



Appeal Decision

Hearing Held on 30 March 2022

Site visit made on 31 March 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th June 2022

Appeal Ref: APP/Y9507/X/20/3259115

Kennels Farm, Selham Road, West Lavington, Midhurst GU29 0AU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by The Cowdray Estate against the decision of South Downs National Park Authority.
 - The application Ref SDNP/20/01635/LDP, dated 23 April 2020, was refused by notice dated 24 June 2020.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the proposed use of buildings at Kennels Farm as Estate Maintenance yard including a joinery workshop, painters' workshop, stores, and offices.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is found to be lawful.

Procedural Matters

2. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance in the context of an appeal made under section 195 of the 1990 Act as amended. The appellant must show, on the balance of probabilities, that the use proposed would, at the date of application, be lawful.
3. Notwithstanding the Local Planning Authority's reason for refusal stated on the decision notice, the signed statement of common ground outlines that whether or not the proposal falls within the scope of the Town and Country (General Permitted Development) Order 2015 is not a matter for the appeal. As such, the Hearing did not focus on this matter.

Main issue

4. The main issue is whether the Council's refusal to grant the LDC was well founded.

Reason

5. This application seeks to demonstrate that the proposed use of buildings at Kennels Farm as Estate Maintenance yard including a joinery workshop, painters' workshop, stores, and offices is lawful. The application for an LDC was made on the basis that the agricultural use of Kennels Farm, West Lavington, and the use of the existing Estate's Maintenance Yard at Easebourne, are within the same Planning Unit (which has been identified within a 'Core Area' of the Estate¹). Therefore, this application seeks to demonstrate that the relocation of the Estate's Maintenance Yard is not "Development" for the purposes of Section 55 of the Town and Country Planning Act 1990. Consequently, the appeal turns on an understanding of the correct Planning Unit which is considered below.

Background of The Cowdray Estate, the Estate Maintenance Yard and Kennels Farm

6. The Cowdray Estate² is a traditional rural estate which is the home of the 4th Viscount and Viscountess Cowdray. The 16,500 acre Estate comprises extensive farm holdings and woodland, together with a polo club, an 18 hole golf course, a farm shop and café, in addition to a range of holiday accommodation and event venues³. The appellant explains that 3000 acres of farmland is managed by the estate (in hand), including 2,000 acres of arable land and 1,000 acres of grassland which supports a 310 cow dairy enterprise. There are 6,000 acres of Forestry Commission certified woodland.
7. The appellant states that the Estate directly employs an Estate Maintenance Team of approximately 30 people, including two building surveyors, supervisors and trade and crafts men, who operate from a Maintenance Yard at Easebourne. The Maintenance Yard is located within the area identified by the appellant as the 'Core Area' (Core), and includes a joinery workshop, paint workshop, stores, and offices. There is no dispute that the team is responsible for managing and undertaking the repair and maintenance of the Estate's property portfolio, which includes Kennels Farm. There is also no dispute that the buildings at Kennels Farm are vacant following the closure of the dairy unit in summer 2019. The Farm buildings comprise a range of mainly modern portal framed barns.

Understanding of the Planning Unit

8. In cases where there is a dispute as to whether a proposal would constitute a material change of use, it is first necessary to ascertain the correct planning unit. In the case of *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207, it was held that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and/or occupied for different and unrelated purposes. The concept of physical and functional separation is a very significant factor. In *Burdle*, Bridge J suggested three broad categories of distinction:

- 1) A single planning unit where the unit of occupation has one primary use, and any other activities are incidental or ancillary;

¹ Shown on Plans P1-03 and E1-01.

² Shown on Plan P1-02.

³ Taken from the appellant's cover letter submitted with their LDC application.

- 2) A single planning unit that is in a mixed use because the land is put to two or more activities, and it is not possible to say that one is incidental to another; and
- 3) The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.
9. With regard to the unit of occupation, the land uses and diversified enterprises within this Core are all centred around the historic buildings and parkland that lie in the centre of the Estate and comprise Cowdray Ruins; The Cowdray Golf Course; Cowdray Park Polo Club; Cowdray House; Cowdray Hall and Therapy Rooms; The Cowdray Farm Shop and Café; the Estate Office and the Estate Maintenance Yard. Most of the Estate's diversified enterprises and all the in-hand farmland and woodland, which includes Kennels Farm are located within this Core. Although not exclusive to the Core, many of the buildings in the Core are visually distinctive, characterised by yellow painted doors and windows frames. In addition, the Cowdray Estate brand is clearly noticeable on the properties within the Core. However, during the site visit I also observed that Conifers School field is located within this area to the South of the Estate Maintenance Yard, and therefore this part of the Core does not appear to be under the direct control of the Estate. Nevertheless, save for this school field, based on the evidence before me, all other land uses and enterprises listed above in the Core are under the ownership and occupation of the Cowdray Estate, and thus are within a single unit of occupation.
10. The Authority consider that the third limb of *Burdle* is relevant in so far as it is possible to distinguish separate planning units within distinct and identifiable areas of land, each with their own function and character. The Golf Course and Club House, the Farm Shop, Kennels Farm, and the Estate Maintenance Yard are all cited as examples of this. In response to this the appellant states that Cowdray is not a "holding company" with a portfolio of separate businesses, but is a single, land-based business, that uses its property assets to generate a diversity of revenue streams. The appellant therefore contends that the Core is a single mixed-use planning unit with a number of main composite uses, and several ancillary uses (such as the Estate Office), and therefore the second category of *Burdle* is more appropriate in this case.
11. The Authority raised concerns at the hearing that the plans submitted showing the Core are indicative only, and therefore the precise boundaries of the Planning Unit have not been clearly defined by the appellant. However, for the appeal to succeed, it would be sufficient in this case, for the appellant to demonstrate, on the balance of probabilities, that the Estate Maintenance Yard and Kennels Farm are within the same planning unit, even if the exact boundaries of the planning unit are not precisely established.
12. During the hearing the appellant explained that the Core identified is not a newly created entity but an area which forms part of an historic estate which has evolved over a hundred years. The parkland associated with the Cowdray Ruins, was altered, and extended by Lancelot Brown in the late C18. The Golf course and Polo grounds were added during the Victorian period, and various diversified enterprises (including the Walled Garden for weddings and events) have been introduced more recently. The in hand farming and forestry have been an important part of the Estate since the C16. It is further stated that

- Kennels Farm has always been an integral part of the Estate, and particularly closely associated with the main house. The Maintenance Yard, which is also located centrally within the Core and has been developed from the early 1900's to accommodate the stores and workshops needed to maintain the Estate's property.
13. A diagrammatic summary of the business structure⁴ illustrates that all of the various components of the business, which includes both the existing Maintenance Yard and Kennels Farm (forming part of Home Farms), falls under a single CEO. The CEO has global oversight of the Cowdray Estate and is the key decision-maker for each of the operational businesses. The business structure also explains that the profits of the Estate business (other than Polo which reinvests to support the sport) are returned to the sole beneficiary, Viscount Cowdray.
 14. All components of the business share a common/centralised administrative service, including payroll, finance, and marketing. Furthermore, the Estate Maintenance Team is a shared resource, with the majority of their work (approximately 85%⁵) being located within the identified Core. The business structures explain that this will be either by way of dedicated, programmed projects, such as the recent refurbishment of the Cowdray Farm Shop and an accommodation wing at Cowdray House, or by way of ad hoc reactive repairs, to operational buildings such as farm buildings, for example Kennels Farm, or let properties. During the hearing I also heard how the maintenance team carry out an annual pro-active repair programme at Kennels Farm, and the adjacent residential property, which includes checking the electrics, drainage, and gutters of the buildings.
 15. It was also explained during the hearing that the estate maintenance team are directly involved with the various enterprises within the identified Core. For example, the team are responsible for setting up audio equipment and grandstands on Polo match days as well as undertaking security and parking responsibilities, with the events team providing the catering. The maintenance team have also been responsible for carrying out a number of projects in the Core, which includes refurbishing the Golf Club and Club House, and all Cowdray holiday cottages. Furthermore, the Estate Management Office, who provide support for the various components of the business, is also located within the Core. The interaction of the Estate Maintenance Team to the other enterprises within the Core, including Kennels Farms, demonstrates a very clear functional relationship. This all demonstrates that, on the balance of probability, a functional relationship exists across the estate including Kennels Farm, with the activities carried out by the Maintenance Team being ancillary to the primary uses within the estate
 16. With regard to the physical relationship, the Authority contends that both Kennels Farm and the Polo Grounds have their own distinct character and occupies a well-defined area of land. However, given the strong functional relationships which exist between these uses and the remainder of the Estate (as outlined above), I consider that the Polo Grounds and Kennels Farm forms part of the single mixed use Planning Unit.

⁴ Appendix A of the Appellant's hearing statement.

⁵ Taken from Paragraph 2.12 of the Appellant's full statement of case.

17. I appreciate that the boundaries for the Cowdray Golf Course and Club House are also well defined, and that the Farm Shop operates under a specific planning permission. Notwithstanding this, even if I were to find that the Golf Course, Club House, and Farm Shop should be excluded from the mixed use Planning Unit, both the Maintenance Yard and Kennels Farm are located outside of these areas in any event and so the inclusion of the golf club and farm shop in the planning unit is not critical. Notwithstanding that the Maintenance Yard is contained within clearly defined boundaries, this use is clearly ancillary to the wider Estate, with the majority of the teams work located within the Core.
18. I also observed during my site visit that the various components of the business within the identified Core were contiguous. Whilst the existing Maintenance Yard and Kennels Farm are some distance apart, all the intervening land (Cowdray Park, the Polo pitches, agricultural land, and woodland area) are all in the ownership and control of the Estate. It was also apparent from my site visit that one could travel between the various parts of the Core without leaving the estate property ownership. This therefore demonstrates a physical relationship of the Estate Maintenance Yard to the remainder of the Core and Kennels Farm.
19. The existing Maintenance Yard and Kennels Farm fall under the ownership and occupation of the Cowdray Estate (and thus are within a single unit of occupation), and all components of the business are contiguous within the Core, and share a CEO, an administrative, finance and marketing service, and an Estate Maintenance Team. Therefore, on the balance of probabilities, I consider that the agricultural use of Kennels Farm and the other primary uses within the estate are composite uses within the same Planning Unit and this includes the existing Estate's Maintenance Yard.
20. In the circumstances where their primary argument is rejected, the Authority have made an alternative argument, that the introduction of the proposed uses will result in a profound change in the agricultural character and nature of that component part by way of intensification to the extent that a material change of use (MCU) would occur to the overall make-up of the mixed use nature of the planning unit. Intensification of a use may amount to an MCU if and where that causes the character of the use to change in a fundamental way. It applies when the existing and proposed uses can only be distinguished in terms of scale and effects related to scale.
21. At the hearing, the appellant confirmed in response to my question that the relocation of the Estate Maintenance Yard to Kennels Farm would not result in an increase in the scale of the operations taking place there. Indeed, the appellant's statement makes clear that this application is not seeking to expand the nature or extent of the Maintenance Yard use. The appellant also states that the nature and extent of the existing agricultural operations and the contribution they make to the overall character of the Core, will barely be altered by re-using the redundant farm buildings at Kennels as the Works Yard.
22. I have found, on the balance of probabilities, that the activities to be re-located are ancillary uses to the wider estate and both the existing Maintenance Yard and Kennels Farm are within the same planning unit. Therefore, the Maintenance Yard is not being introduced into the Planning Unit but is already an integral part of the Unit. Relocating that use within the Planning Unit does not result in an intensification of any one component use – but simply a

'reshuffling' within the planning unit without intensification. As a result, the proposal would not change the overall character of this Planning Unit and would not result in any intensification of the existing uses to the extent that a MCU of the whole Planning Unit would occur.

23. To conclude, on the balance of probabilities, given the functional and physical relationships of the Estate Maintenance Yard to the various components of the business within the Core, together with the overarching control of Estate on these components (through its administration, financing, marketing and maintenance of the Core Estate land and buildings), in my judgement, the existing Estate Maintenance Yard and Kennels Farm are situated within a single mixed use planning unit. Therefore, I consider that the relocation of the Estate's Maintenance Yard is not "Development" for the purposes of Section 55 of the Town and Country Planning Act 1990.

Conclusion

24. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed use of buildings at Kennels Farm as Estate Maintenance yard including a joinery workshop, painters workshop, stores and offices was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

R Satheesan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jonathan Russell, CEO, Cowdray Estate
James Isles, Director, Pro Vision
Robert Walton QC

FOR THE LOCAL PLANNING AUTHORITY:

Derek Price, Principal Planning Officer, The South Downs National Park Authority

INTERESTED PERSONS:

Anthony Jones, Councillor, West Lavington Parish Council
John Stubbington, Councillor, West Lavington Parish Council

Documents submitted during the hearing

1. A copy of the Appeal Site Visit Plan, DRG No OS-01 Rev. A dated March 2022.
2. Location of Appeal Site Visit Plan, DRG No P1-03.

Documents received after the hearing

1. Selected Estates Activities Locations



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 23 April 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The agricultural use of Kennels Farm and the use of the existing Estate Maintenance Yard are within the same Planning Unit, and therefore the relocation of the Existing Estate Maintenance Yard is not "Development" for the purposes of Section 55 of the Town and Country Planning Act 1990.

R. Satheesan

Inspector

Date: 10th June 2022

Reference: APP/Y9507/X/20/3259115

First Schedule

Proposed use of buildings at Kennels Farm as Estate Maintenance Yard including a joinery workshop, painters' workshop, stores, and offices.

Second Schedule

Land at Kennels Farm, Selham Road, West Lavington, Midhurst GU29 0AU

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 10th June 2022

by **R Satheesan BSc PGCert MSc MSc MRTPI**

Land at: Kennels Farm, Selham Road, West Lavington, Midhurst GU29 0AU

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Not to scale.

