
Application number: 2025/0828

Description: Lawful development certificate for existing use and development of land and buildings as a builder's store/yard

Location: Junction of Oxspring Road and Mortimer Road, Cubley, Sheffield, S36 8AB

Site Location & Description

The site in question is located south of Cubley/Penistone. The surrounding area is a mix of agricultural land, residential dwellings and a small number of commercial dwellings. The site is also shared with 2 residential dwellings which were approved in 2010. The site is on the junction of Oxspring Road and Mortimer Road which connects Penistone to Stocksbridge and the surrounding agricultural area. The site is only accessible via road routes and is located approximately 6.8 miles away from Barnsley town centre.

Proposed Development

The applicant has submitted a certificate of lawfulness for the existing use and development of land and buildings as a builder's store/yard. The applicant has provided supporting information to prove that the site has been used as this use in excess of 10 years. The applicant has stated that the site has been in use since December 2012. The applicant provided aerial photographs over a number of years and a sworn affidavit from a neighbour.

Policy Context

Town and Country Planning Act 1990 (as amended).

Consultations

Legal Services – The evidence is consistent and therefore on the balance of probabilities the information that has been submitted is credible and therefore the certificate should be granted.

Representations

No letters were received from members of the public.

Relevant History

- 2010/1092 Erection of 2no. single storey earth sheltered dwellings (Resubmission) – Approved - 2010
- 2009/1038 Erection of two dwellings Withdrawn – 25th September 2009

Assessment

An application has been made for a lawful development certificate under section 191 of the Town and Country Planning Act 1990. 7.2. Section 191(4) sets out the test to be applied when considering an application for a certificate of lawfulness. This section states that if 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; and in any other case they shall refuse the application.

The National Planning Policy Framework is silent as to Section 191 applications for lawful development certificates. The Planning Practice Guidance does however provide guidance on Section 191. This guidance states the burden of proof is on the applicant to show that a lawful development certificate should be granted. The standard of proof is on a balance of probabilities. The Planning Practice Guidance quotes: "...if a local planning authority has no evidence itself, nor from any 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 Council's Legal Services have been consulted upon and has stated that "The applicant claims use since 1 December 2012, which exceeds the 10-year threshold. However, continuity throughout that period must be established. The aerial imagery provided shows use from 2009 onwards, but there are gaps (e.g., 2019, 2021, 2024). These gaps do not necessarily indicate an interruption in use, but they do reduce the evidential strength if unsupported by other documentation. The affidavit is significant and helps bridge these gaps, provided its content is precise, unambiguous, and credible".

Therefore, subject to the evidence being consistent and in the absence of any substantive counter-evidence, the development is immune from enforcement action under s171B TCPA 1990, and the application should be granted on the balance of probabilities

Recommendation

Grant certificate