



Appeal Decision

Site visit made on 8 November 2025¹

by **A U Ghafoor BSc (Hons) MA MRTPI FCI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 19th November 2025

Appeal Ref: **APP/B1550/X/23/3335755**

Clovelly, Chelmsford Road, Rawreth SS11 8SY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended ("the 1990 Act")) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mrs Sharon Morris on behalf of Brian Tibbs & Sharon Morris T/As Clovelly Works against the decision of the Rochford District Council.
- The application Ref 22/00990/LDC, dated 11 October 2022, was refused by decision dated 13 July 2023.
- The application was made under section 191(1)(a) of the Act.
- The proposed development for which a certificate of lawful use is described in the decision notice as follows: "for the existing use of units and open areas for B2 (General Industrial), B8 (Storage or Distribution) and E(g) (uses which can be carried out in a residential area without detriment to its amenity)".²

Decision

1. The appeal is dismissed.

Reasons

2. The onus of proof is firmly upon the appellant whose own evidence does not need to be corroborated by independent evidence to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous on the balance of probability.
3. On the one hand, the appellant's claim is a simple one, namely, that the existing use is immune from enforcement action due to the passage of time. On the other hand, the Council focused on the current use of units 1, 3, 10d, and 13. It concluded that these have not been in continuous use for the requisite period of 10 years preceding the date of the application. However, for reasons that will become clearer later, the approach taken by the parties is incorrect. This is because the evidence presented must show that the existing use, as described in the LDC application, was instituted on or before 11 October 2012 and that use continued thereafter for a period of 10 years without significant interruption. Taking account of guidance found in the National Planning Practice³ (PPG), it is for the applicant to precisely describe what is being applied for and clearly identify the land to which the application

¹ The appeal turns on the facts of the case and relevant planning law and whether the specific matter is lawful as defined by the 1990 Act. Planning merits are not relevant at any stage in this process nor are actual or perceived issues relating to the handling of the LDC application. I do not consider a site visit was necessary to determine the appeal but, since I was in the locality, I made an unaccompanied visit. I have all necessary evidence to hand, and I proceed on this basis.

² For my banner header I have adopted the description of the existing use from the decision notice as this is precise. The site address is taken from the application form.

³ Paragraph: 005 Reference ID: 17c-005-20140306 and 17c-010-20140306.

relates. In that context, there is significant confusion as to what exactly is being applied for and which part of the estate it relates to.

4. The appellant states that the LDC application site comprises a parcel of land sandwiched between a frontage property and shop, which is named Clovelly, and an area of land that is subject to a recent planning permission⁴. The latter being an extension to the original works and is accessed via an internal road that runs through the LDC application site. They maintain the application concerns the industrial estate rather than any one barn, garage, workshop, yard or building.
5. The claim is that the tenants perform a wide range of light industrial and storage operations, and this activity was recognised as evidence in support of the recent planning application. The units are used as workshops, manufacturing kitchen cabinets, parking signs, furniture/cabinet maker, and a stone mason. There are motor trade servicing, repairs, refurbishment, valeting/cleaning operations, car, boat and caravan storage. There are offices, secure warehousing, open-air storage of materials or commercial vehicles such as heavy goods vehicles, flatbed trucks, plant and equipment. There are builders' yards and about 27 storage containers.
6. For the following reasons, the appellant has incorrectly identified the relevant planning unit. Applying principles established in a line of judicial authorities following *Burdle*⁵, the area outlined in red on the LDC application site does not, to my mind, form a single planning unit in a mixed or composite use. The application site may well be under single ownership, but the evidence presented clearly shows smaller units that can be recognised as the site of activities which amount in substance to a separate use both physically and functionally. As a matter of fact and degree, I consider that each unit should be treated as forming a self-contained planning unit.
7. The appellant has supplied images of business rates valuation taken from the government's website. However, the information shows local taxation valuation of each unit, but it does not unambiguously spell out the characteristics of the unit's use to define it with significant degree of precision. For example, it does not show the primary, ancillary or incidental activity. Additionally, there is conflicting evidence because email correspondence between the appeal parties appears to suggest further subdivision of units in general industrial uses. To my mind, the quantum of evidence presented does not clearly, precisely and unambiguously show each building's use is characteristic of a general industrial activity, storage, distribution or operations classified in Class E(g) of the schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) ("the UCO").
8. Apart from generalised assertions there is a lack of precise evidence showing past and present occupiers for all units. There is limited detailed explanation about the extent and scale of each unit's use on or before the relevant date. Nevertheless, letters of support are provided from some of the tenant companies. However, there is limited information about the nature and type of activity on or before the relevant date. The statements do not clearly show when occupation and use commenced and how they have continuously used the unit for a specific purpose.
9. In the absence of detailed and clear evidence, it is difficult to reach a firm conclusion on when the claimed existing use within each unit was instituted. The quantum of evidence presented is lacking in specificity as to the character of each unit's existing use and the nature, level and scale of the activity throughout a 10-year period. The appellant's bundle does not

⁴ Council ref 21/00869/FUL granted 30 June 2022.

⁵ *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207.

support the contention that the existing use claimed began on or before the relevant date, let alone that use continued without significant interruption for a period of 10 years.

10. Even if a different view is to prevail on the planning unit point, I do not consider sufficient evidence has been provided to show when the mixed or composite use of the whole LDC application site for general industrial, storage or distribution, or use falling in Class E(g) to the UCO commenced. This is because the quantum of evidence does not show the nature, scale and level of mixed activity throughout a 10-year period.
11. My decision is likely to be disappointing, but I must determine the appeal based on the written submissions and my analysis and evaluation of the evidence before me, irrespective of the Council's muddled approach. Nonetheless, as the PPG says at paragraph: 009 Reference ID: 17c-009-20140306, a refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented. The latter is relevant in this case because of the extent, nature and quality of the evidence presented about the existing use.

Conclusion

12. Drawing all the above threads together, I find that the quantum of the evidence presented does not clearly or unambiguously show that the existing use, as described by the appellant, is immune from enforcement action due to the passage of time and does not satisfy lawfulness. Although my reasons for dismissing the appeal differ from those given by the Council, ultimately, the decision to refuse the LDC application was well-founded.
13. For the reasons given above, and having considered all other matters raised, I have exercised accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

A U Ghafoor

INSPECTOR