



Appeal Decision

Site visit made on 22 May 2024

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date 18 June 2024

Appeal Ref: APP/M4320/X/23/3328561

Land at Powderworks Lane, Melling, Liverpool L31 1AU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Gary Cringle against the decision of Sefton Metropolitan Borough Council.
- The application ref DC/2022/01968, dated 10 October 2022, was refused by notice dated 26 January 2023.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which an LDC is sought is 'B8 – Storage or Distribution'.

Decision

1. The appeal is allowed and attached to this decision is an LDC describing the existing use which is found to be lawful.

Procedural matter

2. An application has been made by the Appellant for an award of costs against the Council. This application is the subject of a separate Decision.

Reasons

3. The main issue is whether there is sufficient precise and unambiguous evidence to justify a conclusion that, on the balance of probability, the land has been in continuous use for 'B8 – Storage or Distribution' for a period in excess of ten years prior to the date of the application. The ten year period does not need to be immediately before the date of the application but if it isn't then the established lawful use must not then have been abandoned.
4. Powderworks Lane is a cul-de-sac and provides access to a mix of industrial, commercial and residential properties. On the land is a dilapidated building and, at the time of the site visit, some building materials. Much of the land is unused and partly overgrown. The land has an extensive planning history including the issue of an enforcement notice on 13 November 2020. The planning history, including the enforcement notice, is not relevant to consideration of whether the land had attained a lawful use on the date of the application.
5. As noted above the application, in answer to question 4 on the application form, sought to establish that the lawful existing use of the land is 'B8 – Storage and Distribution'. However, in his appeal statement the Appellant claims that "...what is being asserted is that for a considerable period, well in excess of 10 years this land has been used as an industrial site". Use classes are set out in the Town and Country (Use Classes) Order 1987 as amended (the Order). The Order

has been amended on many occasions but the version that exists now is that which existed on the date of the application. The Order now has two Class B uses – 'Class B2 – General Industry' and 'Class B8 – Storage and Distribution'. The use of an industrial site falls under Class B2.

6. Question 5 on the application form requires the Applicant to fully describe the existing use for which an LDC is sought. The answer to this question is 'Industrial site, used for the storage of materials, with small part derelict existing workshop building'. This answer suggests that the claimed 'industrial site' could be so defined because it has been used for, amongst other things, the storage of materials. Question 6 requires the Applicant to state why an LDC should be granted. Part of the answer to this question is "The application...seeks to establish the lawful use of B8 (storage and distribution) in order to continue the activity of storage and distribution in line with historic use of this and adjacent sites".

7. The change of use of a Class B2 site to a Class B8 use is permitted development whilst the change of use of a Class B8 site to a Class B2 use is not permitted development. The use of land as an industrial site, a Class B2 use, cannot be a lawful use, as a matter of fact, if it is established that the land is in lawful Class B8 use. The nature of an application cannot be changed at appeal stage. The answers to questions 4 and 6 on the application form are unequivocal; the Applicant was, and the Appellant now is, seeking to establish that the lawful use of the land is 'Class B8 – Storage and Distribution', despite what is asserted in the Agent's statement. The appeal will be determined on this basis.

8. The Council rely upon their Officer's report on the application. It is clear that the Officer was distracted by the ambiguity in the application; the Officer stated that "There appears to be a misconception that the whole of the site...has an industrial use". The Officer, rather than considering the application on the basis of the use for which an LDC was sought, 'B8 – Storage and Distribution', considered it on the basis that the use sought was 'industrial site, used for storage of materials, with small existing workshop building'. The 'Certificate Not Issued' Notice continued this theme by describing the development as 'continuation of use...as an industrial site, used for storage of materials, with small existing workshop building'.

9. The land was purchased by the Appellant in February 2020 from Samlouis Ltd, which is owned by Mrs Paula and Mr Mark Doyle. Samlouis Ltd purchased the land in 2007 and is one of three property businesses owned and operated by Mrs and Mr Doyle. The three businesses operate from different addresses but it is claimed that they all used the land to store new and reclaimed materials. Mrs Doyle, in a statement dated 15 October 2021, states that "Since 2007...the site...has always been used as a storage and stock depot...The depot is used by staff and employees of the businesses. The staff and employees would store equipment, stock materials, and sometimes vehicles on the site".

10. The statement by Mrs Doyle is corroborated by Statutory Declarations, all properly sworn, signed and dated, by Mr R Seymour Senior, Mr J McLoughlin, Mr N Huntington, Mr P Cassidy and Mr R Gilmour. All five of the declarations, made by persons who were either employees of or who worked for the three companies owned by Mrs and Mr Doyle, paint a consistent picture of the storage use claimed by Mrs Doyle in her statement. The storage use did not occupy the whole site and the types of materials and equipment stored changed over time. But the land is a single planning unit and there was a continuity of storage use throughout the period of ownership by Samlouis Ltd between 2007 and 2020.

11. Owners of businesses on Powderworks Lane have written in support of the Appellant's application and appeal and paint the same picture of storage use described by Mrs Doyle and in the Statutory Declarations. Local residents are opposed to the appeal and some refer to the historical agricultural use of the land. This may have been a historical use of the land but there is certain evidence that such a use ceased before or when Samlouis Ltd purchased the site. Residents have referred to the overgrown nature of part of the land but other comments by them do corroborate storage use of the land. Nothing stated by residents undermines the evidence in the Statutory Declarations and given by Mrs Doyle.

12. The overgrown nature of parts of the land can be seen in aerial photographs submitted in evidence by the Council. Comments made in relation to a photograph of 2010 include "Materials stored in the open" and "...visible vehicle access and wearing of the surface of the land by storage and vehicle use...", in relation to a photograph of 2011 comments include "Increased materials stored in the open in multiple locations..." and "Clearly visible vehicle access and wearing of the surface of the land by storage...use...", and in relation to a photograph of 2012 comments include "Vehicle on site and clear hardstanding...", "Materials stored alongside front of land...", "Materials stored behind and at left hand side of building...".

13. Similar comments to those in the previous paragraph are also made by the Council in relation to aerial photographs of 2015, 2016, 2018 and 2019. The photographs and the comments made by the Council corroborate the evidence of Mrs Doyle and those who have submitted Statutory Declarations that the land was consistently used for storage between 2007 and February 2020. No enforcement action was taken during that 13 year period against the storage use which thus gained immunity from such action. The Appellant has submitted a properly sworn, signed and dated Statutory Declaration which claims that the storage use that became lawful through the passage of time has not been abandoned.

14. The Appellant's claim is corroborated by an aerial photograph of April 2021, taken over a year after he purchased the land; the Council has commented that the "Photo shows use of site and materials stored". There is no evidence of any industrial use of the land but there is sufficient precise and unambiguous evidence to justify a conclusion that, on the balance of probability, the land has been in continuous use for 'B8 – Storage or Distribution' for a period in excess of ten years prior to the date of the application, and that the use has not been abandoned.

15. For the reasons given the Council's refusal to grant an LDC for 'B8 – Storage or Distribution' at Land at Powderworks Lane, Melling, Liverpool was not well-founded and the appeal thus succeeds. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 10 October 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The existing storage use of the land has subsisted continuously for in excess of ten years and has not been abandoned and is thus immune from enforcement action.

Signed

John Braithwaite

Inspector

Date 18 June 2024

Reference: APP/M4320/X/23/3328561

First Schedule

Class B8 – Storage or Distribution

Second Schedule

Land at Powderworks Lane, Melling, Liverpool L31 1AU

IMPORTANT NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated 18 June 2024

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Scale: Not to Scale

