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Planning Development

Evidence Statement – Certificate of Existing Lawful Development for use of land for outside storage at Unit 1-4 Wentworth Way, Wentworth Industrial Park, Tankersley, Barnsley, S75 3DH

Introduction

An application for a Certificate of Existing Lawful Use is submitted to the Council under Section 191 of the Town & Country Planning Act 1990 (as amended). The date of the application is 7th December 2021 and the applicant is Tadano UK Ltd.



Application location

Background

The premises has been occupied since 2006 by Tadano UK Ltd and used as B8 storage and distribution in connection with the importing and distribution of cranes manufactured in Germany:

<https://tadanoeurope.com/united-kingdom/en/about/>

As can be seen below, planning permission was granted to Cranes UK Ltd (understood to be the previous name for Tadano) in 2007, for a change of use to from warehouse to B2 general industrial. However, the manufacturing arm of the business remained in Germany and the planning permission was never implemented – see e-mail confirmation at Appendix A ¹. As such, the premises has remained in B8 use since at least as far back as 2006.

Relevant Planning history

2006/1025 – Change of use from warehouse to B2 (General Industrial) - approved but unimplemented

B/86/0277/WO – erection of extensions to offices – decision ‘unknown’ ²

What the application seeks to establish as lawful development

The application is made under the ten-year immunity rule ³ and seeks to establish that the use of the land hatched in blue is lawful for outdoor storage in connection with the host premises (Unit 1-4 Wentworth Way) – edged in red.

Lawful Development Certificate legislation

The legislation sets out (191 – 1):

“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,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.”

Section 191 (2) states:

¹ It was originally assumed that this application would seek to demonstrate a continuous ten year breach of condition 3 of this planning permission, however upon further investigations with the applicant, it has been established that no manufacturing operations have ever taken place at the site since this planning permission was granted, and it is therefore concluded the permission was never implemented.

² According to Barnsley Council’s planning portal.

³ Section 171B Town & Country Planning Act 1990 (as amended) – sub-section 3

“For the purposes of this Act uses and operations are lawful at any time if—

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Statutory requirements of the Town and Country Planning (Development Management Procedure) Order 2010

As required by this secondary legislation, Part 8 (39) states that such an application must be accompanied by the following information (responses shown in blue):

- (a) a plan identifying the land to which the application relates drawn to an identified scale and showing the direction of North; (submitted with this application - see accompanying plan)
- (b) such evidence verifying the information included in the application as the applicant can provide; (this Evidence Statement); and
- (c) a statement setting out the applicant’s interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application. The applicant leases the application site. The owners are as follows and they were notified in writing of the application prior to submission:

Joseph Terence Lyon & Fransisca Bertina Cicilia Lyon
40 Marine Parade
Avalon Beach
2107 NSW
Australia

M W Trustee of The Cranes UK Limited Directors Pension Scheme
M W House
1 Penman Way
Grove Park
Enderby
Leicester
LE19 1SY

Guidance and case law for Lawful Development Certificate applications

The National Planning Practice Guidance ‘Lawful Development Certificates’, paragraph 006, states:

“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.”

Case law notes that the ‘balance of probability’ test is less onerous than that of ‘beyond reasonable doubt’. Moreover, the courts ⁴ have held that the applicant’s own evidence does not need to be corroborated by independent evidence in order to be accepted.

It is important to note that although the site was vacated by Tadano UK Ltd, case law has established that once the relevant period of immunity has expired and no enforcement action can be taken, it is not necessary that the relevant breach continues at the date of the S191 application.

In *R (Ocado Retail Limited) v London Borough of Islington* [2021] EWHC 1509 (Admin) the Justice Holgate said at paragraph 159 of the Judgement:

I have reached the clear and certain conclusion that, with great respect, I should not follow the decisions in Ellis and in Nicholson, that a breach of condition which has become lawful after continuing for 10 years does not remain lawful unless that breach continues thereafter. I do not consider that those decisions can be reconciled with the following key points, along with the earlier analysis in this judgment:-

(iii) Once an immunity period is satisfied, the legislation prohibits the taking of enforcement action thereafter (s.171B). It follows that from then on, any question about whether there is an ongoing breach of planning control against which a local planning authority would be able to take enforcement action would be completely irrelevant. The raison d'être for the continuity requirement disappears upon the expiration of an immunity period. There is no need to consider whether time is running for the purposes of s.171B;

(iv) Once an immunity period expires, what was formerly a breach of planning control becomes “lawful at any time”, save only that that planning right does not accrue if it would contravene the requirements of an enforcement notice then in force;

Paragraph 162 went on to say:

The correct legal position is that a lawful planning right which has accrued upon the expiry of a time limit in s.171B is not lost merely because subsequently that right is not exercised for a period of time. That conclusion applies just as much to a right legitimising a breach of condition which prohibited a use as to a use right derived from a material change of use. The law does not require that such a right be exercised on the date when an application for a CLEUD is made (or an enforcement notice is issued), or that it has been exercised throughout the intervening period from the time when it accrued. Instead, the law requires that the right remains in existence at the date when the lawfulness of what it authorises is in issue. So an accrued planning right must not have been lost in the meantime because of a supervening event, such as abandonment....

In this case, although Tadano UK have recently vacated the site in March this year, this application demonstrates that the ten year period had already been accrued by that time and: there has been no

⁴ *Gabbittas v Secretary of State for the Environment and Newham LBC* [1985] J.P.L. 630

intervening (different) use; the use has not been abandoned in accordance with the established legal tests⁵; and the planning unit has not been altered in any way.

Evidence for lawfulness

1) **Sworn Statements of Declaration from two witnesses**

These sworn statements are provided by two witnesses and are enclosed with this application as Appendices Bi and Bii. These two witnesses have worked for Tadano UK at the relevant premises for the period 2006 to present. 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 in connection with the Tadano business for a minimum period of 10 years between July 2006 and March 2021.

These witnesses also confirm that although Tadano vacated the site in March this year, the site has not been used for any other purposes since that time.

2) **Google Earth aerial photos**

The aerial photographs at Appendix C (at the end of this statement) from 2008 through to 2020 provide further evidence to corroborate the witness statements, demonstrating that that the land has been used for the storage of mobile cranes and other materials.

3) **Photos supplied by Tadano**

The photographs below also show the storage of cranes and other materials on the site from 2009 until 2018.

4) **Immunity from enforcement action**

We are not aware of any enforcement action during the ten years preceding the date of this application. Furthermore, this is not a 'concealment' case under Section 171BA.

.../cont.

⁵ The four criteria for abandonment applied in *Castell-y-Mynach Estate v Secretary of State for Wales [1985] JPL 40*:- (i) the physical condition of the property; (ii) the length of time for which (and extent to which) the property has not been used; (iii) whether it has been used for any other purposes; and (iv) the owner's intentions with regard to the use of the property.



Photograph taken on 28.09.2009



Photograph taken on 02.04.2010



Photograph taken on 02.01.2012



Photograph taken 25.10.2013



Photograph taken from the lease dated 26.10.2018



Photograph taken from the lease dated 26.10.2018

Conclusion

It is submitted that the use described is lawful at the date of this application under Section 191 of the Town & Country Planning Act.

In summary of the evidence presented is considered to be sufficiently precise and unambiguous to prove, on the balance of probabilities, that the use of the land for outside storage associated with 1-4 Wentworth Way, Wentworth Industrial Park has been used continuously as such for more than ten years. This comprises the minimum required immunity time period before the date of this S191 Certificate of Lawfulness application.

Finally, as the Planning Practice Guidance recommends ⁶, should the Local Authority obtain its own evidence, this needs to be shared with the applicant to enable comment and the opportunity, if necessary, to produce counter-evidence.

In the light of the above, we respectfully submit that the aforementioned use is indeed lawful, and request that the Council grant the Certificate of Lawfulness accordingly.

Please do not hesitate to contact us if you require any further information, or clarification on any of the above.

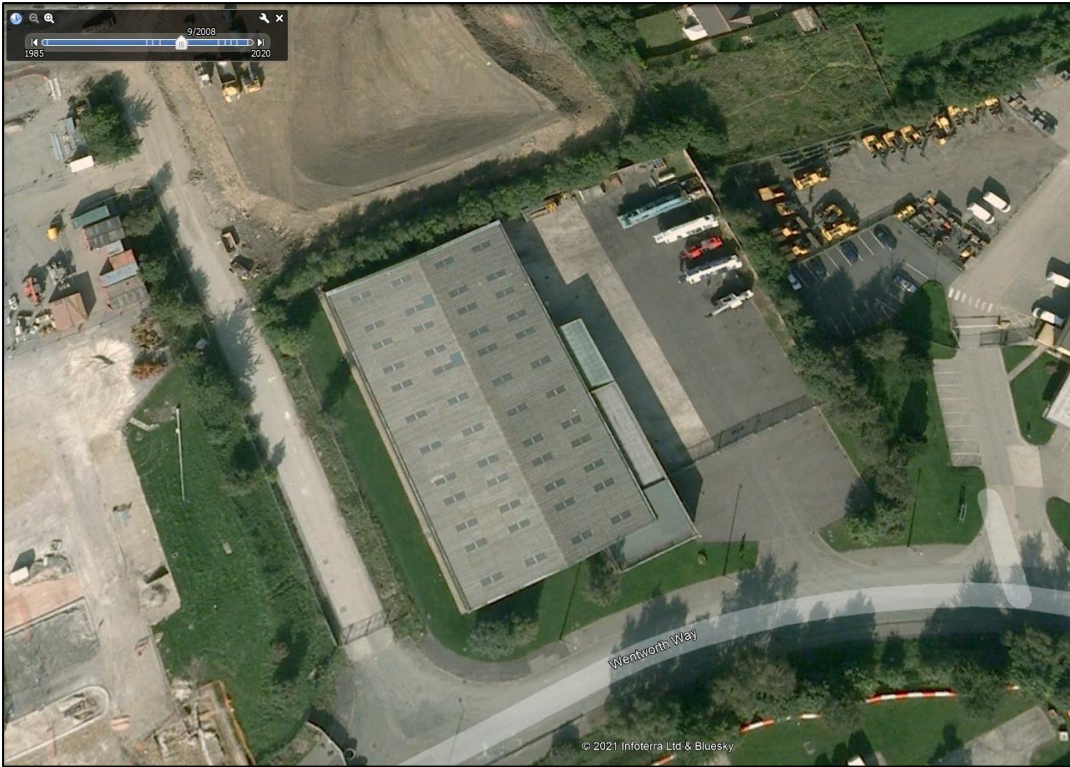
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7th December 2021

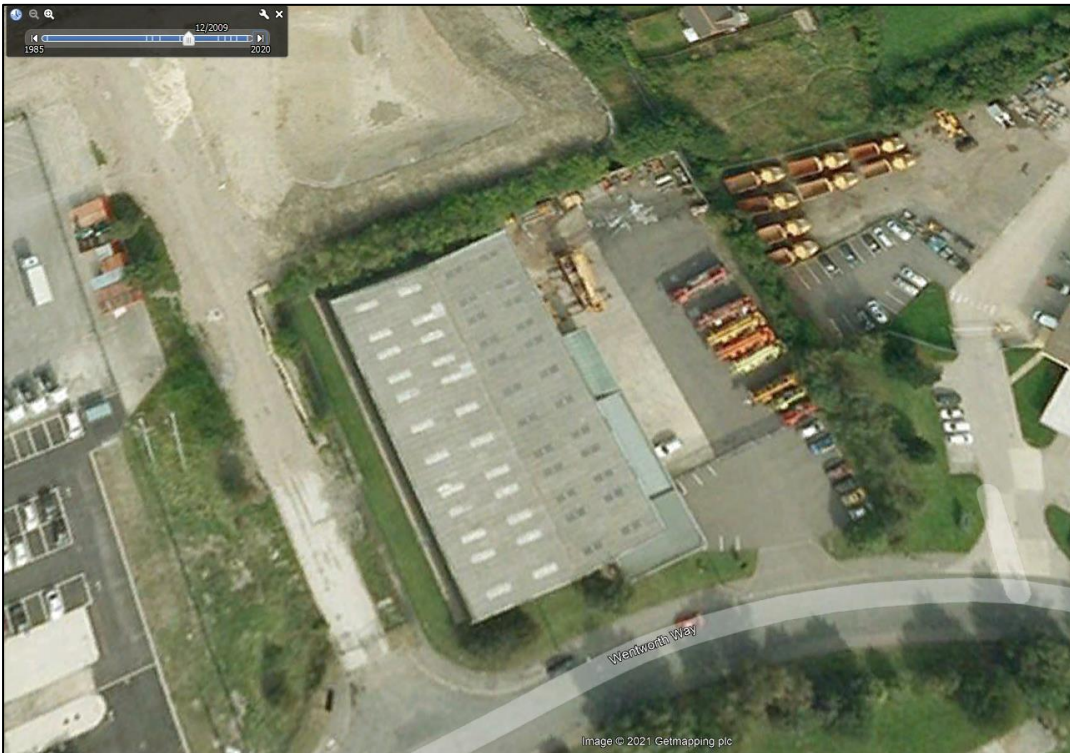
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⁶ 'Lawful Development Certificates' Guidance Paragraph 006

APPENDIX C



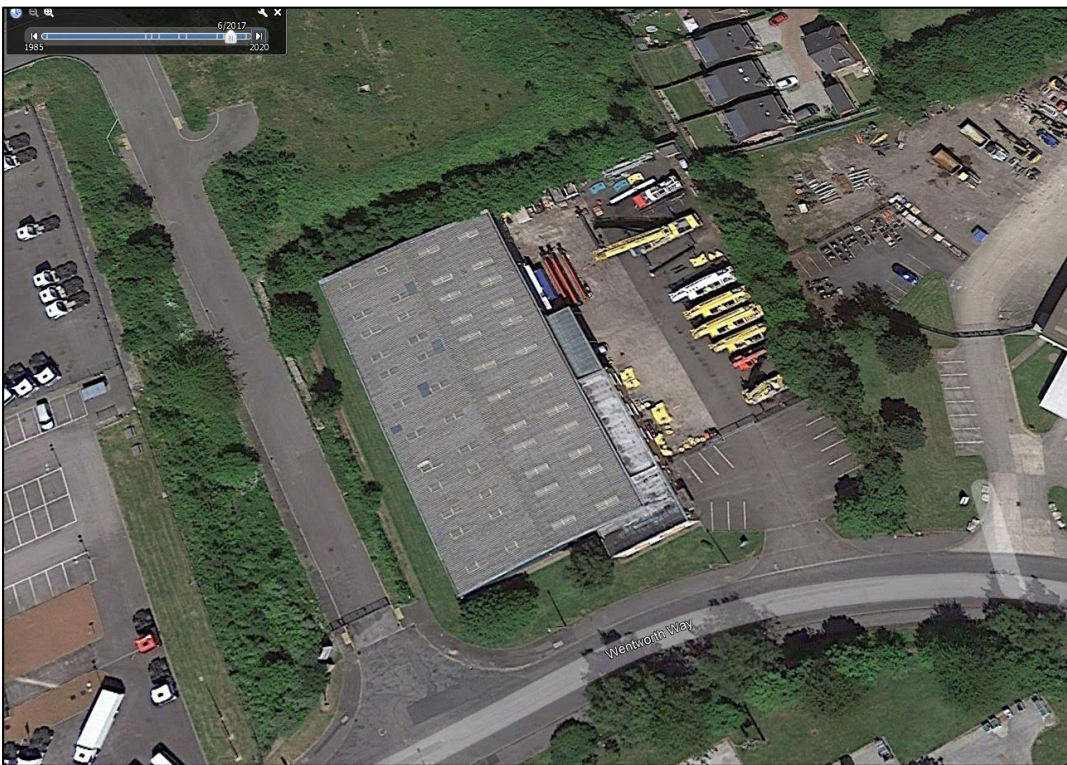
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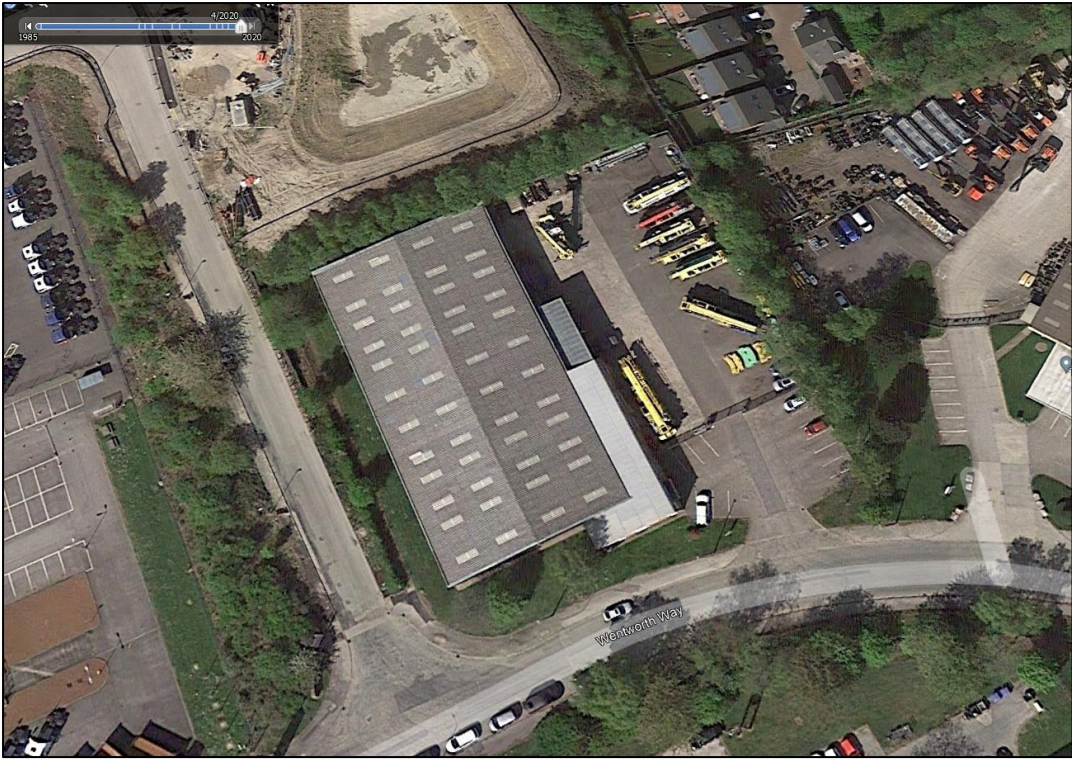
2009



2015



2017



2020