

DERBYSHIRE COUNTY COUNCIL
REGULATORY – PLANNING COMMITTEE

14 July 2014

Report of the Strategic Director – Economy, Transport and Environment

**APPLICATION FOR A CERTIFICATE OF LAWFULNESS OF
EXISTING USE OR DEVELOPMENT, IN RESPECT OF USE
FOR THE STORAGE OF METALS, SCRAP AND WASTE
METALS, AND WASTE MATERIALS AND WASTE
RECYCLING ON LAND AT GRIFFON ROAD, ILKESTON
APPLICANT: DONALD WARD LIMITED
CODE NO: CL8/0114/153**

Introductory Summary This application, made under Section 191 of the Town and Country Planning Act 1990, is for the grant of a Certificate of Lawful Use or Development (CLEUD) in respect of a stated existing use of land for the storage of metals, scrap and waste metals and waste materials, and waste recycling.

Unlike an application for a conventional planning permission under the 1990 Act, an application for a CLEUD is entirely reliant on the available factual evidence about the planning history of the land to which it relates. This is because these applications have to be granted or refused according to whether or not it is considered 'on the balance of probability' to be an existing use or development referred to under the application which has become lawful over time. In this case, this application contends that the land, the subject of the application, has been in continuous use for the storage of metals, scrap and waste metals, and waste materials and waste recycling for a period of over 10 years prior the date of the application.

(1) Purpose of the Report To enable the Committee to consider the application.

(2) Information and Analysis

Application Details

The application relates to the use by Donald Ward Limited of approximately 0.6 hectare of land and buildings situated within the Quarry Hill Industrial Estate in Ilkeston. The land subject to this application is shown hatched on the plan attached to this report. The applicant has also submitted another

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application for a CLEUD on a separate but adjacent area of land, which is outlined on the plan attached.

Location

The land which is the subject of the application is situated within the Quarry Hill Industrial Estate which is on the southern outskirts of Ilkeston. The land is within a greater assembly of land at the industrial estate under the control of the applicant company. The area of the application land is approximately 0.6 hectare and it is surrounded to the north and east by business units on the industrial estate, to the west and east by more land within the assembly occupied by the applicant company, and to the south by the Nutbrook Trail.

Supporting Information

Accompanying the application are:

- Statutory Declaration of David Ward – Director of Donald Ward Limited dated 15 January 2014.
- Statutory Declaration of Donald Ward – employee dated 15 January 2014.
- Witness statement of Donald Taylor dated 17 January 2014.
- Witness statements of employees of the company dated 15 and 17 January 2014.
- Witness statements of contractors to the company dated 15 January 2014.
- Planning Supporting statement provided by the solicitors for the company dated 28 January 2014.

Responses Received

There is no requirement for the Waste Planning Authority to carry out consultations on CLEUD applications. However, the Waste Planning Authority has done so in this case having regard to the nature of the information which has been provided with the application.

Information has been sought from the Environment Agency, Erewash Borough Council and businesses located next to the land. An agent on behalf of Saint Gobain PAM UK Ltd, a company which continues to own a substantial landholding in the vicinity, has responded with a letter which indicates that it does not consider that any CLEUD should be granted in respect of the application. Whilst the letter contains some opinions which criticise the application, it does not contain any new information regarding use of the application land. Therefore it cannot provide any particular assistance to the determination of this application.

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Other Information

As background information, it is well known that Saint Gobain occupied a large area of the former Stanton Ironworks (which is in the vicinity of the application area) from when it was taken over by Saint Gobain in the mid-1980s. It is understood that casting operations at the works ceased in 2007.

The following information, which is available to the Council, also appears relevant to this application:

- Aerial photographs dated 29 July 1999 and 9 September 2004.

Material including copies of the 1999 and 2004 aerial photographs was provided to the applicant under covering letter dated 23 April 2014. In response to this the applicant provided to the Council, with a letter dated 19 May 2004:-

- a copy of an aerial photograph dated 18 July 2000.
- a witness statement of David Ward dated 17 May.
- a witness statement of Donald Ward dated 16 May 2014.

Case Analysis

This application claims that for over 10 years, up to the time of the application, the land has been used for the storage of metals, scrap and waste metals, and waste materials and waste recycling. The key element to consider is the nature and continuity or otherwise use of the site during the 10 year period up to submission of the application.

I consider that the 1999, 2000 and 2004 aerial photographs provide some significant evidence regarding the application land at the times of the photographs. The 1999 and 2000 photograph predates the ten year period up to the date of the application. Some of the witness statement and statutory declarations refer to memories from prior to this period. I consider this material should be considered in the determination of this application.

Although the applicant in its letter dated 19 May 2014 comments that 'the scale of the aerial photographs is very small and it is very difficult to identify precisely what individual details or matters are illustrated on them'. It is clear to me that the aerial photographs capture sufficient details from the air of the situation on the ground on those occasions.

The 1999 and 2000 photographs show that the application land then comprised vegetated areas and vehicle access areas, which were clear of significant quantities of material, and a building. The 2004 photograph shows a generally similar layout for the application land, but a more prominent collection of material on small areas at the south east of the application land. One cannot tell from the photograph whether or not this material comprised waste, though this collection has an orderly appearance, which might suggest

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that it would have been present only for a short period, pending further use or removal from the site. One can tell from the photograph that the other parts of the site at this time which were not built on were then either vegetated or vehicle access areas, and clear of any significant quantities of material.

It is understood from the evidence provided that the building was in use by Saint Gobain for pipe testing and that pipes and other material that were present on the ground around the building were associated with that use. It was evident from a site visit shortly following the Council's receipt of the application, that it was then being used by Donald Ward Limited mainly for mobile plant maintenance and repair activities.

Planning Supporting Statement

This application has been submitted on the ground that the use began more than 10 years before the date of the application.

However, the supporting statement appears to contend that a Certificate of Lawfulness should be granted because the applicant considers that (a) planning permission CW8/1206/148 has been implemented and (b) the land has been in continuous use for the use described in the application for in excess of 10 years. It includes a re-iteration of the view expressed in the letter of 14 January 2014 that planning permission CW8/1206/148 has been implemented.

Planning Permission CW8/1206/148 for *'the construction of a building and use of land for waste recycling operations including the use of a new access'* was issued by the County Council on 4 May 2007. It is considered that this permission has not been implemented and has lapsed, because the period for commencement of the development permitted under it has expired. This opinion was conveyed to the applicant in a letter of 16 October 2013 from the Director of Legal Services. The applicant does not concur with this opinion as noted in a letter from the applicant's solicitor of 14 January 2014, a copy of which is included within the Planning Supporting Statement. I remain of the view that the permission was never implemented; within the period for its implementation, there was neither any construction of the building referred, nor any use of the land for the kinds of waste recycling operations described in the application and specified through the decision notice (which would have required the prior construction of the building). The permission is worded so that the use of 'a new access' was limited to whatever use it might have been associated with any building construction the use for waste recycling operations which took place as permitted by the permission. Furthermore there is a condition in the permission which required the submission of several schemes for approval by the Council prior to the commencement, in respect of which schemes were never submitted.

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The content of the declarations and of the statements which appear to be of potential relevance to this application are summarised below, together with brief comments on their relevance:

Witness statement of Donald Taylor

Donald Taylor was operator of a scrapyard and metal recycling facility on nearby land between 1983 and September 2002 (although he later refers to having operated a metal recycling and processing facility on the nearby land since 1984). He states in his witness statement that the application land was in the control of Saint Gobain who stored scrap metals on the land. He goes on to say that these metals were processed and recycled on his site following which recycled metals were sent back to Saint Gobain for re-melting in their plant. No dates as to when Saint Gobain stored scrap metals on the application land are provided in the witness statement, although it is assumed that he means it took place during his occupation of the nearby land (between 1983 or 1984 and 2002).

Having regard to the witness statement, the 1999 and 2000 aerial photographs nevertheless reveal an absence of substantial collections of scrap metal objects present on the application land at those times. It seems doubtful whether any handling of scrap metal that might have taken place concerning the land in these years amounted to any continuous use of the land for waste storage.

Statutory Declaration and Witness Statement of David Ward

David Ward states that Donald Ward Limited had a Site Services Contract with Saint Gobain which ran from 1999 to 2007 when Saint Gobain ceased to operate. This Site Services Contract involved the collection of material from various buildings across the Saint Gobain complex, including from the application area. David Ward states that the application area was used by Saint Gobain for storage of metal and waste material which his company, Donald Ward Limited, collected for recycling under the Site Services Contract with the recycled metals sent back to Saint Gobain for smelting. In 1999, such materials were taken to the company's other site in Woodville but, on acquisition of the nearby site from Hemlockstone Haulage (Donald Taylor), the materials were recycled at that site.

This Statutory Declaration and witness statement, with reference to use of the application area for storage of metal and waste material are not supported by the 1999, 2000 and 2004 aerial photographs which reveal that no substantial collections of scrap metal objects could be seen on the application land at those times.

Statutory Declaration and Witness Statement of Donald Ward

Donald Ward who worked for Donald Ward Limited since 12 February 2003 makes reference to having been familiar with the land at Griffon Road since 2002. Donald Ward states that the application area was used by Saint Gobain

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to store scrap metal pipes and waste material which Donald Ward Limited used to collect and recycle under the Site Services Contract.

Whilst this Statutory Declaration and witness statement indicates that metal pipes and waste material were retained on the land pending collection under the contract, it does not amount to evidence of any continuous use of the land for scrap metal/waste storage. The 2004 aerial photograph reveals that no substantial collections of scrap metal/waste objections could be seen on the application land at that time.

Witness Statement of Christopher Hunt

Christopher Hunt refers to having worked on the Site Services Contract for Saint Gobain as a crane and lorry driver from 18 March 2002. His role involved loading material from the Saint Gobain land to be taken away for recycling. He confirms in his statement that he loaded scrap metals from all parts of the Saint Gobain land holdings including from the application area.

Whilst this statement indicates that scrap metal was collected from Saint Gobain land under the contract, it does not amount to evidence of any continuous use of land for scrap metal storage. The 1999 and 2004 aerial photographs reveal that no substantial collections of scrap metal objects could be seen on the application land at those times.

Witness Statement of Anthony Ashby

Anthony Ashby worked for Meakes Transport on the Saint Gobain Sites Services Contract and his contract commenced in 1979. His role was to drive the lorry which was loaded with scrap metal and pipes from the Saint Gobain site, including the application area.

Whilst this statement indicates that metal and pipes were retained on the land pending collection under the contract, it does not amount to evidence of any continuous use of the land for scrap metal storage. The 1999 and 2004 aerial photographs reveal that no substantial collections of scrap metal objects could be seen on the application land at those times.

Witness Statement of Michael Holmes

During the 1990's, Michael Holmes worked for Sisson and French who carried out site services for Saint Gobain, including the collection of scrap metal. When Ward Recycling took over these services in 1999, he became an employee of Ward Recycling. The site services he was involved in, both before and after the acquisition of the contract by Donald Ward Limited, involved the collection of reject and scrap materials and metals, including from the application area.

Whilst this statement indicates that scrap materials and metals were retained on the land pending collection under the contract, it does not amount to evidence of any continuous use of the land for scrap metal storage. The 1999

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and 2004 aerial photographs reveal that no substantial collections of scrap metal objects could be seen on the application land at those times.

Statement of Toby Potter

Toby Potter was employed by Saint Gobain as the main scrap metal buyer for the UK business and worked for this company between 2000 and 2006. During that period, Toby Potter states he was familiar with Donald Ward Limited and the Griffon Road site as it was a site that received scrap from Saint Gobain for recycling and produced metals which were smelted down by Saint Gobain. He ceased working for Saint Gobain and took up employment with Wards Recycling in February 2007. He states that Saint Gobain stored scrap metals on the application area.

Whilst this statement indicates that scrap metal objects were retained on the land pending collection under the contract, it does not amount to evidence of any continuous use of the land for scrap metal storage. The 2004 aerial photograph reveals that no substantial collections of scrap metal objects could be seen on the application land at that time.

Conclusion

The Statutory Declarations and witness statements suggest that the application Land was previously in use by Saint Gobain and that this generated some scrap metal waste arisings for collection by Donald Ward Limited under a Site Services Contract, which were taken to the adjacent site operated by Donald Ward Limited for recycling.

The Statutory Declarations and witness statements, nevertheless, are lacking in any information regarding the frequency or scale of any use of the application land over time for the storage of metals, scrap and waste metals and waste materials and waste recycling. Whilst they refer to loading and transport of materials from "the Saint Gobain site" to the Donald Ward Limited site, where they were then recycled, it is not evident that use by Saint Gobain of the application land was essentially different in character from its industrial use of other land it would have then occupied for iron production in the vicinity.

It is apparent that the statements provided with the application do provide substantial evidence that:

- (a) Saint Gobain stored materials on various parts of the land in their occupation which included scrap and other material arising from their business, some of which were considered by them to be waste; and
- (b) such materials were collected by Donald Ward Limited, or contractors on their behalf, and transported to a site at Griffon Road situated adjacent to the application site (which had a conclusive lawful use as a scrap yard from 1994 by virtue of a Certificate of Lawful Use issued by Erewash Borough Council, and some of which has been run subsequently by Donald Ward Limited as a Waste Recycling Facility

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under a planning permission granted by the County Council in July 2003, CW8/0602/37).

The use by Saint Gobain of land for iron production would certainly have involved scrap metal waste arisings from time to time, and such waste would have needed to be collected for removal from time to time under the Site Services Contract. However, this does not amount to evidence of a change of the use of the application land to a use primarily for storage and recycling of waste. The aerial photograph dated 9 September 2004 indicates that, subject to the possible exception of the interior of the existing building on the site, there was then no substantial on-going storage of metals, scrap or other waste metals, or waste materials or recycling.

It seems highly unlikely that whatever scrap metal/waste storage has taken place at the land could amount to any continuous use of the land over a 10 year period.

The evidence presented in the application, together with the other relevant evidence available, are therefore not considered to provide any convincing indication that the application land has remained in use for the use described in the application for any substantial period. Therefore, it is not considered that the land could have been subject to such a use for 10 years or more up to the date of the application.

(3) **Financial Considerations** The Correct fee of £1,170 has been received.

(4) **Legal Considerations** This is an application submitted under Section 191 of the Town and Country Planning Act 1990 as amended by Section 10 of the Planning and Compensation Act 1991. By virtue of the Act, a continuous use for 10 years of a parcel of land in breach of planning control, which has not been subject to enforcement action under the Act, can establish an on-going lawful use for the land under planning law which did not previously exist.

The determination of this application concerns matters of fact and not questions on amenity or planning merits. The activity at the application site may result in an impact on amenity in terms of visual impact, noise or traffic, but cannot be conditioned. In the case of a CLEUD, the action of the Waste Planning Authority is prescribed by law, in that the Town and Country Planning Act 1990 (as amended) requires that a CLEUD be granted where sufficient evidence is provided to show the use over the prescribed period, without taking account of any amenity concerns.

Nevertheless, such a grant will not confer any immunity for the commission of any public or private nuisance. The determination of this application in accordance with the statute is regarded as being compatible with the human rights under the European Convention on Human Rights (including a persons'

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entitlement to a fair and public hearing in the determination of his civil rights and obligations, under Article 6 of the Convention).

(5) **Environmental and Health Considerations** As contained in the report.

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property and transport considerations.

(6) **Background Papers**

Application, together with Planning Supporting Statement and Statutory Declarations and Witness Statements. Aerial photography dated 29 July 1999 and 9 September 2004. Letter from the applicant dated 19 May including additional witness statements of David Ward and Donald Ward. Letter from Alliance Planning on behalf of Saint Gobain.

(7) **OFFICER'S RECOMMENDATION** That the Committee resolves to approve the issue of a refusal under section 191 of the Town and Country Planning Act 1990 in response to the application regarding use of land at Griffin Road, Ilkeston, for the storage of metals, scrap and waste metals, and waste materials and waste recycling which is the subject of this report.

Signed.....Date.....

Mike Ashworth
Strategic Director - Economy, Transport and Environment

Title

CL8/0114/153 - Land at Griffon Road, Quarry Hill Industrial Estate, Ilkeston

