

DELEGATED REPORT

Application Number	11/3759N
Proposal	Lawful Development Certificate For The Parking And Storage Of Vehicles Machinery And Equipment
Location	White Moss Quarry, BUTTERTON LANE, BARTHOMLEY, CREWE
LDLC	29-Nov-2011
Expiry Date	13-Dec-2011
Constraints	Wind Turbine Dev Safeguarding Area Primary Surveillance Radar PSR 200m Agricultural Land GRADE 3 Radon gas class1 High priority military low flying area likely to raise considerable and signific Congleton Local Plan Local Plan Area Congleton Local Plan Open Countryside Congleton Local Plan Inset no.4

SUMMARY RECOMMENDATION: Issue a Positive Certificate

MAIN ISSUES:

- Procedural Matters
- Planning Context
- Examination of Evidence

DESCRIPTION OF SITE AND CONTEXT

The application site is located in the corner of a (much larger) field on the northern side of Crewe Road. The site is located opposite the traffic light controlled junction to Radway Green and adjacent to the entrance to White Moss Quarry. The site boundaries are demarcated by mature native hedgerows (approximately 2/3m in height) which are quite patchy at sporadic intervals. A public right of way abuts the northern edge of the application site. The application site is located wholly within the open countryside.

DETAILS OF PROPOSAL

An application for a Certificate of Lawful Existing Use or Development (CLEUD) for the parking and storage of vehicles, machinery and equipment at land known as Triangular Field, Butterson Lane, Barthomley, Crewe.

RELEVANT HISTORY

10/4139C - Retrospective Change Of Use From Agriculture To Mixed Use For Agriculture And Storage Of Skips And Containers, Parking Of Skip Lorries, Other Vehicles And Trailer, Storage Of Construction Materials, Formation Of A Crushed Stone Surface On Part Of Field No. 8175 Known As Triangle Field, Butterson Lane, Radway Green, Alsager – Refused – 3rd February 2011

10/0296C – Application for a Lawful Development for an Existing Use or Operation for change of use from agriculture to mixed use for agriculture and storage of skips and containers, parking of skip lorries, other vehicles and trailer, storage of construction materials and formation of a crushed stone surface at Triangle Field, Butterson Lane, Radway Green, Alsager – Negative Certificate Issued – 25th June 2010.

POLICIES

National/Local Plan Policies

Not relevant to this type of application.

Other Material Considerations

Circular 10/97 – Enforcing planning control: legislative provisions and procedural requirements.

CONSIDERATIONS (External to Planning)

None Consulted

VIEWS OF THE PARISH / TOWN COUNCIL

The Parish Council has objected to the Certificate of Lawfulness on the following grounds:

The previous application no. 10/0296C for a 'Lawful Development Certificate for an existing use of agriculture and storage of skips and containers, parking of skip lorries, other vehicles and trailers, storage of construction materials, formation of crushed stone surface on part of field no./ 8175, known as 'triangle field' Crewe Road', was refused by Cheshire East stating... 'the applicant on present evidence had not proved on the balance of probabilities the use of the land for a period of ten years prior to the date of the application.'

No new evidence has since been provided by the applicant to support the new application, therefore the grounds on which refusal to 10/0296C was based still stand, along with the information contained within the Cheshire East delegated report to that application recommending refusal.

Evidence provided by the applicant to prove that the field has been used for the parking and storage of vehicles machinery and equipment **for more than 10 years** appears to be based on the earliest evidence provided by the applicant, an aerial photograph taken on 27th June 2000.

This photograph shows a disturbed area of the field which is a very small proportion of the area applied for in the application, and does not show any parked vehicles or machinery, this cannot be used as evidence to prove that the whole area detailed on the application has been used for parking and storage. The remainder of the application site, which is the majority, is covered with vegetation.

This disturbed 'cream coloured' area on the photo is geologically of peat/sand (hence the extraction of the same from the Quarry) and disturbance of the ground at the entrance, is caused by agricultural vehicles accessing the fields. The addition of some stone around any gateway should not constitute any proof of hard standing for the parking of vehicles, and this may have been used to reinforce the entrance to the field.

Alsager Town Council do not consider that the applicant has proven that the use of the land for the purpose of parking and storage of vehicles, machinery and equipment began more than 10 years prior to the date of the application and therefore recommends that the Lawful Development Certificate not be issued.

A further point, Alsager Town Council would express a concern over the lack of available evidence to the Town Council and members of the public in relation to this application. The aerial photo dated 2000 is so vital to this application, and was not contained in the application documentation sent to the Town Council although it is referred to in the application. After requests from the Assistant Town Clerk to Cheshire East a copy was emailed, although it was still not available on Cheshire East's website after persistent request from the Assistant Town Clerk and residents of Alsager and assurances to both that it would be. The photo was published on the website **after** the closing date for comments of the 29th November.

OTHER REPRESENTATIONS

Letters of objection have been received from the occupiers of 68 Gowry Close, 66 Close Lane, Swallow Barn, 20 Nursery Road and 6 Woolaston Drive. The salient points raised in the objection letters are:

- The submitted evidence does not prove that all the land in question has been continually used for the storage of machinery, vehicles and building materials. Furthermore, not all the land was covered in hard standing as indicated by the applicant in their application within the prescribed time period;
- The aerial photograph was not available to view on the Council's website and the only photograph I have seen to match the current area was taken in 2007;
- The photograph of the field entrance is discoloured as this is used by agricultural vehicles and is normal practice. It does not mean that the applicant had installed hardstanding;
- The application is retrospective and the applicant has already been acting illegally and in so doing has exacerbated a situation that is already unsatisfactory;
- The proposal generates a lot of additional traffic which is detrimental to highway safety;
- The proposal has a detrimental impact on the character and appearance of the open countryside;
- The proposal generates a lot more noise and dust;
- The proposal will give a poor first impression for people coming into Alsager;
- The land is part of the green belt;
- The amount of traffic using the site has damaged the roads and is leaving debris on them;
- The application forms contains many inaccuracies – which includes the date when work commenced, whether pre application advice sought, waste storage and collection, hours of opening, industrial and commercial processes and machinery and can the site be seen from any public road;
- No hours of operation are stated. would this field be open to use by all types of vehicles, at any time, everyday of the week;
- How many of each type of vehicle would be parked there;
- How much and what type of equipment would be stored there;
- What types and how much construction material would be stored there? mounds of crushed aggregate;
- How close would this operation be to housing;
- How many vehicle movements would there be each day;

- Would all the vehicles entering the access road from the main road be monitored by camera and recorded, and checked to ensure compliance with existing and new conditions;
- Why should skips/containers etc be stored on the field, does the owner have storage facilities elsewhere?
- The site is visible from the footpath and road;
- There is no need for this development, it can all be contained in the quarry or elsewhere;
- The proposal if allowed may lead to intensification of use;
- The applicant has failed to adhere to an enforcement notice to reinstate the field to agricultural use;
- No fresh evidence has been presented;
- As a user of the adjoining footpath I can testify that this area was used for agriculture 10 years ago;
- The small area of disturbed ground near the entrance in the 2000 photo is consistent with agricultural use. It is in any case not relevant to the application because its an insignificant fraction of the plan area which the applicant is seeking to legalise;
- The fact that the plan area is slightly smaller than 10/4139C is irrelevant because the local authority had the power to alter the position of the boundary and reduction in area does not qualify as fresh evidence.
- Aerial photographs in your possession, 1998, 2000, 2003 and 2005 show no evidence of any vehicles. Aerial photographs of 2006, however, show the parking of vehicles and trailers well beyond the area being referred to in the application;
- The application appears to have been predetermined by officers at Cheshire East Council.

An email objecting to the application from Councillor Hough dated 8th December 2011 raising the following issues:

- The aerial photo confirms that the site was not used as described in section 8 of the application. Apart from 4 cars parked on what is a lay-by, on land adjacent to the application site plus some tipping on the application site there is no evidence of 'the parking and storage/parking of vehicles, machinery and equipment;
- The applicant's statement that all other objections should be ignored should be discounted. On previous applications the evidence from residents has been accepted as showing that the site does not have a 10 year history; and
- Although the applicant suggests that the site is only used during opening hours, this is debatable with some large machinery/equipment being in situ over night and at weekends.

APPLICANT'S SUPPORTING INFORMATION

Aerial Photograph and Flight Log dated 27th June 2000
 Supporting Statement
 Statutory Declaration

OFFICER APPRAISAL

Procedural Matters

A number of local residents have stated that the certificate of lawfulness forms have been completed inaccurately. The case officer acknowledges that this may be the case but does

not consider that the application is fundamentally flawed and the information submitted is sufficient for it to be determined on the balance of the evidence submitted.

Planning context

The previous use of the land was agriculture and in making this decision, the Local Planning Authority must first satisfy itself that a change of use had occurred. It is considered that the development from agricultural land to one comprising an area of hard standing which is used for the storage of machinery, vehicles and building materials did constitute a material change of use and would have required an application for planning permission.

Paragraph 8.11 of Annex 8 to Circular 10/97 "Enforcing planning control: legislative provisions and procedural requirements" states clearly that once an application for a certificate of lawful use or development is valid, what the LPA must address is whether, on the facts of the case and relevant planning law, the specified matter is or would be lawful. But they 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

The merits of the development therefore are not relevant to a CLEUD application consequently in the present case, Local Plan policies, the compatibility with agriculture, relationship with the adjacent quarry and possible future expansion, traffic generated, harm (if any) caused by the crushed stone surface and spreading of waste are not material considerations.

In this case a certificate of lawful use is sought on the basis that the development is immune from enforcement action because no such action has been taken within the time limit specified under section 171B of the 1990 Act. In the case of changes of use (other than the change of use of a building to a single dwelling) the time limit to take enforcement action is 10 years. For the purposes of a CLEUD application this is the period of 10 years prior to the date of the application i.e. 18th October 2011.

Paragraph 8.12 of Circular 10/97 states clearly that the onus of proof is firmly on the applicant. While the LPA should co-operate with applicants seeking information about the planning status of land, they need not go to great lengths to show that the use, operations or failure to comply with a condition is or is not lawful. While LPAs are required to maintain the planning register this is not a complete record of the planning status of all the land in their area. In many cases the applicant will be best placed to produce information about the present and any previous activities taking place on the land. Some information, especially about the history of any unauthorised activity on the land, will be peculiarly within the applicant's knowledge.

Paragraph 8.15 of the Circular goes on to explain that with such applications the relevant test is whether there is sufficient evidence to prove that the development is lawful 'on the balance of probabilities' (i.e. not the more stringent test of 'beyond reasonable doubt' as used in criminal cases).

Moreover the Courts have held that the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the local planning authority has no evidence of its own, or from other people, 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 probability".

It is noted that the documents submitted on behalf of the applicant and by residents opposed to it contain conflicting statements, which could be for various reasons which include due to

the passage of time and the effect on people's memory or simply because people express themselves in different ways. The weight that can be attached to those statements must be adjusted accordingly but it does not mean that those statements were made 'knowingly or recklessly' so as to procure a particular decision on the application.

It is implicit that an application for a certificate of lawful existing use or development will involve some development that has already been carried out. It is important to remember that it is not an offence to carry out development without planning permission and this form of application was specifically introduced by the Planning and Compensation Act 1991 to deal with this type of situation. It is not possible to attach conditions to a determination of this type although the Act does allow the Local Planning Authority to modify or substitute a different description of development if they are provided with evidence satisfying them of the lawfulness at the time of the application of the use, operations or other matter concerned.

Examination of Evidence

The applicants supporting statement states that 'it is clear that numerous statements have been made and conflicting evidence provided, it is questionable if the majority of this evidence is proof for or against the continued use of the site for 10 years'. The reason that the previous certificate was refused because the red edge appeared too large and there was insufficient evidence to prove that all of the land within the area edged in red was used for the parking and storage of machinery for a continuous 10 year period, and as such a negative certificate was refused. However, this does not preclude the applicant from making another application. According to Circular 10/97 clearly states 'The fact that a LDC may be refused because the onus of proof is not discharged by the applicant does not preclude the submission of a further application if better evidence is subsequently available'. (Paragraph 8.12) The circular goes on to state 'A refusal to issue a LDC is therefore not necessarily conclusive that something is not lawful: it may merely mean that, so far, insufficient evidence has been presented to satisfy the LPA that the use, operation or activity is lawful'. Therefore, the applicant has submitted a revised CLEUD with an amended red edge, a certified aerial photograph and a sworn statutory declaration.

In the previous application (10/0296C) it stated that the field first came into use for open storage and parking in 1988 when sand extraction began at White Moss Quarry and additional open storage space was needed. An aerial photograph taken in 1998 shows one indistinct item in the corner of the field but the remainder of the field appears ploughed. Therefore, it is clear from this evidence that the development as applied for had not occurred in 1998.

The applicant has submitted an aerial photograph from 2000, which has been certified that the picture was captured on the 27th June 2000. This picture clearly shows that some type of building material (it is not clear that whether it is stone block or hard core, but given its colour it would appear to be compacted hardcore). However, this is disputed by local residents which claim that discolouration is due to peat and sand when agricultural vehicles entered the site, churned the soil, exposing the sand. One of the residents accepts that some stone may have been placed around the site entrance in order to allow agricultural vehicles to access/egress the field easier. It does appear that the material is similar in colour to other areas of hardstanding outside the application site. In any event, it is noted that this area of hard standing does not fully extend over the whole of the application site. As a matter of fact, the hard standing only covers approximately a third of the area edged red. In addition, to the area of hard standing there appears to piles of materials stored in the open, adjacent to the hedgerow. The remainder of the site appears to be laid to grass. Consequently, it is the Councils opinion that part of the application site was covered in hard standing and was being

used for the storage of materials on the 27th June 2000. However, as stated above, this does not indicate that all of the land which is being applied for was being used for the storage of machinery/vehicles and that it was covered in hard standing.

This point is accepted by the applicant and they have also submitted a Statutory Declaration which clearly states that the site at 'Triangular Field has been continually used for the parking of vehicles, with an established hard standing, from March 2001 to the present day'. The declaration goes on to enunciate that 'the land shown on the image taken on 27th June 2000 clearly shows the access and hard standing, this hard standing was extended early in 2001 and fully established by March 2001'. This sworn statutory declaration carries significant weight and cannot lightly be put aside unless there is compelling contrary evidence.

According to the delegated report **under application 10/0296C** another aerial photograph taken in 2003 shows a roughly triangular area of bare ground measuring approx. 60 metres along the quarry access road by approx. 50 metres along Crewe Road by approx. 50 metres across in the corner of the field but there is nothing distinguishable on this area. There appear to be a number of items randomly scattered across the remainder of the field to the east but since this area is now clear no lawful use can be claimed in respect of it. (the current case officer has been unable to locate this photo).

The 2005 aerial photograph which was captured on the 28th June 2005 shows the application site, which is roughly triangular in shape is now covered by what appears to be a hard standing and various vehicles, machinery and building materials. A further photograph taken on the 11th October 2010 clearly shows that the land in question is being utilised for the storage of various machines and the whole of the site was covered in hard standing.

The LPA has received a number of representations from local residents that dispute the claims made by the applicant. The objectors claim that the application site has not been used for the storage of machinery, vehicles etc for a 10 year period and neither has all of the land been covered in hard standing. None of the objectors have submitted any sworn statutory declarations and neither have they commented on the applicants statutory declaration.

Based on the evidence submitted, whilst there is conflicting evidence and the evidence submitted is very finely balanced. The applicant has produced a sworn statement and the evidence in the aerial photographs to establish that the land was used for storage of vehicles, machinery and other equipment and the land was covered in hard standing (albeit this is clearly not the case in the 2000 photograph). However, in comparison, the objectors evidence cannot be given the same weight as the applicants evidence as they have not submitted any statutory declarations or commented on the applicants. Furthermore, some of the claims made by the objectors contradict each other and this questions the accuracy of their claims. The LPA has no evidence of its own to contradict or otherwise make the applicants version of events less than probable, there is insufficient justification to warrant a refusal. Therefore, on the balance of probabilities it is considered on the basis of the sworn statutory declaration and the aerial photographs a positive certificate should issued.

CONCLUSIONS AND REASON(S) FOR THE DECISION

The applicant has demonstrated that on the balance of probability the land has been used for the parking and storage of vehicles, machinery, building materials and other equipment for a period exceeding 10 years, prior to the date of this application.

Recommendation: **Issue a positive**

