



Appeal Decision

Inquiry held and site visit made on 8 April 2025

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06th May 2025

Appeal Ref: APP/M3645/X/24/3357978

Parast, Broadbridge Lane, Smallfield, Surrey RH6 9RD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Ms Kelly McInnes against the decision of Tandridge District Council.
 - The application ref TA/2024/1057, dated 30 September 2024, was refused by notice dated 19 November 2024.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which a certificate of lawful use or development is sought is described as 'mixed use of open storage and parking'.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Application for Costs

2. An application for an award of costs was made by Ms Kelly McInnes against Tandridge District Council. That application is the subject of a separate decision.

Main Issue

3. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded, with particular regard to whether the site has been in a mixed use for open storage and parking purposes for at least ten consecutive years without substantial interruption prior to the date of the application.

Reasons

4. The appellant's evidence comprises a Supplementary Planning Statement with dated aerial photographs, the statutory declaration (SD) of Paul Vurc, and the SD and oral evidence of Matthew Langley. The oral evidence of Mr Langley and Hannah Middleton was given under sworn affirmation. The Council does not present any evidence to contradict the appellant's case, but it claims the appellant's evidence is not sufficiently precise and unambiguous to show the use is lawful on the balance of probabilities.
5. Mr Langley bought the site from Mr Vurc in September or October 2018, and his oral evidence provided explanations of his knowledge of the site prior to then. Mr Langley's uncle was a friend of Mr Vurc, and he would visit the site either with his uncle or when passing the site if its gates were open to see Mr Vurc and/or collect wood on a monthly or yearly basis.

6. Mr Langley's evidence is consistent with the SD of Mr Vurc, who was unable to provide oral evidence due to severe ill-health. In short, Mr Langley claimed that the site has continued to be used "for the same sort of thing" throughout his and Mr Vurc's ownerships, although he acknowledged that its current use was much more active, that the photographs provided were ambiguous, and that there were significant gaps between the dates of photographs which had not been explained.
7. The Supplementary Planning Statement is a confusing document which is somewhat inconsistent with the description of the existing use claimed to be lawful in the application form. It presents aerial photographs dating from December 1999 (the dates of which are not disputed) and a collection of undated site photographs which are of little assistance due to their size and the lack of explanations of what they may show in unidentified locations on unknown dates. The written evidence fails to explain where many of the various items claimed to have been on the land may be seen in the photographs. The oral evidence of Mr Langley was helpful in this regard, allowing some items to be identified in the photographs.
8. In particular, following the oral evidence of Mr Langley and what I saw during my site visit, I note the aerial photographs show the following at the site: what has been referred to as a large mobile home in the same position since at least May 2007; extensive amounts of wood in roughly the same positions between at least December 2005 and June 2013; what has been referred to as a small caravan in the same position since at least September 2018; and a collection of cars positioned 'nose to tail' in roughly the same positions between at least April 2020 and June 2021. A boat can be distinguished in the aerial photographs dated May 2007 and August 2007, but it is unlikely that is the same boat I saw during my site visit due to it being absent in subsequent aerial photographs, and the different shape and size of the boat currently stored at the site.
9. Various vehicles can also be seen in different positions in most of the aerial photographs, apart from those dated March 2012 and April 2015 (on account of them being blurred) and September 2018. Those vehicles may have been moving or stopping momentarily at the times the photographs were taken, but Mr Langley explained that Mr Vurc often had lorries visiting the site to drop off or pick up wood, some of which would be loaded and/or parked overnight in preparation for deliveries. It was also said that a Jeep and tractors were parked there, and Mr Vurc's SD refers to him parking a pick-up truck there. Mr Langley explained that three lorries are now regularly parked on the land, and that family members often park on the land when visiting and/or seeing to horses. There is no evidence to dispute these claims or to lead me to doubt them.
10. The claims in respect of parking are consistent with the aerial photographs showing vehicles in different positions over the years. As random snapshots in time, alongside the evidence of the witnesses, the presence of numerous vehicles in different positions across the site in the aerial photographs is a strong indicator that vehicles have been parked on the land consistently since at least 1999. The numbers and positions of vehicles during those random snapshots suggests the parking of vehicles on the land has been at a low level, but beyond what may be described as ancillary or incidental to any other use of the relatively small site.
11. The site is skirted by thick vegetation including trees with extensive canopies. It is possible that items may have been stored in the open which are not visible in the aerial photographs due to those canopies, but I have not been provided with clear

descriptions of specifically what such items may have been, where they may have been located, or how long they may have been stored there. However, it is likely that cars have been stored, rather than parked, in the yellow circled area in the appellant's aerial photograph dated April 2020 since at least that date, despite them not being clearly visible in the aerial photographs dated July 2021 and April and August 2024. This is on account of tree canopies and the similar arrangement of dilapidated cars seen in that area during my site visit, together with the explanation provided by Mr Langley in his oral evidence that they are used for banger racing.

12. The aerial photograph dated September 2018 shows the site to be overgrown at the time Mr Langley became its owner, compared to the closest other aerial photographs provided, dated April 2015 and April 2020. Mr Langley explained that Mr Vurc has been suffering from ill-health since 2017/18, and that when he purchased the site it was covered in wood and was "well-overgrown". On removing the green waste, chalk laid by Mr Vurc was discovered underneath. This is consistent with my interpretation of the aerial photographs dated December 2000, December 2001, May 2007, and August 2007 which show bright white areas.
13. It was put to Mr Langley during cross-examination that the site may have been described as "almost abandoned" when he bought it, which he agreed with. However, as Mr Langley is not a planning or legal expert, I do not take this as confirmation that any use of the site had been abandoned in a planning/legal sense. Indeed, it is not part of Ms Middleton's evidence that the September 2018 aerial photograph shows the abandonment of any use. Furthermore, various items can be seen in the photograph at that time, including what was referred to as a mobile home, small caravan and wood being stored. Although it is unclear from the aerial photographs whether vehicles were parked on the land between June 2013 and April 2020, the evidence of Mr Vurc and Mr Langley is that they were.
14. The aerial photographs indicate a more organised arrangement of the site since 2018, with less vegetation present. Mr Langley has also accepted that his use of the site may be much more active than Mr Vurc's previous use, but there is no evidence to suggest that the scale or character of the use may have changed in a fundamental way. As such, based on the available evidence, it is unlikely that there has been a material change of use at the site through intensification since its sale in 2018, or any other substantial interruption to the use of the site going back at least 26 years, including through abandonment.
15. In addition to the above, Mr Vurc and Mr Langley have referred to the following items being stored on the land at various points throughout their ownerships, which stretch back over 26 years: a 54-seater coach, three tractors with various attachments, Land Rovers, a digger, a rotavator, a trencher, bales of hay, skips, a roller, a chain harrow, and silage. There is no evidence to dispute this. Moreover, the aerial photographs support claims that such a broad range of items have likely been stored in the open on the site consistently for a substantial period, rather than being ancillary to, or part and parcel of, any agricultural use of a wider area.
16. It is not necessary for all of the above items to have remained in place on the land for ten years each without being moved to substantiate a lawful open storage use. Some of these items may have stayed on the land longer than others, some may have been stored for very short periods, and some may have been moved around the site. Similarly, it is not necessary for the same vehicles to have each been parked on the land over 10-year periods. What is important in the context of this

appeal is the land continued being used for a mix of open storage and parking, with no single primary use for at least ten continuous years.

17. There is little evidence to suggest the site has been used as a demolition yard or any kind of distinct demolition contractor use. No evidence has been presented to show recent overnight parking of two lorries owned by demolition contractors is anything other than consistent with how the site has been used over more than 20 years. The fact that vehicle operator licenses for two lorries have been registered at the site in the name of a demolition company/contractor does not lead me to doubt the site has remained in use for open storage and parking purposes. Although new aggregate may have been laid to create hard surfacing within the site, it has not been shown that demolition related items or waste being offloaded at the site has likely brought about a material change of use.
18. In summary, it has been stated in the SDs and in Mr Langley's oral evidence given under oath that a broad range of items have been stored in the open and vehicles have been parked on the land consistently for at least 26 years. There are serious implications where false or misleading information is provided under such circumstances, and I therefore assign significant weight to that evidence, which is consistent with the aerial photographs showing various items on the land since at least 1999, and is not contradicted by any other evidence. As a matter of fact and degree, the aerial photographs show what has been described by Mr Vurc and Mr Langley, and the use of the site has remained consistent for at least ten years preceding the application without there being any abandonment or material change of use. I have not been provided with evidence which makes the appellant's accounts of the use of the site less than likely.
19. The evidence initially submitted as part of the application lacks detail, and it is difficult to correspond the items referred to in the SDs and the Supplementary Planning Document with what can be seen in the aerial photographs. However, in the context of the claims being made, and alongside the oral evidence provided and what I saw during my site visit, I find the evidence now available is sufficiently precise and unambiguous to issue an LDC as sought.

Conclusion

20. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the mixed use of the site for open storage and parking purposes was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act.

L Douglas

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Stephen Whale Counsel instructed by Phil Rowe on behalf of the appellant

He called

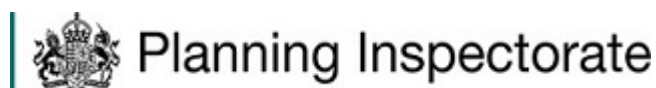
Matthew Langley Owner of the site

FOR THE LOCAL PLANNING AUTHORITY:

Peter Cruickshank Counsel instructed by Femi Nwanze, Tandridge District Council

He called

Hannah Middleton Tandridge District Council



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 30 September 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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:

It has been demonstrated on the balance of probabilities that the land edged in red on the attached plan has been in a mixed use for the open storage of various items and the parking of vehicles for a continuous period exceeding ten years prior to 30 September 2024 and that the site remained in such use on that date. On the evidence available, as a matter of fact and degree, there has been no substantial interruption of that use during that period, including by way of abandonment or material change of use (including any material change of use through intensification). It is therefore more likely than not that the mixed use of the site for the purposes of open storage and parking was lawful on the date of the application for a certificate of lawfulness of an existing use, with regard to sections 171B and 191 of the Town and Country Planning Act 1990 (as amended).

Signed

L Douglas

Inspector

Date: 06th May 2025

Reference: APP/M3645/X/24/3357978

First Schedule

Mixed use of open storage and parking, being a use which does not fall within any use class specified in The Town and Country Planning (Use Classes) Order 1987 (as amended) (a 'sui generis' use)

Second Schedule

Land at Parast, Broadbridge Lane, Smallfield, Surrey RH6 9RD

IMPORTANT NOTES – SEE OVER

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: 06th May 2025

by L Douglas

Land at: Parast, Broadbridge Lane, Smallfield, Surrey RH6 9RD

Reference: APP/M3645/X/24/3357978

Scale: Not to Scale

