

From: planningcomments@highpeak.gov.uk
To: [Planning Comments \(HPBC\)](#)
Subject: Comment Received from Public Access
Date: 30 January 2023 12:23:13

Application Reference No. : HPK/2022/0568

Site Address: Newfield Garage Manchester Road Tunstead Milton Whaley Bridge Derbyshire SK23 7ER High Peak

Comments by: M. Leonard

From:

Riversdale
Manchester Road
Tunstead Milton
Tunstead Milton
Derbyshire

Phone:

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Submission: Objection

Comments: 30.1.23

Dear Sir/Madam,

I am writing to OBJECT to the Certificate of Lawfulness (application number HPK/2022/0568) being granted. Having reviewed the Location Plan and Planning Statement (both dated 10.1.23) and other documents associated with this application, I wish to make the following points:

1. Firstly, the land in question is listed as being part of Chapel-en-le-Frith's designated Local Green Space, therefore I believe granting this Certificate would be a direct contradiction to Chapel-en-le-Frith's policies.
2. The Planning Statement asserts that the factual position is that: 'the use of the land for commercial storage has been taking place for a period in excess of 10 years'. However, I believe this is actually only factually true in part - a smaller section of the land than that marked in red on the Location Plan has been used for commercial storage for a period in excess of 10 years. The evidence to support my assertion of the actual factual position can be seen by looking at the Google Earth image provided from June 2017 which shows the size of the storage area in 2017 and comparing its size to that of the area marked on the Location Plan for which the Certificate of Lawfulness is being sought. I am concerned that a Certificate of Lawfulness is being sought for a larger area of land than that which has actually been in use for storage for 10+ years (i.e. before 2014). In the absence of any other reliable documentary evidence showing the area from 2013/2014-2016, in my opinion the Google Earth image from June 2017 could be used to ascertain the exact area in use for commercial storage 10+ years ago.
3. The documentation with the application maintains that the said field was bought in 2003 with the clear intention of utilising the field for growing the business and allowing the business to expand. To the best of my knowledge, this in itself does not make the use of this field for commercial storage and distribution, legal.
4. In addition to these concerns, I am concerned about the expansion of the area being used for storage as the Google Earth image from April 2020 appears to show expansion from the Google Earth photo taken in 2017. I

believe that if a Google Earth image was included as at today's date, this would show even further expansion from April 2020 to now as I also think a further area of hard core has only very recently been laid in the last few months. If in fact the documentation with the application was accurate and this land has been in use in this way for this entire period (i.e. in excess of 10 years, which would mean prior to 2014), I would expect the storage area to be exactly the same size, and the Google Earth photos which have been provided showing this storage (from 18.6.2017 and 24.4.2020 and a third photo if available from Jan 2023), to be identical, however, in fact, they actually show evidence contrary to this which substantiates my concerns regarding expansion over the last several years.

5. Another of my concerns is regarding the hardcore surface which has very recently been laid in the area which I believe has not been in use for storage for 10+ years. I am concerned that this may interfere with wildlife and drainage and may also increase the flood risk and cause more pollution and environmental harm and note that environmental and other professional/specialist agencies have not been consulted regarding this current application for a Certificate.

6. Whilst the evidence cited regarding use of this land in 2012 (i.e. wedding photos) clearly show areas of hardcore/hard standing, the location of this hardcore in the photos is unclear as there is little to identify the exact location of these photos. I believe this evidence from 2012 should therefore be disregarded.

7. In my opinion, the Planning Statement and related documentary evidence is misleading regarding the original hardcore base laid in the early 2000s as the size of the original hardcore base which has been used for a period of more than 10 years, appears from the evidence to only cover a smaller area of land than what is there now. The invoices and other evidence provided with the application do not confirm the exact size or location of the hardcore base from the early 2000s (or confirm the exact size or location of any area that has had a base laid since). In actual fact another hardcore base has only very recently been laid in the last few months, which I believe expands the storage area further.

8. If a Certificate of Lawfulness is approved for either the entire area outlined in red on the Location Plan, or for the smaller area within this red area already explained, I am concerned about further expansion or overspill of the storage area in the future. These concerns are based on expansion from 2017 to date which leads me to have significant concerns about potential future expansion in the years from now onwards including expansion beyond the red line on the Location Plan. I would therefore like to request, that if granted, the Certificate would require the erection of a fence to contain the storage area and prevent any, either unwitting or intentional, further expansion within this field which I assume would be unlawful. For the avoidance of doubt in the future, the creation of a boundary around any lawful storage area would make it easier to resolve any future concerns or disputes regarding expansion including any issues which may come to the attention of the Compliance and Monitoring officer.

9. The current storage area is also extremely unsightly and is clearly visible from nearby public footpaths and public vantage points used by many walkers and local residents. If a Certificate of Lawfulness is granted and a fence erected around the boundary edge of the area covered by the Certificate of Lawfulness, I would also like to request an area of green planting be required to screen this, to make this storage area look more aesthetically pleasing for the public and local residents.

10. In addition to the evidence I have cited, I would also like to point out that the LPA (Local Planning Authority) does in fact also have its own evidence on which to draw regarding the use of this land (for example, as a minimum there are letters from its Compliance and Monitoring officers in 2017 and 2019). I believe this evidence would also support the refusal of this application.

Recent relevant planning history of this site:

11. Very recently (on 15th August 2022) planning permission with reference number HPK/2019/0223 for a single storey industrial building and associated works on this same site, was refused by the LPA who cited the following reasons:

1. The application site for the proposed industrial building is located within a Local Green Space no. 11 (Field behind Morton's Yard, Tunstead Milton, between Randall Carr Brook and canal feeder) designated by the adopted Chapel-en-le-frith Neighbourhood Plan. Paragraph 103 of the NPPF states: (Policies for managing development within a Local Green Space should be consistent with those for Green Belts). The development does not fall within the exception category to inappropriate development at paragraph 149(f) of the NPPF (National Planning Policy Framework). Due to the scheme's industrial scale and appearance, the proposed building would have a significant visual impact. It would irreversibly change the character of the landscape setting as an intrusive form of development and cause significant harm to the Local Green Space. Very special circumstances have not been demonstrated regarding an essential need for an industrial building to be located on land designated as Local Green Space or that such significant harm to the Local Green Space, together with other identified harm would be outweighed by the economic benefits of the scheme. Accordingly, the proposal is contrary to Policy C1 of the Adopted Chapel-en-le-Frith Neighbourhood Plan 2013 (2028); Policies S1, S1a, S2, S6, E1, EQ2, EQ3, EQ4, EQ6, EQ8 and CF4 of the Adopted High Peak Local Plan 2016; Council Supplementary Planning Documents including the Council's High Peak Design Guide 2018 and Landscape Character (2005) as well as the NPPF.

2. Insufficient information has been submitted with the application relating to the landscape and visual effects of the scheme on the Peak District National Park and its setting in order to assess adequately the impacts of the proposed development having regard to matters of avoiding or minimising adverse impacts on the national park and its setting. In the absence of this information, it has not been possible to demonstrate that the proposal would comply with Policies S1, S6 and EQ2 of the Adopted High Peak Local Plan 2016 and / or any other material considerations including the NPPF, Council Supplementary Planning Documents including the Council's High Peak Design Guide 2018 and Landscape Character (2005).

The Peak District National Park Authority also raised these concerns in their direct response on 28.7.22 when they too objected to the proposed development of this land, and I believe that the same reasoning cited above, holds true in regard to the current proposed Certificate of Lawfulness for this site.

12. Chapel-en-le-Frith's Parish Council also strongly objected to the proposed development of this land on 4.3.22 stating: (The proposed building will be built on an area that is a designated local green space (LGS 6) in the adopted Chapel-en-le-Frith Neighbourhood plan. Planning application HPK/2015/0351 was refused by the Planning Inspectorate in 2017 as the land formed part of LSG6 and therefore this application should be refused for similar reasons). In my opinion, the granting of a Certificate of Lawfulness for this land would be contradictory to supporting this land as a designated Local Green Space.

13. Derbyshire County Council Flood Risk Management Department as the Lead Local Flood Authority raised concerns in their response on 20.6.22 to planning in respect of surface water management and drainage and the need to ensure no increased flood risk to adjacent land/properties. I am concerned that recently renewing and extending the hardcore storage area may have impacted, or be likely to impact, negatively on surface water drainage and/or increase flood risk and feel that this should be looked into as a relevant factor if a Certificate of Lawfulness is now being considered.

14. The Environmental Agency also raised concerns in their response on 28.4.22 in relation to negative effects on biodiversity, negative impacts on ecological value, potential pollution to watercourses, damage and negative effects on the wildlife corridor, wildlife and supporting habitat and negative impact on the site's nature conservation value. This is further evidence that supports my concerns regarding the impact of using any extended parts of this land (i.e. areas that were not in use in this way prior to 2014) for commercial storage and distribution.

15. The Canal and River Trust also raised concerns in their response on 16.2.22:

„Surface water drainage from the site will outfall to Randall Carr Brook; therefore, as we have previously advised, any pollution incident into Randall Car Brook may cause water quality issues in the Peak Forest Canal. We therefore reiterate our request (made in our responses of 19th August 2020, 12th March 21 and 10th September 21) that the applicant ensures that robust pollution response plans are in place to deal with any pollution incidents and that suitable spill response material is kept on site, as any contaminants entering either the feeder channel or the Brook risk adversely affecting water quality in the Peak Forest Canal.„

Whilst I recognise that the current application for a Certificate of Lawfulness is less environmentally disturbing than the works involved with putting up a building with hardstanding, nevertheless I have concerns regarding pollution from the continued movement of vehicles over this site in addition to pollution from decaying vehicles, machinery and equipment being stored on this land as they may result in a similar impact on the environment.

16. It is my opinion, if significant environmental as well as aesthetic concerns were recently raised by a number of professional and specialist agencies who were consulted as part of the recent planning process, that these concerns would still apply and would be equally relevant to the current planning application for a Certificate of Lawfulness for use of this same land for commercial storage of vehicles/machinery and equipment, and/or for the constant and continual movement of vehicles over this land as part of commercial distribution, particularly on parts of this land that have not been in use in this way for 10+ years.

Regarding enforcement action:

17. If the timeframes for enforcement action from the Town and County Planning Act 1990 (Section 171B) are applicable and no enforcement action may be taken after the end of 10 years beginning the date of the breach, this would mean that the Local Planning Authority (LPA) could take enforcement action using this rule on any evidence of expansion that has occurred since 2014.

18. In addition, if the same Town and County Planning Act 1990 (Section 171B) states that no enforcement action may be taken after 4 years from the date of completion of the works, this would mean that the LPA could take enforcement action under this rule on any evidence of expansion that has occurred or been completed since 2019. Both this rule and the regulation above, give the LPA an opportunity to pursue current enforcement.

19. If, as stated in the Planning Statement, at least 2 letters have already been written by the Compliance and

Monitoring Officer (one on 24th July 2017 and a further one in May 2019) outlining concerns over the intensified and expanded use of the land for commercial storage, this would mean the LPA has its own evidence (including within the last 4 years) of an expansion in the land being used for commercial storage which it could draw upon. In addition, with what appears to be clear evidence of further expansion from Google Earth images comparing 2019 to April 2020, it seems that the LPA has further evidence to take current enforcement action which I believe it should. If not, I believe the LPA should clearly publish why this is not being pursued in this case. This would remove any ambiguity regarding what may be classed as acceptable further expansion and would clarify and make public what evidence would trigger enforcement action being brought in the future. In my view this would assist all stakeholders in the future including the applicant, the LPA, the local parish council, other professional agencies, and local residents who would then have clear guidance.

Conclusion

20. If the burden of proof lies on the applicant to establish that the entire piece of land edged red on the Location Plan has been used continuously for commercial storage and for a period in excess of 10 years at the time of this application, for a Certificate of Lawfulness to be granted, then, as I have already shown, the evidence the applicant has provided is not proof of this and therefore the Certificate should be refused altogether.

21. At best, the evidence in the application is proof that a Certificate of Lawfulness could only be considered for a small section of the land which was in use for storage before 2014 (which in the absence of any other evidence from 2013/2014-2016 could be ascertained from using the Google Earth image from 2017) and not the entire red edged area on the Location Plan.

22. As already stated, the evidence cited from Google Earth appears to show that over the last few years the storage area has expanded and therefore, I believe, enforcement action on any expanded area since 2014 can be, and therefore should be, taken.

23. As cited in the Planning Statement regarding Appeal Decisions: „If the local planning authority are provided with information satisfying them that the use 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“.

24. If the Local Planning Authority considers whether, on the balance of probability, the entire section of the land outlined in red on the Location Plan has been used for commercial storage or distribution for a continuous period of ten years or more prior to the date of the application, then, in my view, it will be concluded that a Certificate should be refused.

25. Finally, as an absolute minimum, if the application is successful and a Certificate of Lawfulness is granted, I wish the relevant local authorities to prevent the area of land used for commercial storage/distribution, worsening through expansion in the future by making the erection of a fence around the area covered by the Certificate, a requirement of the applicant and would ask for the local Parish Council and Local Planning Authority's involvement in this endeavour.

I would like to end by acknowledging the time you have taken to read my concerns and thank you in advance for your consideration of all the points I have raised.

Yours Sincerely,

M. Leonard

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