



Town and Country Planning Act 1990 (Section 191)

## Refusal of Certificate of Lawful Use or Development

Reference: H08/0921/94

Received: 03-OCT-94 Type: S191 LAWFUL USE CERT

Name: Charles Mayfield Limited  
Beach Bank Farm  
Surfleet  
Spalding  
Lincs

Agent: Peter Frost & Co  
1 London Road  
Spalding  
Lincs

Description: Haulage use including the merchandising & distribution  
of produce on whole of site

Location : 65 Clough Road Gosberton Rise  
Spalding Lincs

South Holland District Council hereby give notice that a Certificate  
is REFUSED for the use, operations or matter described in the  
application, for the following reason(s):

- 1 In the opinion of the Local Planning Authority, the applicants have failed to demonstrate that the use of the site for the purposes applied for has occurred. The submitted evidence does not support the claim that a haulage use has been carried out (other than in connection with storage and distribution of produce) and the continuous use of the land outlined in green and blue on the submitted plans for the purposes applied for has not been proven.

Director of Housing and Planning Services  
06-JUN-95 H08/0921/94

This decision refers only to that required for the purposes of the Town and Country Planning Act and not for Building Regulations or any other legislation. See enclosed notes relating to rights of appeal.

TYPE: Section 191 Lawful Use Certificate

DESCRIPTION: Haulage use including the merchandising and distribution of produce on whole of site

LOCATION: 65 Clough Road, Gosberton Risegate

APPLICANT: Charles Mayfield Ltd AGENT: Peter Frost & Co

REPORT

The Application and the Site

AS Separate Item

- 1 At the 25 April 1995 Planning Committee Meeting, this application was deferred for further information to be reported on what the evidence showed, and what the law is in relation to Lawful Use Certificates and Haulage Uses in particular.
- 2 The application is to determine the lawfulness of the uses described in respect of a site to the south of Clough Road. The application site comprises three distinct areas of land. The main part of the site containing the buildings and hardcore and two access points onto Clough Road is outlined in red. Two areas of land to the rear of the main site outlined in green and blue respectively, are also included in the application site area.
- 3 Before granting a lawful use certificate, the Local Planning Authority must be satisfied that on the balance of probability, the uses described have been carried out for a ten year period, counting back from the date of the application.
- 4 It must be emphasised that the planning merits, or otherwise, of the claimed uses are not relevant to the determination of the application, and have not therefore been addressed by your Planning and Legal Officers. The issue is solely whether the uses claimed can lawfully be carried out on the land indicated, without planning permission being required. (If the decision of the Local Planning Authority is that they cannot, the applicant may then apply for the necessary planning permission, and the fact that an adverse decision has been made on the Lawful Development Certificate has no bearing on the determination of that application).
- 5 A Lawful Use Certificate must be determined on the factual evidence submitted, and its relationship to planning law. An Authority has to be careful to restrict its considerations to these factors, and not to take into account other issues, or statements not submitted as evidence, as, given the restricted nature of the considerations that can be taken into account, a claim for maladministration, or legal action, can be much more easily established than for planning applications, where the issues may be many, and genuine differences in weighting can be put upon them.

## Legal Background

- 6 In determining this application, a number of legal concepts have to be taken into account, including, the legal definition of "development", the concepts of "material change of use", "ancillary use", "intermittent use" and "sui generis use", as developed by the Courts, together with a knowledge and understanding of Use Classes Order, the definition of B8 Storage and Distribution Uses in that Order, and legal cases relating to those uses and to "haulage" uses. DoE Circular 17/92 is also very relevant, and emphasises the need to take great care interpreting the facts and the law.
- 7 In particular members' attention is drawn to the legal distinction between haulage alone, ie, *sui generis*, and storage and distribution, although both may involve transport.
- 8 On this basis while a haulage use may encompass a B8 Storage and Distribution Use, the term goes well beyond this, and may invoke activities which are materially different from the B8 Use, and which require planning permission.

## The Evidence

- 9 The evidence supporting this application is contained in three affidavits submitted by the applicants. Further evidence has been submitted in the form of letters from objectors, and this contradicts, to some extent, part of the affidavits. If this contradiction was crucial to the determination of the application, it might have been necessary to interview the neighbours and establish what evidence they could give in a form of an affidavit, but in the event the affidavits themselves do not adequately make the case for the Lawful Use Certificate applied for.
- 10 The principal affidavit is from Mr Charles Harrison, who states that he has been familiar with the site since about 1949, first when operating a competing company, and then having bought Charles Mayfield Ltd in 1979 and operating from the site as well as leasing part of it to other companies. He states frequently that the site was used for haulage, but nowhere defines what he means by this. However, when he does amplify his statement, it is clear that he does not appreciate the distinction between "Haulage" as a commonly used term, and a B8 Storage and Distribution Use in planning law, nor what is an ancillary haulage use.
- 11 For example, in describing Superior Growers activities on the site, he states that they used it as "a haulage yard and produce merchant business" and "trading from and haul produce to and from the premises". Again in explaining H P Packaging's use of the site he states it was involved in packaging and "haulage of its own goods", whilst Eve Structures used it for a "storage depot and also hauling its own goods to and from part of the premises". Gosberton Farm Produce who occupied the site for a few years are described as using it as "a haulage depot including use for packaging and grading products and other goods and including storage incidental to haulage". He also submits several photographs showing lorries on site, and also advertisements for Charles Mayfield Ltd which describes

- business as a wholesale produce merchant.
- 12 All these statements appear to indicate that on the main part of the site (referred to as the red site), a lawful B8 Storage and Distribution Use is established and not an restricted haulage use.
- 13 A further affidavit was submitted from Mr Peter Waudby who worked for Charles Mayfield and Gosberton Haulage and whose evidence corroborates Mr Harrison's. Again, however, it does not indicate that the site has been used for unrestricted haulage uses, eg. he states "To the best of my ability it was continually used as a transport depot ... we used the premises ... for the storing of imported potatoes which we hauled there and away again".
- 14 The final affidavit is from Mr Charles Lewis who worked from 1950 and 1978 for Charles Mayfield and describes the use as a "produce merchants". He describes how Charles Mayfield used other hauliers and how "a lot of merchants collected produce from themselves". He does state that he traded from the site himself as a haulier, but for only about five years.
- 15 Apart from the main concreted part of the site with its buildings ie. the red site, there are two other areas of land included in the claim (1) an area of hardcore land (the blue land) (2) an area of arable land (the green land). Mr Harrison's evidence is that he bought these two parts of land in 1979 and occupied it together with the red land for haulage although "no heavy use was made at first". "The use was continuous but intermittent when uncovered land was too wet". He states "in and about 1985 but certainly substantially more than four years ago" he hardcored the blue land.
- 16 These statements are sufficient to establish the fact that the hardcore itself may lawfully be there (since the time period for operational development such as laying hardcore is four years) but does not satisfactorily establish what the main use of the blue land was for the necessary ten year period.
- 17 In relation to the green land, whilst Mr Harrison's affidavit states that it was used "continuously and intermittently for haulage", and "that its use for agriculture had ceased" it is a fact that at present the land is being for used for the growing of brassicas, and there is no evidence any work has been done on it to make it fit for commercial use.
- 18 This report extracts from the affidavits those elements which are critical in reaching the conclusions set out below. Members may, however, wish to refer to the affidavits in full, which are available for reference in the department.

### Conclusions

- 19 The evidence given on the red land indicates its lawful use as a B8 Storage and Distribution Use. Depending on what is meant by merchandising and confirmation that this does not constitute a retail use, a certificate including merchandising could also be issued.
- 20 On the blue land, it would be possible to issue a certificate that the hardcore may be lawfully retained, but not, under the present evidence, that it could be used for storage and distribution.

- 21 On the green land, it is considered that no Lawful Use Certificate could be properly issued to any form of commercial activity, as it is not considered that the evidence shows that what is now a cultivated field has been used for ten years for commercial activity (apart from agriculture).
- 22 Thus, the application in its present form cannot be granted; although it would appear that certificates could be used in response to applications relating to parts of the site and specifying different uses from those referred to in this application.
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#### RECOMMENDATION

*Refuse certificate.*

- 1 *In the opinion of the Local Planning Authority, the applicants have failed to demonstrate that the use of the site for the purposes applied for has occurred. The submitted evidence does not support the claim that a haulage use has been carried out (other than in connection with storage and distribution of produce) and the continuous use of the land outlined in green and blue on the submitted plans for the purposes applied for has not been proven.*
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