



TOWN AND COUNTRY PLANNING ACT 1990

Section 195

APPEAL AGAINST THE REFUSAL OF A CERTIFICATE OF LAWFULNESS FOR
THE EXISTING USE FOR

THE AMALGAMATION OF THREE FORMER PLANNING UNITS INTO ONE FROM
2006 WITH THE FORGE ACCOMMODATION, LULSCOTT, SILVERIDGE
AND THE USES FORMALLY APPROVED AT THE OLD FORGE AREA OF
THE SITE BECOMING ONE ENTERPRISE,

A. THE BUILDING KNOWN AS LULSCOTT IS LAWFUL AND HAS A HOLIDAY
ACCOMMODATION USE,

B. THE USE OF THE FORMER SILVERIDGE AREA OF THE SITE FOR THE
PLACEMENT OF 2 STATIC CARAVANS USED FOR HOLIDAY
ACCOMMODATION AND THE RETENTION OF THE BUILDING TO THE
REAR OF THE FORMER SILVERIDGE AREA OF THE SITE AS HOLIDAY
ACCOMMODATION,

C. THE USE OF THE LAND ACROSS THE SITE FOR THE PARKING OF
VEHICLES WITHIN IN ASSOCIATION WITH THE USES ON THE SITE,
NAMELY;

HOLIDAY ACCOMMODATION, OFFICE, CAR REPAIR, GARAGE AND CAR HIRE
AT THE OLD FORGE BRISTOL ROAD FELTON BS40 9UR

Planning Inspectorate Ref: APP/D0121/X/20/3252913

Local Planning Authority Ref: 20/P/0204/LDE

Statement of case

9 April 2021

Introduction

1. This statement covers the essence of the council's case for the refusal of a certificate of lawfulness application (reference 20/P/0204/LDE) at The Old Forge Bristol Road Felton BS40 9UR.

Location and site description

2. The council will describe the location of the appeal site and its characteristics.

Planning history

3. The council will describe the planning history of the appeal site.

The application

4. A certificate of lawful use application was submitted on 20 January 2020.
5. The uses identified in the description on the application form are:

The uses formerly approved at The Old Forge area of the site becoming one enterprise

The building known as Lulscott for holiday accommodation.

The use of 2 static caravans for holiday accommodation and building to the rear of Silverridge for holiday accommodation

The use of the land for the parking of vehicles in association with the uses on the site namely holiday accommodation, office, car repair garage and car hire.

6. However, the statutory declaration of Mr Wedlake signed 23 January 2020 says the application is for

The creation of a new planning unit before 2006 with the amalgamation of the three formerly separate areas into one known as The Forge Accommodation.

The holiday B and B accommodation at the site

The associated “accommodation with parking” offer across the site.

The continuation of the existing uses considered lawful at The Old Forge aspect of the site which already lawfully comprise a mixed use of residential, bed and breakfast, car repair, office and associated parking and the spread across the wider site since 2006 of the car hire parking and establishment of car hire as a lawful use.

Parking across the site in accordance with the use by staff, customers and visitors for all of the businesses operating at the site.

7. On 30 April 2020 the application was refused for the following reasons

The evidence available to the Council does NOT establish that, on the balance of probabilities, the said use, operations or matter occurred on or before 20 January 2010 and has not been discontinued or abandoned since that date.

The said use, operations or matter constitute a contravention of the requirements of an enforcement notice in force, namely

EN/0715 (issued 5 September 1969) -- the use of land as a car park shall be discontinued.

EN/09/0034 (issued 17 March 2009) -Cease the use of the land for the parking of vehicles unconnected to the authorised use of the land,

remove all vehicles from the land which are unconnected to the authorised residential use, cease the use of the land as a reception centre for the operation of a vehicle parking business. This includes use of the land for receiving vehicles for parking, for the distribution of those vehicles, for the transportation of people leaving their vehicles at the site, for people returning to the site to retrieve their parked vehicles and as a base for the vehicles necessary for the transport of people leaving vehicles at the reception centre.

EN/03/0138 (issued 15 October 2003) -Cease the use of the land for vehicle parking and as a vehicle parking reception facility for airport passengers and other paying customers.

The council's case

Background

8. On 22 September 2014 the council received a complaint that 4 Church View, a property to the rear of the appeal site, was being used as letting rooms and airport parking in connection with The Forge. This prompted further investigation into the whole site, now known as The Forge Accommodation, and resulted in the submission of a Certificate of Lawfulness application for existing use on 11 December 2014. The application was described as

“three former planning units have merged and been run as a single enterprise providing holiday accommodation (class C3) with incidental parking for in excess of 10 years”.

9. The appellant was advised the application would be refused because the evidence submitted with the application was unclear, imprecise and ambiguous, that the council held evidence which disputed the applicant's claim and the use was in breach of extant enforcement notices. The application was withdrawn.

10. A second Certificate of Lawfulness for existing use was submitted for the change of use for the Lulscott building from residential to bed and breakfast provision on 9 May 2016, alongside a retrospective application for the change of use from residential to the provision of 9no. bed and breakfast letting rooms (use class C1). Both applications were placed on hold whilst an application to redevelop the whole site was considered. Planning application 17/P/1245/F to redevelop the site with a 47 bed hotel was approved on 3 September 2018 but has not yet been implemented.
11. At the end of 2019 the council was awarded funding to tackle unauthorised airport parking sites in the Green Belt. As a result, the appeal site was included in daily monitoring of all unauthorised airport parking sites. This prompted a third application, the subject of this appeal, to establish lawful use of the site.

The legislation

12. S191 of the TCPA allows for any person to ascertain whether a use is lawful by making an application for the purpose to the LPA specifying a land and describing the use, operations or other matter. Uses and operations are lawful at any time if

no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time has expired or for any other reason); and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

13. S191(4) states

“If, on an application under this section the LPA are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the LPA or a description substituted by them, they shall issue a

certificate to that effect; and in any other case they shall refuse the application.”

14. The burden of proof in these applications is on the applicant and the relevant legal test is on the ‘balance of probabilities.’ If there is no evidence that the LPA have of their own to contradict or undermine the applicant’s version of events, there is no good reason to refuse the application provided the applicant’s evidence is sufficiently precise and unambiguous to justify the grant of a certificate.
15. An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. This does not preclude another application being submitted later on, if more information can be produced (Paragraph: 005 Reference ID: 17c-005-20140306, revision date: 06 03 2014)
16. The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.
17. In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability (Paragraph: 006 Reference ID: 17c-006-20140306, revision date: 06 03 2014).

18. A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is, however, advisable to seek the applicant's agreement to any amendment before issuing the certificate. A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented (Paragraph: 009 Reference ID: 17c-009-20140306, revision date: 06 03 2014).

The determination of the application

19. It is the council's case the application could not be considered lawful because, in summary:

Notwithstanding the evidence held by the council conflicts with the appellant's version of events pre 2010, it is accepted The Old Forge, Silveridge and Lulscott operate as one planning unit and this occurred before the relevant date, 20 January 2010. The application, as submitted included reference to a mix of uses across the site including car hire, car repair, bed and breakfast and vehicle parking. The vehicle parking use is defined by the appellant as 'with accommodation parking.' The 'with accommodation parking' is a primary use in a mix of uses that is in breach of extant enforcement notices.

In the alternative, the council holds contradictory evidence to show the appellant's business operations of using satellite sites for vehicle parking in conjunction with the appeal site, continued until at least 2017. If the 'with accommodation parking' is not considered in breach of the extant enforcement notices, then it is a new primary use, a new chapter in the planning history, and a material change in a mix of uses on the site that occurred within the relevant 10 year period.

The introduction of 4 Church View in 2014 was a new chapter in the planning history of the site, introducing a new mix of uses and extending the planning unit. This was a material change of use that occurred within the relevant 10 year period.

The planning unit

20. The application as submitted indicated several primary uses operating across the site. In such cases, where there are no physical divisions between them, and it is impossible to identify two or more separate planning units, then the site is within a mixed use.
21. In assessing what comprises the planning unit, the proper starting point is the entire unit of occupation. This was clearly set out by Bridge J in *Burdle v SoS for the Environment* 1972:

“In determining what was the appropriate planning unit a useful working rule was to assume that it was the whole unit of occupation, unless and until some smaller unit could be recognised as the site of activities which amounted in substance to a separate use both physically and functionally”.

22. Even though an occupier may carry on a variety of activities, and it is not possible to say one is incidental or ancillary to another, it is well settled in the case of composite uses where the component activities fluctuate in their intensity from time to time, but the different activities are not confined within separate and physically distinct areas of land, then the correct planning unit is the entire unit of occupation which is in a mixed use. While it is possible for a single unit of occupation to be separated into two or more physically separate and distinct areas occupied for substantially different and unrelated purposes: in such cases each area would be considered as a separate planning unit. However, both physical and functional separation is required because without functional separation the ancillary link remains and, without physical separation, no smaller physical area can be defined – per *Burdle* (above).

23. The concept of a new planning unit, obliterating any previous use rights (were such to exist) is well established. In *Prosser v Minister of Housing and Local Government* 1968 Lord Denning MR held that existing use rights can be lost by an occupier obtaining and implementing an inconsistent planning permission. The matter was ultimately considered by the House of Lords in *Newbury District Council v SoS for the Environment and International Synthetic Rubber Co Ltd* 1980 in which the House reviewed previous authorities, including *Prosser* and concluded that existing use rights can survive the grant of a new planning permission but that where the obtaining and implementation of that permission whether that be for building or a change of use leads to a change in character bringing about a new planning unit then existing usage rights are extinguished. Their Lordships concluded that a pure change of use could result in a new planning unit extinguishing any existing use rights, but that more commonly physical alterations to the site such as the erection of new buildings will cause a new planning unit to be brought into existence.
24. In *Jennings Motors Ltd v SoS for the Environment*, Lord Denning MR stated:
- “The new building could open a new chapter in the planning history, thus bringing to an end previous existing use rights, but only if there was such a radical change in the nature of the buildings on the site or the uses to which they were put that the change amounted to a fresh start in the character of the site.”*
25. In *Stone and another v Secretary of State for Communities and Local Government and another* [2014] EWHC 1456 (Admin), the court agreed two separate planning units had been created when Area D was subdivided into two planning units when the residential use was severed from the mixed use of residential and the storage of (non-scrap) vehicles. The storage of vehicles use had become subsumed into the wider site and because of this, existing use rights had been lost.

26. Contrary to the applicant's claim, the council has not accepted any of the mix of uses are lawful but has confirmed, on the balance of probabilities, the holiday accommodation, the car repairs and car hire have operated on the site for the relevant 10 year period. These uses share an office and they share parking across the site. There is no physical or functional separation, it is not possible to define any area belonging to any of the individual primary uses and the extent of how the uses have changed is unknown. However, it is clear the site is in a mixed use and operates as one planning unit but the appeal site is not the entire planning

Changes to the planning unit

27. To establish lawfulness for the mixed use claimed the relevant date is 20 January 2010.
28. The decision notice refers to a 1969 enforcement notice. It is accepted that this would have been superseded by the notice issued in 2003 and including it within the reasons for refusal was an error. However, the following notices are relevant:
29. On 15 October 2003 the council issued a further two enforcement notices, relevant to this appeal (reference EN/03/0138) on land at The Old Forge and Lulscott. The notices were upheld at appeal on 20 October 2004 with corrections.
30. The breach of the enforcement notice for Lulscott was amended to

'The change of use of land from residential to a mixed use of residential and vehicle parking including vehicle parking reception facility for airport passengers and/or other paying customers and associated works.'

31. The requirement of the notice included ceasing the use of the land for vehicle parking and as a vehicle parking reception facility for airport passengers and other paying customers.

32. The applicant challenged the 2004 appeal decision for The Old Forge on the basis that the Inspector had wrongly extinguished the claimants established lawful parking use of the site, or at the very least, she had failed to reach a conclusion on whether it was an existing lawful use.

33. The breach of the enforcement notice was amended to

“the change of use of the land from a mixed use of residential, bed and breakfast and vehicle repair use to a mixed use of residential, bed and breakfast and vehicle repair and vehicle parking, including vehicle parking reception facility, for airport passengers and other paying customers.”

34. And the requirements included

“Cease the use of the land as a vehicle parking reception facility, for airport passengers and other paying customers.”

35. On 17 March 2009 the council issued an enforcement notice on land at Silveridge for

The change of use from caravan site for one gypsy family with conditions restricting the number of caravans to two to a caravan site and vehicle reception facility with office for vehicle parking.

36. The requirements of the notice included

Cease the use of the land for the parking of vehicles unconnected to the authorised use of the land.

Remove all vehicles from the land which are unconnected to the authorised use.

Cease the use of the land as a reception centre for the operation of a vehicle parking business. This includes use of the land for receiving vehicles for parking, for the distribution of those vehicles, for the transportation of people leaving their vehicles at the site, for people returning to the site to retrieve their parked vehicles and as a base for the vehicles necessary for the transport of people leaving vehicles at the reception centre.

37. It is the appellant's case that he has operated all three properties as a single planning unit and has offered 'with accommodation parking' since 2004 using a business model known as Motel accommodation. Bookings predominantly include 7 days free parking.
38. The appellant's 2006 decision reference is the appeal decision dated 21 December 2006. The court remitted the 2004 appeal decision for The Old Forge part of the site back to the Inspectorate to reach a clear conclusion on whether the claimant had established use rights to use the site for commercial parking. A second inquiry was held, and the Inspector found there had been an element of commercial parking at The Old Forge for a period of more than 10 years before the notice was issued but found, at most, only 5 or 6 commercially parked cars could be accommodated, and that was considered optimistic. The Old Forge is now part of a much larger planning unit.
39. The current use of the appeal site for 'with accommodation parking' extends far beyond 5 or 6 cars within The Old Forge area. In any event, the existing use rights afforded for commercial parking at The Old Forge were lost when the planning unit changed, and the site was incorporated with Lulscott and Silverridge. The 'with accommodation parking' occurs across the wider site and it is the most significant part of the mixed use.
40. The 2003 public inquiry considered a third enforcement notice which was issued for the use of agricultural land at Cross Paddocks and Square Close for vehicle parking. The appeal was considered under ground (f) only but is relevant because cars were deposited and collected from The Old Forge and moved to a satellite sites for the greater part of the period for which they

parked. The appellant operated a minibus to transfer customers between the airport and the appeal site. These satellite sites were not considered as part of the planning unit of The Old Forge, however, their use was found to change the nature of the business on the site. It is the council's case the appellant continued to operate in this way until at least 2017 and therefore, should the current 'with accommodation parking' be considered different to those operations or different to the breach identified in the extant enforcement notices, this primary use is a material change in the mix of uses which has occurred within the relevant 10 year period and is therefore not lawful.

41. The appellant acknowledges in the past he has operated large scale airport parking operations at other sites in the area, and this matter was considered as part of the 2004/2006 enforcement appeals. The appellant claims that he has reverted to the lesser parking uses in accordance with the 2006 decision but gives no definitive date. The council holds evidence to demonstrate the use of satellite sites, in conjunction with the appeal site, continued until at least 2017, and as the Inspector said in paragraph 36 of the 2006 appeal decision, which is still relevant,

'the pattern of use is obscured to some degree by competing demands of various uses on the site.... nevertheless, the volume of vehicles being processed at the site for commercial parking is now much greater than the ancillary use required.'

42. It is the council's case the 'with accommodation parking' is not an incidental use. It is a primary use in the mix of uses across the site. The appellant says guests either stay at the beginning or end of their holiday for one night and their vehicle remains on site for up to 7 days for free. Whilst the owners of the vehicles are in occupation on site, the parking is incidental. Once the owner's leave their vehicles on site, the parking becomes a primary use, in breach of the extant enforcement notices referred to above.
43. Another material change in the planning unit within the relevant 10 year period is the incorporation of 4 Church View in 2014. Previously a residential property,

the appellant bought the site and converted it into letting rooms, retaining a portion of the property for his son to live in. The adjoining boundary was opened, and the land was used for vehicle parking. The access to the property was also used in conjunction with the wider site. This was a material change of use, introduced a new use into the mix of uses and extended the planning unit. It is unknown if the property itself still functions as part of the overall planning unit because the boundary fence was reinstated early 2020 and the property was put on the market as a 2 bed bungalow. However, part of the land has been retained and is still in use in connection with the wider site. This later change also indicates a further change in the planning unit.

44. In summary referring to the application description

The amalgamation of three former planning units into one from 2006 with The Forge Accommodation, Lulscott, Silveridge and the uses formally approved at The Old Forge area of the site becoming one enterprise

45. The amalgamation of The Forge Accommodation, Lulscott and Silveridge cannot be considered lawful because there have been material changes to the planning unit and to the mix of uses within the relevant 10 year period, post 20 January 2010.

The building known as Lulscott is lawful and has holiday accommodation use.

46. This does not suggest the appellant is applying for building operations falling under s171(B)(1). The council therefore did not consider the building operations separately from the use.

The use of the former Silveridge area of the site for the placement of 2 static caravans used for holiday accommodation and the retention of the building to the rear of the former Silveridge area of the site as holiday accommodation.

47. The Silveridge area of the site forms part of the wider planning unit in a mixed use. It is not physically and functionally separate from the rest of the site. It

cannot be considered lawful because there have been material changes to the planning unit and to the mix of uses within the relevant 10 year period, post 20 January 2010.

The use of the land across the site for the parking of vehicles within in association with the uses on the site, namely holiday accommodation, office, car repair, garage and car hire.

48. 'With accommodation parking,' as described by the appellant, is not ancillary to the mixed use of the site. It is a primary use, in breach of extant enforcement notices and therefore cannot be considered lawful. To note, the office use on site is not a separate use, it is an ancillary use.

49. **Comments on the appellants case**

50. Under the heading of Lulscott, the appellant refers to the High Court decision and the remitted decision following. This is an error. The remitted decision was for The Old Forge area of the site only. The appeal decision in 2004 upheld the Lulscott enforcement notice, of which is referred to at paragraph 30 of this statement.

51. In the same paragraph reference is given to the findings of the court that the use of the land for vehicle parking had subsisted lawfully in excess of 10 years for approximately 10 cars for commercial purposes on the Old Forge area and that this extended to the other areas on site as part of the amalgamation. This is incorrect. The enforcement notice for The Old Forge area of the site was remitted back to the Inspectorate. The Inspector concluded there has been an element of commercial parking at The Old Forge for a period of more than 10 years before the notice was issued but found that character was much different to the current operations on site and, at most and optimistically, only 5 or 6 commercially parked cars could be accommodated. The Old Forge, at that time, had not been incorporated into the wider planning unit and therefore it could not have been accepted the use had spread across the site.

52. It is not possible to define any area of the appeal site that is in a single use. The office and parking around the site are shared between all uses. A split decision is therefore not possible.
53. The appellant has misinterpreted traffic counts carried out by the council as direct monitoring of the site. This is incorrect. Traffic counts previously referred to were carried out to inform future works to the A38. The vast volumes of traffic movements to and from the site were noticeable and brought to our attention by highways officers.
54. The appellant has been provided with Trip Advisor reviews.