

**Report to District Development
Management Committee**



**Epping Forest
District Council**

Report Reference: DEV-012-2016/17
Date of meeting: 28 September 2016

Subject: EPF/1227/16 - Mossford Green Nursery, Abridge Road, Theydon Bois - Certificate of Lawful Development for existing use of site for storage of vehicles, caravans, motorhomes, trailers and machinery.

Responsible Officer: Ian Ansell (01992 564481)

Democratic Services: Gary Woodhall (01992 564470)

Recommendation(s):

(1) That the Development is Lawful.

Reason:

- 1. Having regard to the evidence submitted the Council is satisfied that the existing use of the land for parking and storage of vehicles, caravans, motor homes trailers and machinery has been extant for a period in excess of 10 years. The unit therefore benefits from existing use rights and is immune from any potential enforcement action.**

Report:

1. This application was considered at the meeting of the Area Planning East Sub-Committee on 7 September 2016. The Sub-Committee raised concerns as to whether sufficient evidence had been provided to show that the use was lawful and a vote resulted in 5 Members voting for the recommendation to grant the Certificate and 5 against. The Chairman used her casting vote against the application and four Members exercised their right to require the application to be considered by District Development Management Committee. It was also requested, that a Council Legal representative should also attend.

2. In considering the application, Members should have regard that such applications must be determined on a balance of probabilities. Furthermore, where an applicant submits evidence of fact, the local planning authority is expected to give this significant weight, particularly if it is made in the form of a statutory declaration or affidavit (which it is), unless there is clear evidence to the contrary.

3. The application relates to storage of vehicles on specific areas on the site. Evidence of aerial photographs (both those supplied by the applicant and the Councils own independent database) support the contention that these areas have been hard surfaced and used for parking and storage at various times during the relevant period. In such circumstances, it is not necessary for the applicant to prove that all of the land has been used all of the time as there

will inevitably be periods where vehicles, particularly caravans, trailers and camper vans would be in use and away from the site. Officers are satisfied that in this context, there is sufficient evidence to grant the Certificate.

4. The report on the application presented to the Area Plans East Sub-Committee is set out below.

REPORT TO AREA PLANS EAST SUB-COMMITTEE ON 7 SEPTEMBER 2016

This application is before this Committee since it is for a Certificate of Lawfulness in respect of existing use where the recommendation is that the development is lawful contrary to an objection from a local council (Pursuant to The Constitution, Part Three: Scheme of Delegation, Appendix 3)

Description of Site:

The application site lies to the east side of Abridge Road, the site has a single access to the road and limited road frontage. It is located between the northern and eastern boundaries of the adjacent dwelling, Highview and the western and southern boundaries of Hillcroft Nursery. The site houses a mix of uses and buildings, there is a chalet bungalow located centrally within the site. The land closest to the road frontage is used for recreational parking of motor homes, caravans etc. At the southern end of the site lie two buildings, the larger used for storage and the smaller for general vehicle repairs.

The surrounding area comprises open fields, other than the immediate neighbours above. The site and surrounding areas lies within the Green Belt..

Description of Proposal:

The application seeks a lawful development certificate for use of open areas of the site for vehicle storage, including caravans, motor homes trailers and similar. The application plan is specific in defining the areas so used, comprising a single large hard surface area at the south-eastern end of the site, two smaller areas between buildings along the southern edge of the site and along either side of the access road abutting the boundary with Highview.

The initial application was accompanied by a series of aerial photographs purportedly taken from Google Earth covering the period 2003- 2011 showing vehicles parked in various locations around the site. These also indicated a new largest area of storage was laid around 2005 – 06.

The application is further accompanied by the applicants bookings diaries from 2007 – 2012 showing records of bookings over different periods, the case officer has also seen a five year diary for the more recent period which remains actively in use for current bookings. A bank paying in book showing consistent payments of similar amounts (which the applicant advises are standard storage charges) has also been submitted. The applicant has also submitted 8 letters purported to be signed by customers who have stored vehicles at the site (including 5 from business occupiers) who state that they have stored vehicles and caravans at the site over a range of periods from the mid-1990's to the present day.

Following a request for more information, an additional statement was submitted by the applicant. The statement, in the form of a Statutory Declaration states that he has owned the site since 1995 and has stored vehicles in various locations since. In late 2005 (when the adjacent storage building was built), an existing hard surface to the east of the buildings at the southern end was cleared and redressed to allow further storage and the use has continued to evolve since that time. Throughout the subsequent period, areas of hard standing have continued to be maintained and renewed as required. Vehicles are parked for differing periods, agreements are usually for 6 month periods although owners may remove their vehicles for varying periods depending on the time of year. Demand and maintenance requirements mean that vehicles may have been moved around the site but the area of hardstanding has remained the same throughout the period.

Relevant History:

The site has an extensive planning history including applications for dwellings (all refused) and agricultural buildings (generally approved). The current applicant's name first appears on application submitted in 1995.

- EPF/0948/95 Workshop building approved – this is the building at the southern end of the site (see EPF/2267/14)
- EPF/0950/95 Use of dwelling for agricultural use approved.
- EPF/0119/96 Retention of entrance gates approved.
- EPF/2050/01 Dwelling in south east corner of site refused
- EPF/0842/05 Replacement agricultural building for breeding insects refused on the bulk of the building
- EPF/1355/05 Revised application as above approved. It should be noted that this is the building referred to in the applicant's declaration as being built in late 2005.
- EPF/1431/13 Change of use to allow 25 holiday let mobile homes / caravans refused on Green Belt grounds – this relates to the land at the northern end of the site
- EPF/0744/14 Revised application for 15 pitches approved
- EPF/2267/14 Lawful Development certificate issued for use of workshop building for vehicle repairs.

Policies Applied:

Not relevant to LDC applications.

Consultation Carried Out and Summary of Representations Received

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| Date of site visit: | 9 June 2016 |
| Number of neighbours consulted: | Four |
| Site notice posted: | No, not required |
| Responses received: | No response received from neighbours consulted. |

Comments have however been received from the Theydon Bois & District Rural Preservation Society and Theydon Bois Action Group. Comments from the former refer to the applications in 2013 and 2014 for holiday pitches and argue that the application would breach to conditions in those applications. Their view is that the permitted scheme sets the limits for caravans on the site. However, officers are satisfied that the site boundaries to which the permitted scheme relates are clearly identified in that application and do not include the land subject of the current application.

Comments from the later question the evidence submitted arguing that the aerial photographs are unclear as to the level of storage and the areas concerned. They note that the main hard surface area is not surfaces in the 2005 photo and only appears in November 2006 (less than 10 years ago). They also query whether the use was evident when the LDC application was considered in 2014.

Parish Council: Theydon Bois Parish Council object to the application as under:

'It is the Parish Council's view that the evidence supplied is not conclusive. In particular the aerial photos represent a snapshot in time rather than proof of any continuous use of the site. Who has validated the accuracy of the dates on the photographs? Two of the photographs appear to be identical although they have different dates on them.

There does not seem to be any significant intensification of the use of the site until 2010. Any vehicles on site prior to this date could be ancillary to the use of the site rather than being stored for any continuous period of time.

There is no lawful planning consent for anything other than that provided under applications EPF/0744/14 and EPF/2267/14. In conjunction with these applications, we assume that visits from the planning department were made and would have registered any activity going on at the site.

In conclusion the evidence does not appear to be sufficiently precise and unambiguous to justify the grant of a Certificate on the balance of probability'.

Main Issues and Considerations:

Council records are largely silent in relation to the parking of vehicles on the areas of land the subject of the application, photographs retained in the database tend to be specific to the proposals they relate to and general shots of the main hardstanding area are taken only in the last two years showing caravans parked thereon. A number of complaints have been investigated by the Enforcement Team in relation to caravans on the site, but these investigations have specifically been focussed on the land now benefitting from planning permission.

Thus, the primary evidence for consideration remains that submitted by the applicant. Officers have noted there is a consistency between the statement and the history of planning application submitted for the site.

The Council has undertaken a review of aerial photographs within its own database and have confirmed that these are consistent with the applicant's submission. These show vehicles parked on various parts of the application site throughout the ten year period, the number of vehicles increasing in more recent years. They also show the area which the applicant states was cleared on overgrowth and redressed with a new top surface, although it is impossible to verify this solely from the photographs which would equally support the objectors contention that this was a new hard surface. While noting the aerial photograph showing the hard surface is dated November 2006, less than 10 years ago, this of itself does not dispute the applicants claim that the work was carried out at the same time as the adjacent building (EPF/1355/05) some time between the granting of the permission for that building in September 2005 and the end of that year.

Officers have examined further the supporting evidence submitted in the form of diaries purporting to record bookings. A detailed analysis has been carried out of the 2007 entries which record the following:

- 46 identifiable separate entries
- 22 repeat entries for named entries later in the year
- 18 references to storing caravans, 2 to camper vans, 8 cars, 1 trailer, 1 container and 3 references to general storage.
- 7 entries, referring to inside storage and 4 to outside storage

Other diaries show a consistent approach to the monitoring of bookings.

Officers have therefore had regard to the tests in National Planning Guidance in respect of the determination of lawful development applications whereby 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. While noting the evidence does contain some gaps, there is a clear pattern that emerges from the applicants statement and supporting information..

It is evident that the overall level of storage has increased in recent years, the aerial photographs clearly demonstrate this incremental increase. Relevant case law on intensification (*in particular Herts CC vs SSCLG / M & W Recycling Ltd 2012*) suggests however that the evolution of a use will rarely result in a material change of use. For such a change to have occurred, it is necessary to establish that the use results in a definable change in the character of the land and operations. In this regard, it is apparent that the character of the land has not substantially altered. The areas used for housing vehicles have existed throughout the period, notwithstanding the point made by the objector in relation to the November 2006 photograph not meeting the 10 year period (the works to this area evidently took place between 2005 and 2006 and vehicles are shown in the photograph suggesting the surfacing work had been completed some time before) . No other evident alterations have been made to the land to accommodate additional vehicles. The pattern of activity also remains unchanged – vehicles are stored for differing periods and may be removed from time to time during that period on a random basis. As such, a change of use through intensification could not be argued.

Conclusion:

The evidence submitted by the applicant has been reviewed and found to be generally consistent with Council records both from the evolution of planning applications and aerial photographs. Officers attach considerable weight to the evidence of the diaries which show a clear pattern of storage of caravans and other vehicles and trailers over an extended period. It is also noted that there is little evidence that actually contradicts what has been submitted, including no comments or complaints from immediate neighbours.

The use has clearly increased but for the reasons above this has not resulted in a material change in the character of the overall use.

Thus, the evidence is sufficient to show on a balance of probability that the use is lawful.

Should you wish to discuss the contents of this report item please use the following contact details by 2pm on the day of the meeting at the latest:

**Planning Application Case Officer: Ian Ansell
Direct Line Telephone Number: 01992 564481**

**or if no direct contact can be made please email:
contactplanning@eppingforestdc.gov.uk**