



**SUPPORTING STATEMENT**

**IN RESPECT OF AN**

**APPLICATION FOR A CERTIFICATE OF EXISTING LAWFUL DEVELOPMENT**

**AT**

**NUNSFIELD FARM**

**FAIRFIELD**

**BUXTON**

**DERBYSHIRE**

**SK17 7HN**

**ON BEHALF OF**

**G & R LEIGH**

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## **1. Introduction**

An application has been made to the High Peak Borough Council to issue a Certificate of Existing Lawful use in connection with the business use operating at Nunsfield Farm falling under Use Class A1.

The current use can be summarised as the operation of a Country Store which includes the sale of agricultural and equestrian items, general tools and equipment, gardening, pet products and household equipment.

The applicant requests that the Borough Council issues a Certificate to confirm the Lawful Use of the site.

It is noted that the Borough Council have previously granted a Certificate of Lawful Use on the 5<sup>th</sup> September 1994 however this certificate does not reflect the current business operations or the type of business which has been carried out since this Certificate was granted.

The applicant requests a Certificate to be issued on the basis that the business site has been for a period of more than 10 years continuously for the business operations noted above.

This application is supported by a Statutory Declaration, by one of the partners in the business, Mr Colin Gould.

## **2. Law and Policy**

### **The Town and Country Planning Act 1990**

Section 55(1) provides that “development” includes, “the making of any material change of use in the use of any buildings or other land”.

Section 336(1) defines “use” in relation to land as, not including the use of land for the carrying out of any buildings or other operations on it.

Section 191(1) provides that if any person wishes to ascertain whether any existing use of buildings or other land is lawful or whether any operations which have been carried out in, on or under land are lawful he may make an application for the purpose to the local planning authority specifying the land and describing the use.

Section 191(2) advises that uses and operations are lawful at any time if 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 has expired or for any other reason.

Section 191(4) provides that if, on an application under this section, the local planning authority 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 local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

### **Circular 10/97: Enforcing Planning Control – Legislation and Policy**

Annex 8 headed, “Lawfulness and the Lawful Development Certificate (LDC)” provides advice regarding how applications should be determined.

Para 8.11 to the Circular states, “Once satisfied that the application is valid, what the LPA must address when reaching their determination is whether, on the facts of the case and relevant Planning Law, the specified matter is or would be lawful”.

Para 8.12 states, “The onus of proof in a LDC application is firmly on the applicant ..... In many cases, the applicant for a certificate will be best placed to produce information about the present, and any previous, activities taking place on the land, including a copy of any planning permission he may hold. Some information, especially about the history of any unauthorised activity on the land, will be peculiarly within the applicant’s knowledge”.

Para 8.13 states, “Section 191(1) of the 1990 Act enables anyone to apply to the LPA for a decision whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land, is lawful for planning purposes.

Para 8.14 states, “Subsection (4) of section 191 provides that if, on an application under the section, the LPA are provided with information satisfying them of the lawfulness, at the time of the application, of the use, operations or together 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”.

Para 8.15 states, “In appeals to the Secretary of State which raise “legal issues” .... where the burden of proof is on the appellant, the Courts have held that the relevant test of the evidence on such matters is “the balance of probability”. As this test will accordingly be applied by the Secretary of State in any appeal against their decision, a LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, name “beyond reasonable doubt”. Moreover, the Court has held (see *FW Gabbittas v SSE and Newham LBC* [1985] JPL 630) 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”. The LPA should proceed on the basis that neither the identity of the applicant (except to the extent that he or she may or may not be able personally to confirm the accuracy of any claim being made about the history of a parcel of land), nor the planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application.

### **3. The Facts of the Case**

As noted in the Statutory Declaration by Colin Gould, he has extensive knowledge of this site having taken over the business on the 1<sup>st</sup> October 1995.

The Statutory Declaration is supported with a number of exhibits which provide evidence of the extent of the business operations over a 10 year period and provides evidence of the type of products which have been purchased and sold.

In addition, the evidence provided for their marketing strategy with general adverts placed on High Peak Radio give further confirmation that this is a Country Store which sells to the general public. With reference to the existing Certificate of Lawful use (5<sup>th</sup> September 1994) the use of the land and buildings is very specific and does not reflect the use of the site since the Certificate was granted.

### **4. Key Issues**

1. Does the 1994 Certificate of Lawful Use reflect the business operations being carried out since the Certificate was granted?
2. What is the extent of the business use being carried out?

### **5: Assessment of the Key Issues**

With reference to the 1994 Certificate, and the first schedule, 1 states that “the building to the south west of the site on the ground floor and first floor is to be used as storage and sale of agricultural hardware supplies only”. The evidence provided in the Statutory Declaration confirms that the business has been selling a general range of agricultural and equestrian items, general tools and equipment, gardening, pet products and household equipment. This operation has been for a consistent 10 year period and therefore the business has not been operating in accordance with Part 1 of the first schedule.

When considering points 2, 3 and 4, the outside space outlined on this submitted plan has been used for the general storage of larger agricultural and equestrian items, tools and equipment and machinery. The business has not operated in accordance with the first schedule parts 2-4 1994 schedule for a consistent period of in excess of 10 years.

Finally, Part 5 of the first schedule notes a designated area for parking for up to 12 vehicles however, customer parking is provided across the site and staff parking provided at the lower end. The number of customers visiting the site varies considerably on a daily basis and therefore cannot be specified.

The evidence provided confirms that the business has operated in breach of the 1994 Certificate as the operations carried out are much wider than the original Certificate. This business operation has been carried out for a period in excess of 10 years and therefore is now considered Lawful.

The submitted plan identifies the area in red where the business use has been carried out which can be summarised as a Country Store falling under Use Class A1.

## **6: Conclusion**

The evidence in support of this application clearly demonstrates that the Country Store has been operating from the site on a continual period for in excess of 10 years. The business continues to operate and provide employment in the locality.

The evidence provided confirms the extent of the business operations and employment which have been and will continue to be provided.

The applicant seeks the grant of a Certificate of Existing Lawful Use and development in terms which recognise that the business has been operating on the site as a Country Store which fall under Use Class A1 within the area outlined in red on the included plan.

The evidence, on the balance of probabilities, clearly demonstrates that a Certificate should be issued in these terms.