

Land to the South of Hall Farm, Orton on the Hill

Proposed single storey detached dwelling and outbuilding with associated parking and landscaping

Whether the Application Site constitutes “previously developed land”?

1.0 *Introduction*

- 1.1 I am instructed by Frank Brogan of Hall Farm, Orton on the Hill, to review a decision of Hinckley and Bosworth Borough Council dated 11 April 2023 to refuse planning permission for a single storey detached subterranean dwelling on the site of a current menage¹
- 1.2 I am specifically instructed to advise on the following conclusion in the delegated officer report (“OR”):

“ the current application is sited within an existing menage that does not feature any permanent structures, nor any fixed surface infrastructure. Subsequently, the application site is not considered to constitute as previously developed land. Moreover, the extent of the development undertaken to create the existing menage is not considered to justify the provision of one new dwellinghouse within an unsustainable location in the open countryside”.

- 1.3 For the reasons outlined below I am strongly of the opinion that the OR’s conclusion that the application site does not constitute previously developed land is plainly wrong and incapable of substantiation.

2.0 *Construction of the menage*

- 2.1 Contrary to what is implied in the OR as to the extent of development undertaken to create the menage, it was in fact heavily mechanically engineered, including the removal of the original topsoil and excavation to reduced the site level to enable installation of substantial drainage, and the laying of aggregate and top surface layers totalling 350 to 400 mm in overall thickness.
- 2.2 Not only is the menage therefore plainly a permanent structure in itself, the 6 no. lighting columns approved under planning reference 10/00932/FUL comfortably fall within the definition of “fixed surface infrastructure”. On this basis alone, it is difficult to understand how the OR could have rationally come to the conclusion it did on this issue. It is plainly unsustainable.

3.0 *Appeal Decisions*

- 3.1 It is trite law that previous appeal decisions are capable of constituting considerations which are relevant to planning decision making. In *North Wiltshire District Council v Secretary of State for the Environment* [1992] 65 P. & C.R. 34 the Court of Appeal explained that one important reason why previous

¹ Council planning reference 23/00126/FUL

decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency in the appellate process, noting that consistency is self-evidently important to both developers and development control authorities and is also important for the purpose of securing public confidence in the operation of the development control system.

3.2 My opinion that the menage comfortably falls within the definition of pdl is supported by the following Appeal decisions, copies of which are appended hereto, the materiality of which is in my view -in each case - undeniable:

3.3 *APP/D3125//19/3235474
Clover Court, Bushey Drive, Clanfield OX18 2TS²*

3.3.1 The appeal site comprised stables, barn and menage, and paddocks. The Appeal Inspector concluded that not only the stables and barn but also the menage and paddocks, being used in conjunction with the stables and barn, formed an integral part of the equine use that extended across the site and thus the entire site comprised PDL.

3.4 *APP/N4720/W/19/3224856
Upcroft Farm, Carlton Lane, Leeds³*

3.4.1 The appeal site comprised of an existing single storey timber stable building with menage in front. Despite finding that the stable building was not of substantial construction both the building and the menage were permanent structures and thus accorded with the definition of previously developed land

3.5 *APP/Y0435/W/17/3178790
Land to the Rear of Castle Road and North of The Glebe, Lavendon, Olney⁴*

3.5.1 The Appeal site was mainly laid to grass paddocks and contained a menage and stable buildings. Again, the Inspector found that the grass paddocks were part of the use of the site for equestrian purposes within the curtilage of the menage and stable building and accordingly the whole site should be considered pdl.

3.5.2 Having visited the menage at Hall Farm, it is plainly evident to me that it is an integral part of land comprising stables (to the north) and grazing paddocks (to the east). There is, therefore, nothing to distinguish the site from those in the above appeal, and thus nothing to justify a contrary conclusion as to the pdl status of the Hall Farm menage.

3.6 Indeed the position on the ground at Hall Farm is indistinguishable from that in all 3 of the above appeals. In the interests of consistency alone, therefore, a conclusion that the site is not pdl would simply not be capable of being

² Appendix 1

³ Appendix 2

⁴ Appendix 3

substantiated in this case. Indeed such a conclusion would appear on the facts to be somewhat perverse.

4.0 Conclusion

- 4.1 I am instructed that a further application for residential development on the site of the menage at Hall Farm is currently being prepared with a view to submission to the Council. This advice is written in a form that it may be submitted in support of that application, when made, as regards the status of the menage as pdl.
- 4.2 Given all of the above, it would, in my view, be unreasonable for the Council to conclude – upon determination of such application – that the application site does not constitute previously developed land.

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 SHAKESPEAREMARTINEAU

21 August 2024

Appendices – Previous Appeal Decisions

1. APP/D3125//19/3235474 - *Clover Court, Bushey Drive, Clanfield*
2. APP/N4720/W/19/3224856 - *Upcroft Farm, Carlton Lane, Leeds*
3. APP/Y0435/W/17/3178790 -*Land to the Rear of Castle Road and North of The Glebe, Lavendon, Olney*