



## Appeal Decision

Inquiry Held on 15 September 2020

Site visit made on 22 July 2020

**by Elizabeth C Ord LLB(Hons) LLM MA DipTUS**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 9<sup>th</sup> October 2020**

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### **Appeal Ref: APP/C3430/X/20/3248280**

#### **Former Munitions Depot, Lawn Lane, Coven**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Telford 6 Ltd against the decision of South Staffordshire Council.
  - The application Ref 19/00897/LUE, dated 27 November 2019, was refused by notice dated 8 April 2020.
  - 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 *The storage of materials and goods, also the parking of transport and wagons. Vehicles include (but not limited to) a range and scale of commercial vehicles. Wagons include (but not limited to) a range of box trailers, curtain side trailers and flatbed trailers. These uses related to the site as a whole as they utilise the vehicular access from Lawn Lane, the extensive hardstandings located throughout the site and also the adjacent land within the curtilage of the site.*
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### **Decision**

1. The appeal is dismissed.

### **Application for costs**

2. At the Inquiry two applications for costs were made. One by the appellant against the Council and the other by the Council against the appellant. These applications are the subject of separate Decisions.

### **Main Issue**

3. Whether the uses of the site for storage of materials and goods, also the parking of transport and wagons, has occurred on a continuous basis in breach of planning control for such a period as to render the use immune from enforcement action under section 171B of the Town and Country Planning Act 1990.

### **Preliminary Matters**

#### *Validity*

4. The date on which a valid application was made is in dispute and this resulted in an issue over whether the appeal relates to non-determination or refusal.

However, the parties agree that however this is resolved, for pragmatic reasons, the appeal should proceed to a conclusion. I agree.

5. The problem arose over the submission of the red-line boundary plan, required by the Town and Country Planning (Development Management Procedure)(England) Order 2015, and consequently when exactly the Council had sufficient information to validate the application. This, in turn, led to dispute over when the eight week determination period in article 39(10) of the Order ran from. Article 39(12) of the Order states that a valid application is one that complies with article 39(1) to (4) and is accompanied by the appropriate fee. In this case (1) and (2) are most pertinent as they together provide that the application must specify the land to which the application relates and be accompanied by a plan identifying the land.
6. The appellant submitted a red line boundary plan to the Council on 16 December 2019. However, this outlined a larger area than the appeal site. Another red line boundary plan was submitted on 27 January 2020 showing the same red line but this time with an internal blue line around the appeal site. A third red line boundary plan was submitted on 12 February 2020, correctly outlining the appeal site in red and an area to the north in blue.
7. The appellant submits that the 16 December plan was sufficient for the Council to validate the application and, as the Council did not determine the application within eight weeks from then, the appellant's appeal on 4 March 2020 was properly made. The Council on other hand says that validation could not take place until 12 February when the correct site boundary plan was submitted, and therefore it was within the eight week period when it issued its Refusal Notice on 8 April 2020.
8. Article 39 of the Order is clear that the plan must identify the land to which the application relates. It must be the actual land that the applicant is applying for a certificate on, and it should be shown by means of a red line boundary. This was not done until 12 February 2020 and consequently, the Council were within their rights not to validate the application until then. Therefore, the Council was within time for issuing its refusal notice on 8 April. Consequently, this is an appeal against the Council's refusal to grant a certificate.

#### *Other matters*

9. The appeal was started under the written representations procedure and was subsequently changed to an Inquiry on the appellant's request. The reason for the change was the Inspector's need to take evidence on oath in relation to conflicting factual evidence. The Inquiry took place virtually using the *Teams* application and evidence was taken on oath remotely.
10. Whilst an accompanied site visit took place before the Inquiry was opened, the details of the visit were publicised as part of the written representation procedure, therefore affording an opportunity to interested parties to attend. Consequently, nobody was disadvantaged by not having a site visit after the Inquiry was opened.
11. Although a draft Statement of Common Ground was submitted, it became apparent at the Inquiry that there was significant disagreement over its content. Consequently, it was withdrawn.

12. The appellant also withdrew an unsigned Statutory Declaration by a witness relating to use of the site between 1974 and 1986. This is because the witness had confirmed that he had mistakenly referred to the wrong site.
13. The parties made their closings and costs applications in writing and I closed the Inquiry in writing thereafter.

## Reasons

### *Legal considerations*

14. Section 191(2) of the Act states that uses and operations are lawful at any time if (a) no enforcement action may be taken in respect of them and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force. A use will be lawful if the time for enforcement action has expired.
15. Accordingly, in this case, to satisfy the requirements of s191(2)(a) the appellant needs to demonstrate, on the balance of probability, that the time period of ten years set out in s171B(3) is met, beginning with the date of the breach, and that the use was continuous. Furthermore, if this immunity period is satisfactorily demonstrated, the appellant must also establish that there has been no intervening material change of use between the end of the relevant ten year period and the date on which lawfulness is determined. The date on which the lawfulness is determined is the date the application was determined to be valid, in accordance with the above mentioned Order and s191(4) of the Act.
16. At the outset, it is important to establish exactly what is being applied for. In this regard, clarification is needed on whether the "*storage of materials and goods*" and the "*parking of transport and wagons*" constitute one single primary use, or two separate primary uses, or two primary uses constituting a mixed use. The appellant's agent initially gave evidence that these were two primary uses, but thereafter seemed to indicate that they were one use. The appellant's proof and closing submissions do not read as though the application is for two primary uses and, as the thrust of the evidence points to one single use, that is how I shall treat the application.
17. This use appears to correspond to the B8 use of storage and distribution although, when asked whether this was what was being applied for, the appellant said it was the descriptive use it was seeking a certificate for. Therefore, I have considered this appeal on the basis that I am being asked to certify the use of the land for one single primary use for "*storage of materials and goods, also the parking of transport and wagons.*"

### *The current site*

18. The red line boundary shows land that is part of a larger site, the latter of which encompasses the appeal site and an area to the north owned by the appellant. For ease of reference, I shall call this larger area "the wider site", and within it, the area to the north "the northern site" and the area under appeal "the appeal site".
19. Currently, the wider site is one large internally open area enclosed by trees/hedgerows, with one common access from Lawn Lane situated on the appeal site. The appeal site and the northern site have an open border and are

not separated from each other by any obvious landmarks or boundary structures. A concrete driveway runs into the appeal site from the Lawn Lane access and there are large areas of concrete hard standing and some planed areas on the appeal site.

20. At the time of my visit a number of dilapidated built structures, which were probably war bunkers, were apparent in the south west of the appeal site. There was also a derelict wooden structure, and towards the middle of the wider site, a large rubbish mound containing rusting vehicle scrap, amongst other things. There were in the order of 30 vehicles/storage units scattered mainly around the appeal site. These included trailers, containers, portacabins and caravans, many of which appeared old and unused. The northern site seemed mainly to be overgrown green field with few structures. There were also large areas of rough, overgrown greenery and shrubs on the appeal site.
21. The appeal site did not appear to be in active use, and I note that on the appeal form that the appellant has answered "nil" when asked to state the actual use at the time of application.
22. I noted from my observations that there is currently no significant physical or functional separation between the appeal site and the northern site, nor indeed did there appear to be any other obviously separate areas within the wider site. The appellant, when referring to the appeal site on the application form, stated that the uses applied for "*relate to the site as a whole as they utilise the vehicular access from Lawn Lane, the extensive hardstanding located throughout the site and also the adjacent land within the curtilage of the site.*"
23. Consequently, it would appear that the appeal site is now part of a larger planning unit which constitutes the wider site. However, before making a determination on this, previous uses must be considered, and also any changes in the planning unit which may have occurred over time.

#### *Previous uses*

24. The appellant states on the application form that the use applied for began on 1 January 2003, although the appellant's evidence, including its proof and counsel's closing submissions, relates to a somewhat longer period. Therefore, I will consider the time period for which evidence has been submitted.
25. It is undisputed that the land was used as a Heavy Anti-Aircraft Battery during World War II and thereafter as a Territorial Army Centre. The bulk, if not all, of the man-made structures associated with these uses appear from historical plans to have been sited in the south on the appeal site. The wider site was bought by a Mrs Beryl Perry in 1971 and possibly her husband, and occupied by at least one or other of them up to November 2014 when Mrs Perry died. In 2018 the wider site was bought by the appellant and remains in the appellant's ownership.
26. The appellant has no first hand knowledge of the site's use prior to acquiring it in 2018 and consequently relies solely on documentary evidence of usage prior to then. Taken from the appellant's closing submissions, that evidence comprises (i) the planning history of the site; (ii) two appeal decisions in relation to the site (1984 and 1994); (iii) aerial imagery (2003 to the present); and (iv) streetview imagery (2003 to the present). There is also evidence from interested parties which is of relevance.

(i) *Planning history*

27. The Council has provided an unchallenged historical chronology as follows:

- 23.10.62 – caravan site – refused
- 10.9.63 – use of underground shelters for explosive storage – approved
- 8.10.63 – use of buildings for commercial storage and bays for coal storage – refused
- 17.5.66 – use of land for dismantling and disposal of scrap vehicles – refused
- 1972 – outline permission for clay pigeon shooting – approved
- 9.6.1976 – Clay Pigeon Shoot and ancillary buildings – refused
- 17.9.80 – two caravans for daytime use in connection with agricultural holding – refused
- 8.8.1983 – farmhouse – refused and appeal dismissed
- 30.9.83 – enforcement notice against the siting of two caravans (one residential, one office). An appeal decision of 5.9.84 dismissed the residential caravan but with a compliance period of one year and granted a two year temporary permission for the office caravan
- 20.5.1986 – retention of mobile home – refused
- 11.1.1994 – agricultural dwelling refused. Appeal subsequently dismissed and Inspector's challenged decision upheld on 23.3.1995
- 27.01.1998 – re-roofing of agricultural building

28. This planning history appears at least in part to relate to the wider site.

29. The 1984 appeal extended to the whole of the wider site.

30. There is some confusion over the exact area of the 1994 application, but it appears to have included the northern site and at least some of the appeal site. Mr Perry's 1994 appeal was accompanied by a location plan marked "Plan No.1", which encompassed the wider site except the gun area in the south west. However, in paragraph 2 of the appeal decision the Inspector said that it was the red edged area of "Plan No. 2" that encompassed the site, with Mrs Perry's remaining land being outlined in blue. This, he said, superseded "Plan No. 1". However, "Plan No. 2" has not been put in evidence, although the Council officer under oath said it included the wider site. Also, paragraph 16 of the appeal decision takes account of "*use of the remains of wartime structures*", which were in the south-west.

31. The 1997 application form, relating to the 1998 decision on the re-roofing of an agricultural building, states that the use of land/building at the time was for agriculture. Also, the site location plan comprises the whole of the wider site. There is a cross hatched area in the south west, which is on the current appeal site, but it is unclear whether this relates to the agricultural building.

32. My assessment of this evidence overall is that there is nothing in the planning history which demonstrates the single use of the appeal site to be for storage

of materials and goods/parking of transport and wagons. On the contrary, it suggests other primary uses.

(ii) *Appeal decisions*

33. The two appeal decisions of 1984 and 1994 contain factual observations which are helpful in drawing conclusions on past use around those times.

*Inspector's 1984 decision*

34. This provides the most cogent evidence of what was happening on the site over the period prior to the Inspector's decision and consequently it merits some detailed examination.

35. It relates to the enforcement notice of September 1983, which required the cessation of the siting of two caravans (one for office/storage purposes and one residential) on the wider site, which was referred to as "*The Old Gunsite*". The appellant was Mrs Beryl Perry, and the appeal was heard by way of inquiry and consequently the Inspector was able to make a detailed assessment of the site.

*Contents of the decision*

36. The Inspector's decision contains informative comments, especially within paragraph 5, which refers to the factual background. Of particular note are the following observations:
- Mr and Mrs Perry formerly owned a large transport and plant hire business with depots in Wednesfield and Bilston. They bought the site in 1971 when there appeared to have been four gun emplacements, an ancillary workshop, store buildings and a number of huts on site.
  - They intended to set up a clay pigeon shooting range and clubhouse, financed, amongst other things by running down the transport business. After obtaining planning permission for the project in 1972, they started to clear the site. However, detailed approval was refused in 1976. There was no appeal and no attempt to submit further details. The transport business had been closed down.
  - The Perries got into financial difficulties and a small touring caravan was brought on site for Mr Perry to live in. They used some of the buildings on site for calf rearing. They brought a mobile home onto the site and Mr and Mrs Perry moved into it in 1980 and were still living there at the time of the enforcement inquiry. The touring caravan became an office and store.
  - When the Council's Land Agent inspected the site in July 1983, stock seen on site comprised 20 beef cattle, 10 horses and some free range poultry. Mr Perry said there were also sheep in one of the buildings but the Land Agent did not see them. A second inspection in July 1984 noted livestock comprising 3 calves, one Shetland pony and 3 other horses, 5 goats and a number of poultry. When the Inspector visited the site after the inquiry there were 8 calves, 2 goats, about 21 geese, 3 riding horses, chickens, hens, ducks and about 20 cats.
  - The inspector noted that the grassed part of the site lacked top-soil over quite a large area but that there were three mounds of top-soil that

could be spread. The Perries had removed some of the site's top-soil earlier as payment in kind for the loan of a machine for laying drainage.

- The Inspector also noted on site a cattle truck, a jeep, 3 tractors, various pieces of agricultural machinery, about a dozen goods vehicles and goods vehicle tractor units, as well as a number of cars, some unserviceable, and a considerable quantity of scrap, mostly vehicle scrap.
37. The Inspector then related Mrs Perry's case. Paragraphs 6 and 7 are of note, in which she submitted, amongst other things, that the caravans were merged within a group of buildings and structures used for agricultural purposes, and that the primary use of the site was for agriculture. She said that she and her husband were farmers, who bred and kept livestock and used the land for grazing.
  38. The Council did not challenge the agricultural use of the wider site but rather the use of the caravans on site (paragraphs 10 and 11).
  39. The inspector found the caravans to be for office and storage use, and residential (paragraph 12). At paragraph 13, in the context of considering permitted development on agricultural land, he said that the land was an agricultural unit of more than one acre.
  40. The Inspector comments on Mr Parry's evidence at paragraphs 16 to 18 where mention is made of buying and selling farm animals and poultry, rearing calves and keeping geese, ducks and hens. Paragraph 20 speaks of the Perries reclaiming the site, levelling and grading the field and laying drainage on it, building a barn and cattle pens and an internal road to the pens. At paragraph 25 the Inspector accepts that Mrs Perry is engaged commercially in stock rearing.
  41. Paragraph 27 on the other hand, in the context of assessing viability, comments on land being unpromising for restoration to agricultural use, with much work still needed to be done. The Inspector also refers to the so-called complex of farm buildings being cluttered with old vehicles and vehicle scrap so that it did not give the impression of a farm.
  42. My assessment of this evidence is that from the 1970s to 1984 (the date of the inquiry), the site had gradually been converted to agricultural use, albeit its viability was questionable, and the overall site was not in good order. Nonetheless, it is clear from the Inspector's decision that works had been carried out on the land to facilitate the keeping of livestock and that attempts had been made to reclaim some of the land for grazing. The presence of livestock and grazing horses was observed. Whilst considerable work still remained to be done to make it a viable agricultural holding, my reading of the decision is that agriculture was a primary use of the site. In fact the Inspector explicitly said that the site was an agricultural unit of over one acre.
  43. Although the Inspector made reference to a previous transport business, he indicated that this had been wound down. Whilst the date of business closure is unclear, my reading of the decision is that it was by about the mid-1970s. In any event, the decision suggests that the business was operated off site.
  44. Whilst some goods vehicles and lorry cabs were present on site at the time of the inquiry, there is no suggestion in the decision letter that this evidenced

goods storage/vehicle parking as the sole primary use of the site. Neither could this conclusion flow from the reference to the presence of a number of cars, some being unserviceable, and a considerable amount of scrap, mainly vehicle scrap. Indeed, goods storage/vehicle parking could not be the sole primary use because, for the reasons given above, agriculture was clearly a primary use at that time. Neither is there any evidence of a physical and functional separation of these vehicles from the primary agricultural use and so it cannot be inferred that they were on land constituting another planning unit with its own primary use.

45. Therefore, my conclusion is that, even if the storage of materials and goods/parking of transport and wagons were a primary use on the site, it was not the single primary use, due to a primary agricultural use occurring at the same time.

*Inspector's 1994 decision*

46. Although it is unclear exactly what land is covered by this appeal, it is nonetheless of evidential value as it relates to at least part of the appeal site and the northern site, with the uncertainty attaching only to the south west gun area.
47. The appeal relates to an agricultural dwelling and proceeded by way of a hearing. There was no dispute that the land was used for agriculture, and the Inspector assessed the proposal against the then extant PPG7 Annex E, which dealt with agricultural and forestry development.
48. Paragraph 8 refers to Mr and Mrs Perry having built up a successful pedigree pig breeding enterprise. The Inspector noted at paragraph 10 that on his site visit he saw that materials had been acquired for new pens and buildings to replace others lost in a fire on site. When considering the character of the area at paragraph 14, he also referred to the remains of former wartime buildings and present farm buildings "hereabouts", although it is not clear whether he meant on site.
49. At paragraph 16 the Inspector comments on the Perrys' good use of the remains of wartime structures, the removal of considerable amounts of concrete, the restoration of fields and installation of field drainage and other improvement measures derived from their long association with this land.
50. My assessment of the contents of this decision is that a primary use of the land at that time was agriculture. Nowhere does the Inspector refer to storage/parking of transport either on the site under consideration, or in the wider area when considering character. Consequently, it cannot be deduced that the sole primary use of the appeal site was for goods storage and vehicle parking.

*Aerial imagery*

51. Google Earth aerial photographs have been submitted from 2003 to 2019. Whilst it is sometimes difficult to interpret the details exactly, they nonetheless provide a good overall indication of use. The images are as follows:
52. *1/1/2003*. This shows the wider site as largely green fields. The World War II structures are clear in the south west corner, as are the access road/driveway and a relatively small area of hardstanding in the south east. In the centre of

the wider site some debris is apparent, the nature of which is difficult to decipher. On the appeal site, there seem to be about four or five objects which could be trailers/wagons and about four cars on the driveway, together with a few other buildings/structures. There is no indication that the buildings/structures are used for commercial goods storage. Despite these man-made structures, the appeal site appears predominantly green fields with some shrubs/trees.

53. *12/5/2006* and *14/4/2007*. These views are similar to that of 2003 but with less cars on the driveway.
54. *1/1/2010, 9/4/2011, 20/4/2016, 26/3/2017, 5/4/2018*. Again, the views are similar to previous images but there appear to be less vehicles and the appeal site is even greener.
55. *14/5/2019*. There is significantly less vegetation on the appeal site and about half a dozen trailers/wagons are apparent and at least one car.
56. My assessment of these images is that they provide some evidence of a few commercial vehicles in various places on the appeal site. However, the extensive greenery in all but the 2019 image suggests that a primary use of the land was agriculture from 2003 to at least 2018. Therefore, they do not demonstrate that the sole primary use of the site was for goods storage/vehicle parking.

*Street view imagery*

57. Google Street View imagery has been submitted from September 2011 to August 2016. This simply shows the access from a vantage point on Lawn Lane. The use of the appeal site cannot be deduced from any of these images.

*Interested parties' evidence*

58. No interested parties gave evidence on oath but their written submissions, precised in the Council's proof of evidence, nonetheless carry weight.
59. A Councillor's statement (received by the Council on 5/3/20) spoke of an increase in the amount of trailers/wagons stored on site in the last 12 months. The Parish Council's representation (received by the Council on 12/3/20) talks of local knowledge indicating that the land was agricultural prior to 2019. The Ramblers Association's statement (received by the Council on 3/3/2020) says the containers started arriving on site less than 18 months ago. Reference is made to a walk done on 14 January 2014 when no large trailers or containers were stored on the drive of the property, which was then known as "Greenacres Farm". Rather, peacocks were noted on the farm.
60. Other letters from neighbours referred to no containers being on site until 2019 or arriving 12 to 18 months ago. One talks of the land being used as a smallholding until Mrs Perry passed away about five years ago. It also makes reference to going on site as a volunteer from a local animal rescue to deal with animals left behind, namely horses, sheep, peacocks and cats. It goes on to say that no HGVs or containers were stored on site at that time.
61. My assessment of this evidence is that it contains nothing to support 10 years continuous use as goods storage/vehicle parking.

*Overall Conclusion*

62. First, I will consider the planning unit over time. There is little evidence before me to suggest that historically there has been a physical and functional subdivision of the wider site into smaller planning units, including into the appeal site and the northern site. Indeed, neither party's case is based on that premise. From the evidence, the wider site seems to have been used as one large area with a single access, which is spoken of variably as "*The Old Gunsite*", "*Greenacres Farm*" and "*The Former Munitions Depot*". The 1984 decision clearly relates to the wider site, as does the 1997 planning application.
63. Consequently, taking my site observations and all the evidence before me into account, I find that the planning unit is and has been throughout the relevant time, the wider site.
64. Turning to the use on site, the evidence of storage/parking is sparse and patchy in nature and there is little prior to the aerial images of 2003 onwards, to demonstrate such a use in any significance. The single mention of some goods vehicles and goods vehicle tractor units (lorry cabs) present on site at the time of the 1984 inquiry, only provides evidence of possible use at that stage, not of usage before or after. A primary use at that time was agriculture. Therefore, the sole primary use could not have been storage/parking. No supporting evidence of the use applied for has been submitted from then until 2003.
65. The aerial images from 2003, 2006 and 2007 show what looks like a small number of trailers/wagons. Those of 2010, 2011, 2016, 2017 and 2018 show even less trailers/wagons, although the 2019 image shows a few more. However, the presence of a handful of vehicles scattered over a small part of the appeal site does not demonstrate that the sole primary use was for goods storage/parking. On the contrary, the images generally show green fields and vegetation, which is indicative of a primary agricultural use. This is corroborated by interested party evidence, which states that the use of the site until recently has been agricultural. Although it would seem from the submitted documents and my site visit that the scale of storage/parking has been greater more recently, even then it is only on a small scale compared to the size of the planning unit. Whilst there may have been a mixed use at some stage, this is not what is applied for.
66. In conclusion, there is insufficient evidence to demonstrate on a balance of probabilities, that the sole primary use over a continuous 10 year period has been for the storage of materials and goods, also the parking of transport and wagons. Consequently, the appeal is dismissed.

*Elizabeth C Ord*

Inspector

## **APPEARANCES**

### FOR THE APPELLANT:

Mr C Hawley of Counsel

He called

Mr J Nugent BA(Hons), Planning Executive with Brownshore  
MSc, MRTPI, CSML Management

### FOR THE LOCAL PLANNING AUTHORITY:

Mr P Riley-Smith of Counsel

He called

Mr K Denton BA(Hons), Planning Officer with South Staffordshire Council  
PGCE, MA, MRTPI, FRGS