

Mark Leedale Planning

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The Head of Planning,
Wokingham Borough Council,
Council Offices,
Shute End
Wokingham RG40 1WR.

Our Ref: BLP/24/288
17th August 2024

Dear Sir,

Bentley Lane Piggeries, Poplar Lane, Winnersh RG41 5JR

I enclose on behalf of my Clients, Mr and Mrs Taylor, an application under s.191 which establishes the following as being lawful under the meaning expressed in the Act. The colour notations relate to the submitted drawing MLP/02 and the “plan key MLP/02” for ease of reading.

1. Continued use of the buildings for agricultural purposes (Green).
2. The use of a land as a landscape contractors yard (Yellow).
3. The siting of buildings (lorry/van tops) on the land for various storage uses including for agricultural purposes (Red).
4. The storage of a mobile home (“1”) and 5no. touring caravans on the identified land (Blue).

All of the site edged red and associated buildings have been used for many years as a farm within the meaning expressed in the Act for agricultural purposes. The greater majority of the land and buildings is retained for these purposes notwithstanding that the commercial agricultural use ceased in 1998. Indeed some of the relevant buildings which are shaded in green on submitted drawing MLP/02 are derelict for this purpose although they remain in this lawful use. This is described in the statutory declaration (SD) of Paul Taylor.

The use of the landscapers yard (yellow on MLP/02) has been ongoing for the period which would render it as lawful under the meaning expressed in the Act. Thus whilst it has been the subject of local authority payments since March 2016, the SD sets out the longevity of the use which exceeds this period.

There are 10 former British Telecom (BT) structures on the land – photographed below on the north of the site - which are variously used for storage purposes and this is detailed in the SD. The majority of these have remained in one position since they were bought to the site and have a degree of permanence which would render them as “buildings” under the terms of *Cardiff Rating Authority Cardiff Rating Authority and Cardiff Assessment Committee v Guest Keen and Baldwin's Iron and Steel Co. Ltd [1949]*.

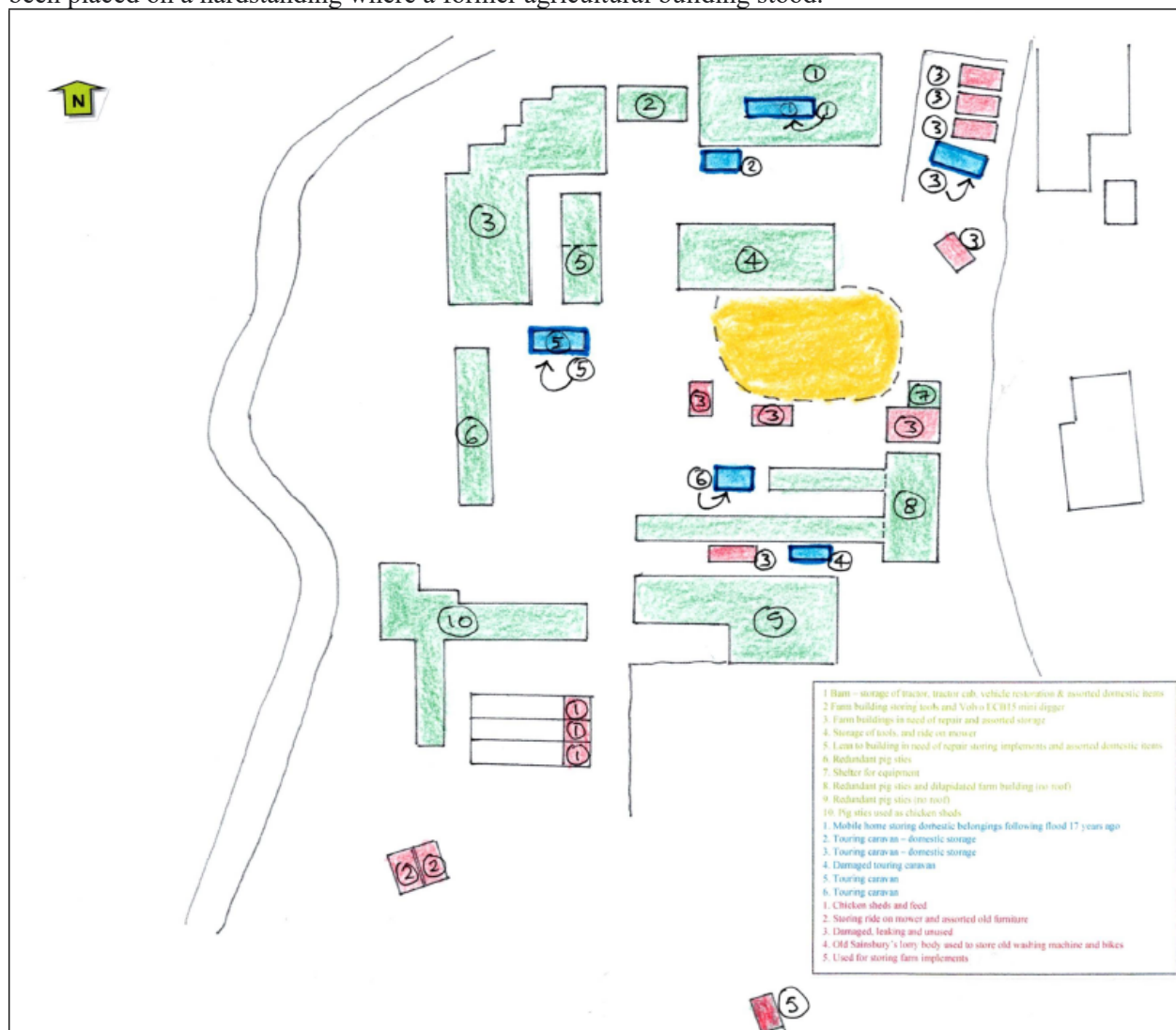
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The exception is the 3 units which are now used for chicken sheds and feed. These are identified on MLP/02 as "1" and are shown below on the extract from the plan. They have been placed on a hardstanding where a former agricultural building stood.



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Former BT van tops

The former agricultural building numbered 1 on the attached plan now accommodates a large mobile home and a car ramp as well as a tractor and lorry body. As is detailed in the SD, the mobile home stores various domestic items following a flood and is not occupied for any residential purpose. The car ramp is purely for domestic and hobby use and is not used for any commercial function.

The landscapers yard is shown in the submission and on the aerial images. The lean to shelter and Sainsburys lorry body (“7” green and “4” red, respectively on MLP/02) are detailed and are lawful under the meaning expressed in the Act, by reason of their longevity.

There are also various cars left on the land and these are either beyond their useful life or are awaiting repair before being made roadworthy for domestic use. The touring caravans are described in the SD and as with vehicles and various storage, are typical of a farm where discarded items are stored as there is space to do so.

In terms of the longevity of use, the submission is accompanied by dated aerial photographs which show the position in 2013, 2018, 2021 and the present. As can be seen from the images, the only material difference between the 2013, 2018 and later photographs is the 3 former BT units which now comprise “1” in red on drawing MLP/02. As stated above, these were moved to this position and placed on a hardstanding where a former agricultural building stood.

You will be aware that paragraph 8.12 of Annex A to the superseded Circular 10/97 states: *In many cases, the applicant for a certificate will be best placed to produce information about the present, and any previous, activities taking place on the land, including a copy of any planning permission he may hold. Some information, especially about the history of any unauthorised activity on the land, will be peculiarly within the applicant's knowledge.*

In this case, the site is secure and not subject to any public access. Indeed views into the land are restricted and the applicant’s evidence must be treated accordingly, unless another party has an alternative version of events, which would cast doubt on these submissions. We will respond to any such matters which arise.

The Circular details the test of the evidence as follows:

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8.15 *In appeals to the Secretary of State which raise "legal issues" (for example, enforcement appeals on grounds (b) to (e) in section 174(2)), where the burden of proof is on the appellant, the Courts have held that the relevant test of the evidence on such matters is "the balance of probability". As this test will accordingly be applied by the Secretary of State in any appeal against their decision, a LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "beyond reasonable doubt". Moreover, the Court has held (see F W Gabbitts 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".*

The PPG Note which replaces the Circular sets out and adopts similar guidance as follows.

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.

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.

As such, there is no requirement for the evidence to be wholly definitive and the local authority must issue a Certificate, unless it has contrary evidence of its own which would contradict the applicant's version of events. We respectfully suggest that the "balance of probability test" is well founded and made.

The aerial photographs and SD's show that the matters covered by the various notations are lawful under the meaning expressed in the Act. That is to say:

1. The green shaded buildings and uses as shown on MLP/01 are in agricultural use with some domestic storage therein.
2. The red shaded areas are buildings under the meaning of *Cardiff Rating Authority* or as annotated on MLP/02. Their use, as described, is for agriculture (1 and 5) and domestic storage (2, 3 and 4), although some are damaged, leaking and unused.
3. The blue shaded areas are touring caravans (2, 3, 4, 5 and 6) and a mobile home (1) used for domestic storage. The touring caravans are used for domestic storage some of which is traded at car boot sales but not on a commercial basis.
4. The yellow shaded area as a landscapers yard.

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On the basis of the foregoing and submitted evidence I trust that a Certificate will be issued and if I can be of further assistance please let me know.

Yours faithfully,

Mark Leedale

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cc Client

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