



REPORT TO: PLANNING COMMITTEE

DATE: 14 FEBRUARY 2017

REPORT OF THE: COUNCIL SOLICITOR
ANTHONY WINSHIP

APPLICATION NO: 16/01931/CLEUD

APPLICANT'S NAME: JOHN GOODRICK EQUESTRIAN DEVELOPMENTS
LIMITED

TITLE OF REPORT: CERTIFICATE OF LAWFULNESS IN RESPECT OF WHEY
CARR FARM, MAIN STREET, SAND HUTTON, YORK,
YO41 1LB

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 To consider an application for a Certificate of Lawfulness for an existing use or development.

2.0 INTRODUCTION

- 2.1 Section 191 of the Town & Country Planning Act 1990 provides for anyone to apply to the Local Planning Authority for a Lawful Development Certificate (LDC). A Certificate is a statutory document certifying in the case of an application under Section 191, the lawfulness of existing operations on, or use of land which in this case is stated to be in breach of a condition.

Development or other activity on land is lawful for planning purposes if it is within one of a number of categories including:-

“the time for taking enforcement action has expired”

- 2.2 In this application for a Lawful Development Certificate, the applicants have provided the following description of the existing use on the land shown edged black on the attached plan for a period of more than ten years prior to 1 December 2016.

"Use of former farm outbuildings and associated yard for the storage and assembly of sectional timber buildings and components which has been operating continuously in breach of condition 10 of planning permission Ref: 3/111/19C/FA"

If the applicant proves that there has been a breach of the planning condition for a period of ten years the Certificate should be granted. This is purely a question of fact having regard to the available evidence and the planning merits of the use are irrelevant.

3.0 THE APPLICATION SITE AND ITS SURROUNDINGS

The application site is located to the north of Main Street (C176), Sand Hutton.

The application site is located within the Sand Hutton Conservation area and is adjacent to St Mary's Church and the remains of St Leonard's Church to the rear boundary of the site.

The applicants business operates from what has been called a redundant farm yard and farm outbuildings of Whey Carr Farm, Sand Hutton.

The planning unit also includes Whey Carr Farm and an adjacent bungalow. The application site is located within the Sand Hutton Conservation Area.

4.0 TIME LIMITATION PERIODS FOR TAKING ENFORCEMENT ACTION

4.1 The time limits for taking enforcement action in respect of a breach of planning control are:-

- (i) For operational development the period of four years from the operations were substantially completed; and
- (ii) For change of use, the period of ten years from the date of breach;
- (iii) In the case of any other breach of planning control, the period of ten years beginning with the date of breach. This is the relevant time period for a breach of condition.

5.0 PLANNING HISTORY

5.1 The relevant planning history for the application site can be summarised as follows:-

The planning unit also includes Whey Carr Farm and an adjacent bungalow. The application site is located within the Sand Hutton Conservation Area.

Planning permission (LPA Ref 3/111/19C/FA) was granted on 16 March 1993 for :-

"Change of use of farm outbuildings and yard for the storage and assembly of sectional timber buildings and components"

Condition 06 of that planning permission provides that:-

"The property known as Whey Carr Farm and the adjacent bungalow shall remain within the same planning unit as the use hereby approved."

The reason given for that condition was as follows:-

"The dwellings and the land and buildings, the subject of this permission, are

closely linked and are served by the same access. It is considered that if the bungalow or house were sold or let separately from the business, noise and associated activity may result in an unacceptable level of residential amenity and give rise to complaint"

6.0 THE ISSUE

- 6.1 Evidence has been submitted alleging that the application site has been used in breach of conditions 10 for more than ten years prior to 1 December 2016.
- 6.2 The planning condition that is the subject of this application is condition 10 which provides as follows:-

*"Noise from operations conducted on the premises shall not exceed 45 dBA 15 minutes Leq as measured at the boundaries of the application site.
(Reason: To ensure that noise from the premises does not adversely affect neighbouring residents)"*

- 6.3 The grounds under which the certificate is sought are that the use in breach of planning control began more than ten years before the date of this application.

7.0 THE EVIDENCE

- 7.1 The onus of proof in an application for a Lawful Development Certificate is firmly on the applicant. The standard of proof defines the degree of persuasiveness which the evidence in support of an application must attain before a Certificate can be granted. The relevant standard of proof in this application is "the balance of probability". This simply means that the applicant must prove that their case is more likely than not to be true.
- 7.2 The evidence in support of the application may be summarised as follows:-
- Three statutory declarations made formally before a solicitor and under the Statutory Declarations Act 1835 from:
 - (i) John Lawson Goodrick of Whey Carr Farm. (a Director for the applicant);
 - (ii) Andrew Binnington who has worked at the application site since 2002 (14 years);
 - (iii) Paula Sedman who has worked at the application site since March 2003 (13 years);

Statutory Declaration of Mr John Lawson Goodrick

The statutory declaration of Mr John Lawson Goodrick states that the applicant instructed an acoustic consultant YES consulting (Environmental Consultancy provided by City of York Council), to review the noise position of the company's operations in the context of condition 10 and the consultants have provided a noise survey.

The noise survey has monitored seven pieces of equipment used in the operation of the assembly of sectional timber buildings.

All seven pieces of equipment are located in the workshop on the application site.

The table setting out the recorded noise levels of the seven pieces of equipment for approximately a four day period from 20 September 2016 is below :

Each piece of equipment was monitored at the boundary for a five minute period; the level recorded are given in the table below .

Equipment	5 minute Leq at the site boundary
Single ended tenoning machine	51.4 dB
Main cross cut machine	52.4 dB
4-sided planning machine	57.7 dB
Surface planer	57.4 dB
Dimension bench	55.2 dB
Small morticing machine	43.8 dB
Main morticing machine	42.1 dB

Mr John Goodrick has also submitted confidential financial information which demonstrates that the level of sales of field shelters, stables and other timber items assembled on the application site by the use of machinery for cutting and working timber has been significant and stable for the ten year period prior to 1 December 2016.

Statutory declaration of Mr Andrew Binnington.

The evidence of Mr Binnington may be summarised as follows:-

- (i) He has worked at the application site continuously for the last 14 years. His hours of work are 8am-5pm Monday to Sunday although work often finishes at 3.30pm on a Friday. There has been no work at weekends or Bank Holidays.
- (ii) His work involves the manufacture of sections timber framed stables, field shelters, stable doors, stable windows and roof trusses.
- (iii) Work practices have not changed for the last 14 years using principally the same machinery.
- (iv) Work also includes loading and unloading.

Statutory declaration of Paula Sedman.

The evidence of Ms Paula Sedman may be summarised as follows:-

- (i) She has worked continuously at the application site for the last 13

years during the hours of 9am-4pm three days a week.

- (ii) Her role includes clerical and accounts work co-ordinating the delivery of manufactured stables, field shelters etc.
- (iii) Ms Sedman has confirmed that the level of business actively during the 13 years has been consistent.

In this case the evidence submitted on behalf of the applicants has been challenged by Mr Adam Griggs and Mrs Karen Griggs. They are neighbours living near the application site and are able to give eye witness evidence for a small part of the ten year period. Mr & Mrs Griggs have lived in neighbouring property since August 2013.

The key points made may be summarised as follow :-

- (a) Accounts of the applicants filed at Companies House show capital expenditure of more than £100,000 since 2006. This suggests a significant increase in activity at the site over the ten year period.
- (b) It is stated that the value of the company's sales over the ten year period has not been included in the application;
- (c) Mr Adam Griggs makes the following statement:-

The YES Consultancy report states that :

"there were 141 15 minute Leq periods monitored during the sites (sic) working hours, of these 74% of them exceeded the 45dB LAeq (15 minute)"

Response

This equates to noise exceeding the prescribed limits for 26 hours per week (141 x 15 minutes x 74%). this in turn indicates the cutting operations are not condensed into a single period to last as short a time as possible, or alternatively, that the nature of the business has in fact changed considerably from a mere assembly operation to significantly increased levels of cutting and raw material processing over the years."

ID Planning, the Planning Consultants acting form the applicants have made the following comments on the representations of Mr & Mrs Griggs:-

- (1) The capital expenditure of £100,000 after 2006 does not relate to the purchase of machinery and neither does it demonstrate that there has been an increase in activity.
- (2) ID Planning have responded as follows:-

"The correspondence refers to noise exceeding the prescribed limits for 26 hours per week, with the suggestion being made that this means the cutting operations are not condensed or that there are increased levels of cutting and raw material processing. The noise survey provides evidence that the daily business operations result in a breach of noise condition. Mr Goodrick's statement confirms that machines are not used continuously and work is undertaken efficiently. Condition 10 only relates to noise levels, and the regularity or intensity of use of individual equipment is only relevant insofar as

the noise that results from it to demonstrate the breach has occurred on a daily basis."

The case for the applicant may be summarised as follows:-

- (i) Mr Goodrick has confirmed in his statutory declaration when the main machines were purchased in a list of equipment. These were purchased more than ten years ago;
- (ii) The inclusion of the list of equipment, and the evidence about when purchased, demonstrates the machines that are used by the company have not changed over the last ten years, or been replaced by newer machinery which may have the potential to be quieter.
- (iii) The noise survey provides evidence that the daily business operations result in a breach of the noise condition.
- (v) In paragraph 10 of his statutory declaration, Mr Goodrick has stated that the annual sales figures show a level of business activity which has been consistent for the last 13 years.
- (vi) As the use of machinery contributes to the breach of permitted noise levels, this evidence demonstrates these machines have not changed and therefore as a result the associated noise levels have in all probability not changed over the ten year period prior to 1 December 2016.
- (vii) Accordingly, the applicants case is that there has been a breach of the noise condition for more than ten years prior to 1 December 2016.

OTHER EVIDENCE

Members are advised that Mr Paul Hunt, an Environmental Protection Officer monitored the application site for noise on 29 September 2015 and produced a report. A copy of the report is attached.

His conclusion in the report includes the following text in relation to the sources of noise on the application site :

"The measurements and recordings show noise levels from activity at Whey Carr Farm did give rise to exceedance of the boundary noise limit of 45dB (LAeq 15min) set by Condition 10 of Planning Decision 3/111/19C/FA. This was primarily due to the noise of various (at least two) extraction systems which produced steady levels of ~47 dB in one case and ~ 55dB in the other."

It also adds the following text :

"It seems that on this occasion at least there was only one person using machine tools at the site and activities appeared to be undertaken serially as opposed to multiple tasks and activities going on at the same time. E.g when the forklift was in use there was no sawing and extraction plant operating."

"The main cause of breaches of the boundary noise limit is extraction equipment and the forklift.

Extraction equipment is likely to operate for periods of greater than 15 minutes at a time (as indeed it did during this visit)."

The response of the planning consultant for the applicant on the evidence of Mr Paul Hunt has been as follows :

- (i) Mr Paul Hunt for the District Council only visited the neighbouring property and did not set foot in Mr Goodrick's property so his knowledge of the operation of the business was limited and the time period of his noise monitoring was short ;
- (ii) Mr Goodrick has employed 2-3 people from the very outset of business operations in 1993;
- (iii) There is only one extraction system.

8. CONCLUSION

- 8.1 The evidence submitted in support of the application has been challenged by Mr & Mrs Griggs.
- 8.2 The key question is considered to be could the applicant and any predecessors on the balance of probabilities have operated the business of the assembly of sectional timber buildings using the machinery identified to cut and work timber at the levels in the last ten years without regularly breaching the noise condition ?
- 8.3 The above question has been discussed with Environmental Health Officers. The conclusion reached has been that on the balance of probabilities the operation of the business would involve breaching the noise condition on a regular basis over the ten year period.
- 8.4 Having reviewed and carefully considered all the available evidence, it is concluded on the balance of probabilities that there has been a breach of the planning condition for a period in excess of ten years.

9. LIMITATIONS

LIMITATIONS ON THE LAWFUL USE

Guidance in the contents of Lawful Development Certificate is included in the National Planning Practice Guidance as follows :

"Content of a certificate

What must a lawful development certificate include?

Details of what must be included in each type of lawful development certificate can be found in section 191(5) or 192(3) of the Act. The prescribed form can be found in Schedule 8 to the Town and Country Planning (Development Management Procedure) (England) Order 2015. Precision in

the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it. It is important to note that:

- a certificate for existing use must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a use class. But where it is within a "use class", a certificate must also specify the relevant "class". In all cases, the description needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to therefore spell out the characteristics of the matter so as to define it unambiguously and with precision. This is particularly important for uses which do not fall within any "use class" (ie "sui generis" use); and*
- where a certificate is granted for one use on a "planning unit" which is in mixed or composite use, that situation may need to be carefully reflected in the certificate. Failure to do so may result in a loss of control over any subsequent intensification of the certificated use.*

Paragraph: 010 Reference ID: 17c-010-20140306

Revision date: 06 03 2014"

The limitations which may be considered relevant on the available evidence are as follows :

- (i) With one exception of the main morticing machine, which is located in the building to the rear of the yard on the application site the machinery was located and used in the workshop;
- (ii) There has been one side loader used on the application site for loading and unloading of vehicles.
- (iii) No machinery was operated and no process was carried out in breach of the hours of use condition attached to planning permission LPA Ref 3/111/19C/FA
- (iv) The planning unit is a mixed use and the Town and Country Planning (Use Classes) Order 1987 as amended will not apply. Planning permission will be needed for any material change of use.
- (v) The location of the machinery used in breach of condition identified in this report to be restricted to specific areas identified in the certificate with a plan.

10. RECOMMENDATION

10.1 Approval subject to the limitations identified above.

Anthony Winship Council Solicitor

Author: Anthony Winship, Council Solicitor
Telephone No: 01653 600666 ext: 267
E-Mail Address: anthony.winship@ryedale.gov.uk

Background Papers:

File for application 16/01931/CLEUD dated 1 December 2016 with supporting evidence