

**DERBYSHIRE COUNTY COUNCIL
REGULATORY – PLANNING COMMITTEE**

3 June 2013

Joint Report of the Director of Legal Services and the Strategic Director –
Environmental Services

**APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR
SCRAP METAL PROCESSING ON LAND AT THE CASTLE
LANE INDUSTRIAL ESTATE, CASTLE LANE, MELBOURNE, AS
AN EXISTING LAWFUL USE
APPLICANT: MELBOURNE METALS LIMITED
CODE NO: CL9/0313/158**

9.1573.1

Introductory Summary This application is for the grant of a Certificate of Lawfulness in respect of an existing use of a site for scrap metal processing, which is claimed to be a lawful use, for the purpose of planning legislation.

Where evidence submitted does not support the claimed lawful use then it would fall to the planning authority to refuse the application. Unlike a conventional planning application, each application for a Certificate of Lawfulness is assessed entirely on available factual evidence about planning history, the relevant planning law. The lawfulness must be judged on ‘the balance of probabilities’. In this case, this application contends that the use of the site for scrap metal activities, scrap activities involving processing of scrap metals, has persisted for over 10 years (which would create an “established” lawful use). Various pieces of evidence have been submitted which substantiates this. In my opinion, there is sufficient evidence to support the claimed lawful use of the site and I consider that the above requirements have been fulfilled. I am therefore recommending that it would be appropriate to issue a Certificate of Lawfulness of Existing Use accordingly.

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

(2) Information and Analysis

Application Details

The application is submitted by Mr Nigel Webster on behalf of Melbourne Metals Limited. It relates to the use of approximately 0.2 hectare of land and buildings in an industrial setting on the established Castle Lane Industrial Estate, on the eastern outskirts of Melbourne. The application states that for the preceding 10 years (from 2003), the land has been used continually for the importation, sorting and processing of scrap metals.

Site Location and Description

The area of the application site is situated on a small established industrial estate, directly east of the Town centre. It is rectangular shaped, is enclosed and roughly level land, and is bounded to the north by a new housing estate. To the south, east and west, within a few metres, the site is bounded by industrial units of varying sizes and designs. The application site comprises an open hard surfaced yard with a large modern high-sided, open-ended building situated on the northern boundary which was granted planning permission by South Derbyshire District Council in 2007 (Ref code no 9/2007/0364). Directly to the east is a further set of buildings and, close to the site access from Castle Lane, is a modern brick single-storey building which houses the company office and toilet facilities. On the site frontage is a small hard surfaced yard area used for car parking. All access to and from the site is via Castle Lane.

Existing Use

The existing use of the site is for scrap metal processing. The applicant states that this involves the importation (buying), selling, storing, sorting, separating, grading, shearing, baling and cutting of both ferrous, non-ferrous and alloy metals. The large open-sided building is used to stockpile incoming metals which are sorted, processed and baled prior to being removed off site. The remaining building accommodates a metal shear and associated machinery. Within the yard area are skips and containers allocated to receive specific metals ready for removal.

Supporting Information

Accompanying the application are:

- A written statement from Mr B C Webster dated March 2013 which contends that he commenced trading at the application site in 1977 and that in 2004 the ownership passed to Mr Webster's sons and, since this time, the company has operated continually from the site.
- A Certificate of Incorporation.
- A copy of scale plan from the Land Registry dated June 2004 illustrating the site area edged in red.

- A copy of planning permission (code no 9/2007/0364), dated June 2007 for construction of a building on the site.
- A copy of a public register held by South Derbyshire District Council which identifies the applicant company as being registered at the site address.
- A copy of a letter from South Derbyshire District Council (Environmental Health Office) dated January 2004 referring to a renewal of the three yearly Scrap Metal Dealers Licence.
- A copy of a letter from the Environment Agency dated August 1995 confirming that the County Council had received details of the scrap metal facility.
- Copies of Certificate of Registration (under the Scrap Metal Dealers Act 1964) from South Derbyshire District Council dated March 2001 and April 2010.
- A copy of a letter from Environment Agency dated July 2003 relating to renewal of the relevant exemptions in respect of recovery of scrap metals and dismantling of motor vehicles.
- A copy of a letter from Metallon, Derby, confirming that it had been trading with the applicant company since 1997 from the site at Castle Lane Industrial Estate.
- A copy of a letter from Alton Metals, Derby confirming that this company has had dealings with the applicant company since 1985.
- A letter dated March 2013 from the Environment Agency which identifies that the Agency has dealt with the applicant company for at least 10 years and no enforcement action has been taken against the company during this time.
- A letter from ELG Haniel Metals Limited confirming that it has traded with the applicant company continually for 20 years.
- A letter dated March 2013 from NatWest Bank which substantiates the unbroken occupation and operation of a scrap metal merchants on the land since 1997.
- A letter from George W Heath and Sons (Builders) Limited who occupy land close to the application site. This identifies that the applicant company has been at the site for more than 30 years.

Comments Received

Local Member

Councillor J Harrison (County Council Ward Member to 2 May 2013) has been consulted.

South Derbyshire District Council

Confirms that the applicant company has operated continuously at the premises for at least 23 years and, during this time, the company has dealt with scrap metals.

Environment Agency

No objection.

Case Analysis

This application claims that for the last 10 years and before, the site has been used for scrap metal processing. I feel there are two key elements to consider:

- the quality of the supportive evidence; and
- proof provided of the continuity of the works on the site during the preceding 10 year period.

The information and evidence put forward in support of this application includes statements from a wide variety of businesses (some local to the applicant company address), a high street Bank and a firm of Accountants, all of whom appear to have dealt with the applicant company in some instances for more than 10 years on the site and corroborate the contention that the use is established. There is also an extant permission in place for a building and wall at the site.

With regard to the question of the continuity of the works on site, I consider that the evidence put forward by the Environment Agency and the District Council is illuminating. Both these authorities independently maintain that there has been no discontinuance in any of the site works. The regular visits, particularly by Environment Agency staff, would have highlighted any discontinuance of the scrap metal activities at any given time during the last 10 years.

Collectively, the evidence provided by the applicant strongly suggests that the site has been used for scrap metal activities and is, in my opinion, sufficiently precise and unambiguous. Given that the application must be judged on the balance of probability and taking all the evidence into account, I am satisfied that this use of this land has subsisted for a period of 10 years or more. The County Council has no evidence to contradict the statements that have been made by the applicant company. Government guidance contained in paragraph 8.15 (Annexe 8) of DOE Circular 10/97 states amongst other things that:

“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, then there is no good reason to refuse the application..”

It is concluded therefore that the development taking place on this site is lawful and that a Certificate of Lawfulness for Existing Development for a scrap metal processing facility should be granted accordingly.

(3) **Financial Considerations** The correct fee of £195 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.

I do not consider that there would be any disproportionate impacts on anyone's human rights under the European Convention on Human Rights as a result of this Certificate being granted.

(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** File 9.1573.1
Application details together with plans, statements and enclosures of various dates. Letters/electronic messages from South Derbyshire District Council dated 19 April 2013. Letter from Environment Agency dated 20 April 2013.

(7) **OFFICER'S RECOMMENDATION** That the Committee **approves** the grant of a Certificate of Lawfulness of Existing Use or Development for the land at the Castle Lane Industrial Estate, Castle Lane, Melbourne as identified in the application, in respect of its use for scrap metal processing (comprising sorting, separating, shearing, baling and cutting of ferrous, non-ferrous and alloy metals).

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