

Our Ref: MJT/2823

16 October 2023

Kirklees MDC.,
Planning Services,
PO Box B93,
Civic Centre III,
Huddersfield,
HD1 2JR.

Dear Sir / Madam,

RE: APPLICATION FOR CERTIFICATE OF EXISTING LAWFUL USE FOR - BUILDER'S YARD AND WORKSHOP FOR PREPARATION AND STORAGE OF BUILDING MATERIALS; AND MECHANIC'S WORKSHOP FOR THE REPAIR AND SERVICING OF CARS, PLANT AND MACHINERY – LAND AT MELTHAM ROAD, HONLEY, HUDDERSFIELD, HD9 6HL – MR JOEL CARTER

Please find attached the above-mentioned application which has Planning Portal reference PP-12489196. I confirm that the application fee has been paid via the Planning Portal.

This application is submitted following a request by the Council's enforcement officer, Mr Leon Warsama. The application seeks to regularise the longstanding mixed commercial use of the site.

The subject application is supported by the following information:

- (i) A site survey plan identifying application site (it will be noted that part of the site in the ownership of the applicants has been omitted from the application) and a site location plan; and
- (ii) Statutory Declarations from a number of parties together with further supporting evidence (submitted separately).

The Statutory Declarations, being legal documents, are to be treated as strictly 'Private and Confidential' and not posted in the public realm or on the Council's website.

Should the Council require any further witness statements these can be provided. However, it is considered that more than sufficient evidence is provided in the form of the statements and supporting information to demonstrate "on the balance of probability" that the Certificate should be issued.

In support of the application, I would comment as follows:

Background

- (i) The subject site was purchased by the owners and applicants in December 2022.
- (ii) The previous owner of the site, Mr P Delarge, owned the site between 2010 and December 2022.
- (iii) There is a longstanding mix of uses on the site, incorporating use as a builder's yard and a workshop for the preparation and storage of building materials, together with a mechanic's workshop for the repair and servicing of cars, plant and machinery. These uses were continuously in place during the previous owner's control of the site. Following purchase of the site, the business has operated the site in the same manner as it does today.
- (iv) It will be noted from the submitted application plan that part of the ownership (outlined in blue) does not form part of the Certificate application. It is understood that around 2009 a badger set was identified on the 'blue outlined' part of the site. Following advice from Kirklees Council that area of the site has been unused since that time.
- (v) Statutory Declarations are provided from:
 - 1. The now owners of the site;
 - 2. The previous site owner;
 - 3. The tenant on part of the site who operates a builder's yard; and
 - 4. A number of third party witnesses who have knowledge of the site.

It is considered that this evidence is sufficient to pass the balance of probability test. However, further Statutory Declarations can be provided if required.

The application of Legislation

I would comment as follows:

- (i) The subject application is made to regularise the lawful use of the site. Evidence is provided which establishes that the use of the site as a builder's yard and workshop for preparation and storage of building materials; and mechanic's workshop for the repair and servicing of cars, plant and machinery, has been continuous over a period in excess of 10 years (the "Ten Year Rule").
- (ii) Section 171B provides that in the case of any breach of planning control other than the carrying out of operations or making a change of use of a building to a single dwelling house, no enforcement action may be taken after the end of a period of 10 years beginning with the date of the breach.
- (iii) Section 191(2) of the Act provides that for the purposes of the 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 do not involve development or require planning permission or because the time for enforcement has expired or for any other reason); and

- (b) They do not constitute a contravention of the requirements of any enforcement notice then in force.
- (iv) Subsection (4) of Section 191 provides that: ***“If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application... they shall issue a certificate to that effect...”***
- (v) Section 191(5) states:

“A certificate under this section should:

- (a) specify the land to which it related;***
- (b) describe the use, operations or other matters in question...;***
- (c) give reasons for the determining use, operations or other matter to be lawful; and***
- (d) specify the date of the application for the certificate.”***

This submission provides the above requirements as follows:

- (a) The formal postal address and site location plan, together with a detailed site survey is provided.
 - (b) A description of the use in breach has been provided with the application.
 - (c) This submission and supporting documents provide Kirklees MDC with the evidence that the subject site has been utilised in the manner set out continuously for a period in excess of 10 years.
 - (d) The date of the application for the Certificate is detailed in the application form and this accompanying letter.
- (vi) The relevant test of the submitted evidence has been held to be ***“on the balance of probability”***. It is demonstrated by the evidence provided in the submitted Statutory Declarations and other supporting evidence that the site has been used as set out in this submission. The Statutory Declarations are clear and consistent in relation to the use of this site and demonstrate that the site has used continuously for a period in excess of 10 years.
 - (vii) As set out above, in the case of applications for existing use, National Planning Practice Guidance states that if a local planning authority has no evidence itself or from others to contradict or otherwise make the applicant’s version of events less probable there is no good reason to refuse the application, providing the applicant’s evidence is sufficiently precise and unambiguous to justify the grant of a Certificate ***“on the balance of probability”***.

Conclusion

The facts and evidence presented with this application clearly show that the site has been used continuously for the requisite period of 10 years for the purpose of a builder's yard and the servicing and repair of cars, plant and machinery and continues in that use today.

The site owners now seek to regularise the situation. In the circumstances, we submit that the grant of the Certificate of Lawful Use in respect of the site for builder's yard and workshop for the preparation and storage of materials; and mechanic's workshop for the repair and servicing of cars, plant and machinery is fully justified.

The applicant is willing to provide any further information or clarification the Council require. Should any matters arise, please do not hesitate to contact me. In any event, I would be grateful if you would contact me prior to drafting up your recommendation for determination.

Yours faithfully,

Michael Townsend BA (Hons) MRTPI
Chartered Town Planner

Encs