CASE OFFICER'S REPORT

Application Reference: PL/2023/10682
Site Address: Land to the North of Stonelea, Mill Lane, Corston, Malmesbury, Wilts, SN16 0HH
Date site notice posted: 11th January 2024

DELEGATED REPORT
Lawful Development Certificate application

Town and Country Planning Act 1990 as amended ("the 1990 Act")

The Town and Country Planning (Use Classes) Order 2020 (as amended)

SITE AND ITS SURROUNDINGS



Figure 1 2012



Figure 2 2019



Figure 3 2023

The aerial images shown are taken from satellite imagery from 2012, 2019 and 2023 and purportedly show the use of the land as storage for the dry-stone wall business.

APPLICATION DETAILS
The applicants seek a Lawful Development Certificate pursuant to Section 191 of the 1990 Act for the

LEGAL ISSUES

Assessment:

Section 191, part 1, of the Town and Country Planning Act 1990 (as amended) reads as follows:

(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, part 2, of the Town and Country Planning Act 1990 (as amended) reads as follows:

(2) 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.

Section 171B of the Town and Country Planning Act 1990 (as amended) reads as follows:

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

(4) The preceding subsections do not prevent—

(a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

(b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

It is considered that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

Section 191, part 4, of the Town and Country Planning Act 1990 (as amended) reads as follows:

(4) 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 they shall refuse the application.

Obtaining a CLE will have the effect of proving that the development is lawful, and protect the development from enforcement action.

The onus is on the applicant to prove the case by supplying sufficient clear and precise evidence to satisfy the Authority that a CLE - the test to be applied to that evidence is the 'balance of probability'.

The application is assessed purely on the evidence; the planning merits of the development are irrelevant.

CONSULTATION RESPONSES

St Paul Malmesbury Without Parish Council – No Objection

- At its meeting on the 24th January the council reluctantly resolved to offer no objection to this application, however, concerns were expressed that the description of the site as a storage area was euphemistic in the extreme.

Public Consultation – Four publishable comments have been received and will be shown below. A further comment was received from an anonymous source and has been discounted as non-compliant.

- I have the following comments to make on Application PL/2023/10682 - Certificate of lawfulness for Land to be used as storage at Mill Lane, Corston SN16 0HH Jan 24.
  - Para 5. The application details plan RD/01 as the land, however, a piece of land adjacent to it is also mentioned that is not owned by the applicant? Clarification needs to be provided on the exact extent that this proposal covers, who owns the land and what is being applied for respective to each area of land. If there is more than one site then there must be more than one application?
  - Paras 8. & 9. Declarations by several individuals alluding to Land use and time periods have been provided by people who either do not live in the village or have moved from the village over 3 years ago, therefore what veritas can be given to the declarations on continual use of the land for business purposes?
  - Para 13. Again mentions the land to the east – not included in the site plan RD/01, or owned

by the applicant?
- Para 10 to 15. The photographic evidence provides insufficient detail to corroborate remains of suggested builder's dumped detritus, a shed or any other specifics of alleged land use.
- Para 16. The 'Evidence' submitted is Anecdotal, there is no Empirical evidence to substantiate continuous business use of the Land over any period of Time.

- We have owned Old Corston Quarry for 7 years.
  We have regularly seen and spoken with Mr R. Dolman who uses the land for the storage of materials pertaining to his walling business in that time. We also believe the land has been used as such for many years prior.
  We support this application.
  Regards. Messrs. Reed, Old Corston Quarry, Mill Lane

- Upon review of the submitted documents, and in particular response to paragraph 7 of the Application, I believe there are grounds for the REJECTION of this application.

  The documentation produced on behalf of the Applicants contains ambiguous references and potentially misleading information; possibly to either imply and extend the requested permission to the adjacent parcel of land (separately owned, but which there is a claim of use also by the Applicants son); or has been poorly produced on behalf of the Applicant by their Agent.

  Upon reviewing the documents provided, it appears there could be intentions to possibly extend the requested permission over to their Family's friend land, of which both parcels of land are also included together as part of Planning Application (PL/2023/10684), and the same measurements being provided for both applications, despite the later application containing a second piece of land.

  As it currently stands, the Application should be REJECTED, and if Mrs Dolman still requires Planning Permission for the Existing Use of the land (despite permission for a dwelling also be submitted), should be asked/advised to submit an application with clear and concise information in regards to the site and also supporting documentation.

  Additionally, if there are plans to also use of their family friend's land (as indicated in Paragrah 5 and images) current, future or even past storage use, a separate application should also be submitted.

  Given Applicants have provided evidence to indicate there has already been unapproved use of that land, there is no current Application to use it, by way of their declarations and evidence should enforcement action for unapproved use be considered against the Friend's land at this time?

- Please note I have drawn my conclusion for REJECTION above based from the following areas of the application and associated documents:

  - Covering Letter:
  o Willis & Co state a reference of DS/Mann – This implies that a further party could be involved; and the reason why this is being highlighted is linked to the below points (e.g. Section 5).

  o Paragraph 2 – I understand a Mr C Mann is the legal owner of the adjacent parcel of land; and section 5 refers to Mr Dolman having previously used the land himself for storage use, yet there has been no Statutory Declaration for Mr Mann submitted in support of references of use.

  o Paragraph 3 – There is reference to 'the land…….. measures some 0.8 hectares (0.2 acres). This is the same size also quoted for Mrs Dolman's application for the erection of a new dwelling (PL/2023/10684), despite the Site plan for that application containing the adjacent land. This is possibly an incorrect measurement.

  o Paragraph 4 and Supporting Images – These are very grainy images from a satellite. Should further evidence / visit be requested to illustrate the presence of the listed materials. I understand from fellow residence of Mill Lane that the land also housed chicken coups and

runs on the land, which may or may not be present on the submitted images also. I understand that the shed was used for those purposes and have been unable to verify if these are in fact being used for storage now, so the land may not have been solely used for Mr Dolman's business needs.

o Land at Mill Lane, Corston SN16 0HH / Paragraph 5 – The inclusion of this section is odd and questionable within the letter, given this additional land is included within a further planning application (PL/2023/10684) by the same parties. According to the land registry, the land is not owned by the Applicant but by the Mann family. At first the Application seems to refer to permission for Existing use at Mrs Dolman's land, yet by including this section and references to occasional use by Mrs Dolmans son and highlighted image, permission is potentially also being sought for this land also? There is also no Statutory statement from Mr Mann to support the claim of occasional use either (and whom may have been responsible for the sheet materials shown on the images as he works in a similar building trade to the Applicants son.

- Location Plan
o Is the Highlighted section correct? given the quoted sizes in the application letter is the same as an further planning application by Mrs Dolman (PL/2023/10684), but which shows a much larger area and includes the Family Friend's land . Also I understand Mrs Dolman owns and is responsible for the track leading to the property, and believe that should this also be highlighted on the Plan image for completeness.

- Supporting Images
o 22nd May 2012 Image - As the land was used by Mrs Dolman's late husband for chickens, can further evidence be provided to show that Mrs Dolman's son as used these for his business purposes and specifically storage of the materials at the indicated time.
o 29th July 2014 Image – The reference to "Timer sheet materials" should have no relevance to this application and should not be highlighted. Unless the Applicant is also seeking to informally extend their request for permission to the adjacent land.
o Images September 2019 & Current 2023 –After visiting the site, it is clear that the quoted "hardcore at the front of the land" is correct as there is a bag of sand present of a similar shape. However that does not necessarily mean the same item is present in the prior images. Also since the 2014 image there appears to be no materials referenced as being stored on Mr Manns land, yet the 2023 image appears to be . I also understand from the neighbour that Mr Mann has granted permission to install raised beds during early 2023; yet the these are not shown on the 2023 image. Maybe the date needs to be confirmed for the submitted image (as offered by Willis & Co in their application letter)

I urge the council to consider the above facts, and REFUSE permission for this application on the basis of the contradictive and potentially inaccurate and misleading statements and information provided.

However, if the Council do decide to PERMIT this application after further clarification from Mrs Dolman; I ask the Council them to be very specific that the approval is ONLY for registered land owned and which is indicated in the Plan by Mrs Dolman, and nDOES NOT apply to the adjacent Family Friend's land.

Finally, it is worth noting and questioning why there is a requirement/need for this application, as mentioned the Applicant has also submitted a planning application for the erection of a dwelling (PL/2023/10684) on the same site, plus the neighbouring parcel of land (which both are separately registered with the land registry).

- COMMENT ON APPLICATION PL/2023/10682

  LAND TO THE NORTH OF STONELEA, MILL LANE, CORSTON – CERTIFICATE OF LAWFULNESS

  The covering letter dated 5 December 2023 from Willis & Co states that this site is 0.8 hectares. This is clearly incorrect and does not accord with the area edged red on the location plan. Therefore, either the figure for its size is incorrect or the red edging around the site to show its location and size is incorrect.

The size and/or location of this site must be clarified and corrected. The Council needs to be clear about the area of land on which it is being asked to grant a Certificate of Lawfulness.

30 January 2024
Robert and Angeli Dunkerley

THE EVIDENCE SUBMITTED IN SUPPORT OF THE APPLICATION

Documents submitted with the application form include:

1. Submitted drawing: a Site Location Plan;
2. 5 Statutory Declarations;
3. Satellite Images from 2012, 2014, 2019 & 2023;
4. Covering letter/Planning Statement.

EVIDENCE FROM THE PLANNING HISTORY

CONTRARY EVIDENCE

No contrary evidence has been brought to the attention of the Local Planning Authority.

RELEVANT TIME LIMIT

Taking into consideration the relevant time period for enforcement action in respect of breaches of planning control, Section 171 B of the 1990 Act specifies these time limits as follows:

- For operational development - four years from the date on which the operations were "substantially completed". This applies to all breaches of planning control consisting in the carrying out without planning permission of all forms of "operational development", namely, the carrying out of building, engineering, mining or other operations in, on, over or under land;

- For breaches of planning control consisting in the change of use of any building (which, for the purposes of the 1990 Act, includes part of a building) to "use as a single dwellinghouse"
  - four years from the date of the breach. This time-limit applies either where the change to use as a single dwellinghouse involves development without planning permission, or where it involves a failure to comply with a condition or limitation subject to which planning permission has been granted;

- In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

CONSIDERATION OF EVIDENCE

In the absence of any confirmation of this or conclusive evidence, and in response to the submitted information within this certificate application, the time period in which this application for a certificate shall be considered is 10 years prior to the date the Certificate of Lawfulness application being submitted to the local planning authority. Therefore, in this case, the relevant time period over which the breach of planning control must be demonstrated is: **9th January 2014 to the 9th January 2024**

The applicants have stated their son, Richard Dolman, has used the site for the storing of materials and equipment in relation to his dry stone walling business since 2012. The satellite imagery shows little change between 2012 and now. Areas have been labelled as “building stone and general masonry materials”, “Storage Shed” and Stored Hardcore. The areas of the site labelled consistently in the submitted evidence are immediately by the entrance and next to the building on site. In the 2014 image, a comparatively large area is highlighted as “timber sheet materials” but is located outside of the redline on land not included in this application or the applicant's ownership. This area is considered to be larger than the sum of the labelled areas within the application site.

Comments have been made by several parties as to the details supplied and that the site has been stated to be 0.8 Hectares. Having measured the site from the scaled location plan it is clear that the site is in fact 0.08 Hectares and the 0.8 measurement is simply an error in typing. As the plans are to scale

and the error is not included in the plans but merely in the statement from the agent it is considered that the error is not fatal to the application and can simply be ignored. However, the evidence supplied via the aerial images shows that less than 25% of the site has been used as “storage” and whilst the images have been labelled as such by the applicants the level of detail is easily open to alternative interpretation. There is no statutory definition of 'material change of use'; however, it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of each case. In this case, it is considered that the limited evidence provided, despite the 5 Statutory Declarations, would not clearly evidence a material change of use to a site measuring 0.08 Hectares.

National guidance sets out that a Lawful Development Certificate application needs to describe precisely what is being applied for (not simply the use class) to ensure that a certificate can precisely describe the use, operations or other matter for which it is granted regardless of whether the matters fall within a use class. In this case, the application has merely requested a change of use to “storage” and whilst materials and equipment have been mentioned within the statement there has been no further elaboration other than the labels applied to the evidentiary aerial photographs. Buildings used for storage would normally be considered within business class B8, whereas a builder's yard would be considered sui generis. A certificate cannot be granted for an unidentified mixed or sui generis use.

Therefore, based on the level of evidence submitted, the Local Planning Authority on the balance of probabilities, are minded to refuse this certificate.

CONCLUSION
The key issue in processing a Lawful Development Certificate is the balance of probability. The applicant has to provide evidence that is sufficiently precise and unambiguous to justify the grant of the certificate on the balance of probability. The onus is firmly on the applicant to supply sufficient factual information that would allow for a positive determination and the legislation is clear that without sufficient, precise and accurate information the local planning authority is justified in refusing consent.

Therefore, in this case, the site is considered to be one planning unit in mixed-use. The evidence provided and available to the Council is inconclusive as to when various breaches of planning control have taken place across the planning unit and what mixture of uses have taken place at any time. The application does not provide evidence to precisely and unambiguously demonstrate a continuous relevant period (10 years) for any specifically detailed use of the entire site, upon which a Lawful Development Certificate could be granted.

In consideration of all of the above, the Local Planning Authority is not satisfied that the legal tests have been met in relation to the site known as “The Land to the North of Stonelea”, and therefore, A Lawful Development Certificate cannot be granted.

RECOMMENDATION: That this Certificate of Lawful Development - Exisiting be Refused.

Reasons for Refusal:

1. the application does not include a precise description of the use being applied for and only seeks to establish a “storage” use. A certificate cannot be granted for an undefined mixed or sui generis use.

2. The evidence provided by way of Statutory Declarations and aerial photography is not sufficiently precise or unambiguous to show that, on the balance of probability, a material change of use has taken place over the whole site applied for.

3. The Council is not satisfied that the legal tests are met in relation to The Lands to the North of Stonelea, or the planning unit to which it relates, and therefore, a Lawful Development Certificate cannot be granted.