

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	242131
Site Address:	Bentley Lane Piggeries, Poplar Lane, Winnersh, Wokingham, RG41 5JR
Expiry Date:	13 December 2024
Site Visit Date:	18/10/2024
Proposal: Application for a certificate of lawful development for the use of the land for mixed agricultural and storage purposes and use of the land as a landscaper's yard.	

PLANNING HISTORY

Application No.	Description	Decision & Date
07441	Continuation of existing temporary as open storage for vehicles on a permanent basis	Approved – 19/01/1978 (personal permission linked to previous occupier. Use lawfully ceased in 1980 when Mr Paul Taylor and his family moved onto the site).

INFORMATION PROVIDED

By the applicant:

- Statutory declaration of Paul Taylor
- 4no. Aerial Images
- Existing site plan - 1121 MLP02B 2024
- Covering letter – MLP
- Plan key
- 1111MLP02A 2024
- 1203 Caravan Purchase

By the Council:

- Business rates information
- Aerial imagery
- Planning history

By third parties:

- N/A

Site Description

The application site is located off Poplar Lane, Winnersh. The site falls within the designated countryside and directly abuts the A329 motorway.

The site hosts multiple structures, numerous caravans, numerous lorry bodies and an open storage of old vehicles and scrap materials. Centrally on the site, there is a landscaper's yard with machinery, a commercial vehicle, materials and green waste visible upon visit. The western extent of the site is predominantly undisturbed grassland.

APPRAISAL

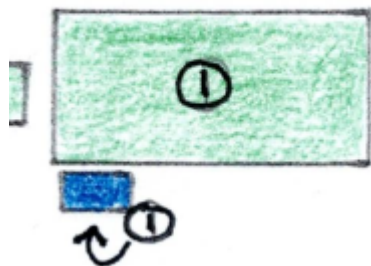
The application is for a Certificate of Lawful Existing Use to regularise the following:

- A – Use of the land for agriculture
- B – Use of the land for storage
- C - Use of the land as a landscaper's yard

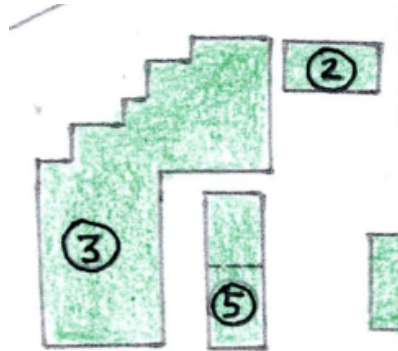
The applicant has provided with a site plan which comprises various buildings and structures and caravans, however the Certificate applied for is for the use of the land only.

The land's use is summarised as per the application's submission below:

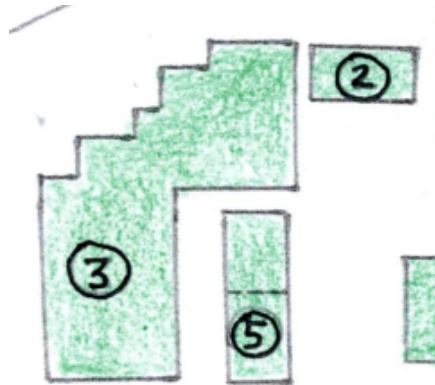
Structure 1 (shaded green) - Mixed agricultural and personal storage use.



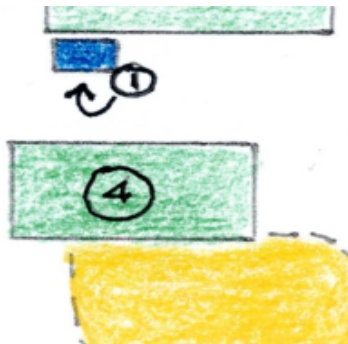
Structure 2 (shaded green) - Agricultural use



Structure 3 (shaded green) - Mixed agricultural and personal storage use

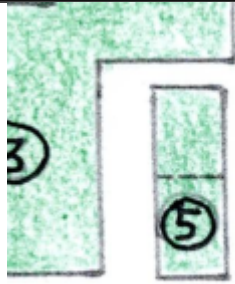


Structure 4 (shaded green) - Agricultural storage use



Structure 5 (shaded green) - Mixed agricultural and personal storage use.





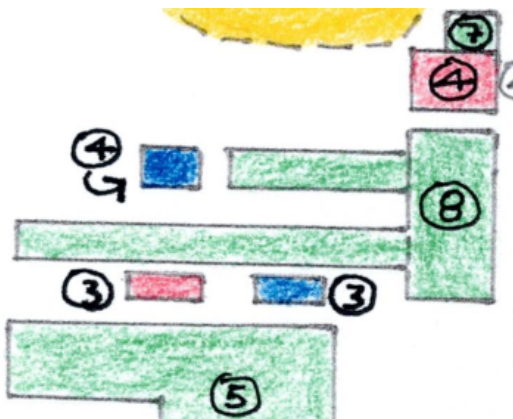
Structure 6 (shaded green) -
Agricultural use (inaccessible)



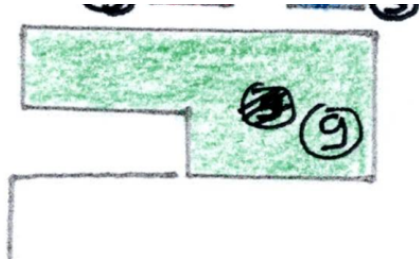
Structure 7 (shaded green) - Storage
use



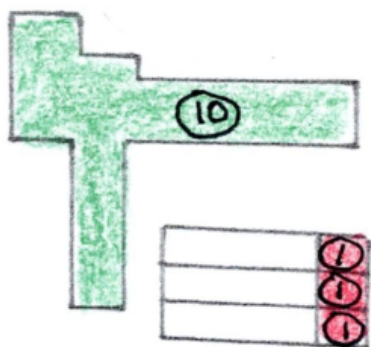
Structure 8 (shaded green) -
Agricultural use



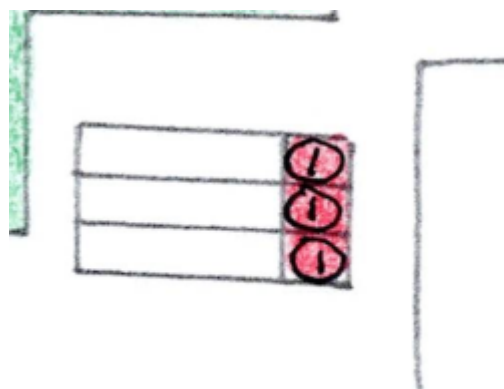
Structure 9 (shaded green) –
Agricultural use



Structure 10 (shaded green) –
Agricultural use



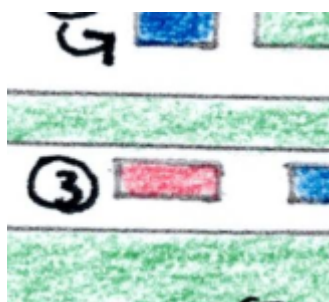
Structures 1(1-3) (shaded red) –
Agricultural use



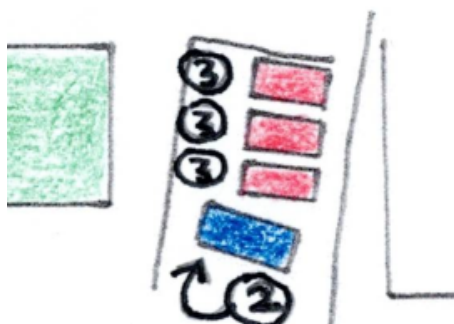
Structures 2(1-2) (shaded red) –
Agricultural and storage use



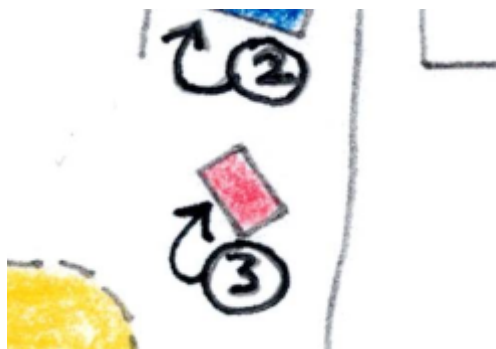
Structure 3(1) (shaded red) –
Agricultural use (currently disused)



Structures 3 (2-4) (shaded red) –
Storage use



Structure 3 (5) (shaded red) – Storage use



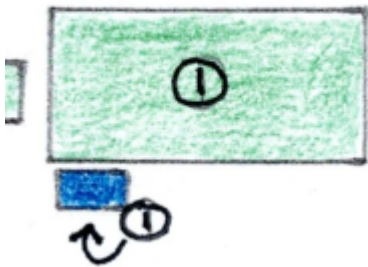
Structure 4 (shaded red) – Storage use



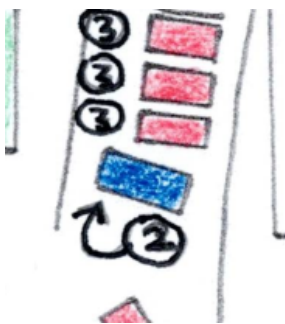
Structure 5 (shaded red) – Agricultural use



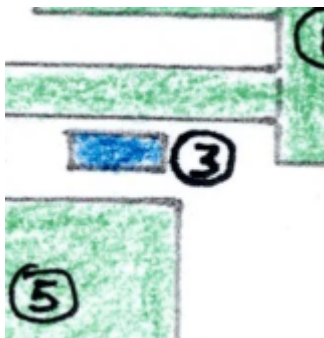
Structure 1 (shaded blue) – Storage use



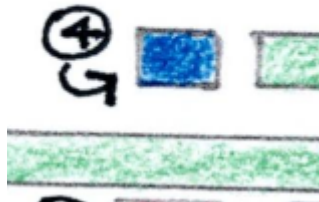
Structure 2 (shaded blue) – Storage use



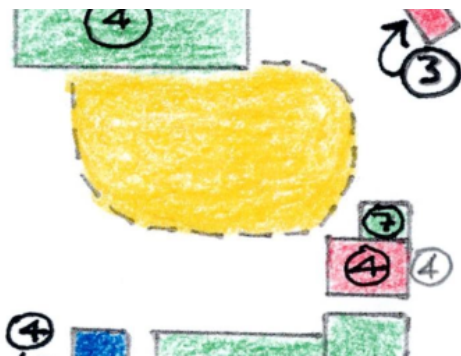
Structure 3 (shaded blue) – Storage use



Structure 4 (shaded blue) – Storage use



Orange shaded area - Use of the land as a landscaper's yard



In determining a Certificate of Lawful Existing Use a Local Planning Authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful.

Lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

In most cases, development becomes immune from enforcement if no action is taken:

- within ten years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place on or after 25 April 2024
- within ten years for an unauthorised change of use to a single dwellinghouse where the change of use took place on or after 25 April 2024
- within four years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024;
- within four years for an unauthorised change of use to a single dwellinghouse where the change of use took place before 25 April 2024
- within ten years for any other breach of planning control (essentially other changes of use)

In the case of this Certificate, it must be demonstrated that the uses of the land have been on-going continuously for at least ten years prior to the application (material changes of use) i.e. 18 August 2014.

Matters A-C are assessed separately within this report for the avoidance of doubt.

Planning merits are not relevant at any stage in the process however evidence from third parties, including neighbours, can be obtained should the Local Planning Authority consider it necessary to do so. The National Planning Policy Guidance (NPPG) sets out that the onus of proof is on the applicant, not the Local Planning Authority in submitting a Certificate of Lawfulness. However, the NPPG also states that “if Local Planning Authorities have no evidence of their own to contradict or undermine the applicant’s version of events, there is no good reason to refuse the application provided that the applicant’s evidence is clear and unambiguous to justify the grant of a certificate”.

Town and Country Planning Act 1990 (as amended)

Section 55(1) of the Town and Country Planning Act 1990 (as amended) defines development as “the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.”

Section 57 of The Town and Country Planning Act 1990 (as amended) requires that planning permission is required for the carrying out of any development of land.

Section 171B (1) states that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four/ten years beginning with the date on which the operations were substantially completed. This was amended to ten years for submissions post 25 April 2024.

Section 171B (2) provides that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. The applicant is required to demonstrate on the balance of probabilities that the use commenced and has been continuous for ten years prior to the date of the application in order for the change to have become lawful. This was amended for four to ten years for submissions post 25 April 2024.

Section 171(B) in the case of any other breach in planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of that breach.

Section 171B(4)(b) does not prevent the taking of further enforcement action within 4 years if the local planning authority have taken or purported to take enforcement action in respect of that breach.

Section 191 deals with applications for Certificates of Lawfulness of existing development, and the authority’s duty to determine them.

Section 191(1)(a) provides that if any person wishes to ascertain whether any existing use of a building or other land is lawful they may make an application for that purpose to the local planning authority specifying the land and describing the use, operations

or other matter. As Section 191(1) (a) is written in the present tense, it is plain that the use must exist at the time of the application.

For the purpose of the 1990 Act s.191(2) defines operations as 'lawful' if:

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

Case Law

The courts have held in *Gabbittas v Secretary of State for the Environment* [1985] JPL 630 that the relevant test of evidence on such matters is 'the balance of probability'. The Courts have also held that the applicant's own evidence does not need to be corroborated by 'independent' evidence in order to be accepted. If the Local Planning Authority has no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less probable, there is no good reason to refuse that application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

In considering applications for a Certificate the guidance given by the High Court in *Panton and Farmer v Secretary of State for the Environment, Transport and the Regions* and *Vale of White Horse D.C.* [1999] JPL 461 is of value.

Three questions need to be answered. Firstly, "When did the material change of use specified in the application occur?" To be lawful, this would need to be before 1 July 1948, by 31 December 1963, or at a date at least ten years prior to the current application.

Secondly, if the material change took place prior to those dates, has the use specified in the application been lost by operation of law in one of three possible ways, namely by abandonment, the formation of a new planning unit, or by way of a material change of use, be it by way of implementation of a further planning permission or otherwise.

Finally, if the decision maker is not satisfied that the description of the use as specified in the application properly describes the nature of the use, the decision maker must modify/substitute each description so as to properly describe the nature of the material change of use which occurred.

The *Panton* case was considered further by the Courts in *Secretary of State for the Environment, Transport and the Regions v Thurrock BC* [2002] EWCA Civ 226. In this case the Court of Appeal considered that the rationale of immunity from enforcement was that throughout the whole of the ten-year period of unlawful use the LPA, although having the power to take enforcement action, had failed to do so. So, if at any time during the relevant period the authority would not have been able to take enforcement proceedings in respect of the breach (because for example, the unauthorised use had temporarily ceased) then any such period could not count towards the ten year period which gives rise to immunity.

The effect of the decision in *Thurrock* is to require a far more stringent test of immunity than had previously been thought following the decision in *Panton*. In particular, the decision means that if an unlawful use ceases and is then

recommenced, the ten-year period required for immunity begins on the act of recommencement. For an unlawful use to obtain immunity from enforcement it has to be exercised continually and without significant interruption for the whole of the ten year period.

The question is therefore whether an interruption of an unlawful use is enough to defeat any claim of immunity from enforcement proceedings. A short period may be regarded as a continuing use; a longer period may not. The Courts have held that this question is a matter of fact and degree for the decision maker in every case.

The usual material planning considerations relating to matters such as policy, principle of development/sustainability, design/landscape/ neighbouring amenity and highways/access are not to be considered under an application for a certificate of lawfulness for an existing use or development.

Assessment:

A – Agricultural use.

This application seeks to confirm the lawfulness of the following development:

“The use of the land for agricultural purposes”.

For this application to be supported, it will be necessary for the Applicant to satisfy the Council on a balance of probabilities that:

The land has been used for agriculture for at least ten years prior to the date of this application i.e. 20/08/2014.

Appraisal and consideration of evidence:

Aerial Imagery

The applicant submitted four aerial photographs of the structures forming matter A in situ over a period from 2013-2022. These are shown below as figures 1-4:

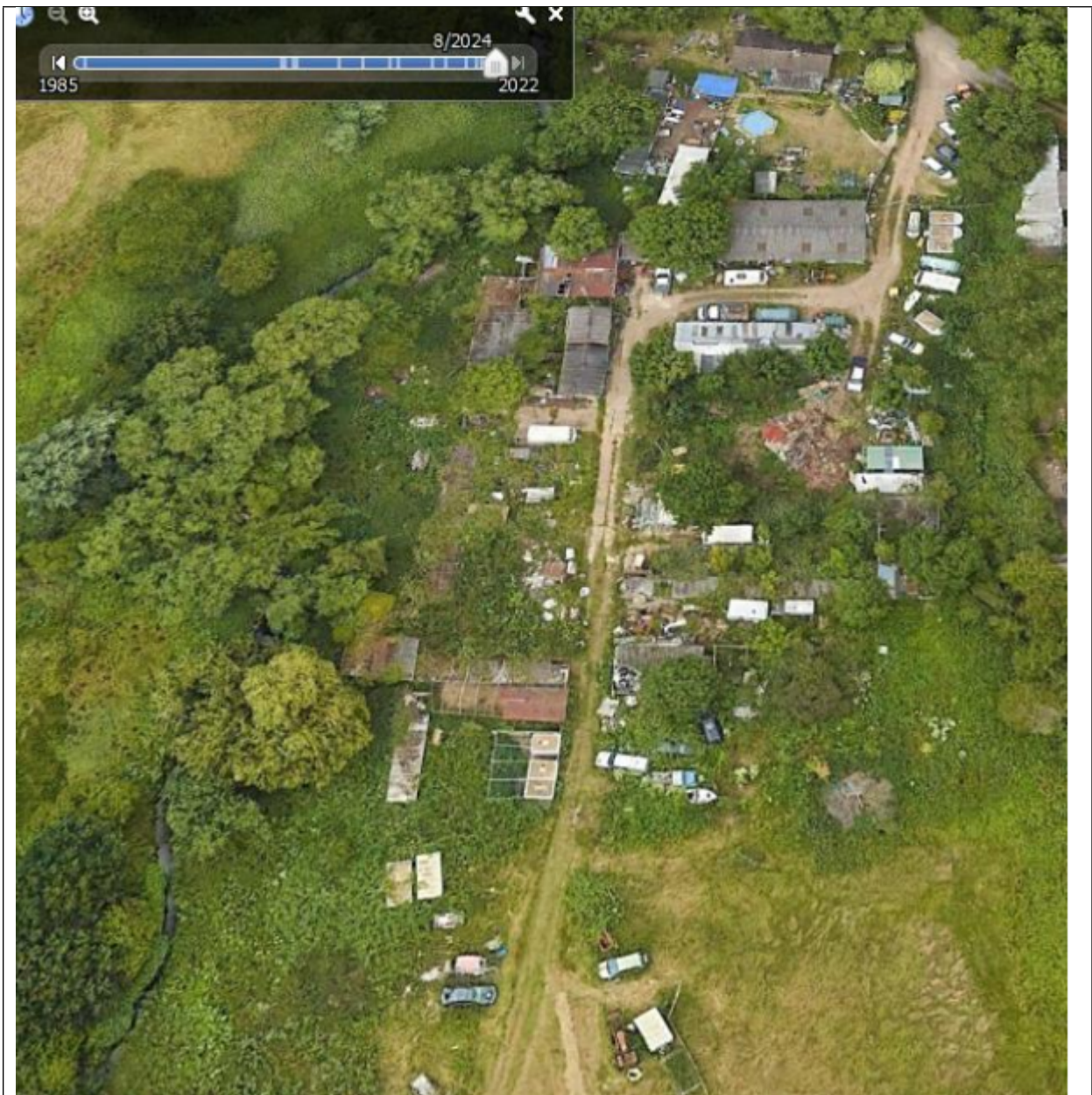


Figure 1 – Aerial imagery from 08/2024



Figure 2 – Aerial imagery 07/2021



Figure 3 – Aerial imagery 06/2018



Figure 4 – Aerial imagery 06/2013

Figures 1-4 consistently show structures being sited/stored on the land consistent with the submitted site plan.

These images do contain significant 'gaps' in evidence between 2013-2018, 2018-2021 and 2021-2024. In this respect, they are not conclusive as they provide a limited snapshot in time.

Given the limited evidence provided by the applicant, the LPA have also considered their own aerial imagery, which are shown in figures 5-10 below between 2014-2022:



Figure 5 – 2014 Aerial - All structures and caravans visibly in situ bar caravans 2 and 4. The 3no. structures (labelled as 1 shaded in red) are in a different position.



Figure 6 – 2017 Aerial - All structures and caravans visibly in situ bar Caravan 2. The 3no. structures (labelled as 1 shaded in red) are in a different position.



Figure 7 – 2018 Aerial - All structures and caravans visibly in situ. Caravan 2 is not visible. The 3no. structures (labelled as 1 shaded in red) are in a different position.



Figure 8 – 2020 Aerial - All structures and caravans visibly in situ bar caravan 2. Caravan 4 appears to be in a different location. The 3no. structures (labelled as 1 shaded in red) are in a different position.



Figure 9 – 2021 Aerial - All caravans and structures visibly in situ bar caravan 2.



Figure 10 – 2022 Aerial – All caravans and structures visibly in situ.

The aerial images only provide a snap-shot in time and do not provide details of use, however it appears that there are items stored on the land, indicating a storage use could be taking place.

Statutory Declarations

One statutory declaration has been submitted in support of the consistent agricultural use of matter A the evidence relating to matter B are discussed separately below.

Concerning the use of the land for agricultural purposes, the statutory declaration of Paul Taylor outlines that:

- Paul Taylor and his family began living on the site in 1980.
- Paul Taylor and his family were initially involved in pig farming and related activities which ceased in 1998 following a downfall in the market.
- Since 1998 Paul Taylor and his family have continued to keep chickens on the land, though some buildings have fallen into disrepair and now are in need to replacement or refurbishment.

- On the land there are a variety of uses which Paul Taylor summarises as agricultural, a landscaper's yard and general/domestic storage.
- Structure 2 of exhibit 1 shows agricultural storage comprising of tools and a Volvo ECB15 mini digger.
- Structure 6 of exhibit 1 are redundant pig sties.
- Structure 8 of exhibit 1 is a redundant and dilapidated farm structure with no roof.
- Structure 9 of exhibit 1 is a redundant milking shed with no roof.
- Structure 10 of exhibit 1 is a pig sty used as a chicken shed.
- Structures 1(1-3) are chicken sheds and feed stores.
- Structure 5 is a lorry body used for storing farm implements.

LPA Evidence

The LPA's aerial imagery align with that submitted by the applicant and indicate the structures have been visibly on site for the relevant period, however, this does not stipulate use which has been applied for within this submission.

During officer site visits, the structures were in situ and were in an identical position at each visit. The agricultural and storage uses within the site as stated by the statutory declaration of Paul Taylor were observed understood to be accurate at the time of visit.

Does the use of the land constitute development (S55)?

The meaning of development, as set out in Section 55 of the Town and Country Planning Act 1990 (as amended), includes "... the carrying out of building, engineering, mining or other operations in, on, over or under land". "building" is defined at section 336(1) of the 1990 Act and includes "any structure or erection".

Structures 1(1-3) and 5 (shaded in red) are predominantly lorry bodies and chattels and their siting on the land constitutes the use of the land for agricultural purposes as opposed to operational development (which has not been assessed within this submission). Structures 1(1-3) are currently used to house chickens and store chicken feed and associated paraphernalia which is an agricultural use. Structure 5 is used to store farm implements. The statutory declaration of Paul Taylor confirms this, which matched the use visible during officer site visit on 18/10/2024.

Structures 1(1-3) and 5 (shaded red) do not constitute development (as they form the same use of the land and are not considered to be 'buildings' as defined by The Act. i.e. agriculture), therefore a certificate can be issued for their lawfulness as they do not require planning permission. Therefore, the Council would not be in a position to take enforcement action in respect of their siting.

Assessment

Structure 2 (shaded green)

Structure 2 is a brick-built store used for agricultural machinery storage. Upon officer site visit, access to structure 2 was not possible given it was locked. The aerial imagery as above, shows structure 2 in situ for a period in excess of ten years. The statutory declaration of Paul Taylor (above) outlines that structure 2 is used for storing tools and a volvo mini-digger. Paul Taylor verbally informed officers during site visits that this was for site profiling and management. The LPA have no evidence to the contrary to suggest the applicant's version of events are otherwise less than probable.

Structure 4 (shaded green)

Structure 4 is of cinder block/ timber and corrugated metal construction used for agricultural storage. The aerial imagery shows structure 4 in situ for a period in excess of ten years. The statutory declaration of Paul Taylor outlines that structure 4 is used for the storage of tools and a ride-on-mower. Paul Taylor advised officers on site this was for land maintenance. During officer site visit, structure 4 was inaccessible. The LPA have no evidence to the contrary to suggest the applicant's version of events are otherwise less than probable.

Structure 6 (shaded green)

Structure 6 is understood to be a disused piggery which has been overgrown and is no longer accessible. However, the Statutory Declaration of Paul Taylor states its last use prior to this was agricultural. The aerial imagery obliquely shows structure 6 to be in situ for a period in excess of ten years. The statutory declaration of Paul Taylor outlines the structure formerly was a piggery, however, has been disused for this purpose. During officer site visit, structure 6 was inaccessible by foot given the surrounding vegetation had blocked access. However, it is not considered that the use has been abandoned, rather currently not in use in recent years which does not interrupt the original agricultural use. The LPA have no evidence to the contrary to suggest the applicant's version of events are otherwise less than probable.

Structure 8 (shaded green)

Structure 8 is understood to be a pig sty and farm structure of cinder block and brick construction. It is currently not in use. Structure 8 in part has no roof given degradation over time which has been patched with plywood. It is currently storing scrap materials such as a bed frame and an old television. The majority of structure 8 is inaccessible and could not be entered during officer site visit given the surrounding scrub impedes access. The aerial imagery obliquely shows structure 8 to be in situ for a period in excess of ten years, however, this does not provide certainty of its use. The statutory declaration of Paul Taylor outlines that structure 8 is un-used given its dilapidated condition and that formerly, this was a pig sty and farm structure. Whilst not in use for agricultural purposes at current, it is not considered this use has been abandoned. Further, as Paul Taylor considers the building to be used for agricultural

purposes, which does not require planning permission. On the balance of probabilities, notwithstanding the small amount of scrap temporarily stored in part of structure 8, the use of the structure is considered to be agricultural.

Structure 9 (shaded green)

Structure 9 is understood to be a pig sty of cinder block construction which is no longer in use given its dilapidated condition. Structure 9 was inaccessible at the time of officer site visit. The aerial imagery shows structure 9 to be in situ for a period in excess of ten years, however, this is inconclusive of use. The statutory declaration of Paul Taylor outlines that structure 9 is a former pig sty which is currently not used. Notwithstanding the fact structure 9 is not currently in use, it is not considered an alternative use has occurred within the structure, nor that the original agricultural use has been abandoned, just not currently used for this purpose, at this time. The LPA have no evidence to the contrary to suggest the applicant's version of events are otherwise less than probable, nor that the agricultural use linked to a pig sty has been abandoned.

10 (shaded green)

Structure 10 is a brick-built pig sty used as a large chicken shed. Structure 10 was evidenced to be in agricultural use for the keeping of chickens at the time of officer site visit. The aerial imagery shows structure 10 to be in situ for a period in excess of ten years, however, this is inconclusive of use. The statutory declaration of Paul Taylor outlines that structure 10 is a former pig sty used as a chicken shed. The LPA have no evidence to the contrary to suggest the applicant's version of events are otherwise less than probable.

3(1) (Shaded red)

Structure 3(1) is a brick and cinder-built store with plywood roofing. Whilst the applicant submits within his statutory declaration that the structure is currently unused, on officer site visit it was in use as a timber/ post store. The aerial imagery shows structure 9 to be in situ for a period in excess of ten years, however this does not provide details of use. Changes of use to agriculture do not require planning permission and when considering the historic use of the site as a piggery, on the balance of probabilities, structure 3(1) was used in conjunction with the former agricultural use on site and remains to do so (in part) to this day given use as a store of timber/ logs and posts arising from land clearance/ management.

B - Storage

This application seeks to confirm the lawfulness of the following development:

"The use of the land for mixed storage purposes".

For this application to be supported, it will be necessary for the Applicant to satisfy the Council on a balance of probabilities that:

The land has been used for mixed storage for at least ten years prior to the date of

this application i.e. 20/08/2014.

Aerial imagery

Figures 1-10 above show caravans 1,3 and 4 in situ over a period of at least ten years. However, as above, caravan 4 is not clearly shown until 2017 given the blurred aerial imagery in 2014.

The aerial images labelled figures 1-4 though limited in scope, align with the LPA's own evidence and consistently show the structures and caravans 1-3 being sited on the land in an identical location, however, these images do contain 'gaps' in evidence, most notably between 2014-2017 and 2022-present.

The aerial images further do not explicitly show what the land was used for, though some open-air storage and the siting of structures are visible over the relevant period. In this respect, they are not entirely conclusive.

However, to support the aerial photographs submitted, the statutory declaration of Paul Taylor covers the period between 1980- present which to some degree resolves the ambiguity listed above.

Statutory Declarations

One statutory declaration has been submitted in support of the consistent use of matter B.

In relation to the use of the land for mixed storage, the statutory declaration of Paul Taylor outlines that:

- On the land there are a variety of uses which Paul Taylor summarises as agricultural, a landscaper's yard and general/domestic storage.
- Exhibit 1 of Paul Taylor's statutory declaration outlines use of each structure and the land forming part of this submission.
- Structure 1 (shaded green) of exhibit 1 shows a mixed-use storage of tractor, tractor cab, old mobile caravan containing personal items, vehicle for restoration and assorted other items.
- Structure 3 (shaded green) of exhibit 1 comprises of mixed agricultural and personal storage.
- Structure 4 (shaded green) of exhibit 1 contains the storage of tools, mobility scooters and a ride on mower.
- Structure 5 (shaded green) of exhibit 1 is a lean-to structure in need of repair of mix agricultural and personal storage.
- Structure 7 (shaded green) of exhibit 1 is a shelter for equipment.
- Structures 2(1-2) (shaded red) are used for storing a ride on mower and assorted old furniture.
- Structures 3(1-4) (shaded red) are damaged leaking and un-used. Structures

3(2-4) are lorry bodies.

- Structure 4 (shaded red) is a Sainsburys lorry body used for washing machine and bicycle storage.
- Touring caravan 1 (shaded blue) of exhibit 1 is a touring caravan storing car boot sale items
- Touring caravan 2 (shaded blue) of exhibit 1 is a touring caravan storing personal items
- Touring caravan 3 (shaded blue) of exhibit 1 is a damaged touring caravan
- Touring caravan 4 (shaded blue) of exhibit 1 is a damaged touring caravan
- Touring caravans 1-4 were purchased between 1993 and 2020.
- When Paul Taylor has something is broken beyond repair or a car that has outlived its life or is awaiting repair, he stores it on the farm and it remains there until such time as it is repaired or taken away for scrap.

The relevant period for the use of the land and structures for mixed storage purposes is ten years.

Further information received from the applicant's agent clarifies that:

- Touring caravan 1 was purchased c14 years ago
- Touring caravan 2 was purchased c8 years ago
- Touring caravan 3 was purchased c25 years ago
- Touring caravan 4 was purchased c12 years ago.

These caravans have been stored on the land since their purchase.

LPA Evidence

During officer site visits on 07/05/2024 and 18/10/2024, caravans 1-4 were in situ being utilised for the storage of household items and were in an identical position at each visit. Structures 1,3,4, 5 and 7 (shaded green) and structures 2(1-2) and 3(1-4) (shaded red) were used for a mixed storage use with the storage of farm implements, personal goods, scrap and machinery. Open storage was visible across the majority of the site including scrap vehicles, a camper van, broken caravans, materials, timber and broken farm implements.

Assessment

Touring caravans 1-4 (shaded blue)

The LPA's aerial imagery show that caravans 1 and 3 can be seen on the land in an identical position since at least 2010. However, caravans 2 and 4 are not visible in the same location until 2018 which is a period of circa 6 years rather than the required ten to establish lawfulness.

It is considered on the balance of probabilities that whilst not in the same location, caravan 4 has been relocated around the site over the relevant period. As caravans are uses of the land (in this case pertaining to the wider redline), they do not need to be in the same location for the 10-year period and as a storage use is occurring on the site as a whole, storing caravans which also contain stored items align with this use of the land.

However, with respect to caravan 2, within the lawful ten year period of assessment, the site had a maximum of 3 caravans in years 2013-2014 and this has not been evidenced to increase until circa 2017 which is below the required period. However, as the siting of caravans for storage use falls within a wider storage use (which is part of the mixed use applied for), this does not make the evidence provided less than probable.

Structure 1 (shaded green)

1 is a barn used for a mixture of agricultural and storage. Upon officer site visit, it was evidenced that 1 contained a stored caravan, tractor, van in need of repair, farm implements and domestic paraphernalia. The aerial imagery as above, shows structure 1 in situ for a period in excess of ten years, however, this is inconclusive of use. The statutory declaration of Paul Taylor (above) outlines that structure 1 is used for mixed domestic storage and agricultural storage. The LPA have no evidence to the contrary to suggest the applicant's version of events are otherwise less than probable.

Structure 3 (shaded green)

Structure 3 is a large brick-built structure used for mixed agricultural and personal storage. The aerial imagery as above, shows structure 3 in situ for a period in excess of ten years. During officer site visit, structure 3 was evidenced to contain domestic paraphernalia and farm implements. The statutory declaration of Paul Taylor (above) outlines that structure 3 is in need of repair and is used for assorted storage. The LPA have no evidence to the contrary to suggest the applicant's version of events are otherwise less than probable.

Structure 5 (shaded green)

Structure 5 is cinder block-built barn with corrugated metal lean to extension, forming a 'garage' style appearance. This is used for the purposes of agricultural and storage. The aerial imagery shows structure 5 in situ for a period in excess of ten years, however, this is inconclusive of use. The statutory declaration of Paul Taylor outlines that structure 5 is in need of repair and is used for a mixture of domestic and agricultural storage. Upon officer site visit, structure 5 was used for storage and agricultural purposes, containing domestic paraphernalia, scrap and a ride on mower as well as farm implements. The LPA have no evidence to the contrary to suggest the applicant's version of events are otherwise less than probable.

Structure 7 (shaded green) and 4 (shaded red)

Structures 7 and 4 (forming one structure) comprise of a converted lorry body and a timber lean-to extension which connects into the ground. It is understood to be used

ancillary to the landscaper's yard use on site to provide shelter for heavy machinery and tools. The aerial imagery shows the structure in situ for a period in excess of ten years, and whilst part of one of the machines are obliquely visible do not provide any conclusion on use. The statutory declaration of Paul Taylor outlines that the structure provides shelter for machinery and provides personal storage for washing machines and bicycles, which is a mixed storage use. During officer site visit, a heavy digger and wood-chipper was seen to be beneath the canopy of the structure as well as some building materials. The LPA have no evidence to the contrary to suggest the applicant's version of events are otherwise less than probable.

Structure 2(1-2) (shaded red)

The statutory declaration of Paul Taylor outlines that this is used to store a ride on lawn mower and assorted old furniture. Structures 2(1-2) falls within a storage use. Structure 2 is shown on the historic aerial images for at least a period of ten years. As above, aerial imagery is not conclusive in terms of a structure's use and the LPA have no further evidence to the contrary insofar as to say that structure D has not been in consistent storage use for a ten-year period.

Structure 3 (2-5) (shaded red)

Structures 3 (2-4) fall within a personal storage use. Whilst the submitted statutory declaration outlines these have not been in use given their condition, as evidenced from officer site visit, the telecoms boxes contain personal storage and remain in use for this purpose. During a site visit, the applicant confirmed these had been used to store scrap and personal goods since their siting and remains doing so to the current day. Structures 3(2-4) are shown on the historic aerial images for at least a period of ten years. As above, aerial imagery is not conclusive in terms of a structure's use. However, the LPA have no further evidence to the contrary insofar as to say that structures 3(2-5) has not been in consistent use for a ten year period.

Conclusion – Matters A and B

Having considered the evidence submitted with the application and the contradictory evidence outlined in the Assessment, the Local Planning Authority is satisfied on the balance of probabilities that:

- The land has been used for mixed agricultural and storage purposes for a period in excess of ten years

C – Use of the land as a Landscaper's Yard

This application seeks to confirm the lawfulness of the following development:

“The use of the land as a landscaper's yard”

The applicant seeks lawfulness for a specific area of the site only for this use.

For this application to be supported, it will be necessary for the Applicant to satisfy

the Council on a balance of probabilities that:

The landscaper's yard (comprising machinery, green waste and material storage and processing (sui-generis)) has been in uninterrupted use on the land for at least ten years prior to the date of this application i.e. 20/08/2014.

Aerial imagery

Figures 1-10 above align with the LPA's own evidence and consistently show a cleared area on the land in the same location at the existing landscaper's yard, however, these images do contain 'gaps' in evidence most notably between 2014-2017 and 2022-present. In this respect, they are not entirely conclusive and further do not show the nature of the use as bare ground with material storage could be attributed to a variety of uses. In this respect, aerial imagery does not provide any conclusive evidence on the use occurring on the land.

Statutory Declarations

In relation to the use of the land as a landscaper's yard, the statutory declaration of Paul Taylor outlines that:

- On the plan attached, the yard which is shaded in yellow has been in use by James Randall since 1998 and a rates demand was served on Paul Taylor in March 2016 which have been paid annually since this date.
- The use broadly comprises the delivery and processing of garden and landscape cuttings and the related machinery.
- No rent has been charged for this commercial use, and it continues to the present day.

LPA Evidence

During officer site visits on 07/05/2024 and 18/10/2024, the landscaper's yard was in situ and was in an identical position in between visits (aligned to the aerial imagery).

Landscape cuttings, materials and machinery were visible, as well as a commercially branded transit tipper vehicle, of which pick-up bed was loaded with ladders, a wheelbarrow rakes, landscape waste bags and cuttings. The vehicle was parked within the area outlined as a landscaper's yard.

Further, terracotta pots, 3no. potted fir trees, wheelbarrows, landscape waste bags, a pile of new bricks, fencing panels, a mini-excavator and a wood-chipper were visible. The area had the appearance of a landscaper's yard.

Officers contacted WBC Business Rates regarding the rate demand and received the following response:

"We have land used for Storage and Premises r/o Bentley Lane Piggeries. This has been in the Business Rates listing since 1.4.1990 the current occupier Mrs Carol A Taylor has been liable for Business Rates since 29.1.2016."

This contradicts the statutory declaration of Paul Taylor, which outlines a different date for the commencement of paying business rates as well as the nature of the use.

However, considering much of the landscaper's yard use (bar the processing of clippings and timber) can be attributed to a general commercial storage use (machinery, green waste and materials), the nature of the business rates paid (which were not specified upon request) do not alter the balance of probabilities to suggest the applicant's version of events are otherwise improbable, nor suggest that the use of the land as a landscaper's yard (including storage) has not occurred for the relevant ten year period.

Conclusion – Matter C

Having considered the evidence submitted with the application, the Local Planning Authority is satisfied on the balance of probabilities that:

- The area outlined in yellow by the applicant has been used for the purpose of storing, processing and managing landscape cuttings and for the storage of machinery and materials linked to this purpose, for a period of at least ten years.

The Public Sector Equality Duty (Equality Act 2010):

In determining this application the Council is required to have due regard to its obligations under the Equality Act 2010. The key equalities protected characteristics include age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief. There is no indication or evidence (including from consultation on the application) that persons with protected characteristics as identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular planning application and there would be no significant adverse impacts as a result of the development.

RECOMMENDATION

The relevant test for Lawful Use is the 'balance of probability'. Based on the evidence provided and the Local Planning Authority's own information, it is considered to have been demonstrated that:

Matter A and Matter B

- The land contained within the redline other than the landscaper's yard has been used for mixed agricultural and storage purposes for a period of at least ten years

Matter C

- The land has been used as a landscapers's yard for the purpose of storing,

processing and managing landscape cuttings, materials and for the storage of machinery linked to this purpose, for a period of at least ten years

The description of development upon submission was:

“Application for a certificate of lawful development for the continued use of buildings for agricultural and personal storage purposes, use of the land as a contractors yard and storage of 4.no touring caravans, all in excess of 10 years.”

For the reasons above, the balance of probabilities shows that the land falls within a mixed storage and agricultural use with part of the land used as a landscaper’s yard. Accordingly, the approved description of development now reads:

“Application for a certificate of lawful development for the use of the land for mixed agricultural and storage purposes and use of the land as a landscaper’s yard for a”

It is therefore considered that the application of a certificate of existing lawful use should be approved for the matters specified above and a draft certificate is set out below.

Date:	13 December 2024
Earliest date for decision:	17 September 2024
Recommendation agreed by: (Authorised Officer)	
Date:	13 December 2024