

SECTION '2' – Applications meriting special consideration

Application No : 15/01533/ELUD

Ward:
**Chelsfield And Pratts
Bottom**

Address : Woodhill Farm Norsted Lane Orpington
BR6 7PQ

OS Grid Ref: E: 547175 N: 161948

Applicant : Mrs Lesley Carter

Objections : YES

Description of Development:

Use of Site A for the parking of two lorries in connection with a haulage business, and two buildings on-site used for ancillary storage purposes, and use of building on Site B as a repair workshop ancillary to Site A with external storage and parking of two lorries again ancillary to Site A.

CERTIFICATE OF LAWFULNESS FOR AN EXISTING USE.

Key designations:

Biggin Hill Safeguarding Birds
Biggin Hill Safeguarding Area
Green Belt
London City Airport Safeguarding
Open Space Deficiency
Sites of Interest for Nat. Conservation

Proposal

- The application seeks a Lawful Development Certificate to confirm the Use of Site A for the parking of two lorries in connection with a haulage business, and two buildings on-site used for ancillary storage purposes, and use of building on Site B as a repair workshop ancillary to Site A with external storage and parking of two lorries again ancillary to Site A is lawful.

The application material includes:

- Ordnance survey extract of site and surrounding area, highlighting sites A and B;
- Photograph, floor plan and elevation plans of store building on Site A;
- Photograph, floor plan and elevation plans of workshop building on Site B;
- Statement of case, including proposed description, planning history, evidence submitted as part of first CLUED, evidence for the LA, conclusions in respect of current CLUED, further evidence;
- A chronology of events;

- Photographs of site;
- Submitted documents
- o Sworn declaration of Lesley Carter (SD1);
- o Series of photographs (SD2);
- o Series of waste licence documents from 1992 onwards (SD3);
- o Series of Operators Licences from 1981 to date (SD4);
- o VAT initial registration documents (SD5);
- o Invoices for sale of some vehicles in 2008 and 2009 (SD6);
- o Selection of sales invoices showing purchase of lorries 1988, 1993, 1995 and 1996 (SD7);
- o Set of accounts for R. Carter Esq. 1996-2012 (Year end accounts for 2013 have not yet been completed) (SD8);
- o Letter to DPP from accountant confirming use since at least 1994 (SD9);
- o Death certificate of Alan Carter 2/6/03 (SD10);
- o Aggregate haulage invoices 2011 to 2013 (SD11);
- o Supplier credit accounts 1994-1998 (SD12);
- o Invoice purchases for Allan Carter Haulage 1997-2013 (SD13);
- o Copy of receipt for sheeting to Building B in July 2001 (SD14);
- o Copy of receipt for materials in connection with Building A in August 2003 (SD15);
- o Sworn declaration of Alan Golding (SD16), a village resident and friend confirming:
 - Confirmed haulage use of SITE A since late 1950s;
 - Laid concrete base to building on Site B in 2001;
 - Fitted lorry engine in Site a in mid-1980s;
 - Recall store building on Site A erected in or around 2003;
 - Confirmed haulage use on both sites for more than 10 years (from 21/2/14).
- o Sworn Declaration of Lesley Carter dated 1/4/15 (SD17);
- o Sworn Declaration of Stephen Scotton dated 30/3/15 (SD18);
- o Sworn Declaration of Ashley Smith dated 31/3/15 (SD19);
- o Haulage Invoices (Tarmac) 2004 - 2006 (SD20);
- o Selection of tickets to show examples of dispatch date and delivery date (weekday) (SD21);
- o Selection of tickets to show examples of dispatch date and delivery date (weekend) (SD22);
- o Selection of "other work" invoices (SD23);
- o OCR Level Certificate of professional Competence in National Road Haulage Operations to Lesley Taylor (Carter) dated 22/1/04 (SD24);
- o Marriage Certificate Rob Carter and Lesley Taylor dated 19/6/13 (SD25);
- o Tilcon Staff Pass Miss L. A. Carter (SD26);
- o Death Certificate of Allan Carter dated 3/6/03 (died 2/6/03) (SD27);
- o Death Certificate of Robert Carter dated 22/8/13 (died 16/8/13) (SD28);
- o VOSA maintenance assessment 31/1/05 (SD29);
- o Escort van registered to Allan Carter Haulage dated 29/1/04 (SD30);
- o VAT returns 09/13 till cancellation 7/10/14 (SD31);
- o Lorry Registration Certificate acquired 19/7/07 (SD32);
- o Operators License dated 23/12/14 to Lesley Carter (SD33);
- o Service Agreement with SM Commercial dated 1/8/14 (SD34);
- o Towergate Vehicle Insurance renewing lorry insurance dated 24/7/14 (SD35);

o OCR Level 3 Certificate of Professional Competence in National Road Haulage Operations to Rob Carter dated December 2003 (SD36).

- The applicant's agent has drawn attention to SD17, SD18 and SD19, which outlines the working practices of Allan Carter Haulage, showing loads being brought back to the yard late in the afternoon and taken out next morning. Haulage invoices have also been provided to support these Sworn Declarations, in the form of documents SD20, SD21, SD22 and SD23.

It is claimed that on the balance of probabilities, goods were "hailed" back to the yard for onward transmission to sites the next day.

- SD24 and SD36 (Certificates of Professional Competence) also describes the occupation of both Robert Carter and Lesley Taylor (Carter) as haulage contractors.

- The applicant's agent concludes by stating that should the Planning Authority wish to discuss amendments to the description in order to tighten up the certificate as granted, they are prepared to enter into those discussions, however it is considered that the evidence now submitted is conclusive.

Location

The application sites are located at Woodhill Farm, which is located to the south of the village of Pratts Bottom in Rushmore Hill, Bromley. The village is set in the designated Metropolitan Green Belt on a slope of the North Downs.

The access drive to Woodhill farmhouse leads off from Norsted Lane as it branches to the south. Norsted Lane is a narrow country lane which commences from the junction with Rushmore Hill, Pratts Bottom with both roads running at each side of a large triangle of land known as 'The Green'. A series of cottages and residential properties line the western side of Norsted Lane at this point.

The application sites, identified as Site A and Site B in the submitted Certificate of Lawfulness application, are situated, for Site A, directly from the access drive from Norsted Lane, to the east of the farm track leading to Woodhill farmhouse. There are three detached residential properties situated to the east of the access drive from Norsted Lane, these are; Aston House, Woodlands and Elm Hollow.

Site B is situated to the south of the open parking area in front of the integral double garages serving Woodhill farmhouse and is accessible via the farm track which continues from the drive from Norsted Lane down to the farmhouse.

To the east of the farmhouse, beyond the farm track access lane, there is deciduous woodland and to the south, behind the farmhouse, is Pratts Bottom Wood. To the west of the bridleway to Woodhill farmhouse are three detached houses in Lambardes Close; Timberland, Oaklands and The Chestnuts which were erected following a successful planning appeal in 1987, and they were erected on the site of former redundant piggeries previously belonging to Woodhill Farm.

Consultations

Comments from Local Residents

Nearby owners/occupiers were notified of the application and representations were received which can be summarised as follows:

- o Lived at property for 56 years, Mr Allan Carter had only 2 lorries, one for himself and one for his son;
- o The yard was only used for parking the lorries;
- o A haulage lorry has been parked on the land for several years;
- o The grass etc growing in the field behind was harvested for silage a few years ago;
- o Nothing on the suggested level has been operating at Woodhill Farm;
- o In the last 10 years, can confirm that the first 7 ½ years Mr Robert Carter, the owner and occupier of Woodhill Farm, had a lorry, which he carried goods from somewhere to somewhere else on week days;
- o He went out in the morning and returned in the afternoon, a lot of days but not every day;
- o Mr Carter simply had room to park his own personal vehicle at home, a luxury most drivers do not have;
- o For the last 2 ½ - 3 years there has been no activity whatsoever;
- o He was a one man band with one lorry and nothing more; one lorry, one man and one vehicle;
- o Application is bemusing and incorrect, clearly set out to disguise the next move, or what the real motive is, whatever that may be;
- o The application is asking for the existing use to continue, but nothing is happening from these sites at the moment;
- o Surely the answer should be permit nothing and stop applying on ridiculous grounds for things;
- o The buildings are just temporary out-houses that most larger plots tend to have, the parts left in these buildings and around either site are simply redundant parts which the owner did not dispose of;
- o In most private homes these would be various stuff for which anyone would wonder what it was on the premises, but this does not mean it was a business or company - simply means there are some sheds and mechanical items on either site, the same as any other house in the country;
- o There is an old helicopter in a field at or near the top of poll Hill, does this mean this field is now an airport?
- o The repeated applications at the site are now becoming a major issue for local residents;
- o Perhaps an application for an owner/occupier with one work vehicle, would be about the maximum to be approved for existing use;
- o The latest re-hashed bundle of "this and that happened" and pages of making it out to be something it never was, is not any different from the last application, therefore there must be the same conclusion;
- o This latest revised application states that the HGV operations were based at Site A with any operations at Site B being ancillary to those carried out at Site A. My understanding from this is that Lesley Carter and her agent Stephen Downes are attempting to move an HGV business to Site A, a hardstanding in the corner of

a green belt field. I wonder if this has anything to do with the fact that Site B and Woodhill Farm have now had the agricultural restriction lifted on them and are now very desirable for housing redevelopment. However, it does seem incongruous that anyone with such a valuable site as Woodhill Farm would want a haulage yard next to it with the associated reduction in amenities / value.

- o The above begs the question what do Lesley Carter and Stephen Downes plan to achieve with this application.

- o Back to the current application, the HGV business has never been based on Site A as there has never been any form of office at Site A, neither has there been any toilet facilities, means for receiving mail (postal address) or a telephone there to contact Alan (or Allan depending which statement you read) Carter Haulage. Rather the business was operated out of Woodhill Farm with all book keeping, client contact, vehicle repairs (to avoid noise disturbance and complaints), etc., taking place there. Site A has only ever been used for overnight lorry parking and to store a few vehicle spares. I have seen none of the documentation for Waste licences, Goods Vehicle Operators licences, etc., but am sure that they must bear the Woodhill Farm address;

- o The sale of old/scrap HGV Lorries to be shipped overseas detailed in the Statement of Case coincides with the introduction of the Greater London Low Emission Zone introduced on 4th;

- o February 2008 and as stated in both the declarations of Mr Ashley Smith and Mr Stephen Scotton trips were regularly made into the Low Emission Zone and a vehicle was purchased to enable loads to be transported there. Consequently, since February 2008 till the death of Robert Carter there was only one useable LEZ compliant HGV vehicle DN51 XCH at the site which has not moved for the last 2 to 3 years;

- o I take exception to the statement made by Stephen Downes that there are minor inaccuracies in my original evidence and stand by every word I said - perhaps Stephen Downes could let me know what he considers the inaccuracies to be or is he trying to discredit what I wrote? I stand by my statement that for most of the time there has only been one lorry parked overnight at Site A and that this was a 'one man with a lorry' operation not a multi vehicle haulage operation. Nowhere is there evidence submitted to show any additional drivers or contract drivers being hired and I only ever saw Robert Carter taking a single HGV vehicle in/out of Site A or Woodhill Farm in the past 10 years;

- o I can see little, if any, new evidence in this latest application but a rehash of the previous application. This application includes lots of paperwork making this out to be an operational haulage yard when there is one vehicle in very shabby condition. Said vehicle has not been moved from where it is parked in over 2 years so is unlikely to be fully roadworthy or taxed for road use;

- o After moving into the area and up until Robert Carter became ill in 2013, a single lorry was parked overnight at Site A, leaving early in the morning and returning each evening;

- o Due to the gate across the entrance to Site A, it was not possible to see into the area to establish exactly what was taking place, however if it was clear that Robert was illegally operating a haulage business then clearly I would have made an objection to the Council, but there was no evidence of any activity other than the single lorry being parked there overnight;

- o If Robert had been using the area as a haulage yard, being in an adjacent property, I would have become aware of that through the noise that was generated,

and the only noise ever generated and that which I was aware of, was when Robert started the lorry to leave in the morning;

- o Never once saw anyone other than Robert driving his lorry from Site A, and never saw any other lorry in use;
- o Only 2 lorries have been used, and none recently;
- o No workshop on site;
- o What about the noise in a small village from a workshop for 4 lorries and all the extra traffic;
- o There is only a small track up to the site.

Comments from Consultees

No consultees were considered necessary.

Planning Considerations

The proposal is to be assessed under the Town and Country Planning Act 1990, Sections 171B and 191 (as amended by Section 10 of the Planning and Compensation Act 1991).

The Town and Country Planning Act, Section 171B, introduced rolling time limits within which local planning authorities can take planning enforcement action against breaches of planning control.

(1) 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 years beginning with the date on which the operations were substantially completed;

(2) 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 four years beginning with the date of the breach;

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach;

(4) The preceding subsections do not prevent—

- (a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or
- (b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

Section 191 of the 1990 Act deals with CLUEDs. It indicates that the burden of proof lies with the applicant. The relevant test is 'the balance of probability'. Local Planning Authorities are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events, then there is no good reason to refuse the application - provided that the applicants' version is precise and unambiguous to justify the grant of a certificate.

Paragraph 010 of the Planning Practice Guidance with reference to Lawful Development Certificates states that:

"Precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it. It is important to note that:

- o a certificate for existing use must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a use class. But where it is within a "use class", a certificate must also specify the relevant "class". In all cases, the description needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to therefore spell out the characteristics of the matter so as to define it unambiguously and with precision. This is particularly important for uses which do not fall within any "use class" (i.e. "sui generis" use); and

- o where a certificate is granted for one use on a "planning unit" which is in mixed or composite use, that situation may need to be carefully reflected in the certificate. Failure to do so may result in a loss of control over any subsequent intensification of the certificated use."

Planning History

There is a vast planning history at the site. The most relevant can be summarised as follows:

Permission was originally obtained for a bungalow, smallholding and market garden on this land in 1949. Council records showed at that time that the farm comprised a total of 20 acres although this included 9 acres of scrubland and 5 acres of hazel and ash coppice. The bungalow, known as 'Woodhill', was not restricted by any occupancy condition.

In 1959, a bungalow was permitted by the former Orpington Council (reference WK/7/59/284) with a condition restricting the occupancy of the dwelling to workers employed locally in agriculture.

Under reference 68/1738, outline permission was granted for an additional detached bungalow for a farmworker and the details were subsequently approved under reference 71/883.

A subsequent application for 2 detached bungalows on the farm was refused under reference 72/3730 on Green Belt grounds.

Under reference 84/00131, approval was sought for the removal of agricultural occupancy condition attached to permission WK/7/59/284. This application was refused on the following grounds:

1. The site is within the Metropolitan Green Belt wherein there is a presumption against residential development not connected with agriculture or forestry and no overriding circumstances have been presented sufficient to justify the removal of the occupancy condition;
2. The loss of this agricultural dwelling and land would be likely to prejudice the use of the remaining area for agriculture in general and for intensive stock-rearing in particular and could set a pattern for the undesirable release of the remaining dwelling from agriculture, to the detriment of the Green Belt and established policy;
3. If the Metropolitan Green Belt is to be protected in accordance with long established policies the removal of such conditions cannot normally be sanctioned since this would militate against the need to prevent development unrelated to agriculture or forestry. Further, having regard to the number of planning applications received for dwellings on relatively small holdings, there is no lack of demand for such agricultural dwellings.

The refusal was taken to appeal and it was dismissed by the Inspectorate.

Furthermore, planning permission was refused in 1984 for planning application reference 84/03086 concerning the erection of a haulage depot at the farm. This use was not identified as being operational at the site at the time the application was made.

More recently, an application for a Certificate of Lawfulness for an Existing Use was refused for Use of 'Site A' for haulage yard with ancillary repair and parking for four lorries and two workshop/storage buildings and building on 'Site B' for use as workshop for vehicle repairs and two associated parking spaces on the following ground:

1. The use of 'Site A' for haulage yard with ancillary repair and parking for four lorries and two workshop/storage buildings and building on 'Site B' for use as workshop for vehicle repairs and two associated parking spaces has not subsisted, on the balance of probabilities, for more than ten years continuously and as such the existing use is not considered to be lawful.

This refusal is the subject of a current appeal inquiry, yet to be determined but due to be heard in July 2015.

Lastly, a Certificate of Lawfulness for use of Woodhill farm house as single family dwellinghouse without complying with as Agricultural Occupancy Condition attached to permission WK/7/59/284 was granted under reference 14/04564.

Conclusions

In applying for a certificate of lawful development for an existing use, the onus of proof is on the applicant to demonstrate that, on the balance of probability, Site A has been used for the parking of two lorries in connection with a haulage business, and two buildings on-site have been used for ancillary storage purposes, and also that the building on Site B has been used as a repair workshop ancillary to Site A, along with external storage and parking of two lorries again ancillary to Site A, without significant interruption, for a period of 10 consecutive years.

Whilst section 191 refers to whether the use or operations described in the application would be lawful "if instituted or begun at the time the application", this is one of those cases where it is being argued that the use had already been established before the time that the application was made.

In terms of the previously refused certificate (14/00867), a great deal of information was provided at application stage in the form of photographs and documents to show the Carters at the site and some of the vehicles they were using at various periods. For the reasons given, however, it was not considered that claim for haulage yard use on Areas A and B had been made out. The appeal against the refusal of the certificate shall be heard on 7th July 2015. The Council has engaged an independent planning consultant and his conclusions on the evidence presented to the Council are set out in his proof of evidence for that inquiry which is attached to this report.

Subsequent to the refusal of application 14/00867 the Council considered a separate application for the removal of the Agricultural Occupancy Condition concerning the farm house, (14/04564). It was accepted that Mr Robert Carter's wife and mother had been undertaking book keeping records for the business and the application was approved.

Discussions took place between the Council and the applicant's agent and it was agreed that a further application would be submitted concerning the use of Areas A and B. The Council drew the agent's attention to the Planning Practice Guidance and emphasised that it is the breadth of the description of the use as a "haulage yard" or for "haulage use" that is a cause of the Council's concern. Such a broad description may well encompass activities that have not been carried out at Woodhill Farm.

Whilst it was expected that the applicant would seek to more precisely define the use applied so as to address the Council's concerns, the applicant instead has maintained the claim of a haulage yard use. The agent has asked that the previously submitted documents be considered as part of the new application but has also provided a number of additional documents in addition to the previously submitted documents. This additional evidence has been carefully considered but it is not felt that it overcomes the reasons previously given for refusal of a haulage yard use.

The additional information comprises Sworn Declarations from Lesley Carter, Stephen Scotton and Ashley Smith which all refer to the working practices of Allan

and Robert Carter. It is stated within each Statutory Declaration that as part of the haulage contractors' role, empty travelling was avoided wherever possible. As such, if early morning deliveries were required in order to avoid exceeding drivers' hours at the end of the finishing day the lorry would load at the finishing depot a load of materials and the loaded material would then be taken back to the haulier's Licenced Operating Centre to be held overnight as a 'load on'. If however, the haulier was working from a depot that was considered to be local for the next day, loads held overnight as a 'load on' at the haulier's premises would not be required.

Neither Stephen Scotton or Ashley Smith refer specifically to Allan Carter or Robert Carter actually holding 'load on' materials overnight at their sites. In Paragraph 11 of her Declaration Lesley Carter did however refer to both Allan Carter and Robert Carter having 'load on' washed sand at the end of their finishing day to be delivered to a non-local plant the following morning, and she further stated that she became familiar with the haulage yard at Woodhill Farm, being aware that lorries with materials were kept in the haulage yard overnight before being delivered to the destination the following morning.

The haulage invoices (2004-2006) and tickets of various dates provides some support for the information supplied in the sworn declarations that "load on" materials were stored overnight in the lorries.

Finally evidence has been submitted that Ms Lesley Carter has renewed the Goods Vehicle Operator's Licence from 23 December 2014 until 23rd December 2019, that she has entered into a Vehicle Inspection and Service Agreement on 1st August 2014 with SM Commercial and that she has renewed the truck insurance on 23rd July 2014 (although the cover is described as "Laid Up Fire and Theft"). However the Council's witness on his site inspection did not observe an active haulage yard use.

The impression gained from the evidence of local residents is that the activity was of a lorry being parked on Area A overnight, leaving early in the morning and returning each evening. Their impression has been of a one man, one vehicle operation, and the claim that a haulage yard has been in existence is disputed.

The balance of the evidence therefore remains that this Site A was used for parking of one or possibly two commercial vehicles only, mainly overnight and at weekends. It is doubtful that there was a ten year period when there were two regular drivers. This conclusion is not altered by the presence of a vehicle with 'load on' as the materials were not emptied at the Woodhill Farm site and the loads were incidental to the parking of the vehicle concerned. The building mentioned in the application does not appear to be used for storage of 'load on' materials.

With reference to Area B the evidence does not demonstrate that this area was used independently from the remainder of Woodhill Farm. The evidence does not show the land to be anything other than residential curtilage. They appear visually to be on the same landholding, use the same driveway and are in the same ownership. There is no boundary fencing or other physical demarcation from the remainder of the curtilage.

The evidence indicates that the buildings on site A and site B have existed for more than four years, and are therefore considered to be lawful buildings in their own right.

On balance, the view remains that:

- o Site B is not a separate site to Woodhill Farm, but is incidental to the dwelling house use. The building, however, as shown on the drawing has become lawful (being more than 4 years old). There is no separate parking use.
- o Site A is arguably separate as its own yard. It has been used for the parking of one commercial vehicle or possibly two vehicles (stated in the information to have a plated weight of 24,390kg), for more than ten years and the buildings on site as shown on the drawings are lawful (being more than 4 years old).

It is therefore considered that there is insufficient evidence to support the application description provided by the applicant. The current Planning Practice Guidance states that "precision in the terms of any certificate is vital so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it".

Section 191(4) of the 1990 Act provides that if the Council 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 local planning authority or a description substituted by them, they shall issue a certificate to that effect: and in any other case they shall refuse the application.

While the claim for a haulage use is not proven the evidence does point to a lesser use of the parking of a commercial vehicle being carried out on Site A and that the buildings shown on the site are lawful. The Council should consider whether to modify the description applied for to equate with this lesser use. Good practice however indicates that the Council should first consult with the applicant's agent and it is recommended that consideration of the report be deferred to enable these consultations to take place.

Background papers referred to during production of this report comprise all correspondence on the file ref(s) 14/00867, 14/04564 and 15/01533, set out in the Planning History section above, excluding exempt information.

RECOMMENDATION – APPLICATION BE DEFERRED

To enable consultations to take place with the applicant's agent regarding modification of the description of the use