

Delegated Report

Planning Ref: 23/00966/CLE

Applicant: Mr R Flavel

Ward: Markfield Stanton & Field Head

Site: Denbar Lodge, Hillside, Markfield



Hinckley & Bosworth
Borough Council

Proposal: Lawful Development Certificate for the existing use of concrete rear area for storage of vehicle equipment.

1. Recommendations

- 1.1. Refuse Certificate of Lawfulness for the use of land identified by the red line boundary received on 10/10/2023 for the storage of vehicle equipment.

2. Description of application for existing use

- 2.1. The application seeks a certificate for the use of the land for commercial storage purposes. The application is made on the grounds that the development to which this application relates has taken place more than 10 years before the date of the application, with no enforcement action during this time.
- 2.2. The application is supported by the following documents:
 - Site Location Plan
 - Aerial photography
 - Witness statement declarations

3. Description of the site and surrounding area

- 3.1. The site relates to an area of hardstanding surrounded by dense hedgerow on its western and northern boundaries, with open countryside on all sides apart from the south where there is existing residential development. It is located off Hillside, a classified road on the western edge of Markfield. It is outside of the settlement boundary for Markfield therefore forming part of the countryside.
- 3.2. Relevant planning history
 - 23/00702/AGDO. Portal framed agricultural storage building. Refused Prior Approval 09.08.2023.
 - 23/00272/AGDO. Proposed steel portal frame building for general purpose storage. Refused Prior Approval 11.05.2023.
 - 04/01199/FUL. Erection of general purpose agricultural building for storage of implements equipment and vehicles. Permitted – 26.11.2004.

4. Publicity

- 4.1. No publicity is required, and no comments have been received.

5. Consultation

- 5.1. No consultation is required for this type of application.

6. Legislation and Guidance

- 6.1. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

7. Appraisal

- 7.1. The key issues are whether the change of use comprising of land from agricultural use to the commercial storage of heavy goods vehicles (HGV), HGV trailers and equipment vehicle equipment as identified edged red on the site plan provided took place at least 10 years before this application was submitted.
- 7.2. The evidence submitted with the application includes satellite imagery and a number of letters. The submitted historic satellite imagery from 2006, 2011, and 2023 shows the site containing an unconfirmed mix of materials which appear to change in quantity over time. The aerial pictures are not of sufficient quality or detail to show the presence of HGVs or HGV trailers and equipment. Furthermore the photos alone do not evidence that this use has been continuous as the aerial photography has significant time gaps between each image.
- 7.3. The application form refers to the use of land as B2- General industrial through the use of storage of HGVs as described above. The submitted letters are brief and all refer simply to use as commercial storage in excess of ten years, none refer to the storage of HGVs or HGV equipment. Additionally, the submitted letters do not refer to specific photographs, nor do they mention any specific type of storage other than 'commercial', or what is or has historically been on site. Whilst the letters are signed they are not sworn affidavits thus carry less weight. Additional information has been requested from the planning agent but no response has been received.
- 7.4. Therefore, the evidence provided in the form of historic satellite imagery and signed letters are considered insufficient, on the balance of probability, to demonstrate that the use of the land for the storage of vehicle equipment continually over the last 10 years.

8. Equality implications

- 8.1 Section 149 of the Equality Act 2010 created the public sector equality duty. 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.
- 8.2 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.
- 8.3 There are no known equality implications arising directly from this development.
- 8.4 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).

9. Conclusion

- 9.1. The information included in the application for a Certificate of Lawful Existing Use provides insufficient evidence to demonstrate that the site has been used continuously use for the storage of vehicle equipment for at least 10 years before this application.
- 9.2. The aerial photography does not provide conclusive evidence regarding the continuous use of the site for storage, nor does it confirm the nature of the materials stored on the site. The signed letters are not sworn affidavits and do not provide sufficient unambiguous evidence to satisfy the use of the land on the balance of probability which the LPA would require in this situation.
- 9.3. The land subject to this Lawful Development Certificate application is therefore in breach of planning regulations and the Certificate cannot be issued.

10. Recommendation

- 10.1. The Certificate of Lawfulness cannot be issued as there is insufficient evidence to demonstrate the continuous use of land identified by the red line boundary received on 10/10/2023 for the storage of vehicle equipment for at least 10 years.