

Delegated Report

Planning Ref: 23/01202/CLE

Applicant: Mr R Flavel

Ward: Markfield Stanton & Field Head



Hinckley & Bosworth
Borough Council

Site: Denbar Lodge, Hillside, Markfield

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

1. Recommendations

- 1.1. **Grant Certificate of Lawfulness** for the use of land identified by the red line boundary received on 13/12/2023 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 (B8 storage or distribution). 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
 - Historic photography
 - Historical aerial photography
 - Witness statement declarations and signed affidavits.

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
- 23/00966/CLE - Lawful Development Certificate for the existing use of concrete rear area for storage of vehicle equipment. Refused Certificate of Lawful Use - 01.12.23.
 - 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.

- One neutral neighbour representation was received:
“The application form overlooks the fact that the upper concrete pad is clearly visible from the path, which runs around the margins of the Hill Hole nature reserve.”

6. Legislation and Guidance

- 6.1. 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.
- 6.2. Section 191 of the Town and Country Planning Act 1990 (as amended) provides that if a person wishes to ascertain whether:- a) 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.
- 6.3. 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.
- 6.4. 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.
- 6.5. 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.
- 6.6. It is against this legislative framework that the application is assessed.

7. Appraisal

- 7.1. The key issues are whether the operational development comprising of the storage of 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 information submitted by the applicant together with the planning history indicates that the land that is the subject of this application was originally used for the storage of vehicles and machinery associated with nearby quarrying operations. The hardstanding area that is the subject of this application has clearly been in situ for a period in excess of ten years. It is clear that a change of use from agricultural to B8 (storage or distribution) use has occurred at some point during the site’s history. The change of use is considered to be material.
- 7.3. The submitted photographs date as far back as 1995 showing the former quarry use and present-day storage use. The submitted letter and application form refer to the

site being used for storage for in excess of 10 years and the application includes six sworn affidavits from former occupiers and neighbours of the site confirming that the land has been in continuous use for the storage of heavy goods vehicles and containers since 1989.

- 7.4. The Council has no evidence to counter any of the information that has been submitted by the applicant. No evidence has been submitted by local residents or the Parish Council to counter the information submitted. Therefore when assessing the submitted evidence, the local planning authority needs to be mindful of the Planning Practice Guidance (Lawful Development Certificates) paragraph 6, which states; in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
- 7.5. Whilst there are some time gaps in the submission of photographic evidence, the LPA has considered this alongside the signed witness statements and affidavits. In conclusion and on the balance of probability, the use of the application site can be considered lawful and immune from Enforcement Action. A Certificate of Lawful Existing Use may be granted.

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 has sufficient evidence to demonstrate that the business has been operating for a period of 10 years at this site. On the balance of probability, the use of the application

site can be considered lawful and immune from Enforcement Action. A Certificate of Lawful Existing Use may be granted.

10. Recommendation

- 10.1. It is recommended that a certificate is issued because sufficient evidence presented by the applicant, has shown that on the balance of probability, Denbar Lodge, Hillside, Markfield has been used for storage or distribution purposes (Class B8) for an uninterrupted period of at least 10 years and is subsequently immune from any enforcement action.