

Application Reference Number:		2024/0966	
Application Type:		Certificate of Lawfulness - Existing	
Proposal Description:		Lawful development certificate for existing use as builders yard	
Location:		Land off Broomhill View, Bolton Upon Dearne, Barnsley, S63 8EW	
Applicant:		Mr Robin Priestley	
Third-party representations:	Five	Parish:	None
		Ward:	Dearne South

Summary:

This lawful development certificate application seeks confirmation for the existing use of land as a builders yard for ten years; therefore, the use being lawful and not requiring planning permission.

Based on the evidence submitted by the applicant, the LPA determines that the existing use of the land off Broomhill View as a builders yard is not lawful, and therefore, this lawful development certificate should be refused.

Recommendation:

Lawful Development Certificate - Refused

Site Description

The application relates to an area of land to the south of Broadwater and west of Broomhill view to which the site is accessed from via a private drive in Bolton Upon Dearne. The site has a Local Plan allocation of Green Belt and appears separated from the rest of the Green Belt parcel it is allocated with as there are a number of trees located around the edges of the site with brambles and scrub covering the site. The land has seen a significant increase in intensification of use over recent years.

Planning History

Application Reference	Description	Status
2018/1046	Erection of detached dwelling	Refused and Appeal Dismissed

Proposed Development

This application is for a Section 191 Certificate of lawfulness of existing use or development. A certificate under this section can be sought if any person wishes to ascertain whether –

- a) any existing use of buildings or other land is lawful;
- b) any operations which have been carried out in, on, over or under land are lawful; or
- c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful.

The applicant seeks confirmation of an existing use of land as a builders yard on land which has been used as such in excess of 10 years.

Relevant Policies

Section 191(1) of the Town and Country Planning Act 1990 states that if any person wishes to ascertain whether any existing use or operations which have been carried out in, on, over or under land, would be lawful, they may make an application for the purpose to the local planning authority describing the use or operations in question.

Section 191(4) of the Town and Country Planning Act 1990 states 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, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application.

Guidance states that if a local planning authority has no evidence of its own, or 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 is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

This reflects the ministerial advice that was formerly printed in Annex 8 to Circular 10/97, at paragraph 8.15. 'Evidence' from neighbours, or others objecting to the application, consisting of no more than doubt, disbelief or scepticism regarding the evidence adduced by the applicant does not amount to evidence contradicting or otherwise making the applicant's evidence less than probable.

A full award of costs is liable to be made on appeal under Section 195 of the Town and Country Planning Act 1990 against a local planning authority which refuses a certificate of lawfulness in ignorance or defiance of the rule in Gabbitts.

Consultations

Dearne South Ward Councillors - No objections

Legal - Objected

Planning Enforcement - No objections

Representations

There is no statutory requirement for local planning authorities to consult third parties, including neighbouring residents or parish councils on a certificate of lawfulness application since such applications are a matter of fact and law and are not determined on their planning merits or judged against national or local planning policies or guidance.

None the less neighbouring properties were consulted, and five objections were received including multiple objections from one address (classed as one) and in summary raised the following points.

- I declare with full responsibility that the land behind my property was empty and free. The only things I saw there at the time it was some beehives and an old camper. The builders yard they are claiming, it started 10-11 months ago.
- I am asking to return this place to normality how it was before and how is possible to make an application to the council for something that is not true, is there going to be any consequences for them giving false information to the council.
- I was the estate agent who dealt with the sale of a property on Broomhill View in March 2021. From my recollection, there wasn't anything built or being built on the land behind Broomhill View, and the searches didn't bring up any plans to build on the land either.
- I was tenant on Broomhill View from December 2021 until May 2024. I declare it was no builders yard in the land behind the property when I started to live there. They brought these materials there just nearly 11 months ago from that time.
- The land behind Broomhill View began to be utilized by a scaffolding company with heavy machinery and HGV's constantly requiring access in April 2024 and not before. Previous to this the landowner used the land to keep bees.
- The scaffolding company cause a constant nuisance with noise from as early as 6am, constant access with HGV'S causing damage to the road, residents not being able to park outside their own homes and the street being used as a car park for staff.
- The scaffold company frequently uses large HGVs to transport scaffolding, and these vehicles often struggle to manoeuvre into the yard, resulting in blocked streets. Furthermore, when workers arrive, they tend to park their personal vehicles on the narrow pavement.
- Having lived on Broomhill View for over 20 years, I have witnessed how these circumstances can impede delivery services.
- The congestion in this area has become increasingly problematic and warrants attention.

Assessment

A local planning authority 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 LPA 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. If the 10 years is established for the use the LPA would not be entitled to take enforcement action in respect of the breach and the existing use would thus be lawful.

As with all such applications the LPA are only concerned with the factual background in this case to establish that any existing use of buildings; or any operations that have been carried out in, on, over or under land, are lawful. If, on an application under this section, the LPA are provided with information satisfying them that the use or operations described in the application are lawful, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

Analysis of evidence for the use of the land as a builders yard

In terms of the use of the land as a builders yard for 10 years, Section 191(4) says that the submitted evidence must satisfy the LPA that the use has been present for the requisite period. This means that the evidence supporting the application must be clear and unambiguous. The burden of proof rests with the applicant to demonstrate that all of this land has been used continuously for at least 10 years as a builders yard. The applicant has provided the following statement in support of the application:

It is noted that this site's earliest recorded use, possibly in conjunction with the construction of the adjacent housing estate, site yard is the 1961 Ordinance Survey, showing the access road and brick built toilet block and welfare facilities (see attached) Other historic use information has been provided by the applicant and others (attached) detailing use as welfare facilities, materials storage and works depot by the British Coal Corporation / National Coal Board. The current applicant purchased the site from the British Coal Corporation in 1997 for use as a builders yard and used it as such, with brief periods of non use between 2000 and 2009 when working elsewhere in the UK.

The applicant has also provided statements from neighbours of the site however these aren't recent neighbours of the site and mainly refer to the use of the site in the 1970's. None of the statement mention the increased intensity in the use of the site nor the seemingly vacant use that preceded it. Storage of materials is mentioned but with no recent timeframe mentioned. As evidence below there is no visual evidence of this in the last 10 years.

Furthermore, the planning application for 2018/1046 can provide some more recent evidence of the use of the site. This planning application was submitted by the same applicant as this application Mr Robin Priestley. The current use of the site at that time as filled in on the application form by the applicant is vacant. Moreover, the officer report for planning application 2018/1046 included the following description of the site none of which refers to the site as a builders yard. Also, the mention is of a former maintenance yard not an existing, active one as it states:

The site is stated by the applicant to be a former coal authority maintenance yard, located to the rear of 4 and 6 Broomhill View with access via a driveway between the two. It is relatively flat with no buildings other than a disused outside toilet. There are a number of trees located around the edges of the site with brambles and scrub covering the site and climbing the existing palisade fencing to the boundaries. There is a caravan on the site and evidence of rubbish tipping.

The applicant has not submitted any historic photographic evidence with the application; however, the LPA has access to aerial photographs from 2002 which shows the land in question as grassed area featuring what look like five outbuildings or possibly caravans. Furthermore the 2009 aerial photograph further shows the same grassed area this time with no structures on the site. It may be during this time which is defined above as a period of none use but the site would appear to be vacant rather than not in use as it appears in a natural state.



To continue a 2013 aerial photograph shows what appears as one caravan on the site as per the above. This is a stark contrast to the use of the site in recent years in which activity on the site has started. There is no change in the aerial photographs of the site until the year 2024 as per the below therefore showing how the current use of the site has only been active since 2024 and not for the continuous period of 10 years as stated by the applicant.



The LPA must determine this lawful development certificate application in accordance with s191 of the Town and Country Planning Act 1990 as stated above. The legal test is whether, on the balance of probabilities, the stated use is lawful. For existing use, the applicant must demonstrate:

- a) 10 years of continuous use of the land for the stated purpose.
- b) That the evidence provided is precise, unambiguous, and consistent.
- c) That the burden of proof lies with the applicant, not the Council.

The objections received as part of the application form that of counter-evidence. Much of it consists of subjective concerns regarding disruption, access, and safety. While these are valid planning concerns, they are not relevant to the legal test for lawfulness under s191 and therefore carry limited evidential weight. However, one submission does provide material counter-evidence stating:

"I can confirm that the land behind Broomhill View began to be utilised by a scaffolding company with heavy machinery and HGVs constantly requiring access in April 2024 and not before. Previous to this the landowner used the land to keep bees."

This statement is significant and is not the only one that mentions the keeping of bees. It directly contradicts the applicant's claim of 10 years' continuous use and supports refusal of the lawful development certificate application. As previously noted, the applicant's supporting evidence is not particularly strong, and during the course of the application they were unwilling to provide further documentation or evidence. The LPA is not satisfied that the applicant has met the legal threshold on the balance of probabilities. The counter-evidence was shared with the applicant, in good practice and no significant response was received in receipt of this nor any of the counter-evidence claims directly disputed.

Considering all available evidence, application 2018/1046, comments from neighbouring properties and aerial photographs including ones in the 10-year period, it is considered that on the balance of probabilities, the land use of a builders yard, has not been established to be shown as continuous in use, in excess of 10 years and in fact the land was vacant for a large majority of this time. The LPA has evidence which conflicts with the provided evidence of the use being in place, which is lacking in recent detail, and as such, the balance of probabilities test is applied and in this instance the applicant has not supplied enough evidence to conclude this test is met. To conclude, the LPA are not satisfied that the existing use or operations described in the application are lawful and a certificate should be refused.

Recommendation

Lawful Development Certificate - Refused