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PLANNING STATEMENT

SITE: LAND ADJOINING CHELWORTH LODGE INDUSTRIAL ESTATE, CRICKLADE, SN6 6HP

APPLICANT: MICHAEL LINDSEY

PLANNING STATEMENT TO ACCOMPANY AN APPLICATION FOR A CERTIFICATE OF LAWFUL DEVELOPMENT

1. INTRODUCTION

- 1.1 An application is respectfully submitted for a Certificate of Lawfulness for Existing Use or Development to regularise the existing access and former agricultural building as a commercial storage facility with access to it.
- 1.2 This statement has been prepared on behalf of the applicant to accompany the application form for a Certificate of Lawfulness for Existing Use or Development in respect of the continued use of the former agricultural building for the storage of commercial vehicles.
- 1.3 The purpose of this application statement is to demonstrate that based on the strength of facts and evidence presented, and in accordance with the applicable legislation in force, the access and use of the building has been commercial in nature for over 10 years being the required period of time for the use to be lawful.
- 1.4 An assessment of this application will show that the strength of the applicant's evidence presented with this statement is compelling.

2. THE LEGISLATION

- 2.1 The application is submitted in accordance with s.191 of the Town and Country Planning Act 1990, as amended.
- 2.2 Under s.191(a) if a person wishes to ascertain whether any existing use of buildings or other land is lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use, operations, or other matter.

- 2.3 Under s.191(2)(a) uses and operations are lawful at any time if 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).
- 2.4 Under s.191(4) If, on receiving an application the local planning authority is 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.
- 2.5 Under s.191(5) a certificate shall:
- (a) Specify the land to which it relates.
 - (b) Describe the use, operations, or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class)
 - (c) Give the reasons for determining the use, operations, or other matter to be lawful; and
 - (d) Specify the date of the application for the certificate.

3. BURDEN AND STANDARD

- 3.1 In order to satisfy a local planning authority that a Certificate should be granted, the courts have held the relevant test of the evidence submitted by an applicant should be the civil law test of the balance of probabilities.
- 3.2 We will demonstrate throughout the statement that this test is unequivocally met when considering the evidence in the Applicant's favour.
- 3.3 We respectfully remind the LPA that when assessing this application, it must do so based on the evidence alone, rather than considering planning merits or policy in force.

4. THE APPLICATION

- 4.1 The applicant is seeking a Certificate of Lawfulness for Existing Use or Development under section 191 of the Town and Country Planning Act 1990 in respect of the continued use of an access and a building for commercial purposes.
- 4.2 We respectfully request that Certificate of Lawfulness for Existing Use or Development is issued to regularise this use.
- 4.3 In this case the use of the land for commercial purposes has been ongoing for the last 12 years continuously to the present date.

- 4.4 The Applicant obtained planning permission for the erection of an agricultural building on the 17th April 2014 for the erection of an agricultural building under planning reference number 14/02108/FUL.

The plan accompanying that application is shown below which includes the access to and rear storage and parking to the building:

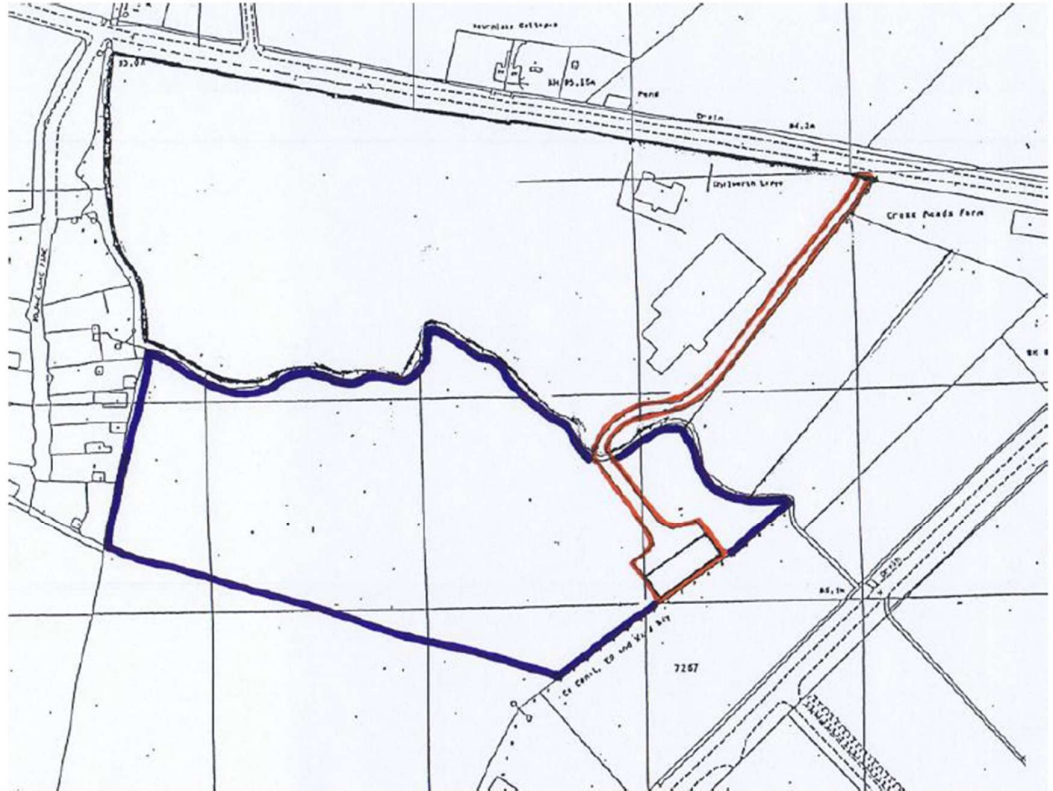


Figure 3: Approved red line boundary shown in Location Plan under planning permission 14/02108/FUL

- 4.5 The Applicant has confirmed by way of sworn statutory declaration that the use of the agricultural building has been for commercial purposes in line with the storage of commercial vehicles on the site which had been happening since the site was acquired in 2013.
- 4.6 It has been accepted by the planning officer in his report under an earlier LDC Application for the whole of the site (Ref:PL/2025/04540) that in May/June of 2015 the building had been erected:

.....was noted by the case officer at the time (May/June 2015) although it appears the agricultural building, the subject of the 2014 planning permission, had been erected.

Below are photographs of the approved building showing its use as commercial storage.



- 4.7 Applying this section of the legislation to the facts of this application we can clearly demonstrate in the evidence presented that the use has been ongoing for a continuous period for over ten years and therefore, the time for taking any enforcement action has expired.
- 4.8 S.191(4) of The Town and Country Planning Act 1990 sets out that if, on an application, the local planning authority is presented with information satisfying

them of the lawfulness of the use at that time, it shall issue a Certificate of Lawfulness for Existing Use or Development.

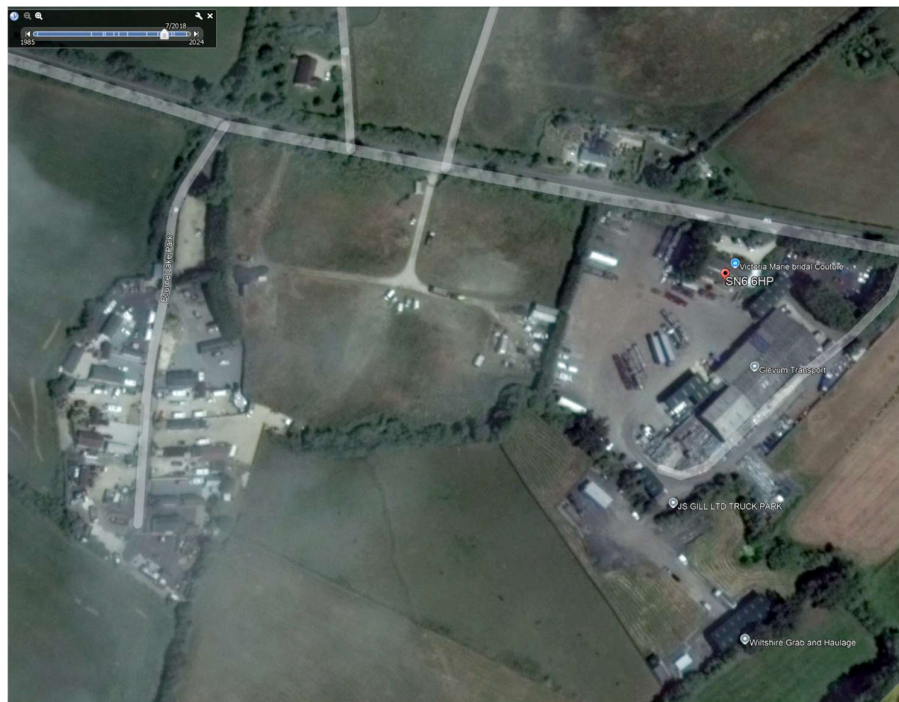
- 4.9 Based on the weight of the evidence presented within this application, we consider that the Local Planning Authority will be satisfied that the use of the land as commercial is lawful and a Certificate of Lawfulness for Existing Use or Development should be granted.
- 4.10 Guidance states that “where the burden of proof is on the appellant, the courts have held that the relevant test of the evidence on such matters is the balance of probability.”
- 4.11 As this test will accordingly be applied by the Secretary of State in any appeal against the decision, and LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely “beyond reasonable doubt”.
- 4.12 Moreover, the Court has held that the applicant’s own evidence does not need to be corroborated by “independent” evidence in order to be accepted (see *FW Gabbittas v SSE and Newham LBC* [1985] JPL 630).
- 4.13 If the LPA has no evidence of its own, or from others, to contradict or otherwise make the applicant version of events less than probable, there is no good reason to refuse the application, provided the applicants evidence alone is sufficiently precise and unambiguous to justify the grant of a Certificate on the balance of probability.
- 4.14 We submit it is clear the building has been used for commercial purposes in its own right for a significant number of years. **A Statutory declaration by the Applicant will accompany this statement.** Given that any person who lies about the information contained within a Statutory Declaration could be prosecuted, the information contained within a Statutory Declaration must be apportioned significant weight in any determination.
- 4.15 Upon assessment of the evidence presented in this statement, we respectfully submit it will become clear that the applicant has overwhelmingly exceeded the burden of proof.
- 4.16 The use has been continuous since the erection of the building at the end of 2014.
- 4.17 The use of the land/building is clearly evidenced in Google Earth images. However, there is a gap between 2014 and 2017 on Google Earth. As stated above the building and land is mainly used for storage of communications over night and at weekends when the vehicles are not being used by their respective owners. Therefore, the images cannot always show vehicles in situ.

Dated Google earth images showing the dwelling in situ from 2017 to Date:

2017: The building and access are clearly visible



2018: The building and access are clearly visible



2019: The building and access are clearly visible



2020: The building and access are clearly visible



2021: The building and access are clearly visible



2024: The building and access are clearly visible



The Google Earth images provide a snapshot over the last 12 years which clearly show that the use of the land and building have been commercial and not agricultural. There has been no agricultural use of the building since it was erected toward the end of 2014. The commercial use has been continuous from that time to the present date. The intended use

has always been commercial in line with the existing commercial industrial estate also owned by the Applicant.

5. CONCLUSIONS

- 5.1 The evidence presented with this application is clear, precise, and unambiguous and the fact that the evidence is corroborated is significant.
- 5.2 In order to grant a Certificate of Lawfulness for Existing Use or Development, the applicant must prove that the use has been continuous for 10 years. This has been achieved.
- 5.3 The Statutory Declaration and supporting evidence presented with this application demonstrate that without any shadow of doubt this is the case and should be afforded significant weight.
- 5.4 It is respectfully submitted that on this basis, the applicant has exceeded the civil law standard of proof required, namely on the balance of probabilities.
- 5.5 Upon an assessment of the overwhelming evidence presented we submit the LPA is drawn inexorably to one conclusion. This being that a Certificate of Lawfulness for Existing Use or Development should be issued. On that basis we respectfully request that this application is granted.

6. RECOMMENDATION

- 6.1 The Planning Authority is respectfully requested to approve this application and grant the Certificate of Lawfulness for Existing Use or Development.

**HEAL Planning
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Supporting documents to accompany this statement:

- APPENDIX 1 – Statutory declaration from the Applicant