

Application Reference Number:	2026/0072
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Application Type:	Certificate of Lawfulness - Existing
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Proposal Description:	Certificate of Lawful Development for the existing use as a Waste Management Facility -including metal recycling (Use Class Sui Generis)
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Location:	1 Acorn Way, Grimethorpe, Barnsley, S72 7PE
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Applicant:	Mr James McQueen
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Third-party representations:	2	Parish:	None
		Ward:	North East Ward

Summary:

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

Based on the evidence submitted by the applicant, it is not considered the evidence is sufficiently precise and unambiguous to justify the granting of a certificate on the balance of probability. The LPA determines that the use of the site off 1 Acorn Way as a metal recycling facility, is not lawful, and therefore, this lawful development certificate should be refused.

Recommendation:

Lawful Development Certificate - Refused

Site Description

The site is located within Park Springs Industrial Estate, Grimethorpe. The site is allocated as Urban Fabric within the Local Plan Proposals Maps. The site is set between Acorn Way to the south and west which mainly consists of large industrial/commercial units, High Street to the north which consists of terraced dwellings and the Acorn Centre to the east.

A steel industrial building exists to eastern boundary of the site. Along the southern boundary of the site is a 2.4m high palisade fence with a gated entrance. Along the east, west and northern boundary are trees and hedges. Along the south-western boundary of the site is a small brick building which has been used as a security office and a static caravan is sited next to the security office.

A number of wagon trailers have previously been parked on the land. More recently, the site has been used for the outdoor storage of scrap metal which is visible from Acorn Way.

Planning History

Application Reference	Description	Status
B/95/1113/HR	Erection of 2.4 metre high security fence and 1.8 metre high gates	Approved
2008/0985	Erection of non illuminated signs at McQueens Textiles Ltd	Approved
2010/1366	Erection of a steel industrial building	Approved with conditions
2011/0280	Retention of brick 'Security Office' and retention of 'Caravan Site Office' (Retrospective)	Split decision with permission granted for retention of brick 'security office' but refused for retention of static caravan.
2013/0414	Siting of static caravan in connection with recycling business (Retrospective)	Refused for the following reason:- The static caravan is a poor design, residential in appearance, and is at odds with the character and appearance of the wider industrial estate. The proposal therefore appears as a prominent and discordant feature which fails to take the opportunities available for improving the character and quality of the area. The retention of the static caravan

		is therefore detrimental to the visual amenities of the area and contrary to Core Strategy Policy CSP29, UDP Saved Policy ED10, and Core Planning Policy 7 'Design' of the NPPF
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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 Waste Management Facility - including metal recycling on land which has been used as such in excess of 10 years.

In summary, the applicant's statement puts forward the following justification:-

'The application site is located at 1 Acorn Way and comprises yard, hardstanding, buildings, containers and processing areas.

The site is accessed from Acorn Way and is surrounded by industrial / commercial / mixed uses. The lawful use relates solely to the recycling operations within the defined red line boundary shown on the submitted Site Location Plan.

The site has been used for recycling since 2008, including:

- Acceptance and storage of textiles
- Acceptance and storage of ferrous and non-ferrous metals
- Sorting, processing, and baling/shearing of scrap metal
- Loading and dispatch of recycled materials
- Ancillary activities such as weighing, storage, and vehicle movements

These activities have occurred without material change to the nature of the use over the relevant period.

- Scrap Metal Dealers Licence ref: 092935 – issued by Barnsley Metropolitan Borough Council (every three years)
- Same Dealers ref. No. since 2011.

This evidence demonstrates that the metal recycling use has operated continuously, openly, and without interruption for a period exceeding 10 years.

The evidence clearly demonstrates that:

- The use constitutes a sui generis metal recycling operation
- The use has been ongoing for more than 10 years
- The use has not been concealed or intermittent
- No enforcement action has been taken to restrict or stop the use.'

Relevant Polices

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 Gabbitas.

Supplementary Planning Document – Lawful Development Certificates – Adopted May 2019

Consultations

Ward Councillors – Cllr Peace has stated the following:-

'As elected members we haven't received any notice of the above application and it will have a huge impact on our community, this will be the second waste management site in proximity of the residential properties on the High Street, both as you enter the village which seems excessive for the area. Especially when the one at the bottom of the High street is causing several issues.'

Legal – No comments received

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.

Whilst no neighbouring properties were notified of the application, two representations have been received and complaints have been made to the Planning Enforcement Team. In summary, the following comments have been made:-

- According to the complainant, scrap metal has only been stored from February 2026 and that the original use of the site is as a rag merchants
- The previous applications at the site do not suggest that the site has been used for scrap metal
- The scrap metal is stacked in an unsafe manner
- Concerns regarding HGV vehicles accessing the site, increased traffic and damage to the road
- The scrap metal is an eyesore
- This site has already been used as a scrap yard, planning has not yet been approved
- Increased noise
- Concerns regarding fires on the site
- The yard is also next door to the Acorn Centre which also has a pre-school inside

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 continuous usage 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 metal recycling facility

In terms of the use of the land as a metal recycling facility 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 metal recycling facility.

The Supplementary Planning Document – Lawful Development Certificates – Adopted May 2019 provides guidance for applicants when submitting an application for a lawful development certificate. The SPD states that in terms of assessing an application:-

‘The planning merits of the use, operation or activity in the application are not relevant. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. However, the onus of proof in an LDC application is squarely on the applicant to show to the Council on the balance of probabilities, that a Certificate ought reasonably to be issued. Put simply, the applicant must show that it is more likely than not that the facts asserted by him or her are correct. Indeed, Government advice to local Council's is that "they need not go to great lengths to show that the use, operations or failure to comply with a condition specified in the application is not lawful". There is no requirement on the part of the Council to make an independent search for evidence.’

In addition the guidance states that for applicants to:-

‘To substantiate your claim you should provide any additional information you consider necessary, such as:-

- a. any information concerning business rates, or from the council tax or electoral records;
- b. any relevant invoices/bills or receipts for services such as water, electricity, gas or telecom;
- c. personal testimonies or sworn affidavits of applicants, operations or witnesses;
- d. photographs which can be dated;
- e. any other relevant factual information.’

The applicant has provided the following in support of the application: A planning statement which in summary states that:-

The site has been used for recycling since 2008, including:

- Acceptance and storage of textiles
- Acceptance and storage of ferrous and non-ferrous metals
- Sorting, processing, and baling/shearing of scrap metal
- Loading and dispatch of recycled materials
- Ancillary activities such as weighing, storage, and vehicle movements

These activities have occurred without material change to the nature of the use over the relevant period.

- Scrap Metal Dealers Licence ref: 092935 – issued by Barnsley Metropolitan Borough Council (every three years) – No physical documentation provided
- Same Dealers ref. No. since 2011 – No physical documentation provided

This evidence demonstrates that the metal recycling use has operated continuously, openly, and without interruption for a period exceeding 10 years.

The evidence clearly demonstrates that:

- The use constitutes a sui generis metal recycling operation
- The use has been ongoing for more than 10 years
- The use has not been concealed or intermittent
- No enforcement action has been taken to restrict or stop the use.’

In assessing the evidence, the evidence provided is very limited and the applicant has not submitted any of the following evidence to support their application:-

- Any relevant invoices/bills or receipts
- No personal testimonies or sworn affidavits of applicants, operations or witnesses
- No photographs of the use
- No physical copies of licences have been submitted

The applicant has indicated that they have a Scrap Metal Dealers Licence ref: 092935 – issued by Barnsley Metropolitan Borough Council, however no physical documentation has been provided. In any case, this does not provide sufficient evidence of continuous use, nor are any dates have been provided that the licence has been held for.

Whilst there is no requirement on the part of the Council to make an independent search for evidence, when looking at the Planning History of the site it is accepted that the site has been used for the recycling of textiles as demonstrated by the evidence below, however the applicant's Planning Statement indicates that the site has been used for scrap metal recycling since 2008 and 'the acceptance and storage of ferrous and non-ferrous metals and the sorting, processing, and baling/shearing of scrap metal, in addition to the clothing recycling use.'

Planning History evidence of use since 2008.

An application was submitted in 2010, under application ref 2010/1366 for the erection of a steel industrial building. This application was approved with conditions on 28/04/2011.

The building was granted and was to be used in connection with the use on site, which is described within the application form as 'sorting of clothing for export and recycling into cleaning cloths.' An extract of the application form is shown below.

14. Existing Use	
Please describe the current use of the site:	
SORTING OF CLOTHING FOR EXPORT AND RE-CYCLING INTO CLEANING CLOTHS	
Is the site currently vacant?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If Yes, please describe the last use of the site:	
When did this use end (if known)? DD/MM/YYYY	<input type="text"/>
(date where known may be approximate)	

There is no mention of the site being used as a metal recycling facility within the application documents.

In 2011, an application was submitted under ref 2011/0280 for the retention of brick 'Security Office' and retention of 'Caravan Site Office' (Retrospective). The application was subject to a split decision with permission granted for retention of brick 'security office' but refused for retention of static caravan, dated 11/07/2011.

In granting the permission for the security office, the reason given for granting permission was:-

'The Security Office consists of a permanent brick structure and is required to support the clothing business which currently operates from the site and is therefore supported by Policy ED2 of the Barnsley UDP and Policy CSP19 of the submission version of the LDF Core Strategy.'

This suggests that the site is used as a clothing business and there is no mention of metal recycling within the application documents. The below design and access statement submitted with the application states that the site is used for a 'small textile company...which distributes old clothes.'

Design and Access Statement

Plot 1, Acorn Way, Grimethorpe

Retention of Caravan site office and security mess facility's.

The site is located in an established industrial unit area of Grimethorpe, The site boundary is fenced off via a 6ft Pallsade fence with two main entrance gates. As shown by drawing No JM001/dwg001.

Access to the site is off acorn way via a roundabout which leads straight onto the site.

The site office is used for the day to day running of the business as shown on drawing JM001/004 and JM001/003

Due to the crime and vandalism on the site, we have to employ a fulltime security guard.

Recreation facilities have been provided by way of a brick building as shown on drawing JM001/dwg002 and JM001/003

The business is a small textile company which employees 4 permanent staff in the distribution of old clothes.

A further application was submitted under reference 2013/0414 for the retention of the caravan which was subsequently refused. There are no other planning applications at the site which are of relevance or demonstrate that the site has been used as a scrap metal recycling facility.

Aerial Photograph Evidence since 2013

The applicant has not submitted any historic photographic evidence with the application, however, the LPA has access to aerial photographs from 2013 which shows the land in question and there does not appear to be any scrap metal stored on site. In addition, aerial photographs are a snapshot in time and do not demonstrate a continuous use of the site in any case.



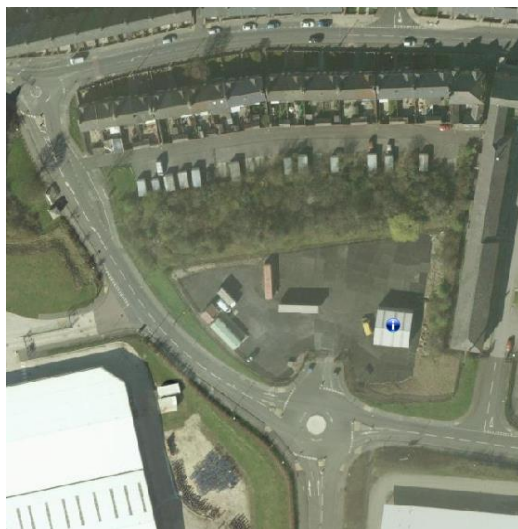
2026



2021



2018



2013

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 noise, highway safety and visual impacts. 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, the one representation provides material counter-evidence stating:

'I would like to report a breach of planning permission conditions at Plot 1, Acorn Way, Acorn Business Park, Grimethorpe, Barnsley, S72 7NZ please.

Firstly, the site only has planning permission to be a rag merchants as outlined in their application reference number: 2010/1366. In this application, the site owner requested the Erection of a steel industrial building in 2010 and confirmed that the site would not be used for recycling metal. In the past two weeks, the site has been storing very high quantities of scrap metal which it has never done so before. Please see attached photos that were taken on Tuesday 10th February 2026.

Secondly, on 23/05/2013 an application to store a static caravan on site was denied. The said caravan has been stored on site for the past few years despite the councils refusal. Please see the image attached. The application reference number for the caravan is 2013/0414.

Finally, I am aware that a resent application has been submitted by the site owner, reference 2026/0072.

Requesting that the site now be turned into a scrap metal recycling centre on the grounds that is has already been one for 10 years with no complaints. This is misleading and incorrect. The scrap metal storage at the site has only begun this past fortnight.

The above breaches of planning permission clearly identify that the site owner is an untrustworthy character who makes his own rules despite planning permission refusals. The disregard for laws and planning permission should not be rewarded with the approval of now turning this site into a scrap metal recycling centre. The site is currently in breach of exciting planning permission conditions, is an sore the area and is stacked in an extremely unsafe manner.'



The comments 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 insufficient and whilst there is a current scrap metal use on the site, there is insufficient evidence to prove applicant's claim of 10 years' continuous use. The LPA is not satisfied that the applicant has met the legal threshold on the balance of probabilities.

Considering all available evidence, the previous planning history of the site, comments from residents and aerial photographs, including ones in the 10-year period, it is considered that

on the balance of probabilities, the use of the site as a metal recycling facility, has not been established to be shown as continuous in use, in excess of 10 years.

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

In the opinion of the Local Planning Authority the applicant has failed to provide sufficient evidence to show that the land in question has been used continuously for the described use (metal recycling facility) for a period of 10 years. As such a Lawful Development Certificate cannot be granted.