



Appeal Decision

Site visit made on 14 February 2026

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

an Inspector appointed by the Secretary of State

Decision date: 10th March 2026

Appeal Ref: APP/J0405/C/24/3342980

Land at Turweston Hill Farm, Brackley Road, Turweston NN13 5JB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the “Act”).
- The appeal is made by Mr Ian Francis Jones against an enforcement notice issued by the Buckinghamshire Council.
- The enforcement notice was issued on 15 March 2024.
- The breach of planning control as alleged is the change of use of the land to residential and the laying of hardstanding facilitating the unauthorised use.
- The requirements of the enforcement notice are to 1) Permanently cease the unauthorised use of the Land 2) Permanently rip up and remove the tennis court and hardstanding on the Land shown hatched on the plan 3) Permanently remove the nets, fencing and any other such items facilitating the unauthorised use from the Land, and 4) Permanently remove any debris or materials from the Land that comes as a result of complying with Steps 1-3 of this Notice.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (d) and (a) of the Act.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Ground (d)

1. The onus of proof is upon the appellant. 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 dismiss the appeal, provided the appellant’s evidence alone is, on the balance of probability, sufficiently precise and unambiguous.
2. Essentially, the appellant’s argument is a simple one, namely, the alleged matters are immune from enforcement action due to the passage of time. The material change in use of the area targeted by the notice occurred on or before 15 March 2014. Effectively, they argue that the cross-hatched area, which is outlined in black on the site plan attached to the issued notice, and includes a full-sized tennis court referred to in the notice as the laying of hardstanding facilitating the unauthorised use, was part of a large parcel of land that had changed to incidental residential use. For convenient shorthand, I will refer to this area as “the notice land”.
3. On the other hand, the Council argue the land in question has either been agricultural or used in connection with horiculture. They claim the appellant has not provided sufficient evidence to substantiate this challenge for example, there is absence of sworn testimony, or first-hand evidence, and the aerial images submitted are from publicly accessible website. Be that as it may, full grounds of appeal supporting this challenge and a statement of case has been submitted.
4. As the Planning Practice Guidance indicates, anyone with an interest in the land, or neighbours, may have evidence which is relevant. If that evidence supports immunity claim, it is up to the appellant to produce it, if they choose to do so, in

- support of the case. Similarly, if the Council has evidence of its own to disprove the appellant's case, then, instead of sitting on it, they should produce it and explain why their evidence undermines or casts significant doubt over the veracity of the appellant's claims.
5. Now then, I have detected a fundamental misunderstanding of concepts relevant to the determination of this appeal. First, time limits are set out in s171B of the Act and the recent change to the law is of no consequence in this case. Sub-section (3) of the provision explains: where there has been a breach of planning control consisting in the carrying out of a material change in use, *no enforcement action may be taken after the end of the period of 10-years beginning with the date of the breach* [emphasis added]. Judicial authority has, consistently, held that any 10-year continuous period can count for immunity purposes. The relevant period is therefore 10-years from the date of the breach, and any ten-year period is relevant. So, in the context of this challenge, the material facts need to show when the notice land's incidental residential use commenced and whether it continued thereafter for any 10-year period without significant interruptions.
 6. Second, it is important to point keep in mind that curtilage defines an area of land in relation to a building and not a use of land. It is often the case that the concept of "curtilage" and "planning unit" are confused: they are distinct and separate. The planning unit is a concept evolved as a means of determining the most appropriate physical area against which to assess the materiality of change in the use of land. The two will sometimes cover the same area on the ground, but that will not always be the case and does not in any event mean that they are the same thing.
 7. The leading authority is the case of *Burdle*¹. The assessment is a matter of fact and degree, and as a useful working rule, it should be assumed that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.
 8. Third, applying the established principles to Turweston Hill Farm, it includes a detached dwellinghouse that sits in a spacious and landscaped plot. The surrounding land said to extend 20 hectares is agricultural in nature and there is an established equine-related business. Each activity takes place in separate parcels of land. As a matter of fact and degree, I consider that, within a single unit of ownership or occupation, there are two or more physically separate and distinct areas occupied for substantially different and unrelated purposes and each area used for a different main purpose forms a planning unit. That approach is broadly consistent with the third situation identified in *Burdle*.
 9. The Council refer to an invalid application for planning permission relating to the erection of a tennis court and it described the previous use of the notice land as equine². However, it does not necessarily mean that a new planning unit had been created when the tennis court was built.
 10. Fourth, when dealing with immunity related to a change of use of land from agriculture to incidental residential use, it is worth reading the *O'Flynn* judgment³. Although it relates to an existing use lawful development certificate, the concepts

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

² Council ref 21/03007/APP.

³ *O'Flynn v SSCLG & Warwick DC* [2016] EWHC 2984 (Admin).

are relevant to this ground of appeal. Here it was held there were two alternative routes by which it is possible to establish that an incidental residential use of a site was lawful assuming that a claimant was able to establish that an incidental residential use was in existence at the relevant time.

11. The first route was to establish no enforcement action could be taken in respect of an existing incidental residential use within the curtilage of the dwellinghouse because, by virtue of the exception in s55(2)(d) of the Act, it did not constitute "development". That route does not apply here because the notice land does not fall within the curtilage to the main dwellinghouse. The second route was to establish that no enforcement action could be taken in respect of an existing incidental residential use because the 10-year time limit for enforcement action had expired. The *O'Flynn* case also established that, while maintenance and/or recreational use do not necessarily denote incidental residential use, it will depend on the facts of the case. These activities are quintessentially carried out by householders on land as incidental to their use of a dwelling and ought to be considered.
12. Turning to the facts of this case, the appellant relies heavily on aerial images of the site. The Council argue that the submitted photographs show an area devoid of any residential paraphernalia and they only show an empty and fenced off field in an oval shape. However, by 2013 a pond had been constructed for ducks and geese, an orchard had been created and ornamental flowers planted. An oval pitch, which the appellant says was used for sports, had been created, but the tennis court came in about 2016. The images also show the notice land is manicured and maintained: I too observed that the texture, strength and overall quality of the grass seem to indicate regular maintenance.
13. The Council say that the duck pond was meant to be part of an approved drainage scheme linked to agriculture. The inference drawn is that the pond cannot be unauthorised. There is a problem with this line of argument. There is also a large pond located to the south of the notice land, which the agent says is the one referred to by the authority. I observed that the large pond is set some distance away from the notice land.
14. On its own the duck pond does not sufficiently demonstrate an incidental residential use, because such a feature could be provided for wildlife purposes on any field. However, prior to the construction of the tennis court in 2016, the land on which the pond had been built, which includes the area outlined in the notice, had undergone significant change due to the planting of an orchard, ornamental plants, the creation of an oval pitch for sports and the regular mowing and maintenance of grass. Taking all these considerations together, the evidence presented clearly shows the physical alterations changed the land's appearance, profile and layout resulting in a sense of domesticity in about 2013, which is before the relevant date.
15. The appellant explains that the notice land, including the area where the pond and orchard exist, was first used as a domestic garden before the relevant date. It was mainly used by the appellant's family as a place for leisure, sport or outdoor recreation including exercising dogs. The activities included regular mowing of grass and maintenance of trees and plants. The children used the oval pitch as a place to play football: the goal posts are stored on the land, and their current condition speaks volumes. Tennis playing was formalised once the court was built in 2016. When considered together, I find the nature and type of these activities

can be reasonably characterised as domestic and functionally linked to the occupation and use of the main dwellinghouse.

16. Although a snapshot in time, the Council has not provided any firm evidence of its own to contradict or make less than credible the submitted aerial photography and the appellant's version of events. The evidence presented clearly corroborates the claim that the notice land underwent physical changes to its layout and makeup in around 2013 and the incidental residential use was instituted at the time. I find that the definable agricultural/equine character of the notice land changed to residential on or before the relevant date.
17. There is nothing to cast any doubt or undermine the veracity of the appellant's claim that the notice land's incidental residential use continued thereafter without any significant interruption, and that was the circumstance at the time when the notice was issued. Given the scale of the activity combined with the physical alterations made to the notice land, including the construction of a large tennis court, enforcement action could have been taken at any point in time prior to the date of the notice.

Other matters

18. The appellant's agent points to the 4-year immunity period and says that is applicable to the tennis court, which was substantially completed in 2016. There is certainly some merit in the argument that the tennis court, given its size and scale, cannot be reasonably regarded as ancillary or subordinate. Given my findings above, and applying the judgment in *Caldwell*⁴, it follows that the notice cannot require its removal because the engineering operations comprised in the construction of the tennis court were substantially complete in 2016. In addition, the tennis court came after the material change in the use of the notice land – it did not facilitate it. That said, for the reasons given above, as I have found the alleged matters immune from enforcement action, there is really no point in varying the requirements prior to quashing it.

Conclusion

19. My inescapable conclusion is that, for the reasons given above, based on the available evidence, I find that the incidental residential use began on or before the relevant date and continued thereafter for a period of 10 years without significant interruption.
20. For the reasons given above, and having considered all other matters raised, I conclude that the appeal should succeed on ground (d). The enforcement notice will be quashed. In these circumstances, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act does not fall to be considered.

Formal decision

21. The appeal is allowed and the enforcement notice is quashed.

A U Ghafoor

INSPECTOR

⁴ *Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council* [2024] EWCA Civ 467.