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**2021/1628**

Tadano UK Ltd.

Lawful Development Certificate for existing use of land of storage for cranes

1-4 Wentworth Way, Wentworth Industrial Park, Tankersley, Barnsley, S75 3DH

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**Site Description**

The application site is in relation to Units 1-4 Wentworth Way located to the North of Wentworth Industrial Park in Tankersley. The site is square in shape measuring approximately 0.43 ha, with a fairly large detached building on the site which is constructed from brick with some timber cladding features to part of the front elevation and the Western-facing side elevation. The building is located to the West site of the site with the rear elevation not visible from Wentworth Way itself but there is a public footpath which wraps around the entire building, providing pedestrian access to the industrial estate to the village of Pilly to the North-East. There is a small car park to the front of the site on the outside of the fenced area hosting 6 x parking spaces. The East side of the site is hard surfaced. The information presented by the agent states that the site has been vacant since March 2021. The previous occupiers were a company called Cranes UK (previously called Tadano) who occupied the site from 2006 to this date. The site is located within an area in the Urban Fabric with the surrounding sites/buildings are occupied by commercial uses of varying uses

The building has a canopy erected to the East elevation on the Northern side which was approved under B/90/1930/WO.





## **Background**

B/86/0277/WO – Erection of extension to offices (Historic)

B/90/1930/WO – Erection of canopy (historic)

2006/1025 – Change of use from warehouse to B2 (General industrial) (Approved with conditions)

## **Proposed Development**

The applicant has applied for a Lawful Development Certificate for the existing use of the land for the storage of cranes. The agent has submitted the following pieces of evidence to support this claim:

- Photographs showing the outdoor storage of cranes on site in the following years – 2009, 2010, 2012, 2013 and 2018 (x2).
- Sworn statements of declaration from two witnesses. The witnesses have worked for Tadano UK at the relevant premises for the period 2006 to present and in summary, they both confirm that the outdoor area hatched in blue has been used continuously for the outside storage of mobile cranes, testing equipment and spare parts. The sworn statements have been provided as an appendix to the evidence statement – Appendix Bi and Bii.
- An email from a current employee which states that there was a previous planning permission granted under 2006/1025 for the change of use from warehouse to B2 (General Industrial) but this has never been implemented and the premises has remained in its Historic B8 use through Tadano's occupation since that site, up until vacating the site recently.
- Google earth aerial photos – the aerial photographs at Appendix C (at the end of the statement) from 2008 through to 2020 provide further evidence to corroborate the witness statements. The aerial photographs provide further evidence which shows that the land has been used for the storage of mobile cranes and other materials.

The evidence base shows that the cranes were stored outside to the Front (East) of the building in a fenced-off, hard surfaced storage area.

## **Consultations**

Legal – The aerial photographs provided by the agent/applicant have been checked and matches the ones that the Council has. The case of R. (on the application of Ocado Retail Ltd.) x Islington LBC 2021 establishes beyond question that the relevant period of continuous use to qualify for an LDC does not have

to be present at the date of the application. The requirement is that a full 10 years continuous use must be shown and if that is not present at the date of the application we must be satisfied that the use has not been lost by abandonment by some other intervening event such as the use of the land for a materially different purpose or a change to the planning unit. The aerial photos show that the use was present in 2008-2009, 2009, 2015 and 2020. There is a gap between 2009 and 2015 but unless we have some evidence showing that the use ceased or was replaced by another use in that period, it must be assumed that it continued. I am not aware of any evidence that the use has been lost in this way between 2009 and 2015 or currently, and if this is the case, then I think that a certificate of lawfulness should be issued.

## **Representations**

Neighbour notification letters were sent to neighbouring properties and a site notice placed near to the site; no comments were received.

## **Assessment**

The LPA can grant a certificate confirming that an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under Section 191 of the Town and Country Planning Act 1990. The applicant has submitted this application for lawful use of the relevant area of land under Section 191 of the Town and Country Planning Act 1990. Section 191(1) provides that if any person wishes to ascertain whether any existing use of buildings or other land is lawful they may make an application for that purpose to the local planning authority specifying the land and describing the use, operations or other matter. Section 191(4) further provides that if, on the basis of the information provided in the application, the Council is satisfied at the time of the application of the use, and the Council is obliged to issue a certificate to the effect that the use is lawful. It should therefore be assessed whether the use of the land is lawful under the Town and Country Planning Act 1990 on the basis. If the 10 years is established for the use the Council would not be entitled to take enforcement action in respect of the breach and the present use would thus be lawful.

The key issues within the assessment of this application is whether appropriate evidence has been submitted to establish that 10 years continuous use for the outdoor storage of cranes has been undertaken on site, at what periods and whether a material change of use has been occurred (either during or afterward the 10 years) which would have disrupted this continuous use. By effect, the LDC also seeks to confirm that the previous planning permission granted on the site (2006/1025) wasn't implemented at any point which may have otherwise disturbed the above use.

The first piece of evidence submitted by the agent to support this claim is aerial photographs dated 2008, 2009, 2015, 2017, 2018 and 2020 which clearly show cranes on the site and the LPA has checked these aerial photograph dates against its own records which confirms that they are accurate, and cranes were on site in the exact same position during these times. This provided a good starting evidence base but left quite a large gap between 2009 and 2015 where no aerial photographs were submitted. However, the LPA has access to aerial photographs from 2013 which also showed that cranes were stored on the site closing this gap from 2009 to 2013. Whilst this isn't ideal as it still leaves a 4-year gap, there are other pieces of evidence submitted which support the application in the form of 2 x sworn affidavits from former employees which state that the site was indeed used continuously for this use. Additionally, there is an email from a current employee at the company which also states that the previous permission (2006/1025) was never implemented, and the use was not disrupted by this permission. Further, there are site photographs provided by the agent showing cranes on the site. However, these photographs are not dated themselves but the agent has dated the actual text of the evidence statement. These photographs show different cranes on the site at different points but with limited backgrounds the photographs themselves aren't dated. As such, these photographs are limited in their use as evidence.

Nonetheless, LPAs need to take a 'balance of probability' test as covered under the National Planning Practice 'Lawful development certificates', paragraph 006 which reads:

*'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.'*

The LPA must therefore have sufficient evidence to dispute the claims made by the agent/applicant in order to refuse the LDC. In this case, the agent has supplied a fairly solid evidence base in the form of aerial photographs which are supported by sworn affidavits, an email from a current employee and site photographs – although, these are not dated and offer weak support. The gap between 2009 and 2013 in the aerial photographs is supported by the sworn affidavits and the LPA has no evidence or reason to suggest that the use ceased to operate in this time.

The Council's legal officer was also consulted on the application and made the Case Officer aware of recent case law (R. (on the application of Ocado Retail Ltd) v Islington LBC 2021) which establishes beyond question that the relevant period of continuous use to qualify for an LDC does not have to be present at the date of the application. The requirement is that a full 10-years continuous use must be shown and if that is not present at the date of the application we must be satisfied that the use has not been lost by abandonment by some other intervening event such as the use of the land for a materially different purpose or a change to the planning unit. The Legal Officer has checked the same information as the LPA and came to the same conclusion that it is accurate and when assessing the application using a balance of probability test, the LPA should grant a certificate.

Finally, the Case Officer visited the site (January 2022) and the building was not being operated for any use and therefore it is evidenced that no material change of use has occurred on the site since the company has left the premises and there is no evidence of such change having occurred previously. As shown in the photographs above, there is a 'To let' sign displayed on the site.

#### *Conclusion:*

With all of the above taken under consideration, the LPA considers that there is a sufficient argument and evidence base submitted by the agent to provide proof that 10 years continuous use of outdoor storage of cranes has been undertaken on the site. The key piece of evidence presented has been through Aerial Photographs at various dates. However, this had a fairly large gap between 2009 and 2015 but the LPA had access to aerial photographs from 2013 which confirmed there were cranes on site at this time, cutting the gap in evidence to a period of 4 years between 2009 and 2013. This is still a fairly significant chunk of time but there is other pieces of evidence which have been submitted by the agent in order to support the LDC including 2 x sworn affidavits confirming that the site has been used continuously for the use in question. An email from a current employee was also submitted stating that the previous permission (2006/1025) for a change of use into warehousing (B2) was never implemented which would have potentially disrupted the 10 year's continuous use. The LPA is required to take a balance of probability test for LDCs and if it has no evidence itself, nor any from others, to contradict the applicant's version of events there is no good reason not to grant the LDC. The Council's Legal Officer has assessed all of the information/evidence against the council's own records and has confirmed that the information matched this. The LPA has no good reason or evidence to suggest that the use ceased during 2009-2013, or at any other point and taking the balance of probability test leads to the conclusion that 10+ years continuous use for the outdoor storage of cranes is extremely probable.

The Legal Officer has also made the LPA aware of recent case law which establishes beyond question that the relevant period of continuous use to qualify for an LDC does not have to be present at the date of the

application. The site is still vacant with no evidence of any other material change of use taking place and there is considered to be sufficient evidence that shows this use has been continuous on the site for 10+ years. In effect, the development is determined to be 'established development' immune from planning control in line with stipulation within 171B (3) of the Town and Country Planning Act (As Amended) in that the breach of planning control has been operating for a period in excess of 10 years from the date of the beginning of the breach. It is recommended that a lawful development certificate can be granted for the use of the site for the outdoor storage of cranes.

**Recommendation: Grant**