 5BG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended 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 Nigel Cole-Hawkins & Philip Shepherd against Aylesbury Vale District Council.
- The application ref 19/03792/ACL is dated 21 October 2019.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is for storage of builders' waste soil, construction material, equipment and storage containers.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the application was made the Council has changed from Aylesbury Vale District Council to Buckinghamshire Council

3. It was common ground that the 10 year period to be considered was 21 October 2009 until 21 October 2019.

4. Evidence was taken under oath.

Main Issues

5. The main issues are:

- What is and has been the planning unit/s from around 2006.
- Whether the appellants have demonstrated a continuous use of the appeal site for 10 years.
- Whether the appeal site benefited from permitted development rights.
- Whether there has been deliberate deception in relation to the use of the site.

Reasons

2009 -2010

Planning unit/s

6. The land essentially was in two parts: the public house that was initially purchased for development, followed by the land to the rear of the Laurels, purchased with the aim for development around 2006/7.

Ownership

7. Ownership of the land is different and included London and Bookham Properties Ltd for the Laurels land and Commonside Ltd for the land to the rear of the former public house. However, it appears that while the directors/shareholders vary between companies and they are different entities, there are two directors in common, one of the appellants and his former wife, with part in trust for family members in Commonside Ltd. While decisions will be taken by the separate companies, it is my view that for planning purposes, in terms of ownership there is a considerable degree of cross over and the different companies/ownership is not a major factor.

Boundaries

8. Initially Plough Orchards /the public house were effectively one site, with no internal physical boundaries, as evidenced by the aerial photograph of 2006. The main boundary formation of Plough Orchards occurred with the development of the pub and plots 1-4, with these each having their own boundary and a new cross boundary a little beyond the turning head of the access road. Boundaries were subsequently formed along the line of the access road towards the rear of the site and opposite the location of No 8 as seen in the 2017 aerial photograph. The Council notes this boundary was initially Heras temporary fencing, replaced by the current post and rail fence. There is no cross division apparent within the remainder of the land behind plots 2 – 4 and the turning head.

9. The appellants note that hardcore was provided on land to the rear of plots 2-4, but not on the appeal site. This appears to be the case as seen from a number of photographs and remains can be seen on site. However, while there was a difference in surface material it is clear from photographs it did not restrain use of the land. Uses appear to spread over the appeal site land as well as the other land beyond plots 2-4. I therefore do not consider this hardcore to be a 'material' boundary.

10. The land purchased to the rear of the Laurels, as evidenced by the 2010 aerial photograph, had been incorporated with the land to the rear of the old public house. Boundaries are evident separating it from the Laurels and there are no boundaries adjacent to the appeal site and other Plough Orchard land.

Use including the 10 year continuous use.

11. It is common ground that initially the public house and the land to the rear formed a single planning unit. It was in the same ownership, same use and there were no internal physical boundaries. The public house and land towards the front was later sold to, and developed by, Earlview Properties Ltd, to provide 1-4 Plough Orchards. Although evidence from Mr Shepherd indicated completion of this part in 2007, the evidence in relation to conditions and their approval indicates on the balance of probability that completion actually occurred in the later part of 2008. The planning permissions, change of ownership and change in use effectively split the old public house land into various individual planning units for the houses and left the land to the rear as

another. This unit extended back from the small area of land beyond the access road turning head (that which has a close boarded fence), and had no internal physical separation.

12. The appellants say that the appeal site land to the rear of the former public house was used as described in the LDC application by their respective companies. Looking at the situation then, it is probable that the whole of the remaining land beyond plots 2-4 would have been used in the same way. Apart from the appellants' verbal evidence, there is little to show that the appeal site was in separate use. There also is no physical separation and aerial photographs show a very similar appearance.

13. In addition, some time after the purchase of the land to the rear of the Laurels, it was physically separated from the Laurels, and the fence was removed on the former public house side. This would have then effectively added this land to the land behind plots 2-4, making a single planning unit. In the aerial photograph of 2010, the Laurels land has a very similar appearance/use to all the land at the rear of the former public house.

14. After the joining of the Laurels land and Plough Orchards, various applications were made to gain planning permission for residential development. This occurred in phases. A planning application was made in 2007 for 5 and 6 Plough Orchards, which was approved. This changed the functional use of the land and effectively added two new separate planning units, one for each of the houses, and left the remainder of the land as a separate planning unit. Units 5 and 6 were commenced in 2010, construction paused until 2011, with completion in 2013.

Use around 2010

15. I accept that the types of uses claimed in the LDC have occurred on the land. There is evidence of this from the appellant, various photographs, aerial photographs, previous inspectors in appeals, neighbour observations/objections and Council officers. However, the main question is whether that related to use described by the appellant or in conjunction with the various developments at the appeal site (permitted development) or a combination of each and then whether the use claimed occurred continuously for 10 years.

16. It is clear that some of the observations included land other than the appeal site itself. The previous inspector, in relation to the appeals for plots 9 and 10, referred to land currently housing some building materials and a compound, but that appeal site included land additional to that in this appeal.

17. At the time up to and around 2010 there is little evidence to show the use claimed. There is the appellants' own evidence in the form of sworn affidavits. The only 'physical' evidence provided by the appellants in relation to the independent use of the land is the list of developments undertaken at the corresponding times. I acknowledge that these other developments were going on, but that fact does not demonstrate any use of the appeal site or continuity of use. Looking at the 2010 aerial photograph there is little to show use of the land in the way applied for. There are indications of bits and pieces, but it is mainly a heavily vegetated area and does not have the character of a storage area. On the balance of probability, I consider that a nil use is a more appropriate description at that time.

18. Neighbours' representations about the use of the land do not cover the period up to 2010.

19. Around May 2011 neighbours and a Councillor complained about stored materials on the site and investigations were undertaken to consider whether enforcement action was appropriate. 2011 was about the time when works on 5 and 6 Plough Orchards recommenced following an earlier start of works. This investigation was of alleged unauthorised dumping of soil, trees and other waste on the land to the rear of the Laurels and the Plough PH, Brook End, Weston Turville. There is a contemporaneous site note indicating the officer spoke to Mr Cole-Hawkins who confirmed that the waste deposited on the adjoining land was with the landowner's consent and there was an agreement to remove the waste at the landowner's request or when the works were complete.

20. The appellants maintain that the stored material in question was on the site of numbers 7 and 8. I do not agree with this. Photographs were taken at the time, which included a very large spoil heap. If that was not part of the investigation, why photograph it and not the heap in question? The photographed heap was clearly on the appeal site. A neighbour responding to the planning application for plots 7/8 supported the development but indicated their concern about the land directly in front of 2,3 and 4 Plough Orchards, where they note the builder dumped spoil from the footings of 5 and 6 Plough Orchards in the middle of this land. The appellants said at the inquiry that the top soil from plots 5 and 6 was removed from site and soil from other developments brought in. This evidence suggests that is not the case, and it would also be improbable for this to happen. It also shows the appeal site was not used solely for imported materials and plant as suggested by the appellant, but in relation to the other developments on the site, which would have been permitted development.

21. Photographs of 27 April 2014 show the former land of the Laurels during construction of properties there. Construction activity appears to run seamlessly across to Plough Orchards and on to the Appeal site. There is little distinction on the ground. I accept that some equipment may well have been used at Plough Orchards and then used elsewhere on other projects, and then brought back to Plough Orchards, but it is normal for plant to come and go in such a way, using it when needed.

22. An application was made for plots 9 and 10 by Mr Davis in 2016. On the application form, for the existing use he noted former garden to public house, now unused, with the box ticked for the site currently vacant. It was said that he did not ask the appellants about the use, but that was just his impression at that time. The aerial photograph of 2017 gives that same impression, vacant and unused land, with much vegetation. I accept there is again some indication of items on the site, but this is of a minor nature and certainly not leading to the impression and character of an area storing materials.

23. The appellants refer to letters of representation in support of their case, including from the application 18/04598/ACL, but these provide little support in relation to the early part of the 10 years or identification of exactly where the materials are from.

24. Generally, I consider that probably the land to the rear of the Laurels and the rear area of Plough Orchards had nil use. There is not precise evidence to show

a continuous use for the storage described separate from other development at Plough Orchards. While parts of the land were being developed, clearly the adjoining land was used in association with that development, for which it would have been permitted development.

25. In relation to the planning unit/s I would summarise it as follows. Initially it was a single planning unit of the public house. When plots one to four were developed these became planning units, leaving the land behind as one unit. When the Laurels land was purchased and divided from the Laurels and the boundary with Plough Orchards removed this became a single planning unit. Then when plots 5 and 6 were developed the planning unit would have been the whole of the land beyond units 2 – 4 and plots 7 and 8 and would have formed the remaining land and a single planning unit. When plots 7 and 8 were developed the land beyond units 2-4 would have formed a single planning unit.

26. For an LDC the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If there is no evidence to contradict it or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence is precise and unambiguous to justify the grant of a certificate on the balance of probability.

27. I conclude that the appellants' evidence is not precise and unambiguous. The appellants' argument that it was solely used for externally imported materials/plant etc. is contradicted by the Council's enforcement evidence and there is little to distinguish the use associated with development on the Plough and Laurels land from any externally imported materials etc. There is little to show a continuous use over the period. Continuous use of the site is not demonstrated in photographs and aerial photographs and the appellants own description at the time of enforcement was that the storage was associated with the adjacent site. The appellants' agent's impression of the site at the time of application for plots 9 and 10 was that it was vacant and unused. Overall, the appellant has not demonstrated on the balance of probability the 10 years continuous use.

Permitted Development Rights

28. Permitted development rights (part 4 Class A of the General Permitted Development Order) permit the provision on land of buildings, movable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land. Condition (a) notes that any building, structure, works, plant or machinery permitted by Class A is to be removed, and (b) any adjoining land on which development permitted by Class A has been carried out is, as soon as reasonably practicable, to be reinstated to its condition before that development was carried out.

29. The appellants argued that Class A did not permit temporary uses, citing in particular R(Hunter Hall Partnership) v First Secretary of State [2006] EWHC 3482 (Admin). I reject that argument; that case was effectively indicating that this form of permitted development did not arise if the say 'farming operation' was actually a 'use of land' and not genuine 'operational' development. This type of permitted development only applies to operational development which was occurring.

30. In summary, I find that when plots 5, 6, 7 and 8 were being constructed the appeal site and land behind plots 2,3 and 4 Plough Orchards was adjoining land. This is the case with plot 8 alone, even if just the appeal site is considered to be the planning unit. I accept that adjoining means touching, with Mr Davies noting the red lines that would outline the various sites touching. It is clear on the plans and seen at the site visit that the corner of plot 8 abuts with the corner of the appeal site. So for the purpose of permitted development, they are adjoining.

Deliberate Deception

I have no need to consider deliberate deception.

Conclusion

31. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of storage of builders' waste soil, construction material, equipment and storage containers 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.

Graham Dudley

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr K GARVEY OF COUNSEL
MR N C COLE-HAWKINS
MR P SHEPHERD
MR N DAVIS

FOR THE LOCAL PLANNING AUTHORITY:

MR A GREAVES OF COUNSEL
MS D HIRD

INTERESTED PARTIES:

Mrs J Puddefoot

DOCUMENTS:

Appellants' opening
Council's opening
Plan associated with planning application for plots 9/10
R. (on application of Hall Hunter Partnership) v FSS
R. (on application of Wilsdon) v FSS
Brown v Hayes and Harlington UDC
Council's closing
Appellants' closing
Note on waste from the EPL