

GREENHAM 15/01369/CERTE  Pins Ref 3167986	Former GAMA Site Greenham Common, Basingstoke Road Greenham Flying A Services Ltd	Use of the property for internal storage use within Class B8.	Del Refusal	Allowed 14.8.17
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### Application for costs

At the Hearing an application for costs was made by Flying A Services Ltd against West Berkshire Council. This application is the subject of a separate Decision.

### Reasons

The application and appeal site was formerly part of the Greenham Common Air Base. The Ground Launched Cruise Missile Alert and Maintenance Area (GAMA) was a secured area by the western end of the runway used for the storage and maintenance of armourments, including nuclear warhead armed cruise missiles. It comprises extensive open areas and numerous buildings, including 6 specialised cruise missile storage bunkers and 5 large general munitions storage buildings (known as Igloo Bomb Stores), along with large garage and maintenance buildings and a number of smaller buildings such as guard posts and a fire station. There are extensive areas of open hardstanding, some of which have temporary (10 year) permissions for open car storage. Due to its role in the Cold War and its wider cultural significance as a focus of mass protest, the site, which closed in 1992, has been designated as a scheduled monument.

The appellant company manages and has had the use of the site since it was purchased by a parent company in October 2003. It is involved in the collection and refurbishment of old aircraft, parts and equipment, mainly military, and battlefield vehicles. Up until 2003 a related company, Wizzard Investments Ltd, now dissolved, was based at North Weald Airfield where it rented hangar space for its collection of aircraft, parts and equipment. An August 2003 quarterly invoice for hangar rental was annotated as "Last payment". In October 2003, Wizzard Investments entered into an agreement with the appellant company to rent the appeal site and "Not to use it for any purpose except one falling within Class B8". Later in 2003 Wizzard Investments moved all of its stock and related equipment to the appeal site using shipping containers. Apparently the intention was to set up a museum on the site. Order confirmations and invoices for moving numerous containers from North Weald Airfield to the site were submitted with the application. These cover the period December 2003 to February 2004. Most of the items delivered in that period, along with the various containers and packing crates, have remained on the site, and other items have been brought onto the site since then, either to add to the collection or building materials potentially useable in the proposed museum. None of this is disputed.

Only 3 of the larger buildings on the site are secure, one of the Igloo Bomb Stores, the former maintenance shed and the former storage shed, and these buildings are where the more valuable items on the site are kept. The Council was satisfied on the evidence provided and the observations of its officers over the years that the former maintenance building, referred to as building 714, had been in continuous use for storage purposes for at least 10 years prior to the application date, so it granted the LDC in respect of that building alone. For the rest, the Council accepts that each of the larger buildings has been used at one time or another for storage purposes, but it is not satisfied that there is sufficient evidence to show that any of these buildings have been used for 10 years continuously for storage purposes, and on this basis it considers that the LDC cannot be granted on the basis applied for, the burden of proof being on the appellant.

Amongst the evidence relied upon by the Council is a YouTube video purportedly dating from 2007 which shows footage of some of the cruise missile bunkers, clearly empty at that time. Mr Arnold maintains that what is in the bunkers now, including shipping containers, metal presses, aircraft paint, engine and equipment boxes and miscellaneous building materials, has largely been there since the 2003/04 move, but points to a period in about 2005 when the northern row of bunkers were cleared in order to close the blast doors facing the old runway portion of the common for security purposes. The bunker doors were winched up from the inside using a Centurion tank based recovery vehicle. He points to the fact that the footage shows 2 bunker doors closed and 1 open as evidence that the video was made while that operation was in progress. The timings do not match,

but that seems to me to be a plausible explanation for the absence of items in the bunkers. The Council accepted that at the hearing. The video is not in any case determinative. It shows a bunker as empty, but the appellant does not claim that all of the buildings had items stored in them at all times over a 10 year period prior to the date of application, rather the buildings on the site as a whole have been used primarily for storage purposes since 2003/04, notwithstanding that some individual buildings have been vacant at various times or for extended periods during the relevant 10 year period.

This is the crux of the difference between the Council and the appellant. Both parties agree that the appropriate planning unit for the purposes of assessing whether there has been a change of use of the land is the overall former GAMA site, by reference to the tests proposed in the case of *Burdle*. And both parties agree that the site has been used since 2003/04 for the internal storage of most of the items moved to the site in 2003/04, and that some other items have been brought on or left since. However, it is the Council's case that it should only grant the certificate applied for in whole if it considers that there is sufficient evidence to show, on the balance of probabilities, that each of the individual buildings within the planning unit has been used for the purpose specified for the 10 years continuously prior to the application date.

However, the use of the planning unit must be assessed as a whole, and it is common ground that the individual buildings should not be considered to be planning units in themselves. There is considerable evidence that the primary use of the planning unit comprising the site since late 2003 has been for keeping the majority of the large number of items moved there from North Weald Airfield, along with other items which have been brought onto the site to be kept for a period. The more valuable items have been kept in the secure buildings, with the less valuable items or those less susceptible to theft or damage kept in the more open buildings. Not all of the more open buildings have been in constant use, and items have been moved from building to building as needs be. There is not specific evidence before me of the frequency or intensity of the use of individual buildings or groups of buildings. Certainly some of the buildings appear to have had fairly limited use for storage purposes, particularly the less secure Igloo buildings furthest from the former maintenance shed which appears to be the focus of operations on the site.

Nonetheless, the pattern of use that emerges from the evidence provided and elaborated upon at the hearing appeared to the Inspector to be most appropriately described as a use of the overall site for internal storage uses. That appears to have been the purpose of the purchase of the site, and all of the larger buildings have been used for storage at some stage. When vacant, buildings appear to have been kept available for storage and not used for other purposes. The items being kept in the buildings have been put there with a view to subsequent re-use or for safe-keeping. These are storage uses. A use for storage falls within Class B8 of Schedule 1 of the Use Classes Order. I consider that the evidence provided is sufficient to establish, on the balance of probability, and as a matter of fact and degree, that this has been the primary use of the planning unit for over 10 years prior to the LDC application date. As such the use, being a material change of use of the land from what appears to have been a nil use following abandonment of the previous use as a military facility, is immune from enforcement by virtue of section 171B(3) of the 1990 Act. It follows that it has become lawful by reference to section 191(2)(a).

For these reasons, the Inspector considered that the Council's refusal in part to grant an LDC for use of the property for internal storage within class B8 was not well founded. The appeal succeeds accordingly and the Inspector exercised the powers transferred to him under section 195(2) of the 1990 Act as amended.

### **Decision**

The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

## **Costs Decision**

### **Reasons**

Parties to a planning appeal are normally expected to bear their own costs, but costs can be awarded where the unreasonable behaviour of a party has caused another party to incur unnecessary or wasted expense. In this case the appellant submits that the Council has acted inconsistently with regard to the established legal principles, and that had it assessed the application correctly it would have granted the LDC in full and the appeal would not have been necessary. However, the Inspector did not accept that the Council's conclusion in respect of the former maintenance building, namely that it had been used for 10 years for storage purposes, necessarily determined the character of the use of the site as a whole over the relevant period. On a large site such as this with numerous buildings it is not invariably the case that the use of a single building establishes the overall use of the site as a single planning unit. Although the Inspector came to a different conclusion to the Council, he found the hearing necessary to gain a full understanding of how the site as a whole was used over the relevant period. He did not find the evidence submitted in support of the application to be sufficiently precise and unambiguous on its own to justify the issue of an LDC in the terms applied for.

The Council has also been criticised for refusing to reveal the legal advice which it says underpinned its decision. The Inspector certainly found it unhelpful for the Council not to disclose whatever advice it did have, but in his view this was a case that stood to be assessed on its own facts.

Regarding the length of time that the Council took to determine the application, it was open to the appellant to make an appeal against non-determination of the application. The Inspector's view is that the hearing was necessary and he had not seen any evidence of how the delay might have added unnecessarily to the costs incurred.

Overall, the Inspector's conclusion is that unreasonable behaviour on the part of the Council leading to wasted or unnecessary costs for the appellant has not been demonstrated, and it follows that an award of costs is not warranted.

DC

