

Delegated Report

Planning Ref: 24/00301/CLE
Applicant: Mr Mike Deacon
Ward: Earl Shilton



Hinckley & Bosworth
Borough Council

**Site: Breach Lane Farm, Breach Lane, Earl Shilton, Leicester
Leicestershire**

Proposal: Use of former farm buildings for the restoration, storage and sale of historic motor vehicles (as defined by the Historic Tax Class). Barn 1 and Barn 3 east being used for hobby purposes while Barn 2 and Barn 3 west being used for business purposes for historic motor vehicles.

Recommendations

- 1.1. **Refuse a certificate of lawful use** for the use of premises for restoration, storage, hobby purposes, business purposes, and sale of historic motor vehicles for the buildings identified on the plan outlined in red.

Planning application description

- 2.1. This application seeks a certificate of lawful existing use for the former agricultural buildings identified on the submitted plan on Breach Lane Farm, Breach Lane, Earl Shilton. The buildings are used for restoration, storage, sale, hobby purposes, and business purposes for historic motor vehicles
- 2.2. The application is made on the grounds that the land and buildings to which this application relates has been used for that purpose continuously for a period of over 10 years before the date of the application.
- 2.3. The application is supported by the following documentation:
 - Photographic evidence of historic vehicles on the site from 2005.
 - 2 Sworn Statements by the Applicants, detailing years & history of usage, vehicle reg numbers, barn numbers and years photographs were taken.
 - 9 statutory declarations from customers of and visitors to AMD Four Wheel Drive (the stated business name).
 - Inventory lists for personal hobby collections from 1997 to present day.

Description of the site and surrounding area

- 3.1. Breach Lane Farm is located within an area of countryside off Breach Lane. The Lane runs south-east from Station Road in Earl Shilton to cross the A47. The site is located to the south of the A47. This part of the Lane is predominantly a single-track road with informal passing places. The site, which measures 5,200 sq. m. comprises a two-storey farmhouse with associated buildings originally built for agricultural purposes. These include three large, corrugated metal barns, and a single storey brick barn with a tile roof.
- 3.2. With the exception of the two-storey dwelling the single storey buildings which have been on site for some considerable time are partly brick built, but largely consist of grey / brown corrugated metal and plastic sheets, plus two shipping containers, separated by concrete hardstanding, gravel and grass. The buildings were once used for sheep in association with surrounding fields, but this agricultural use has long since ceased.
- 3.3. The site has been used for the general storage and restoration of classic cars since 2000, as a hobby of the occupier of the farmhouse and his brother. At present, the site is in use as a mixed hobby and commercial use for the repair and restoration of classic vehicles as well as the ancillary sale of classic car parts from the vehicles that the applicants import. The AMD Four Wheel Drive Limited business is well established, operating from Merrylees Industrial Estate, near Desford.
- 3.4. The site is surrounded primarily by agricultural fields. The primary exception to this is Stanmaur Farm Boarding Kennels, located 100m to the west of the site. The A47 is also located less than 100m north of the site.

3.5. Relevant planning history

22/01029/CLE

- Certificate of Lawful Existing use of premises for restoration and repair of classic vehicles and associated storage.
- Refused.
- 20/12/2023

APP/K2420/C/22/3304696

- Change of use of land for the storage, repair, restoration and sale of vehicles, associated shipping containers and area of hardstanding (mixed use) (part retrospective)
- Appeal dismissed.
- 24/10/2023

20/01374/FUL

- Change of use of land for the storage, repair, restoration and sale of vehicles, associated shipping containers and area of hardstanding (mixed use) (part retrospective)
- Refused
- 07/04/2022

98/0044/COU

- Siting of residential caravan for farm worker for temporary period of 12 months
- Withdrawn

- 11/06/1998

Publicity

- 5.1. Although no formal publicity is required, the application has been publicised by sending out letters to Earl Shilton Town Council & Stanmaur Farm.
- 5.2. One neighbouring letter of objection has been received. The quantum of information received is substantial and cannot therefore be reproduced verbatim within this report. The main summarised points of objection are:
 - *Site notice placed in the wrong location*
 - *Application should not have been validated as there was live enforcement action associated with the site*
 - *GCN pond on Breach Lane east has been disturbed/destroyed*
 - *Passing verge area on Breach Lane extended unlawfully to allow for large vehicles to turn.*
 - *Site plan does not show two shipping containers present on site, nor the illegally diverted footpath in the adjacent field.*
 - *Contamination risk from future development*

Consultation

- 6.1. Earl Shilton Town Council:
- 6.2. *"the Town Council would like to reiterate the same objections and previous points and concerns raised in previous comments submitted."*
- 6.3. Previous comments received as part of 22/01029/CLE:

'The Town Council's fully reasoned and listed objections were submitted to HBBC on 10 Feb 21 through the Planning Portal and the Members of ESTC feel strongly that these reasons have always been pertinent and remain extant, i.e., unless HBBC as LPA in conjunction with LCC Highways put in place and enforce significant conditions to obviate all forms of environmental damage to the application site and adjacent properties.

To be clear and candid, ESTC Cllrs see this latest 'Certificate of lawful existing use' application as nothing more than a crude and desperate attempt to circumvent environmentally safe and sustainable planning conditions. ESTC expect HBBC to vigorously and comprehensively reject this application in its present form'.

Legislation and Guidance

- 7.1. Town and Country Planning Act 1990 (Section 191) as amended by Section 10 of the Planning Compensation Act 1991.
- 7.2. Town and Country Planning (Development Management Procedure) (England) Order 2015
- 7.3. Planning Practice Guidance

Appraisal

- 8.1 The Town and Country Planning (Development Management Procedure)(England) Order 2015 and the Town and Country Planning Act (TCPA) 1990 (Section 191) as amended by Section 10 of the Planning Compensation Act 1991 provide advice and guidance in respect of applications for certificates of lawfulness of existing or proposed use or development.
- 8.2 Section 191 of the Town and Country Planning Act 1990 (as amended) provides that if a person wishes to ascertain whether:-
- any existing use of land or buildings is lawful, then he/she can apply to the local planning authority for a certificate to that effect.
- 8.3 Uses are lawful at any time if no enforcement action may be taken by the Council, in the present case this means that the applicant has to show that the use claimed has been continuous for a period of at least ten years back from the date of the application and that the buildings were substantially complete for at least four years prior to the date of the application.
- 8.4 The burden of proof is on the applicant and the relevant test is the 'balance of probability'. The applicant's evidence in support of the application must be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
- 8.5 In applications such as this, if the local planning authority has no evidence itself to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided that the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities.
- 8.6 It is against this guidance that the application is assessed.
- 8.7 Key Issues:
- Whether the former farm buildings to which this application relates for the restoration, storage and sale of historic motor vehicles (as defined by the Historic Tax Class) a continuous period of 10 years prior to the application.
- 8.8 The application is supported by two statements, photographic evidence, signed statutory declarations, and inventory lists.
- 8.9 The applicant (Antony Deacon) (summarised) states that:
- 'My brother and I have had a passion for military, 4x4 and classic cars since we learned to drive in the 1970s.*
- By 1982 we started AMD 4 Wheel Drive in Markfield – Land Rover specialists repairing, restoring and selling Land Rovers and their parts.*
- By 1988 our landlord sold the premises and we moved to the Merrylees Industrial Estate. We still operate from Merrylees but the premises have become less suitable due to lack of undercover storage and the steep entrance.*

The business evolved to encompass imported vehicles (mainly USA) including WWII vehicles.

In 1997 our mother and Michael purchased Breach Lane Farm for her to grow produce and keep chickens, whilst using the barns for hobby vehicles and business vehicles that could not be kept securely at Merylees.

The open top WWII vehicles required under cover storage to prevent rain damage and vandalism and were stored at Breach Lane Farm from 2001.

Alterations to each barn are as follows:

Barn 1: wall built by Beeston Construction – York boarding was replaced by steel cladding in 1998, with steel framed doors fitted 1999. Secure dry building used as main vehicle storage for business and hobby use from 1998 until 2012.

Barn 2: upgraded whilst in use – blue container added inside in 2009 to keep vehicles dry, with bracing added between 2004 – 2012. Block retaining wall and steel cladding added 2012-2014.

Barn 3: New north wall added, with dividing wall and power floated concrete. Wooden double doors, steel pedestrian door and steel cladding added – all completed 1998. The east section of Barn 3 now used for restoration and repair, west section used to store business vehicles and large components like bodies and chassis.

From 2001 sales vehicles stored at the site would be viewed by customers in barns 1,2 and west section of barn 3. Both business and hobby use continues with business sale vehicles in barn 2, and west section of barn 3. Barn 1 and east section of barn 3 are used for personal and hobby vehicles.

8.10 The applicant's brother (Michael Deacon) states that:

'Along with my brother Antony Deacon we have had a strong interest in classic and world war 2 vehicles since childhood . We have built Land Rovers and competed in off road events with them . since the Mid 1970's . I bought my first jeep to restore in 1977.

From that hobby with my brother Antony Deacon we set up and still own A M D Four wheel drive Ltd , whose registered address is 40 Oaks road , Great Glen, Leicester, LE8 9EG. We have both owned the company since its formation in 1982. From 1982 to January 1990 we operated from Rise Rocks Farm, Shaw lane, Markfield, Leicestershire. Subsequently we then moved to Unit 22 Merylees Industrial estate, Merylees ,Leicestershire, LE9 9FS from Feb 1990 to present day.

The purpose of the company was to sell Land Rovers and new parts also service and repairs for Land Rovers In 2005 we stopped servicing and repairs and added classic American pickup trucks to our vehicle sales although at that time new Land Rover parts was our main business. From 2006 we diversified our range to import and sell World War 2 vehicles (mainly WWII Jeeps for restoration). This and new parts sales for ww2 jeep and classic Land Rovers is now our core business.

Unit 22 was unsuitable for our type of operation, as we needed to push the vehicles outside during the day to make room to work because the unit would only hold a maximum of 8 vehicles tightly packed in -We then had to tow them in every night up the steep forecourt back inside the building. There was a lot of pilfering from vehicles stored outside in the enclosed yard at Unit 22 Merry Lees Industrial Estate. This meant we could not safely leave anything of value out there even if covered against the elements.

With our mother. Antony and I purchased Breach Lane Farm in 1997. Antony then lived at the house at the Farm with our mother. After her death in 2013 the house was refurbished by Antony who moved back in with his partner in 2018.

Barns 1 and 3 on the attached plan were upgraded with concrete floors, power points, secure doors and lights. They were now weather tight and secure giving us a workshop and hobby media blasting space in barn 3 with vehicle storage in barn 1. This was all completed by 1999.

The media blasting is only used very infrequently to restore component for our hobby vehicles where the risk of damage by commercial blasters would ruin rare parts. It was done in the west end of barn 3 until my Chevy was finished in 2019 (picture H14) but since 2020 is now done in one of the 20ft containers which is fitted with an extractor/filter system (picture H17) Less critical items and any sales items are sent to commercial blasters.

Once the barns were restored as well as storing our hobby vehicles they were also used for storing immobile sales project vehicles. These vehicles needed to be under cover so as not to deteriorate further and to avoid pilfering which was a problem at unit 22.

Once the vehicles were ready for sale they would be viewed in barns 1, 2 and the west half of 3 by customers then collected from these barns on completion of a sale. Occasionally vehicles would have to be shipped to the farm before being ready for sale and would require some minor work to prepare them for sale which was done in the same 3 barns at the farm.

Since about 2019 the sales vehicles are all in barn 2 (see attached plan) making it simple for customers to see our stock. Since 2017 we have sold an average of 25 vehicles per year.

These activities have continued to the present day from Breach Lane Farm. As proof photographic evidence is submitted in an attached document giving an example from each year since 2005 (when we bought a digital camera) of business vehicles that were stored and sold along with the invoice information from the company. Photos of hobby activities are also attached for most years during the same period.

- 8.11 The refusal of 20/01374/FUL by HBBC was appealed by the applicant and dismissed by the Planning Inspectorate. The conclusion and reasoning were as follows:

The statutory declarations submitted during the hearing by the appellants state they purchased the appeal property in 1997. Two of the barns were upgraded with

concrete floors and were used as a workshop and hobby media blasting space by 1999. Since 2020, the media blasting takes place in one of the storage containers and is done infrequently for the appellant's hobby vehicles.

From 1999 the barns were used for storing immobile sales project vehicles as well as hobby vehicles. However, there is little evidence as to what the intensity of the use has been over the years since 1999. Michael Deacon's declaration confirms that since 2017 they have sold an average of 25 vehicles per year. However, there is no indication of how many vehicle sales were made in the preceding years, notably from 11 July 2012 (the 10-year period prior to the issuing of the notice) onwards. Moreover, whilst the historical photographs clearly show that vehicles have been stored on the site since at least 2005, there is no indication of how many on average were stored on the site over a continuous 10-year period.

I also note that Anthony Deacon's declaration confirms the 'pole barn' was upgraded in 2014 with a concrete floor, side cladding and electrics. Given that many of the old vehicles need to be kept under cover for protection from rain damage, it is likely this barn did not previously accommodate as many vehicles as it does now that it has been clad. Photograph H6) attached to Michael Deacon's declaration supports this. During my site visit, I noted that this building contained approximately 17 vehicles, along with various parts. Photograph H6) shows the open-sided pole barn with significantly fewer vehicles stored within it. This suggests there was a significant difference in the intensity of the use between when the 'pole barn' was open-sided to when it was fully clad.

Consequently, it is not possible to establish two key factors; firstly, when a material change in the use of the land to a mixed use for the storage, repair and refurbishment of vehicles commenced. It may be that, to begin with, the storage, repair and refurbishment of the vehicles was carried out on a scale that was ancillary to the residential use of the land and did not require planning permission as no material change of use had occurred. From the evidence before me, it is not possible to ascertain when the use increased in scale to the extent that a material change of use occurred that would have required planning permission. And secondly, once the material change of use did occur, were there any subsequent material changes of use through the intensification of the use.

Overall, the evidence in support of the ground (d) appeal is limited and is not sufficiently precise or unambiguous. There is significant ambiguity over when the material change in the use of the land occurred and if there has been any subsequent material change of use through the intensification of the use. Therefore, I am not satisfied that, on the balance of probabilities, the material change of use of the land to a mixed use for the storage of containers and the storage, repair and refurbishment of vehicles occurred continuously for a 10- year period prior to the date of the notice being served.

- 8.12 Photos submitted with the application show the internal use of barns 1, 2 & 3 as well as the external structures of barn 1 & 2 & 3 (Barn 2 was upgraded in 2014 but has been a pole barn, without walls or cement floor before 2014). This shows that the building has been in situ over 4 years. These photos show various vehicles in and around various barn buildings with specific dates. However, what is not clear is which vehicles are stored for hobby use and in which building, and which are for storage, sale or business purposes and which buildings these are stored in. Nor do they fully indicate the scale of operations on the site.

- 8.13 An inventory list has been submitted documenting arrival dates and sale dates for numerous vehicles between 1982 and January 2024.
- 8.14 Whilst the submitted statements refer generally to the use being carried out on the site for 'over ten years', when looking into the specifics of the statements they do lack in demonstrating a continuous use for both hobby and business purposes. Many refer to sporadic dates within the relevant 10 year period, others to dates prior to the 10 year period and in some cases there is conflicting evidence as to what dates buildings were use for a hobby use and business use. The statements are not sufficiently clear, precise or unambiguous evidence of the use being continuous for the period claimed and it remains unclear which buildings have been used for sales or hobby use for that period.
- 8.15 It is stated that the buildings have been used to repair and service vehicles however no evidence to support the application has been submitted in the form of business rate bills/payments, electricity bills, telephone bills etc. to demonstrate continuous use over the period claimed. None of this evidence has been provided to show the continuous use of the barn buildings over the last 10 years. It is probable that the business use & the applicants place of work was at the Unit on Merrylees Industrial Estate & the applicants worked on vehicles at the farm some evenings/ at weekends and then sold these vehicles from the business premises. There may have been a bit of a cross over, but this does not qualify as 10 years of continuous use.
- 8.16 It is accepted the barn buildings have been used for both hobby and business use in the past however sufficient evidence has not been provided to show the buildings have been used continuously for these respective uses for the last 10 years.
- 8.17 As per the Inspectors previous decision, it is still not possible to establish when a material change in the use of the land to a mixed use for the restoration, storage, and sale of vehicles commenced. At some point in time the scale of these activities may have been ancillary to the residential use of the land and did not require planning permission as no material change of use had occurred. From the evidence before the LPA, it is not possible to ascertain when the use increased in scale to the extent that a material change of use occurred that would have required planning permission. Once the material change of use did occur, whether there were any subsequent material changes of use through the intensification of the use is also unclear.
- 8.18 Overall, the evidence in support is limited and is not sufficiently precise or unambiguous. There is significant ambiguity over when the material change in the use of the land occurred and if there has been any subsequent material change of use through the intensification of the use. Therefore, on the balance of probabilities, it is not considered that the material change of use of the land to a mixed use for the restoration, storage, and sale of historic vehicles occurred continuously for a 10- year period prior to the date of the notice being served.

9.0 Equality implications

9.1 Section 149 states:-

- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 9.2 Officers have taken this into account and given due regard to this statutory duty, and the matters specified in Section 149 of the Equality Act 2010 in the determination of this application.
- 9.3 There are no known equality implications arising directly from this development.
- 9.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

Conclusion

- 10.1. Planning Practice Guidance confirms that the applicant is responsible for providing sufficient information to support the application and that such evidence should be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
- 10.2. In applications such as this, if the local planning authority has no evidence itself to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided that the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities.
- 10.3. In this case, it is considered that there is an absence of sufficiently clear, precise and unambiguous evidence to demonstrate that, on the balance of probabilities, the respective barn buildings have been used for restoration and repair of classic vehicles and associated storage (business use & hobby use) continuously for the last ten years prior to the date of application.
- 10.4. For the reasons discussed in this report, it is recommended that the certificate of lawful existing use is refused.

Recommendation

- 11.1 **Refuse a certificate of lawful use** for the use of premises for restoration, storage, hobby purposes, business purposes, and sale of historic motor vehicles for the buildings identified on the plan outlined in red.

Reasons

- 11.2 There is insufficient clear, precise and unambiguous evidence submitted by the applicant to demonstrate that on the balance of probabilities the buildings within the red line shown on the Site Location Plan received by the local planning

authority on 28th March 2024 have been used continuously for the restoration, storage, sale and business use in relation to historic vehicles for a period of ten years up to the date of this application.