

**Report to District Development Control
Committee**

Report Reference: DEV-003-2014/15
Date of meeting: 25 June 2014



**Epping Forest
District Council**

Subject: Planning Application EPF/2554/13 - Certificate of lawful development for retention of hardstanding and use of hardstanding for vehicle parking in association with dwelling and stables - 11 Mount End, Theydon Mount.

Responsible Officer: Katie Smith (01992 564103).

Democratic Services: Gary Woodhall (01992 564470).

Recommendation:

(1) That the application be approved for the following reason:

(a) The Local Planning Authority is satisfied that the development described is lawful by reason of the passage of time prescribed in Section 171(b) of the Town and Country Planning Act 1990 (as amended) having been met.

Report:

1. (Director of Governance) This application is reported to this Committee because the applicant is the spouse of Councillor Heather Brady and relates to property in their ownership. The Council's Constitution requires that planning related applications in such cases be reported direct to this Committee for determination and decision making.

Planning Issues:

Description of Site

2. The application site comprises land to the side and rear of 11 Mount End. It is loosely surfaced with gravel and has vehicle access from Mount End.

Description of Proposal

3. This application seeks the grant of a certificate of existing lawful development/use in respect of hard standing used for the parking of vehicles in association with the dwelling and stables.

Relevant History

4. None relevant.

Summary of Representations

5. Notification of this application was sent to Theydon Mount Parish Council.
6. The application has attracted the following responses:
 - THEYDON MOUNT PARISH COUNCIL. No objection.
 - 1 BEACHETT COTTAGE, THEYDON MOUNT. Support. We have visited the Brady family at 11 Mount End. I have parked my car and observed throughout this time numerous vehicles parked upon the land to the south of the property and stable yard on the hard standing.
 - 28 KINGSMEAD PARK, COGGESHALL ROAD, BRAINTREE. Support. I have visited the property over the last 20 years in my profession as a hairdresser and I have used the car park to the South of the property outside the hedge to park in. I have also noted various vehicles parked in the stable yard (that is beyond the metal gate in the car park) for at least 20 years.
 - GREAT TAWNEY HALL, STAPLEFORD TAWNEY. Support. I have known the Brady family for over 30 years. The area in question where Mr Brady stations his mobile caravan/motor home has been a hard standing for many many years.
 - TAWNEY BARN, TAWNEY COMMON. Support. I have over the last 20 years or so been spraying, fertilising and cutting the hedges of the fields around 11 Mount End and can confirm that the car park to the south of the property outside the hedge has been used to park in along with various vehicles parked in the stable yard for at least 20 years.
 - SCHOOL HOUSE, MOUNT END. Support. I have lived at the School House for some 25 years and have seen various vehicles continually parked upon the hard standing.
 - BARKERS FARM. Objection. There is a difference between a hard standing and a hard surface. The Brady's have a patch of ground covered with a scattering of stones, this is a temporary surface, best described as a hard surface. A hard standing should be a minimum of half a metre deep and have foundations. I do not believe that Mr Brady has used the area for a period of ten years or more. I walk around the area regularly and have never seen a vehicle parked where the caravan now is. The parking obstructs the route of horses coming and going from the stable block. Letters supporting the claim are not sufficient – solemn declarations/affidavits should be made. Has the Council looked at aerial photographs? Have they measured the depth of the hard area and does it have foundations? Have other neighbours been consulted?

Issues and Considerations

7. The only issues to be considered is whether or not evidence demonstrates that the Applicant's claim that the hardstand has existed for over four years and the parking use has taken place without interruption for a period of at least ten years is probable. There are therefore no national or local planning policy issues.

8. It is for the applicant to prove that the use is lawful. However, in case law, *“the Court has held (see F W Gabbitas v SSE and Newham LBC [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by “independent” evidence in order to be accepted. If the LPA have no evidence of their own, or 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”.*”

9. Accordingly, it must be determined whether there is sufficient evidence to prove, on the balance of probability, that the described use has taken place for a continued period of at least ten years and that the hard standing has been in situ for a period of at least four years.

The Applicant's Evidence

10. The Applicant's submitted evidence comprises a letter from the occupier of School House, Mount End. Subsequently further letters have been received during the course of the application which, with the exception of one, supports the claim.

The Council's Evidence

11. The area of hard standing is visible (along with the stable buildings) on aerial photography taken in 2004, 2007 and 2011.

Assessment of Evidence Available

12. Usually, as stated by the occupier of Barkers Farm, there is a requirement for supporting statements submitted accompanying applications for certificates of lawfulness to be witnessed. This is because greater weight can be applied to declarations made under oath when assessing the evidence provided.

13. However, in this case, the letters submitted support the Council's own aerial photography, which clearly shows the existence of the hard surface over the requisite period. On this basis, it is not necessary to seek additional evidence in the form of sworn statements.

14. Whether or not the surface which exists and is visible within the aerial photography constitutes a hardstanding or hardsurface is a matter raised by an objector. However, the Oxford Dictionary definition of a hardstanding is *‘an area with a hard surface for a vehicle to stand on’*. No definition is given in either The Town and Country Planning (General Permitted Development Order) or the Highways Act. Accordingly, it is not considered necessary for the surface to sit on foundations for it to be considered a hardstanding.

15. With regard to parking, the presence of vehicles within the site cannot be ascertained from the aerial photography (with the exception of one vehicle clearly visibly in the 2004 image). Furthermore, whilst there is supporting information from neighbouring occupiers in respect of this claim there is also a statement to the contrary from the occupier of nearby Barkers Farm.

16. In the instances described by the Applicant and within the supporting statement, the parking of vehicles would not be the primary use of the land. The parking would be ancillary to either the adjacent dwelling, or the stables to the rear. Furthermore, the hardstanding has clearly been erected for an intended use.

Ostensibly, that intended use will have been for parking and access. Accordingly, whilst the evidence submitted is not sufficient to demonstrate that the primary use of the land for the parking of vehicles is lawful, it is considered that the existence of the hardstanding for the period at least since 2004 along with the written evidence of neighbouring properties is sufficient to demonstrate (on the balance of probability) that the use has taken place for the required period.

17. An objection has been received and the content of the representation are largely irrelevant to the material facts of the application. However, two comments are notable. Firstly, the objector has not seen a vehicles parked previously in this position that a caravan is now parked; and secondly, that the location of the car parking is not logical in relation to access to the stables. With regard to the position of the caravan, for a use involving the parking of vehicles to become lawfully established it is not necessary for the parking to have taken place within the same very specific location and without interruption (i.e. as long as the use has occurred throughout the site and that vehicles are regularly parked this is sufficient - vehicles are able to come and go and change over time). In relation to the matter of where vehicles would logically be parked, the site is adjacent to a residential property and the stables are not commercially run. On this basis it is considered likely that the car parking would be managed to suit the Applicant's needs, even if this occurs in a way which may not seem logical to third parties.

Conclusion:

18. In light of the above appraisal, it is the opinion of officers that sufficient evidence exists to demonstrate on the balance of probability that the claim is lawful. The Committee should decide whether they agree with this recommendation. If Members do agree and a certificate is issued confirming the existence of the hardstanding and its use as lawful, it is recommended that this will be subject to limitations including that the use is incidental to the use of the stables and the residential property of 11 Mount End. Accordingly, the site would not form any extension to the existing residential curtilage.