

DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No: H09-0978-20 **Applicant:** Tecvyn Ltd
Proposal: Use of Site as B2 - General Industrial
Location: Laurel Lodge Washway Road Holbeach
Terminal Date: 29th January 2021

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2019

Not applicable.

Representations:

	Object	Support	No Obj.	Comments
SHDC INTERNAL	0	0	0	1
RESIDENTS	7	0	0	2

CASE OFFICER ASSESSMENT

Proposal

This application seeks the granting of a Lawful Development Certificate (LDC) for the use of the site as B2 General Industrial, for which planning permission has not previously been sought and is therefore a breach of planning control.

Site Description

The site sits on the northern side of the A17 and to the east of Hurn Road, from which it takes its access. It is a large site that comprises mostly of grassed land and hardstanding, but with a large industrial building at the western end. The site boundary wraps around an existing electrical contractors premises and adjoins Lodge Farm Cafe at the western end. There are residential properties on the other side of Hurn Road, off Washway Road.

History

H09-1518-04 - Erect bulk boxed storage building (renewal of H09/0232/00) (approved December 2004)

H09-0048-02 - Extension to existing effluent treatment facilities (approved March 2002)

H09-0232-00 - Erect bulk boxed storage building (approved April 2000)

H09-1096-99 - Process effluent treatment facilities (approved January 2000)

Consultation Responses

A formal consultation process was not undertaken due to the nature of the application, however there have been objections received, as below.

Cllr Seymour - The property was a farm. It was used as a vegetable processing factory which is common in today's farming. The only outdoor storage was vegetable bins (boxes) on hard standing to the north of the building. The land adjacent and along the north side of the A17 has been open ground with no storage on it. To use this land as storage of plastic waste would not be in keeping with the open countryside and street scene as this area stretches along the A17 with no screening and would need screening plus limit of the height of material to be stacked. The junction of the A17 and Hurn Road is a very busy and can take time to exit on to the A17. A work force of 60 plus and deliveries and collections would increase the traffic to more than 150 movements a day which would increase the problem at the junction. If it were to be granted, working times and deliveries/collection would have to be controlled with set timings so as not to disturb local residents day and weekends. All machinery should be inside closed buildings to limit noise and dust pollution. This is an application for waste and needs a waste licence for the site.

Cllr Worth - I think it would be helpful if the company were to send round some leaflets or letters to the local residents, reassuring them about their concerns, based on the feedback from objections received. This is about a lawful use certificate not a planning application and on that basis there is nothing to object to, other than raising the concerns of local residents which are mainly health, noise and traffic related to which they deserve an answer.

9 public objections/comments (summarised below) -

- Site has been derelict for at least the last 10 years
- Concern re highway safety
- Additional noise from factory and additional traffic movements
- Impact of additional lorry movements on road conditions and properties
- Field has been cleared and fencing erected on land that hares were living on

Planning Considerations

This is a legal determination and planning policy is not relevant to the determination as to whether the claimed use is indeed lawful. The decision is based upon the case officer's judgment as to the case being proven on the balance of probabilities.

The applicant has submitted the following evidence in support of the claim:

1. Application Form
2. Site Location Plan
3. Planning Statement
4. Statutory Declaration from an individual with knowledge of the history of the site
5. Hygiene Method Cards and assessment checklists for MBMG

Case law has established that in order to become immune from enforcement and therefore lawful, the breach must be continuous for a period of at least 10 years.

It is the applicant's case that the unauthorised use of the site as B2 (General Industrial) exceeds the 10 year time period within which enforcement action could be taken.

It has been confirmed in a statutory declaration that Oldershaws operated from the buildings on the site in approximately 2003 and that vegetable washing took place on the site at that time. In addition to this, the Council's Economic Development and Inward Investment Manager has also confirmed that the site was used by Oldershaws for the processing of onions prior to its sale to MBMG who used it for the same purpose before falling into administration in 2009. Both have confirmed that no

other use has taken place since, as have public objections.

Furthermore, the planning history of the site suggests that the washing and processing of vegetables took place earlier than 2003, with relevant applications dating back to 1999:

- H09-1096-99 was an application for process effluent treatment facilities and it is clear that the application related to a factory which generates trade water waste.
- H09-0048-02 was an application to extend the existing effluent treatment facilities. The application form states the existing use as 'vegetable processing' and the use was referred to as a 'food processing factory' by the Environmental Health Officer at the time.

Taking the above into account, and in the absence of any evidence to the contrary, it is concluded that sufficient evidence has been produced which demonstrates that "on the balance of probability" the unauthorised B2 use has continued for in excess of 10 years since the breach of planning control, thereby making it immune from planning enforcement.

It is therefore considered appropriate to issue a certification of lawfulness.

Planning Balance

On the balance of probabilities, it has been demonstrated that the unauthorised B2 use has continued for in excess of 10 years since the breach of planning control, and it would be appropriate to issue a certification of lawfulness.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:

- A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).
- C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

Conclusion

Given the evidence submitted and in the absence of contrary evidence, it is considered that the applicant, on the balance of probability, has demonstrated that the unauthorised B2 use has continued for in excess of 10 years since the breach of planning control, therefore it is appropriate to issue a certificate of lawfulness.