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Planning Development

Evidence Statement – Certificate of Existing Lawful Development – Change of use of agricultural building to general (non-agricultural) storage at land adj. 9 Top O’ Th’ Bank, Thurstonland, Huddersfield, HD4 6XZ

Introduction

An application for a Certificate of Existing Lawful Development is submitted to the Council under Section 191 of the Town and Country Planning Act 1990 (as amended). The date of the application is 10th May 2023 and the applicant is Mrs J. Duns.

Planning History

2022/93188 – Demolition of outbuilding and garage and erection of detached dwelling with integral garage – Withdrawn

2006/91065 – Erection of detached double garage – Withdrawn

2006/90027 – Erection of detached double garage and store with living accommodation over – Withdrawn



The building forming the subject of this application (photograph taken 27.01.23)

What the application seeks to establish as lawful development

The application is made under the ten-year immunity rule¹ as the development in question relates to the following aspect of 'development' as defined under Section 55 of The Town and Country Planning Act:²

- The material change in the use of the building from agricultural to general (non-agricultural) storage over ten years prior to the date of this application.

The application relates to the building shown enclosed in red on the attached location plan. The building is currently being used for general (non-agricultural) storage purposes including the storage of gardening equipment, garden furniture, wooden pallets, bicycles, generator, DIY tools, logs and coal.

Lawful Development Certificate legislation

The legislation sets out (Section 191 – 1):

“If any person wishes to ascertain whether—

- (a) **any existing use of buildings or other land is lawful;**³
- (b) any operations which have been carried out in, on, over or under land are lawful; or
- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.”

Section 191 (2) goes on to state:

“For the purposes of this Act uses and operations are lawful at any time if—

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Section 171B (3) confirms the time limits for enforcement action in respect of a change of use:

“In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.”

¹ Section 171B Town & Country Planning Act 1990 (as amended) – Paragraph (3)

² Meaning of 'development' and 'new development'

³ Our emphasis

Statutory requirements of the Town and Country Planning (Development Management Procedure) Order 2010

As required by this secondary legislation, Part 8 (39) states that such an application must be accompanied by the following information (responses shown in blue):

- (a) a plan identifying the land to which the application relates drawn to an identified scale and showing the direction of North; (submitted with this application - see accompanying 1:500 block plan)
- (b) such evidence verifying the information included in the application as the applicant can provide; (this Evidence Statement and appendices; and Sworn Statement); and
- (c) a statement setting out the applicant's interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application. The applicant J Duns is the freehold owner of the property in question.

Guidance and case law for Lawful Development Certificate applications

The National Planning Practice Guidance 'Lawful Development Certificates', paragraph 006, 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."

Case law notes that the 'balance of probability' test is less onerous than that of 'beyond reasonable doubt'. Moreover, the courts⁴ have held that the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted.

Evidence of lawfulness

1) Sworn Statement of declaration from one witness

One sworn statement is provided by the applicant, J. Duns and is enclosed with this application at Appendix 1. In summary, the building and associated curtilage land was used by the applicant's brother for a number of years when he worked as an agricultural contractor and also kept a number of beef cattle, in association with approximately 26 acres of land near Thurstonland Bank.

Unfortunately, due to the declining health of the applicant's brother, the agricultural business ceased 12 years ago at which point the applicant began using the building for general (non-agricultural) storage purposes. The use of the building for general storage has remained constant and to the same level of intensity until the present day.

This demonstrates that the use of the building for general (non-agricultural) storage has been in existence in excess of the requisite ten years.

⁴ *Gabbitts v Secretary of State for the Environment and Newham LBC [1985] J.P.L. 630*

2) Immunity from enforcement action

We are not aware of any enforcement action during the ten years preceding the date of this application.

Conclusion

It is submitted that the change of use described above is lawful at the date of this application under Section 191 of the Town & Country Planning Act.

The evidence listed above is considered to be sufficiently precise and unambiguous to prove, on the balance of probabilities, that the change of use from agricultural to general (non-agricultural) storage was completed more than ten years ago. This comprises the minimum required ten-year immunity time period before the date of this S191 Certificate of Lawfulness application.

Finally, as the Planning Practice Guidance recommends ⁵, should the Local Authority obtain its own evidence, this needs to be shared with the applicant to enable comment and the opportunity, if necessary, to produce counter-evidence.

In the light of the above, we respectfully submit that the aforementioned development is indeed lawful, and request that the Council grant the Certificate of Lawfulness accordingly.

Please do not hesitate to contact us if you require any further information, or clarification on any of the above.

Robert Halstead Chartered Surveyors & Town Planners

10th May 2023

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⁵ Paragraph 006