DELEGATED REPORT

Recommendation Made: 1 October 2009

Reference:- 09/00593/CLU **Parish:- Markfield Parish Council**

Applicant:-

County Hall
Glenfield
Leicestershire
LE3 8RE

Location:- Leicestershire County Council Copt Oak Road Copt Oak Markfield Leicestershire

Proposal:- CERTIFICATE OF LAWFUL EXISTING USE FOR CONTINUED USE AS A HIGHWAYS DEPOT

Introduction:-

A certificate of lawful existing use is sought to regularise the use of the Leicestershire County Highways Depot, on Land to the west of Copt Oak Road, Markfield. This follows two previous refusals for certificates in 2006 (06/0006/CLU) and 2008 (08/00739/CLU).

Relevant Planning History

08/00739/CLU	Certificate of Lawful use for existing use as a Highways Depot (use class B8) Refused
06/0006/CLU	Certificate of Lawful Existing Use for use of Depot Refused

Consultations:-

To date no representations have been received

Development Plan Policies:-

Appraisal:-

Comments have been received from the Councils Legal Department which are summarised below.

The Legal section gave advice on a previous application 08/00739/CLU and concluded in light of the advice set out in circular 10/97, in particular paragraph 8.21, it was considered that the applicant's evidence was not sufficiently precise and unambiguous to justify the grant of a Certificate.

The current application submits the same documentation as that of the 2008 with an additional 'Supporting Statement' prepared by Rebecca Wooley from LCC's Property Service section. This is not in the form of a statutory declaration nor is it signed. It is concluded that the way to deal with this application is to ascertain whether the Legal Sections concerns in relation to the 2008 application have been allayed.

The concerns expressed by the Legal Section in relation to the 2008 application are set out below:

These are:

1. The use. The application argues a B8 use. Legal Section`s view was that it was a 'sui generis' use. This point is addressed in more detail later.
2. In relation to the two statutory declarations submitted with the '08 application the following points were made.

a) Both referred to ‘personal knowledge’ and ‘records’. It would have been helpful to know how much of the information was from ‘personal knowledge’ and how much from ‘records’, and to have details of the records referred to.

NB – the same (unamended) declarations have been resubmitted.

b) Did the records referred to not contain details of when the two garage structures were erected?

c) The declaration referred to the use of the site as a ‘central base’ for 12-16 highway employees and an emergency team.

The advice from Legal Section considered that the information submitted was not sufficiently precise and unambiguous in defining the following:

(i) What was meant by the term ‘central base’?

(ii) How long had the site been used by 12-16 employees?

(iii) What was the extent, frequency and duration of the usage by those employees?

(iv) What was meant by the term ‘emergency team’ and what were the details of the usage by that team?

d) What, exactly, and in what quantities, were the materials stored.

e) How many trips in and out of site by employees, and by delivery vehicles, were made on a daily basis.

f) What were the hours of operation of the site and how long had these hours of operation been applied

g) How many and what type of vehicles were stored on site. The declarations referred to the storage of highways maintenance vehicles including two lorries.

h) The declarations referred to use as ‘The base for a tarmacadam dressing team.’

i) What was the capacity of the diesel tank and how long had it been stored on site.

The Supporting Statement answers a series of questions designed to allay the concerns raised above. Within this a brief outline of the use of the base is given with the added information that LCC forestry department also use it as a storage base for their own machinery, equipment and chippings. The two buildings were erected in 1976, with others demolished in 1995, including the diesel storage tank. The site was acquired in 1938 and first brought into use as a highways depot in 1966. A variety of materials are stored on the site from time to time including, hardcore, sand, kerb stones, crash barriers, signs and equipment but it is impossible to quantify the levels of stock stored on the site.

The status of the Author of the Supporting Statement is not clear, nor her authority to make the statement. The statement does not define what a central base is. Reference was made within the 2008 application to the base being used by 12-16 employees, however no reference to this number is made within the 2009 application. The Supporting Statement refers to the site being used by the forestry department for the storage of wood chippings and machinery. This appears to be recent and given our arguments that the use is ‘sui generis’ do we consider that a material change of use has occurred? Insufficient information is submitted for an assessment of this to be made.

With regard to the hours of operation the statement maintains that the site is in operation between 7:30am and 6:30pm Monday to Friday, however no evidence has been submitted to substantiate these hours. The statement continues to then say that 24hr access is required in the event of out of hours deliveries or emergencies. It is not clear what deliveries need to be made at weekends and no records have been provided detailing deliveries or the records of the number of emergencies- it is considered that there should be some records available showing these. If not the applicant should state that there is not.

The Supporting Statement maintains that there are two employees who operate from the site but other unspecified employees visit the site. Two vehicles, a flat bed lorry and a van or lorry, are stored on the site. It is not clear what other maintenance equipment is stored on the site.

When reaching a conclusion, the advice contained within Circular 10/97 is relevant. This is:

- It is important in an application for the use of land to state the limits of the use at a particular date

- Details in an LDC will be a point of reference against which any subsequent change may be assessed
- An LDC must be precisely drafted in all aspects
- Certainty is particularly important for uses which are 'sui generis'

The applicant states on the application form that the use of the site falls under Class B8 of the use classes order. However it is considered that the use as described is a 'sui generis' use. This was a point made in the previous application that has not been addressed in the current application.

The details submitted are ambiguous with regard to some of the operations carried out on the site including if any maintenance of vehicles is undertaken on the site? Is any work undertaken to maintain, repair, shape the material/ equipment on the site? Is there any evidence of hours that the depot is operational or used at weekends? There are also questions around the forestry use of the site and how this use fits in with the use as a highways depot.

Given this it is considered that insufficient evidence has been submitted to enable a sufficiently tight LDC to be drafted.

Reasons :-

1 In light of the advice set out in circular 10/97, and in particular, para 8.21, it is considered that the applicant's evidence is not sufficiently precise and unambiguous to justify the grant of a Certificate.

Notes to Applicant:-

1 Bats, nesting birds, great crested newts and certain other species are protected by law. If any such species are discovered before or during the works the works must be suspended and the local office of Natural England contacted for advice.

2 This permission does not grant approval under the Building Act 1984 and the Building Regulations 2000 (as amended) for which a separate application may be required. You are advised to contact the Building Control Section.

3. As from 6th April 2008 this Authority are charging for the discharge of conditions in accordance with revised fee regulations which came into force on that date. Application forms to discharge conditions and further information can be found on the planning portal web site www.planningportal.gov.uk.

4. All works within the limits of the Highway with regard to the access shall be carried out to the satisfaction of the Southern Area Manager (0116 3052202).

5 The applicant is advised that Paragraph 8.11 of Circular 10/97: Enforcing Planning Conditions notes that the purpose of Section 191 (1) (a) (and article 24(1) to (4) of the Town and Country Planning (General Development Procedure) Order 1995), is to ascertain whether specific uses, operations or other activities are or would be lawful. Paragraph 8.11 goes on to say: "[The provisions] do not enable anyone to ask the general question, 'what is or would be lawful'. For this reason, the applicant must precisely describe what is being applied for .... It is insufficient ..... merely to specify one of the 'use classes' .....".

Your attention is also drawn to paragraph 8.17 where it is stated: "By virtue of section 195 (5) (b), a lawful development certificate must include a description of the use, operations or other matters for which it is granted regardless of whether the matter falls within a 'use class' of the Use Classes Order. But where within a use class, a lawful development certificate must also specify the relevant 'class'. In all cases the description must be more than simply a title or label".

It is recommended that should the applicant resubmit the application further information be provided that demonstrates the specific uses, operations or other activities and the location on the site in which these have predominantly taken place.

Contact Officer:- Sarah Humphries Ext 5680 Date Printed: 14 April 2010