



Appeal Decision

by James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 20th February 2024

Appeal Ref: APP/V3310/X/23/3325523

Land south of Parchey View, Chedzoy, Bridgwater TA7 8RW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Harrison Meadows against the decision of Somerset Council (formerly Sedgemoor District Council).
- The application ref 18/22/00007/EC, dated 31 October 2022, was refused by notice dated 5 January 2023.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (1990 Act).
- The use for which a certificate of lawful use or development is sought is storage yard for business purposes (B8 storage and distribution).

Summary Decision: The appeal is dismissed.

Preliminary Matters

1. Whilst the appeal application was determined by Sedgemoor District Council, Sedgemoor District Council has since become part of Somerset Council, a newly formed unitary authority. Somerset Council is therefore the local planning authority for the area in which the appeal site is located, which is reflected in the banner heading above.
2. The outcome of the appeal hinges on the strength of evidence presented by the appellant which pertains to the historic use of the site before the date of the application. I have therefore not carried out a visit of the site, as it could not have demonstrated the use that was ongoing at the time the application was made.
3. The appellant contends that the appeal site had been used as a storage yard for business purposes, for more than ten years at the time of application. As per s191(2) of the 1990 Act, the appellant therefore says no enforcement may be taken in respect of this use, as the time for enforcement has expired.
4. For a use to be lawful under s191(2) of the 1990 Act, it must also not contravene any requirements of an enforcement notice then in force. There is no suggestion from either party that this is the case, so I have proceeded on the basis that this element of the test is met.
5. In this context, for the appeal to succeed, the appellant would need to demonstrate, on the balance of probability, that the storage yard use of the site had subsisted continuously for a period of ten years at the time of application. As an application for an LDC, the planning merits of the development are not relevant.

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6. I have considered the appellant's evidence in accordance with the principle established in *Gabbittas*¹. This says that where there is no evidence to contradict an appellant's version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, then it should be accepted.

Main Issue

7. The main issue is whether use of the site as a storage yard for business purposes (B8 storage and distribution) was immune from enforcement, and therefore lawful for the purpose of the 1990 Act, as at the date of application.

Reasons

Background

8. The appeal site, which is accessed from Ward Lane, comprises a parcel of land within a countryside location to the east of the settlement of Chedzoy. It forms part of a larger parcel of land, which extends southwards from its southern boundary ("Wider Site"). There is a large building to the eastern side of the appeal site, which incorporates a Dutch barn at its centre. Whilst the remainder of the appeal site is broadly open, photos show two shipping containers within the appeal site, with one located next to the site access and the second located along (or very near to) the appeal site's southern boundary. Photos also show vehicles and other stored materials within this space.

Planning Unit

9. In order to determine whether any particular use of the appeal site is lawful, it is first necessary to consider the extent of the relevant planning unit. As established in *Burdle*², a planning unit is usually identified by reference to a unit of occupation, unless a smaller area can be identified, which as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes. The concept of physical and functional separation is key.
10. In 2019, retrospective planning permission (reference 18/19/00004) was granted for "*an extension to the existing agricultural implement store/shed*" (Extension Permission). The red line plan for this application encompassed both the appeal site and the Wider Site, and whilst not determinative, this is a useful starting point in determining the extent of the relevant planning unit.
11. The consented extension is located within the Wider Site. However, the approved plans show that the extension extends out from the southern side of the pre-existing agricultural building, which is within the appeal site. Irrespective of whether the two buildings are physically connected, this proximity demonstrates a close physical relationship between the two.
12. The appeal statement submitted in support of the application for the Extension Permission, said that "*the objective is to provide additional storage facilities in conjunction with the existing storage building*". Email correspondence in connection with the application also said "*the extension is to increase their own storage capacity to enable all of their equipment under cover in a secure building and be able to accommodate hay bales*". These statements suggest

¹ *Gabbittas v SSE & Newham BC* [1985] JPL 630

² *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

that the two buildings were intended to be used for the same or similar purposes, which further demonstrates a close functional relationship between the two buildings.

13. More generally, photos of the land show a lack of clear physical demarcation between the appeal site and the Wider Site. The appellant has not explained how they were physically separate prior to the date of the application. There is no obvious change in ground levels or ground conditions between the two, and there are also no clear physical boundary treatments which separate them. Physically, the appeal site and the Wider Site therefore integrate seamlessly with one another, and appear to form part of the same parcel of land.
14. Functionally, the appeal site encompasses the access route into the Wider Site, which means the Wider Site is reliant on the appeal site to function effectively. Irrespective of whether part of the Wider Site is leased to a separate tenant, this factor is again indicative of a close functional relationship between the two sites. From the Council's photos, it also appears that vehicles and stored materials are not confined to the appeal site alone, and instead extend into parts of the Wider Site as well.
15. Both physically and functionally, the appeal site and the Wider Site are therefore closely related. Put another way, the appeal site does not appear physically distinct nor separate from the Wider Site, and it is not explained how this was so, prior to the application being made. In line with the principles established in *Burdle*, the evidence therefore points to the relevant planning unit encompassing both the appeal site and the Wider Site, and the alleged use must be considered in the context of this planning unit as a whole.

Use of Planning Unit

16. The statutory declarations submitted in support of the appeal all attest to some kind of storage use having taken place within the site. Such use encompasses the storage of vehicles, plant, machinery, two caravans, two shipping containers and various other tools and equipment. The statutory declarations indicate that this storage use has subsisted over a prolonged period of time, possibly for as long as 40 years. From the evidence, it therefore seems reasonably clear that some element of storage use had subsisted within the appeal site for at least ten years at the time of application.
17. Nonetheless, the statutory declarations also say that the appeal site was used by the appellant's father for a variety of vehicle repairs and maintenance. Specifically, the appellant's statutory declaration says "*vehicles were stored for repairs and breaking*". He goes on to say that his father serviced diggers for local people. Richard Pope says the appellant's father "*would repair machinery and vehicles for me*". He also says "*there would be other vehicles, plant and machinery stored around the place that he was probably working on too*". Brian Reed says that "*Ashley Meadows [...] repaired my vehicles when I needed*". He goes on to say that "*he was always working on different vehicles including diggers and machinery*". Christopher Rhodes says that "*I knew as soon as I moved in that the land was being used as a yard for Ashley Meadows business which involved vehicles and repairs. It was definitely an active and well-established place, with vehicles in and out including cars, lorries and plant*". Finally, Kevin Hill says that "*the machinery he would repair for me included commercial diggers, excavators, forklifts, tele handlers, tractors, my vans and trucks*".

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18. Irrespective of any storage use, it therefore seems clear that the appeal site has also been used for the repair and servicing of vehicles. The motor traders' policy and insurance details also suggest that at points, the site has been used for the sale of motor vehicles, with Kevin Hill's statutory declaration also attesting to such use. Typically, neither of these uses would constitute a storage & distribution use. Moreover, the vehicle repair and servicing use appears to have formed a key element of Ashley Meadows' business, which is indicative of it being a primary use of the appeal site (and therefore of the planning unit), as opposed to a use which is incidental to some other use. This points to the planning unit having had a mixed use in the years preceding the appeal application.
 19. Documents submitted to support the application for the Extension Permission confirmed that use of the pre-existing building within the appeal site was agricultural in nature. Indeed, an email to Council Officers said "*the existing identified planning use is for a barn for agricultural use, therefore the application is for an extension to an agricultural building and does not require consent for any continuation of the buildings existing use*". This email also said that "*the building is used for the storage of [...] agricultural implements and machinery*" and that "*the barn is also used for the storage of hay bales when required*". Whilst this commentary does refer to storage, it is also evidence of an agricultural use having subsisted within these buildings during the ten years preceding the appeal application.
 20. Part of the Wider Site is also understood to be used for crane driver training. Whilst it is not clear when this use started, the appellant says that the crane is now situated permanently in the yard, and is leased to a separate tenant. Once again, this use would not fall within the scope of B8 storage and distribution.
 21. Whilst I accept that the appeal site has been used for storage purposes, the evidence therefore suggests this is just one element of a mixed use within the planning unit. The planning unit has also been used for the repair and servicing of vehicles, the sale of motor vehicles, agricultural purposes and more recently, for crane driver training.
 22. A mixed use must be considered in its totality, and its various components cannot be considered in isolation from one another. Consequently, it would not be possible for a single element of this mixed use to have become immune from enforcement, independently of the other uses. Instead, it is the lawfulness of the mixed use which is critical.
 23. This means the appellant has not demonstrated, on the balance of probability, that the relevant planning unit (or part of the planning unit) had been used continuously as a storage yard for business purposes for ten years before the date of application. The alleged use was therefore not immune from enforcement at the date of application.

Other Matters

24. Section 191(4) of the 1990 Act does allow a description of development to be amended for the purpose of granting an LDC. However, the evidence before me does not demonstrate that the mix of uses of the site at the time of the application had subsisted continuously for a period of at least ten years prior to the date of application. In turn, any such amendment would not be appropriate in this instance.

Conclusion

25. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a storage yard for business purposes (B8 storage and distribution) 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.

Formal Decision

26. The appeal is dismissed.

James Blackwell

INSPECTOR