

Planning Statement

For J E Morten Ltd | 22-615

Certificate of Lawful Use or Development for commercial storage – Newfield Garage,
Manchester Road, Tunstead Milton, Whaley Bridge, SK23 7ER

Project: 22-615
Site Address: Newfield Garage, Manchester Road, Tunstead Milton, Whaley Bridge,
SK23 7ER
Client: J E Morten Ltd
Date: 04 January 2023
Author: Caroline Payne

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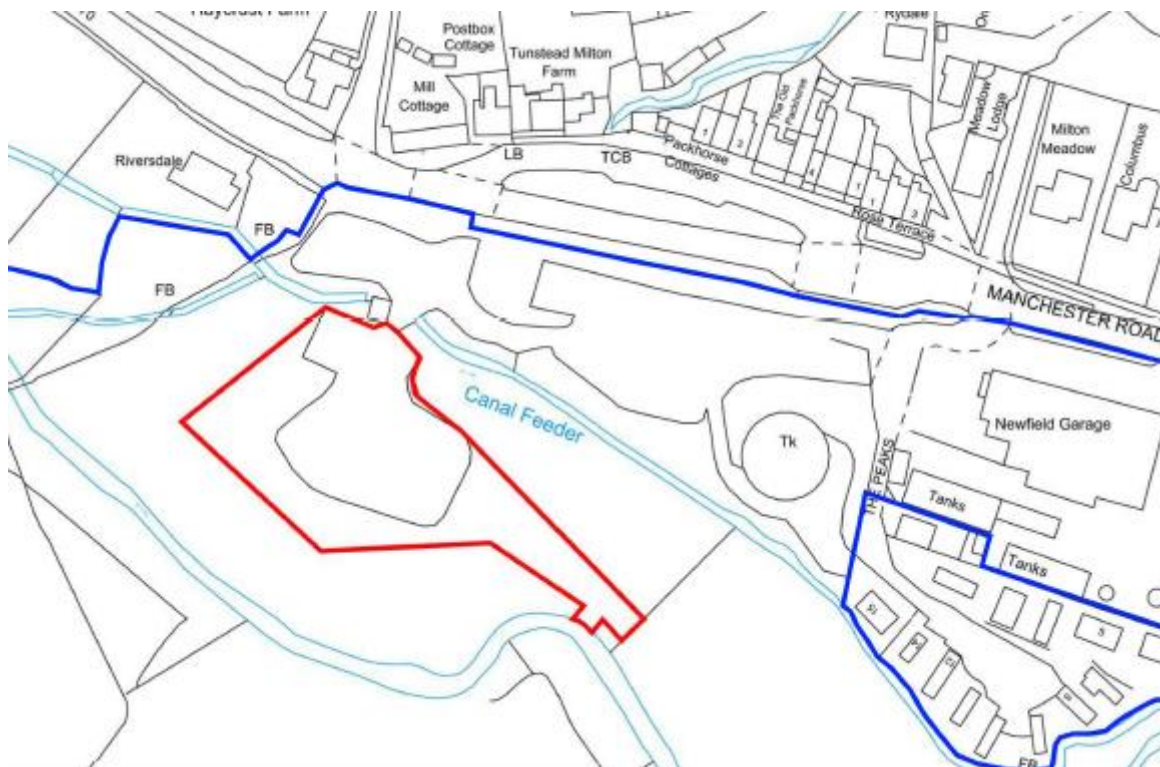
Appendices

EP1. Appeal decision



1. Introduction

- 1.1 This statement supports an application for a certificate of lawfulness in respect of the use of land for commercial storage at land at Newfield Garage, Manchester Road, Tunstead Milton. The land in question is shown on the plan below:



- 1.2 The application is not a planning application to be determined on the merits of the case but an application seeking for a certificate of lawfulness to be determined based on the factual position. This statement demonstrates that the use of the land for commercial storage has been taking place for a period in excess of 10 years. This statement sets out and summarises the evidence in respect of the application.



2. The application

2.1 The CLEUD application comprises this planning statement and the following:

- Application form and ownership certificate
- Location plan
- Statements of Truth

2.2 The Statements of Truth are made by:

- Mr John Morten
- Mr Tony Wood
- Mr James Thorp
- Mr Robert Joule

2.3 Other evidence appended to the Statement of Truth of John Morten comprises:

- Invoices relating to early construction work on the site.
- Land registry plan.
- Photographs from 2012.

2.4 Aerial photographs are included within this statement.

2.5 The submitted evidence shows that the land has been used for commercial storage for a period in excess of 10 years without restriction on operational usage times and/or days. It is therefore lawful, in accordance with Section 171B of the Town & Country Planning Act 1990.



3. Context

Site location and description

- 3.1 The site is located to the south of the B5470 Manchester Road on the edge of Tunstead Milton, which is an established settlement located between the principal market towns of Chapel-en-le-Frith and Whaley Bridge. The built-up area of Tunstead Milton, which is predominantly residential in character, fronts onto Manchester Road in a linear fashion.
- 3.2 The site is located in the open countryside. It is screened from the wider area by mature tree planting. It is situated between the canal feeder linked to Combs Reservoir which runs along the northern boundary of the site and the Randal Carr Brook to the south.
- 3.3 Immediately to the north, the site adjoins the Primary Employment Zone within Tunstead Milton formed by the applicant's business with the settlement of Tunstead Milton beyond. To the south and east are open fields.

Relevant planning history

- 3.4 The wider commercial garage site has an extensive planning history. Applications relating specifically to this site or part of it are summarised below:
 - HPK/2019/0223: single storey industrial building – refused 15 August 2022
 - HPK/2007/0628: Development of land for leisure purposes and erection of 16 timber holiday chalets – refused 17 October 2007



4. Legislative context

Town and Country Planning Act 1990

4.1 Section 171B of the Town and Country Planning Act 1990 states that:

"(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 when 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 dwelling house, no enforcement action may be taken after the end of the period of 4 years beginning 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 10 years beginning the date of the breach."

4.2 Section 191 refers to Certificates of Lawfulness of Existing Use or Development. Sub-section (1) states:

"If any person wishes to ascertain whether:

- a) Any existing use of buildings or other land is lawful;*
- b) Any other operations which have been carried out in, on, over, or under land are lawful; or*
- c) Any other matter constituting a failure to comply with any conditions or limitation subject to which planning permission has been granted, is lawful, he may make an application for the purpose to the Local Planning Authority specifying the land and describing the use, operations or other matter."*

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter."

4.3 Section 191 (2) states:

"For the purposes of this 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".

4.4 Section 191(3) states:

"For the purposes of this act, any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if: (a) the time for taking enforcement action in respect of the failure has



then expired; and (b) it does not constitute a contravention of any of the requirements of any enforcement notice of breach of condition notice then in force."

4.5 Section 191 (4) states:

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

The National Planning Practice Guidance (NPPG)

4.6 Section 17c of the National Planning Practice Guidance (NPPG) sets out guidance on lawful development certificates and applications for lawful development certificates.

4.7 Paragraph 6 of this section (Ref ID: 17c-006-20140306) states that an applicant is responsible for providing sufficient information to support an application for a lawful development certificate, although a LPA always needs to co-operate with an applicant. It continues that an LPA is entitled to canvass evidence if it so wishes before determining an application. However, if an LPA obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

4.8 In terms of applications for an existing use, paragraph reference ID: 17c-006-20140306 states that:

"if a local planning authority has no evidence itself, not any 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."

4.9 Paragraph ref ID: 17c-009-20140306 states that in determining an application for a lawful development certificate:

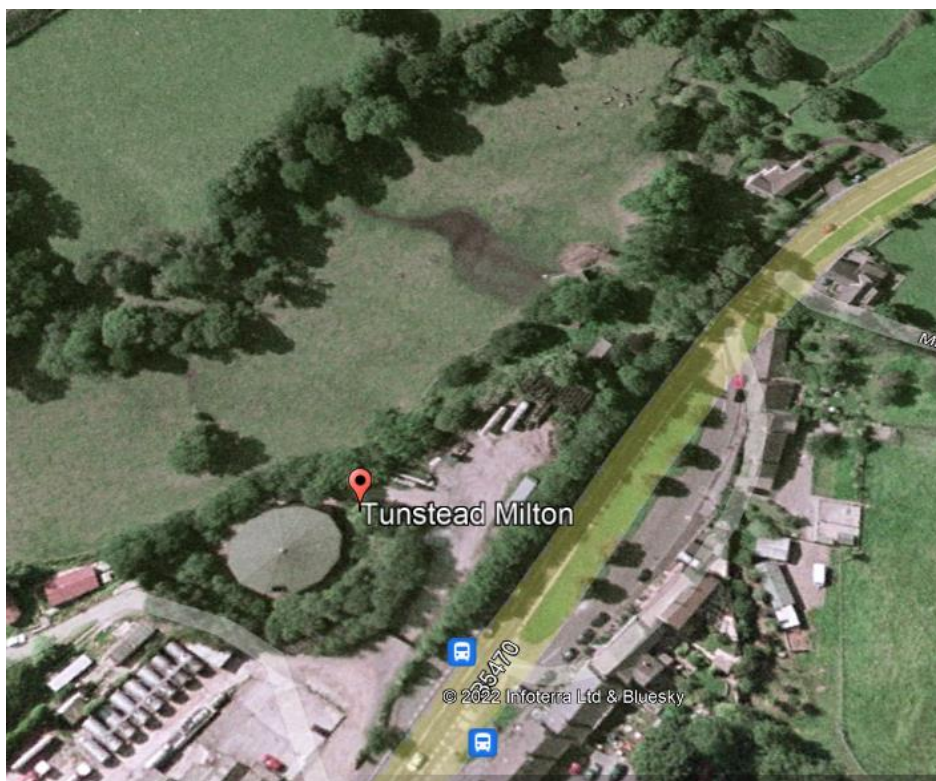
"A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process".

4.10 The evidence in support of the application is set out in Section 5 of this statement.



5. Evidence in support of the application

- 5.1 The information below provides a summary of the key dates in the use of the land adjacent to Newfield Garage.
- 5.2 Mr Morten purchased the site which was at that time known as Haycrust Farm yard and land in 2003. The land was purchased in two parcels. The statement of truth of Mr Morten sets out that the land was purchased because it was adjacent to their existing premises with the intention of allowing the business to expand onto the area and it was incorporated into the planning unit at that time.
- 5.3 The Google Earth image below was taken in 1999 before the purchase of the land by Mr Morten.

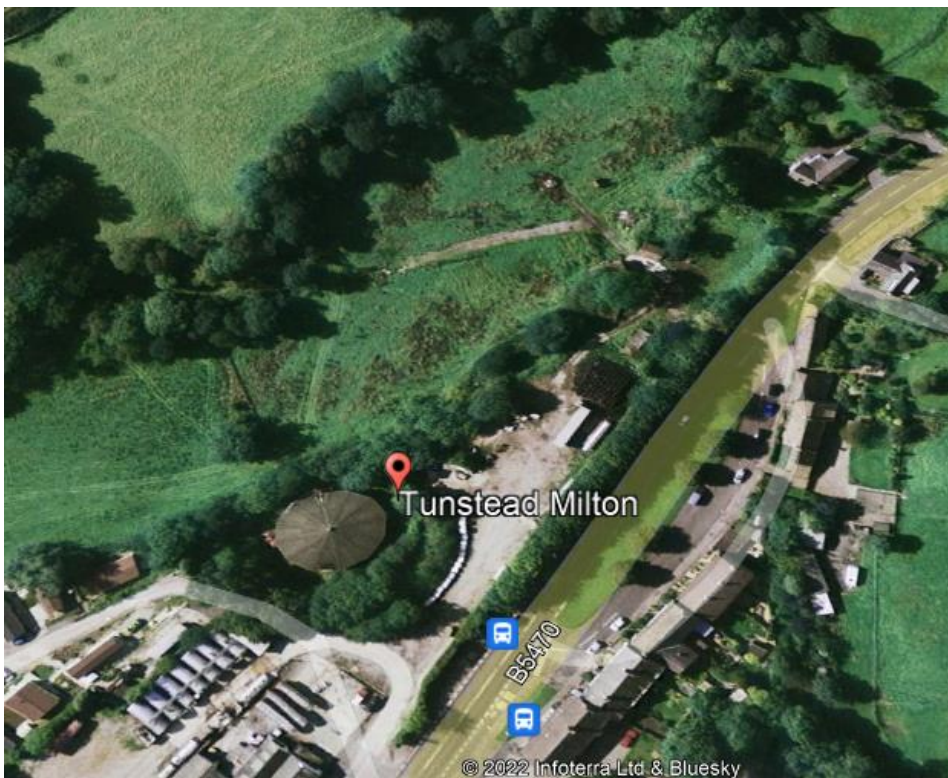


Google Earth image 1.1.1999

- 5.4 Ground works were undertaken following the purchase of the site. Mr Morten explains that the hard core removed from the farm yard was used as a base material to construct a parking area and road where a bridge had originally existed. This work was undertaken to facilitate a hardstanding to create an area for storage and parking. Mr Morten also sets out that grass re-established itself on part of the hardcored area. The reasons for this were first that some parts of the hardcore had a poor load bearing capacity and second, that the site was used for parking primarily during the quiet periods of business.



- 5.5 At the time the Google Earth images below from 2005 were taken there was no storage on the site. The second photograph shows the access to the land now taken from the original premises at Newfield Garage and some hardcore is visible.



Google Earth images 6.9.2005

- 5.6 The next available Google Earth image was taken in June 2017 and shows that there was outdoor storage taking place at this time. Mr Joule explains in his statement of truth that the area was used for parking



vehicles during quiet periods. The statement of truth of Mr Wood also confirms that he only went into the bottom field to park lorries and trailers following his retirement in 2006.



Google Earth images 18.6.2017

- 5.7 The latest Google Earth image is from 2020 and shows the continuation of the parking/storage use.



Google Earth image 24.4.2020



Correspondence with the local planning authority

- 5.8 On 24th July 2017 the Compliance and Monitoring Officer wrote to Mr Morten in relation to various matters including 'untidy site, storage of freight container, vehicle trailers, burnt waste and various sundry items.' The letter states that this has been the subject to earlier site visits.
- 5.9 In May 2019, the Compliance and Monitoring Officer once again wrote to Mr Morten stating that the use of the land has intensified and expanded. Attached to the letter is an aerial photograph showing the area in red that was covered by the original letter and the land edged blue into which the use has intensified.



- 5.10 There appears to be a discrepancy here as the Google Earth image above from 2017 clearly shows that the land edged blue was in use for storage at that time. Additionally, the land edged red in the above photo was clearly being used in 2005 as shown on the aerial image earlier in this statement.

Burden of proof

- 5.11 The requisite principles that govern the consideration of such applications are as follows:
- The requisite standard of proof is the balance of probabilities. A LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely 'beyond reasonable doubt'.
 - The burden of proof lies on the applicant to establish that a certificate should be granted for the development sought.



- 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.
- The courts have confirmed that the appellant's own evidence does not need to be corroborated by 'independent' evidence, particularly if it is unchallenged, in order to be accepted, see for example Gabbitts v SSE and Newham LBC [1985] JPL 630.

5.12 We enclose an appeal decision at **EP1** which relates to a certificate of lawful use for garden land (APP/W4223/X/16/3143392) where the accompanying evidence comprises two sworn affidavits, photographs taken in 1998 and 2002 and google earth images taken in 2000 and 2005. The Inspector stated:

"4. The onus is on the appellant to demonstrate that, on the balance of probability, the land has been used as a garden for a continuous period of 10 years. The Council does not provide evidence to contradict the evidence provided by the appellant. Rather, the Council considers that the evidence provided is not sufficient to demonstrate the continuous use of the land.

7. The affidavits are rather limited but nevertheless clearly explain how the land in question has been maintained and used as a garden since 1987. Given that any person who lies about the information contained in an affidavit could be prosecuted for the crime of perjury, and if convicted may be ordered to pay significant fines or sentenced to time in jail, I give these significant weight.

9. Whilst I agree with the Council that both the aerial images and photographs do not demonstrate a continuous use of the land, when considered in the round alongside the sworn affidavits and in the absence of any evidence to the contrary, I consider the appellant has discharged the onus of proof, on the balance of probability, incumbent upon him."

5.13 In this case, the application is accompanied by statements of truth from 4 parties. These all confirm that the land was purchased in 2003 to allow the business to expand, a hardcore base was laid in the early 2000s and has been used continuously for parking of vehicles and the open storage of materials for a period in excess of 10 years.

5.14 The aerial images available from Google are limited and unusually in this case have a significant gap between when they were taken. However, what is clear is that since at least 2005 as demonstrated by the photos, the area of land in question has been accessed from the JE Morten land to the North and used as part and parcel of their business operations as and when required.



This is unsurprising as the land was bought by JE Morten Limited with the clear intention of utilising the land for what was and is a successful and growing business that had a need for additional land to accommodate its needs. The land was incorporated within the business and has formed part of the same planning unit as JE Morten Limited since its purchase for that purpose in 2003. This is entirely consistent with the declaration that accompany this application.

- 5.15 It is also consistent with the view of the LPA when investigating the use of the site in 2017/19 when reference is made to intensification and expansion of the use. The letters to our client do not allege a change of use of the land which in itself suggests that the use had already been taking place for some time. Whilst the level of use has fluctuated to accommodate the needs of the business at any one time, we also do not consider that there is any evidence to demonstrate any material change or intensification in planning terms when the evidence is looked at in the round. The site was purchased for expansion/overflow in 2003 and since that time it has been used for that purpose. Areas of hardcore and hard standing have been managed over that time to facilitate its use and it is clear that it is used as part and parcel and in association with the wider site with which it has been in single and consistent ownership since 2003.



6. Summary and conclusions

- 6.1 This statement supports an application for a certificate of lawfulness in respect of the use of land for independent commercial storage on land adjacent to Newfield Garage, Manchester Road, Tunstead Milton. The land has been used for commercial storage without restriction on operational usage times and/or days.
- 6.2 The application demonstrates that land has been used continuously for commercial storage (B8) and for a period in excess of 10 years at the time of this application. There is no evidence to contradict or make the applicant's version of events less than probable. On this basis, a certificate of lawfulness should be granted



EP1



The Planning Inspectorate

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15-049-GS

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Mrs Helen Leggett
Emery Planning
Unit 2-4 South Park Business Court,
Hobson Street
Macclesfield
Cheshire
SK11 8BS

Your Ref: 15-049:HL/GS
Our Ref: APP/W4223/X/16/3143392

04 August 2016

Dear Mrs Helen Leggett,

Town and Country Planning Act 1990

Appeal by Mr J Jaskolka

Site Address: Land rear of 748 Ripponden Road, Oldham , Lancashire , OL4 2LP

I enclose a copy of our Inspector's decision on the above appeal(s), together with a copy of the decision on an application for an award of costs.

If you wish to learn more about how an appeal decision or related cost decision may be challenged, or to give feedback or raise complaint about the way we handled the appeal(s), you may wish to visit our "Feedback & Complaints" webpage at <https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure>.

If you do not have internet access you may write to the Customer Quality Unit at the address above. Alternatively, if you would prefer hard copies of our information on the right to challenge and our feedback procedure, please contact our Customer Service Team on 0303 444 5000.

The Planning Inspectorate is not the administering body for High Court challenges and cannot change or revoke the outcome of an appeal decision. If you feel there are grounds for challenging the decision you may consider obtaining legal advice as only the High Court can quash the decision. If you would like more information on the strictly enforced deadlines and grounds for challenge, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

Guidance on Awards of costs, including how the amount of costs can be settled, can be located following the Planning Practice Guidance.

<http://planningguidance.communities.gov.uk/blog/guidance/appeals/how-to-make-an-application-for-an-award-of-costs/>

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https://www.surveymonkey.co.uk/r/Planning_inspectorate_customer_survey

Thank you in advance for taking the time to provide us with valuable feedback.

Yours sincerely,

Kelly Frost

Where applicable, you can use the internet to submit documents, to see information and to check the progress of cases through GOV.UK. The address of the search page is - <https://www.gov.uk/appeal-planning-inspectorate>



Appeal Decision

Site visit made on 4 July 2016

by **C Sherratt DipURP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 August 2016

Appeal Ref: APP/W4223/X/16/3143392

748 Ripponden Road, Oldham, Lancashire OL4 2LP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr J Jaskolka against the decision of Oldham Metropolitan Borough Council.
 - The application Ref CL/336820/15, dated 9 April 2015, was refused by notice dated 11 August 2015.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is garden land (C3).
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Application for costs

2. An application for costs was made by Mr J Jaskolka against Oldham Metropolitan Borough Council. This application is the subject of a separate Decision.

Reasons

3. Section 191(4) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. Accordingly, it is necessary to consider whether, on the balance of probability, the land has been used as a garden for a continuous period of ten years or more prior to the date of the application.
4. The onus is on the appellant to demonstrate that, on the balance of probability, the land has been used as a garden for a continuous period of 10 years. The Council does not provide evidence to contradict the evidence provided by the

appellant. Rather, the Council considers that the evidence provided is not sufficient to demonstrate the continuous use of the land.

5. The evidence submitted to support the application includes two sworn affidavits, photographs taken in 1998 and 2002 and google earth images taken in 2000 and 2005.
6. The sworn affidavits confirm that the appellant purchased the property in 1987 together with the adjacent field. Shortly after purchasing the land it was ploughed, levelled and seeded. Some trees were planted and there was no formal separation between the garden associated with the dwelling and the adjacent land. The affidavits state that the land has been used for purposes incidental to the enjoyment of the dwelling since 1987 and been mowed throughout the growing season.
7. The affidavits are rather limited but nevertheless clearly explain how the land in question has been maintained and used as a garden since 1987. Given that any person who lies about the information contained in an affidavit could be prosecuted for the crime of perjury, and if convicted may be ordered to pay significant fines or sentenced to time in jail, I give these significant weight.
8. Although the affidavits suggest other people could confirm the use of the land during this time, no further statements or affidavits are submitted. The aerial images provide further support at least in so far as they reflect the circumstances of the particular dates the images were taken. There is no explanation as to how the appellant recalls the year that the photographs were taken which reduces the weight that can be afforded to them but they nevertheless offer further support.
9. Whilst I agree with the Council that both the aerial images and photographs do not demonstrate a continuous use of the land, when considered in the round alongside the sworn affidavits and in the absence of any evidence to the contrary, I consider the appellant has discharged the onus of proof, on the balance of probability, incumbent upon him.
10. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of garden land (C3) was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Inspector



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 9 April 2015 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability, the land has been used as a garden for a continuous period of 10 years or more.

Signed

Claire Sherratt

Inspector

Date 4 August 2016

Reference: APP/W4223/X/16/3143392

First Schedule

Garden area

Second Schedule

Land at 748 Ripponden Road, Oldham OL4 2LP

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

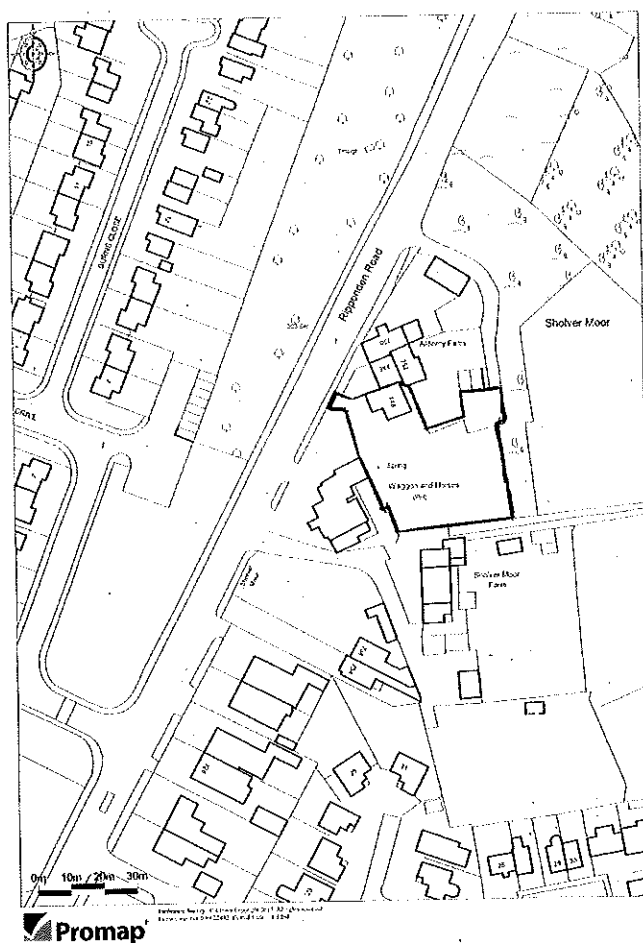
This is the plan referred to in the Lawful Development Certificate dated: 4 August 2016

by **C Sherratt DipURP MRTPI**

Land at: 748 Ripponden Road, Oldham OL4 2LP

Reference: APP/W4223/X/16/3143392

Scale: Not to scale



Costs Decision

by **C Sherratt DipURP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 August 2016

**Costs application in relation to Appeal Ref: APP/W4223/X/16/3143392
Land rear of 748 Ripponden Road, Oldham, Lancashire OL4 2LP**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr J Jaskolka for a full award of costs against Oldham Metropolitan Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for use as garden area.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The case of the applicant is made in writing and there is therefore no need to repeat it here. No response was received from the Council.
3. In submitting an application for a certificate of lawfulness the onus is firmly on the applicant to demonstrate that the use is lawful, on the balance of probability. Like the Council I take the view that the aerial images and photographs are simply a snap-shot in time and fail to demonstrate any continuous use of the site. There is no explanation to clarify the dates of the photographs. Whilst the affidavits claim many people could confirm the use of the site over the years, no additional statements were submitted. The application and subsequent appeal therefore turns primarily on the affidavits to demonstrate a continuous use.
4. The Council's statement does not refer to the statutory declarations. The delegated report only refers to the statutory declarations briefly. The Council are entitled to make a judgement about whether they considered the affidavits to be sufficient to demonstrate a continuous use, even in the absence of any contradictory evidence. However, it is not clear to me how the Council assessed the statutory declarations other than to acknowledge they formed part of the evidence.
5. In my view the Council has failed to substantiate its reason for not issuing a certificate looking at the evidence as a whole. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the

Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

6. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Oldham Metropolitan Borough Council shall pay to Mr J Jaskolka, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
7. The applicant is now invited to submit to Oldham Metropolitan Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Inspector.

