

SIMMONDS PLANNING LTD

PLANNING STATEMENT

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CERTIFICATE OF LAWFUL USE FOR:

EXISTING USE OF LAND AND BUILDINGS

**AT LAUREL LODGE, WASHWAY ROAD,
HOLBEACH, PE12 8JB.**

November 2020

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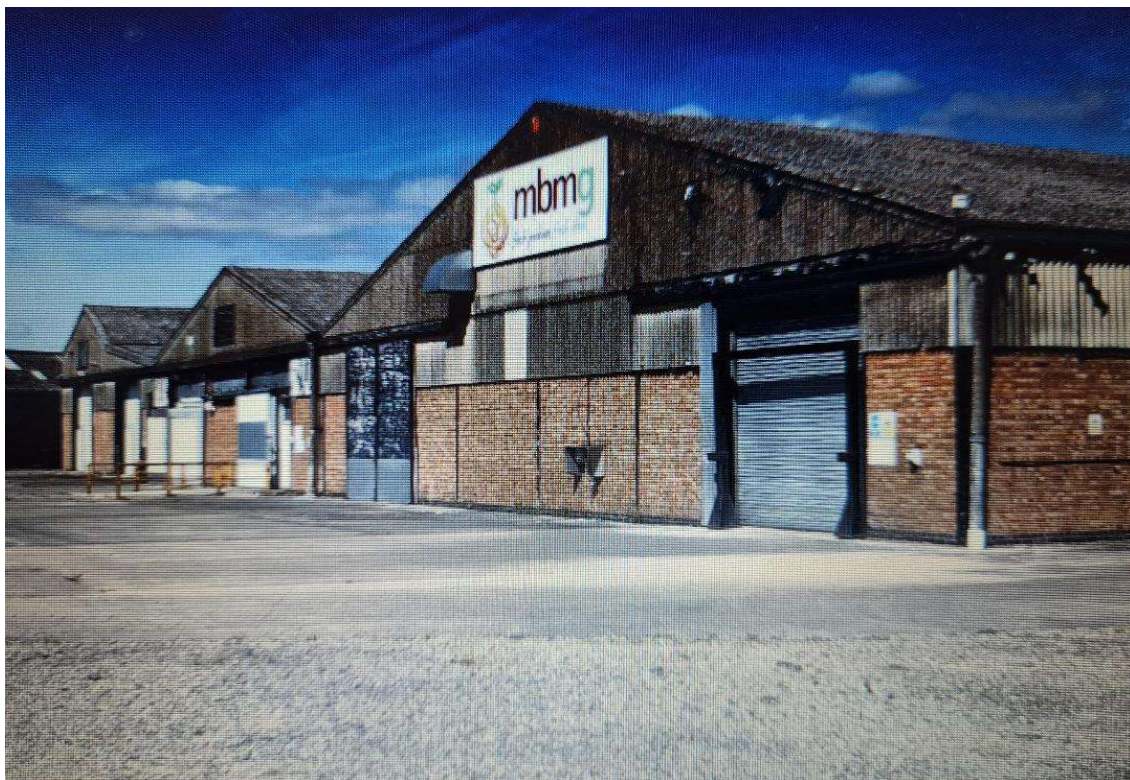
- a. Site Plan.
- b. Statutory Declaration of Mr Paul Woodrow with exhibits.

Prepared By: Angela Simmonds

Position: Director/ Planner / Solicitor (Non-Practising)

1. INTRODUCTION

- 1.1** This Planning Statement has been prepared and submitted by Simmonds Planning Ltd on behalf of Tecvyn who are the owner and future operator of the site at Laurel Lodge, Washway Road, Holbeach, PE12 8JB. This statement is in support of an application for a Lawful Development Certificate for an existing use of the land.
- 1.2** The site known as Laurel Lodge on Washway Road has seen a variety of operators but has been consistently (the most recent and long term use) been for the washing and processing of vegetables which falls under user class 'B2' (General Industrial).



2. SITE DESCRIPTION AND PHYSICAL CONTEXT

- 2.1** The application site is located adjacent to the north of the A17 carriageway, midway between the nearby settlements of Holbeach and Fleet Hargate.
- 2.2** The property comprises a range of buildings and associated land to the side and rear. The largest set of buildings on the site consists of three steel portal frame buildings with brick elevations and cement fibre roof and cladding. The property has been internally fitted with boxed white wall facilities comprising packing, processing, low care and chill store facilities. There is a small ambient temperature production facility in the main building. The main building also contains a wash down area, quality control,

offices and storage facilities with a staff canteen. There are substantial concrete aprons to the front and rear. Further buildings on the site include a stand-alone office facility, formerly a residential bungalow, and a range of outbuildings.

2.3 The total Site Area is approximately 3.48ha.

3. PLANNING HISTORY

3.1 Planning Application Reference's :

H09-0232-00

H09-0048-02

H09-1518-04

All of the above planning applications indicate a standard B8 planning use.

3.2 Based on the above- mentioned permissions the site has an authorised B8 use only and the long term use as B2 General Industrial is not authorised

4. EVIDENCE AND SUMMARY OF THE PROPOSED USE

Certificate of Lawful Established Use

4.1 The Town and Country Planning Act 1990 ("the Act"), s.191(1) provides that 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, 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 apply to the LPA specifying the land and describing the use, operations, or other matter. If, on such application the LPA is satisfied with the lawfulness of the use, operations, or other matters described in the application, or that description as modified or substituted by them, it shall issue a certificate or refuse the application.

For the purposes of the 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.

4.2 The Proposed Use

The application is submitted with the following description of development:

Application for a Certificate of Lawful existing Use for the use of the site at Laurel Lodge, Washway Road, Holbeach as a B2 General Industrial use and the continued use of this land for B2 General Industrial Use.

4.3 Guidance and Case Law

Planning Guidance and case law has established that the onus of proof is firmly on the applicant to prove the case for the Certificate, however an element of co-operation is expected from the LPA in establishing the evidence if the LPA does hold evidence associated with the application.

If the LPA 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 LPA or a description substituted by them, they shall issue a certificate to that effect; and, in any other case, they shall refuse the application.

The relevant test to be applied to the evidence is that of the 'balance of probability' which is the lesser test to the criminal burden of proof.

The case of *F W Gabbitts v SSE and Newham LBC* [1985] JPL 630) has established that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their 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 alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability"

Time Limits

Time limits in relation to the enforcement action referred to above in sections 191 (3)(a) are provided in section 171B:

- (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.

Therefore, in this case the relevant test for the unauthorised use of B2 General Industrial, and in particular the washing and processing of vegetables shall be 10 years beginning with the date of the breach.

4.4 The Applicants Case

The photographs below demonstrate how the existing site is set up with the facilities used in the sites long term B2 use:







4.5 Evidence

Appended to this statement is a sworn statutory declaration of Mr Paul Woodrow

The Declaration is submitted to demonstrate the following:

- * known the site at Laurel Lodge for at least 18 years as I initially worked on the site for over 9 years and then became the caretaker of the site to present day.
- * approximately 2003 Aldershaws operated from the 3 large buildings on site washing vegetables as a B2 operation.
- * Aldershaws ceased use of the site around 10 years ago and since then Mr Woodrow has had responsibility of looking after the site and acting as its caretaker.
- * No other intervening use has been carried out on this site and within Mr Woodrow's knowledge the site has not been used for any other use than that of vegetable washing and processing.

4.5 The same vegetable washing process was continued under the name of MBMG and this was reported as falling into administration on 10th July 2009. This was reported on many local news sites and in particular the farmers weekly, please see extract below:



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Cambridgeshire fresh produce company **MBMG** has gone into administration, resulting in job losses and uncertainty over whether growers will be paid for outstanding invoices.

Ian Carr and Malcolm Shiersen of [Grant Thornton](#) were appointed joint administrators on 10 July 2009. Attempts to secure a buyer for MBMG's Holbeach and Bicker sites in Lincolnshire failed, so both will be closed down. Grant Thornton said the businesses would continue to trade for a few weeks, to give customers more time to find new suppliers.

"As administrator I am bound to put the needs of creditors first," Mr Carr explained. "Against this backdrop and in the context of the current market conditions it has proved impossible to continue trading and so we have had to take the difficult decision to close the business."

- 4.6 There are no other reported change of uses or registered businesses using this site and the site remains set up for vegetable washing. The applicant has discovered many examples of paperwork associated with the previous B2 use and appended to this statement is number of examples of hygiene method statements for the vegetable preparation on site.

A 2008 company food and safety policy are also attached as evidence of the B2 use.

5. The Future Use of the Site

5.1 The applicants, TecVyn, have 10 years of processing experience TecVyn is one of the most advanced UPVC - processing operations in the UK and are at the forefront of both the collection of redundant material and pioneering new technology, offering one of the most advanced and innovative recycling processes in the UK.

5.2 The applicants have an established processing site in the city of Hull (Unit 7 St John's Business Park, Hull) and they occupy an industrial unit under a B2 use as the process that they are engaged in is widely accepted as a B2 use. Therefore, their proposed use of this site which has been sought by this Certificate to establish, is that of a continued B2 use.

5.3 The applicants have outlined the processing process as follows:

uPVC window line

We take in deglazed window and door frames usually in full artic loads. These are offloaded in a designated area in the compound.

We cut (if necessary) the frames and feed them into a large shredding machine situated outside of the main plant but under a shelter to be constructed.

We then feed the shredded material into our processing plant which removes all metals, gaskets, and other contaminants through a complex series of shredders, granulators, sieves, dust extractors, magnets, eddy current separators, size reduction units and colour separators.

We then pulverise the material into a powder (some of which we sell at this stage).

Then feed the powder into extrusion machines to produce a finished high-quality pellet.

This pellet is now the raw material to be sold to extruders of pipe, gutters, window trim, conduit, cable trunking, fascia boards, fencing, etc etc.

The material leaves the site in one tonne, tied and labelled bags in 22 tonne (full truck) loads.

PET bottle processing plant

We take in baled PET bottles supplied mainly by the big waste companies that operate kerbside collections.

The bales are delivered to our site in full loads of around 18 tonnes in wire tied mill size bales and will be stacked neatly in rows in the outside area of the site.

The bales will be brought into the factory fed into the bale breaker and directly into the processing plant.

The plant will consist of shredders, granulators, washing plant, dryers, float sink separation to remove labels and PE or PP caps, air knives, metal detectors, colour sorters etc.

The flake can then be sold to manufacturers for producing new bottles, thread for making textiles, strapping for packaging and so on.

This ultra clean flake will be packaged in one tonne, tied and labelled bags in approx. 18 to 20 tonne (full truck) loads.

5.4 The above process has been considered by other LPA's as a B2 process as it is the processing, sorting and repackaging of raw materials.

5.5 Part B of the Schedule to the User Class Order contains Class B2, which is headed "General Industrial" and is described as "Use for the carrying on of an industrial process".

5.6. "Industrial process" is defined by Article 2 of the User Class Order as:

"a process for or incidental to any of the following purposes:

(a) the making of any article or part of any article

(b) the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article; or

(c) the getting, dressing or treatment of minerals; in the course of any trade or business other than agriculture"

5.7 The Council is asked to note the case of Bennett Fergusson Coal Limited v FSS [2004] 1 P&CR 30, which clearly supports this form of waste reprocessing as a B2 use class. In this case, Blackburne J indicated that sorting, crushing, screening, chipping and baling waste could fall within B2. This is clearly the case here and a full citation of the case can be provided if required. The Council will of course be aware that if waste is being disposed of on the site (via incineration, chemical treatment or landfill), then this activity will not fall within Class B2 – again this clearly is not the case with the TecVyn process.

5.8 The Land Use Gazetteer is a useful tool used by Councils in establishing the user class of an operation. A cursory look at the Gazetteer establishes the following:

- * Waste Baling Place – B2

- * Waste Compaction Place – B2

- * Waste paper baling, sorting or shredding place – B2

- * Waste plastic baling, sorting, shredding, densifying or washing place –B2

- * Waste sorting place – B2

- * Waste steel case baling, sorting, shredding, densifying or washing place – B2

5.9 The activities of TecVyn as outlined above is considered to fall within the B2 general industrial use class. This is consistent with the documented case law which therefore conclusively confirms that the proposals fall within the B2 use class.

CONCLUSION

The evidence provided is clear and unambiguous and provides factual evidence in the form of a sworn statutory declaration and documented evidence from the previous vegetable washing on site. Unless the Council holds evidence to the contrary it is considered that the site as outlined on the attached site plan has been used for a period far exceeding the required 10 years for the washing and processing of vegetables which falls firmly within a Class B2 use. No other operation has been carried out on this site in the last 20 years therefore the last lawful and continuing use of the site is that of a B2 use.

This use falls under class B2 and therefore does not have the benefit of planning permission. There has been no enforcement action taken against the site and there are no Enforcement Notices registered against the site in respect of this use.

Unless the Council holds some evidence to the contrary, it is believed that evidence has been produced to demonstrate that on the balance of probabilities the unauthorised use has been carried out on the site for a period exceeding 10 years which results in such a use being immune from enforcement action.

The applicant respectfully requests that a Certificate of Lawful use is granted for the B2 General Industrial of the site and the Council is asked to note that the applicant shall be continuing the B2 use of the site by moving the factory from the Hull depot to Holbeach and shall be creating 60 jobs for local workers which will add to the rural vitality of this area.