



Appeal Decision

Site inspection on 26 February 2007

By **G F Self MA MSc FRTPI**

Inspector appointed by the Secretary of State
for Communities and Local Government

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Date: 1st March 2007

Appeal Reference: APP/Y3615/X/06/2026367

Land at Tormead School, Cranley Road, Guildford GU1 2JD

- The appeal is by Tormead Ltd. It is made under Section 195 of the Town and Country Planning Act 1990 against the partial refusal by Guildford Borough Council to issue a certificate of lawfulness.
- The application (reference number 06/P/1525), dated 13 July 2006, was partly refused by a notice dated 11 September 2006.
- The application related to an existing use, described in the application as: "Use as a school with ancillary uses (all within Class D1) including supplementary staff car parking to rear of the science block (edged green on the application plan)"

Summary of Decision: The appeal is allowed and a Certificate of Lawfulness is issued.

Background

1. The description of the use given above is taken from the application. In the appeal documents, the use is described as: "use of land to the rear of the science block as supplementary staff car parking, ancillary to the use as a school".
2. The plan accompanying the application showed edged red a roughly rectangular area between Cranley Road in the south-east, the railway line in the north-west, and the back gardens of houses in Watford Close and Tormead Road in the south-west and north-east respectively. Within the red-edged area, the plan showed a smaller area edged green, north-west of the science block. This area is mostly grassed, with patches of bare earth. It has evidently been used for staff car parking, although at the time of my inspection no cars were there, apparently because the wet conditions made it impracticable to use this area for car parking.
3. The council have issued a Certificate of Lawfulness relating to the school site as a whole, certifying that use as a school was lawful on 13 July 2006 (the application date). The council refused to grant a certificate to the effect that the use of the land edged green for staff car parking was lawful. The reasons for refusal were (in summary) that the use was not considered to be incidental to the primary use of the site as a school, and that the change of use had taken place within the last four years.

Assessment

4. The school has evidently been established on its present site for more than 100 years. There is no dispute about the planning status of the site as a whole (the red-edged area), and the certificate issued by the council has confirmed that the use of this site as



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a school was lawful in July 2006. In the circumstances I am treating this appeal as seeking a Certificate of Lawfulness for the use of the area north-west of the science block (the area edged green on the application plan) for staff car parking.

5. In deciding whether a material change of use of land has occurred for the purposes of planning law, a key point is the definition of the "planning unit". Applying the principles established by the courts, notably in the well-known *Burdle*¹ case, the planning unit here is the school site as a whole, defined as the area edged red on the application plan. The primary use of this site is for educational purposes as a school.
6. Within this unit, various activities are carried on. For example, there are tennis courts and administrative offices. Several areas, most of which are apparently not the subject of any dispute, are used for car parking by staff or visitors. These activities are part and parcel of the school use and in planning terms are ancillary to the use of the land as a school. Staff car parking is an activity which is functionally linked to the school use and is ancillary to the school use in much the same way as an office car park would typically be ancillary to office use, or parking in the driveway of a house by occupiers or visitors would normally be ancillary to residential use. If not ancillary, the car parking is incidental to the school use. Either way, as a matter of law no material change of use of the planning unit has occurred.
7. The situation might well be different if the parking area were to be open to the general public but that is not so. Different considerations might also arise if operational development such as the installation of hard surfacing were to be carried out, but again that is not an issue here.
8. The Borough Council have contended that in determining whether one use of land is ancillary to another, an "environmental impact test" should be applied, looking at outward effects of the proposed use (for example, the visual, amenity or traffic impact). The council state that their decision "was based on the car parking proposal failing the environmental impact test". The council evidently received comments from local residents which the council regarded as confirming their view that neighbours should have the opportunity to object through the statutory consultation process following the submission of a planning application.
9. The council's claim about the environmental impact test is incorrect. The decision on an application under Section 191 of the 1990 Act has to be made solely as a matter of fact and law. Whether it is desirable for local residents to have the opportunity of commenting on a planning application is irrelevant - there is no planning application.
10. The submissions before me refer to judgments by the courts in the *Harrods* case² where the Court of Appeal held that helicopter landings on the roof of a London department store solely by the owner were not "ordinarily incidental" to retail use but occurred because of the owner's whim. Helicopter access was found not to be something generally associated with shops. The circumstances of that case are not comparable with the present appeal. Staff car parking at schools is not uncommon, and there is nothing extraordinary or whimsical about staff car parking at this school in particular, to the extent covered by this application.

¹ *Burdlev SSE* [1972] 3 AER 240.

² *Harrods Ltd v SSETR* [2002] EWCA 412.

11. The scale of an activity can make it more than incidental or ancillary.³ That is not the situation in this instance, taking into account that the area of the disputed car park is a very small proportion (a little over 3%) of the total school site area.
12. I note that the occupier of No 56 Tormead Road (Mr Darnell) has raised objections about the amenity impact of car parking, and I can understand his concerns. One of Mr Darnell's objections is to the construction of a car park, but as I have already commented the *construction* of a car park is not an issue in this case. Mr Darnell has also pointed out that it is not essential for most businesses to provide staff car parking and that the school should encourage non-car travel. Those points might be relevant if a planning application were being considered, but are immaterial to a decision about a Certificate of Lawfulness.
13. My only doubt in this case relates to car parking on the appeal site by staff of the junior school, which is situated on the opposite side of Cranley Road from the senior school. There is room for debate about whether the junior and senior school sites should be treated as two separate planning units or as a single unit.
14. In summary, the available evidence indicates that the senior and junior schools are run as one entity by Tormead Ltd. Some facilities, such as catering, are shared. However, there is a considerable degree of separation and self-containment. Indeed, part of the appellant company's case is that the senior school site is one planning unit – the barrister's opinion submitted on behalf of the appellants comments on the links between the junior and senior schools and states: "It does not appear to me that this limited overlap is sufficient to disturb the conclusion that the senior school site constitutes one planning unit". The onus of proof is on the appellants and it would seem perverse for me to go against the appellants' own case in order to give them the benefit of the doubt in defining the planning unit.
15. Having regard to all these considerations, I judge on balance that for the purposes of this appeal the senior and junior school sites should be treated as separate planning units. Therefore only parking in connection with the use of the senior school site as a school would be ancillary to the use of the land within the senior school planning unit (this excludes parking by staff whose day to day work is at the junior school). I should perhaps add that there is nothing to prevent a future Section 191 or 192 application being made if fresh evidence were to become available and if a different case were to be argued.
16. I conclude that the council's decision partially to refuse a Certificate of Lawfulness was not well founded. The appeal succeeds and a certificate is granted.

Formal Decision

17. I allow the appeal and attach to this decision a Certificate of Lawfulness describing the use which I judge to be lawful.

G F Self

Inspector

³ For example, the court held in *Hussain v SSE* [1971] 23 P&CR 330 that keeping 300 poultry in a pen behind a food shop was found not to be incidental or ancillary to the retail use of the premises.



Lawful Development Certificate

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TOWN AND COUNTRY PLANNING ACT 1990, SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)
TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT
PROCEDURE) ORDER 1995, ARTICLE 24

IT IS HEREBY CERTIFIED that on 13 July 2006 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto would have been lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended) for the following reason:

G F Self

Inspector

Date: 1st March 2007

Reference APP/Y3615/X/06/2026367

First Schedule

The use of the area edged green on the plan accompanying the application by Tormead Ltd dated 13 July 2006 (reference number 06/P/1525), for car parking by staff of Tormead Senior School, for purposes ancillary to the use as a school of the site edged red on the plan accompanying the application.

Second Schedule

Land at Tormead School, Cranley Road, Guildford GU1 2JD, edged green on the plan accompanying the application by Tormead Ltd dated 13 July 2006 (reference number 06/P/1525).

NOTES

1. This certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use 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 would not have been liable to enforcement action under section 172 of the 1990 Act on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule. Any use 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.
4. 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