

Application for Lawful Development for an Existing Use

Land adjacent Mandai

St Peters Road

Hayling Island PO11 0RT

1. Introduction

- 1.1. This statement has been prepared to support the following proposal:

Application for Lawful Development for an existing Use – Material Change of Use as Leisure Plot together with retention of associated buildings and structures

- 1.2. The application is submitted by The Town Planning Experts who act as planning consultants to the applicant.

- 1.3. Section 171B of the Town and Country Planning Act indicates that development becomes immune from enforcement if no action is taken:

- Within four years of substantial completion for a breach of planning control consisting of operational development;
- Within ten years for any other breach of planning control (essentially other changes of use).

2. Planning History

- 2.1. 05/60059/000 Outline application for construction of a chalet bungalow with shared access. Refused and appeal dismissed.

3. Site Context

- 3.1 The site is a rectangular-shaped plot of land, approximately 0.14 ha (0.33 acres) in size, lying on the west side of St Peter's Road at the southern extremity of North Hayling.
- 3.2 It lies immediately to the south of the property known as Mandai a two-storey house separated from the land by hedging.
- 3.3 The land is currently occupied by 2 caravans, one permanently sited and a touring caravan, a wooden shed, a shipping container and associated paraphernalia.

4. Planning Considerations

- 4.1. The application seeks a Lawful Development Certificate to confirm that the existing use of the land is lawful having regard to the period of time it has been operating.
- 4.2. Evidence is submitted in support of the application to demonstrate that, under Section 191 of the Town and Country Planning Act, on the balance of probability the site became a leisure plot prior to September 2004. The evidence supports that the use has operated in excess of 10 years, and that the existing use is therefore immune from enforcement action.
- 4.3. In accordance with advice set out in the National Planning Policy Guidance the applicant is responsible for providing sufficient information to support an application.
- 4.4. The planning merits of the use are not relevant, and the determination of the application should rest on the facts of the case with reference to planning law. Planning merits are not relevant at any stage in the application process
- 4.5. In preparing this statement regard has been had to **R (Sellars) v Basingstoke and Deane Borough Council** [2013] EWHC 3673 (Admin). This identified three stages to considering if a change of use has occurred.

- Identification of the planning unit
- Identify if a material change of use has occurred
- Identify if use has taken place in excess of 10 years.

Planning unit

- 4.6. The land the subject of this application is clearly defined on the ground and is indicated by the accompanying plan edged red.
- 4.7. It comprises a rectangular piece of land 1.4 ha in area. It is separated from neighbouring uses by existing fences and hedges.
- 4.8. The activities associated with the alleged use are contained wholly on this land.

Change of use

- 4.9. A timetable of the relevant actions in relation to the use of the land is set out in Appendix A.
- 4.10. Prior to 1945 the land was in agricultural use as part of Upper Tye Farm and belonged to a Mr William Windebank. In that year it was purchased by Mrs E A Duffie of 'Fernbank, Church Road (now St Peters Road) Hayling Island. (Document B1)

-
- 4.11. In 1949 Mr Arthur William Isaac “purchased and took up residence at ‘Mandai’ St Peters Road, Hayling Island. On 12 September 1951 he bought the land adjacent, being part of the land the subject of this application.
- 4.12. In 1951 part of the site “was overgrown” and Mr Isaac cleared the land. In 1954 the adjacent land “had become so overgrown that the light to my adjoining land was restricted and I therefore took possession of the land and set fire to the growth and cleared the said land.” After 1954 Mr Isaac claimed sole ownership of the land. It is understood that the land was used as part of the garden of ‘Mandai’. (Document B2)
- 4.13. In 1983 the land was sold in two parts by Mr and Mrs Isaac, separately from ‘Mandai’, to Merle Iseli and Laurie Jean Weyeneth and to Merle Iseli and Sylvia Anne Cunningham respectively. (Document B3). The land was separated from ‘Mandai’ by hedging and fencing.
- 4.14. It is understood that the land was used by these owners for leisure purposes as evidenced by the letters from Christine Franklin (LS2), Mrs J Lound (LS3), Paul Elverson (LS4) and Lee McGowan (Shamrock Garden Services) (LS5).
- 4.15. At some point 2 touring caravans were brought on to the site, one of which, at least, was there prior to the land being sold in September 2004. (Document B4)
- 4.16. In 2003 Lawrence Stanley and Nicola Hardy were living in Portsmouth but were conversant with the area. As one of their children was suffering from Attention deficit hyperactivity disorder (ADHD) they were looking for a piece of land where the family could go and allow the children to play in safety. (Document LS1)
- 4.17. In 2004 the land came up for sale through Hugh Hickman and Son (Document B5)
- 4.18. Having made enquiries Mr Stanley and Ms Hardy satisfied themselves that the land was being used for leisure purposes. Mr Stanley bought the land on 24 September 2004.
- 4.19. Since that date the family has maintained the land as a leisure plot, with frequent visits at weekends, as evidenced by the letters by Lawrence Stanley and Nicola Harding, (LS1), Sarah Hardy and Alan Benham (LS6), and Sylvis and Michael Hardy (LS7)
- 4.20. At no time since at least the 1980’s has the land been used for agricultural or any other purpose. Rather over the years the previous owners and Mr Stanley and Ms Hardy have sought to maintain and improve the land for leisure purpose as time and finances allowed.

-
- | | |
|--|--|
| <p>4.21. Although an application was made for planning permission to erect a house on the land in 2005 neither the application form nor the subsequent appeal Inspector's decision makes reference to the use of the land at that time.</p> <p>4.22. In 2006 Mr and Mrs Stanley replaced the existing main caravan, and had water and electricity installed. (Documents B6 and B7). A second touring caravan is occasionally stored on the land.</p> <p>4.23. In the following year Mr Stanley resurfaced the access track and a visit was made by a Council planning officer, and the work was held to be permitted development. The use of the land would have been noted at that time but no action was deemed necessary.</p> <p>4.24. In 2008 fencing was erected to replace the original fencing, which was by then in a poor condition, along the north and east boundaries. CCTV was also installed.</p> <p>4.25. In subsequent years a shipping container was brought on the land to house Mr Stanley's mower and other tools necessary to maintain the land. (Document B8)</p> <p>4.26. To provide better amenities a hot tub was installed and a shed erected to provide washing facilities. The caravans have also been replaced and decking installed.</p> | <p>4.27. None of the structure are fixed to the land and all can be removed in a short period of time should the need arise.</p> <p>4.28. The applicants' acknowledge that the land does not benefit from permitted development rights and the buildings and structures brought on to the land since 2004 do not benefit from planning permission. It is pointed out however that those buildings and structures, which constitute operational development, and which were brought onto the site prior to September 2010 are now exempt from action.</p> <p>4.29. From the above it can be seen that although originally agricultural land the use has changed over time, having been acquired by the owner of 'Mandai' in the 1950's and then disposed of separately from that property in 1983.</p> <p>4.30. Agricultural use of the land appears to have ceased in the 1950s, the land being overgrown until cleared by the owner of 'Mandai' who then used it in association with the house.</p> <p>4.31. When the land was later sold in 1983 it was used separately from 'Mandai' for leisure purposes.</p> <p>4.32. The land at that time was bought by a Mrs Cunningham who visited it regularly and paid a firm to maintain it.</p> |
|--|--|
-

-
- 4.33. Mr and Mrs Stanley bought the land in September 2004 on the understanding it was being used as a leisure plot, and have continued to use it as such to the present day.
- 4.34. No agricultural activity has taken place on the land for over 60 years and the use subsequently has changed to a leisure plot.

Whether use commenced in excess of 10 years ago

- 4.35. From the above history it is clear that the land has been separated from the neighbouring agricultural land, initially in association with 'Mandai' but subsequently was sold separately from that property and used as a leisure plot.
- 4.36. Mr and Mrs Stanley bought the land in September 2004 at which time the land was understood to have been used for leisure purposes for a number of years prior to that date, as evidenced by the letters LS1 to LS7 together with the existence of the caravan(s).
- 4.37. Although Mr Stanley and Ms Hardy have subsequently sited buildings and brought other structures onto the land the fundamental use of the land has not changed in over 30 years.

5. Conclusion

- 5.1. In the opinion of the applicant, having regard to the history of the site it can be demonstrated that the use of the land as a leisure plot has existed in excess of 10 years.
- 5.2. In addition the shipping container, hot tub and timber shed have been on site in excess of 4 years and are again exempt from action.
- 5.3. The evidence points, on the balance of probability, to the use of the land as a leisure plot since 1983. At no time since that date has the land been used for any intervening purpose, nor has there been any physical change to its appearance.
- 5.4. The applicants respectfully request that on the above basis a Certificate is issued.

APPENDIX A

Time Line

- | | | | |
|----------------|--|--------|---|
| • Pre-1945 | Agricultural Use | • 2008 | Replaced fencing to north and east boundaries |
| • 1945 | Sold to Mrs E A Duffie | • 2008 | CCTV installed |
| • 1951 | Mr Isaac of Mandai cleared land | • 2009 | Shipping Container brought on site |
| • 1954 | Mr Isaac appropriated land as part of Mandai | • 2009 | Hot tub installed |
| • 1983 | Land sold separately from Mandai | • 2010 | Timber shed built |
| • 1983-2004 | Used as leisure plot | • 2012 | Replaced caravan 1 |
| • 2004 | Sold to Mr and Mrs Stanley | • 2013 | Replaced caravan 2 |
| • 2004-present | Used as leisure plot | • 2013 | Decking laid |
| • 2006 | Replaced caravan | | |
| • 2006 | Water and electricity installed | | |
| • 2007 | Track re-surfaced | | |

APPENDIX B

Documents

Reference	Document
B1	Conveyance 1945
B2	Statement by A W Isaac
B3	Conveyances 1983
B4	Letter H Hickman & Son
B5	Sale particulars 2004
B6	Water installed 2006
B7	Electricity installed 2006
B8	Container bought 2009

Letters

Refernce	Author
LS1	Lawrence Stanley and Nicola Hardy
LS2	Christine Frankum
LS3	Mrs J Lound
LS4	Paul Elverson
LS5	Lee McGowan (Shamrock Gardening Services)
LS6	Sarah Hardy and Alan Benham
LS7	Sylvis and Michael Hardy