

Mr James Stannard  
High Peak Borough Council  
PO Box 136  
SK17 1AQ

14 March 2023  
EP ref: 22-615

Dear Mr Stannard

**Re: HPK/2022/0568 – Certificate of Lawfulness for existing use for storage and distribution (B8) at Newfield Garage, Manchester Road, Tunstead Milton, Whaley Bridge**

We note that there have been four representations to the above application and we provide additional information and response to each of these below. We focus on points raised regarding the use of the land and seek to avoid matters raised that are not of relevance to this application.

**Jeanette Nicholls, 3 Rose Terrace**

Ms Nicholls comments that in the two and a half years she has lived at her current address it has been observed that the land has been increasingly used. This is correct and as set out in the statements of truth accompanying the application the level of the use of the land has fluctuated on a seasonal basis and depending on the demand for the manufactured products which reflects the nature of our client's business and has never previously been a controversial point.

As Ms Nicholls has only lived in the area for two and a half years, she does not have and does not claim to have 10 years knowledge of the area which is the period over which the nature of the use should be properly assessed in planning terms.

Ms Nicholls raises a concern with regard to lighting. Whilst this is not a consideration for this application, the applicant would be willing to discuss this with Ms Nicholls.

There is no evidence within this representation which contradicts or makes the applicant's version of events less than probable.

**Ruth George, Derbyshire County Council**

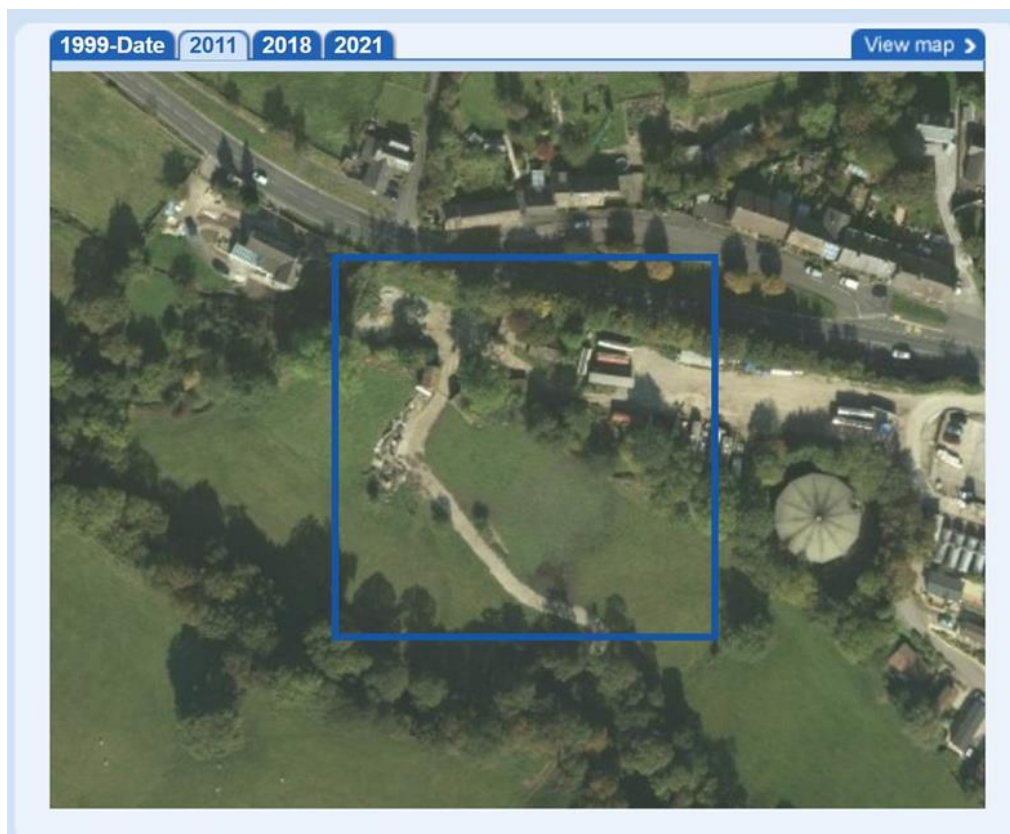
Mrs George states that she walks along the public footpath edging the field regularly and can confirm it has not been used for the "current dumping and parking of materials for the last ten years" (our emphasis).

The applicant acknowledges that the site has not be used at the current level for the last ten years and the statements of truth and planning statement acknowledge that the level of use has fluctuated to accommodate the needs of the business at any one time. This is merely reflective of the seasonal nature of the businesses that our client operates at the site and similar to other businesses that serve sectors that fluctuate with the seasons, agriculture and the related service industries being one example and the supply of food or fuel where storage or the need for more delivery vehicles at any particular site will fluctuate with seasonal needs and trends. However, Ms George provides no evidence to support her statement that the site has not been used for storage for the last ten years sufficient to contradict the applicant's version of events.

Mrs George states:

1. **A small area of hardcore track approx. 20m from the yard onto the field was built in May 2012 a few days prior to Mr Moreton's son's wedding when a marquee was erected in the field and temporary coverings were put across the marshy areas. The temporary coverings shown in the photos from the wedding were lifted straight after the event and the hardcore track soon disintegrated as Mr Moreton's statement sets out as it had been placed onto a marshy field.**

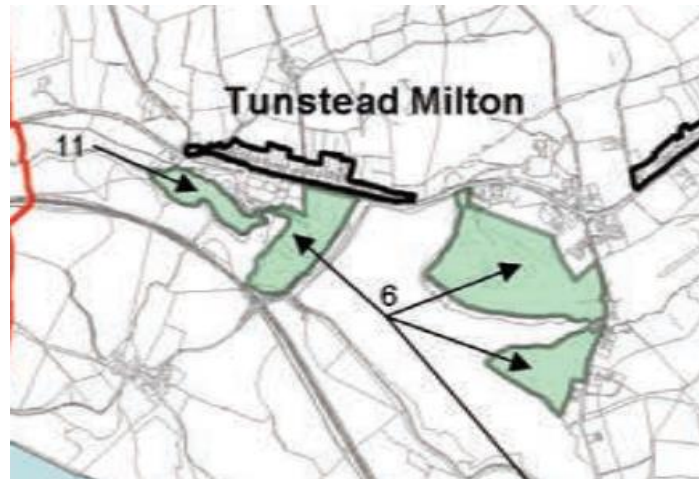
Mrs George seems to imply that the hardcore was put down for the purposes of the wedding only. This is not the case and Ms George provides no evidence to verify this. Furthermore, the 2011 aerial from Getmapping below shows hardstanding on the site in 2011 directly contradicting the suggestion that the hardcore had only been laid in connection with the wedding:



Making reference to the Neighbourhood Plan Examination Report in January 2015, Mrs George notes that the Neighbourhood Plan Examiner commented that the land is a contained area of open space on the edge of Tunstead Milton. Ms George states that:

**2. The extensive use of hardcore and of the field for business activity commenced after this, in the run-up to the application for a warehouse and access for large lorries on the site in May 2019.**

The Examiners Report does not provide evidence that the land subject to this application was not used for storage at that time. The area covered by LGS11 extends significantly beyond the confines of the application boundary, which comprises a much smaller area of land in the west most part of the designation. The Examiner would have been commenting in general terms rather than on individual areas of the site and at its highest level the comments simply confirm that the area was absent any buildings.



Ms George then proceeds to list 6 items of concern which are copied below in bold with our response beneath.

- 1. It is unclear in the supporting planning statement prepared by Emery Planning, as to which area in section 1.1 is the subject, the red or blue outline. We are perfectly aware that the operations on this site have included areas within the blue, but the area edged red is a matter for concern and no photographic evidence of the area edged red could conclude that this has been used for 10 years plus.**

The area subject to the application is the area edged red. The photographic evidence shows that the use of the land for outdoor storage was well established in June 2017, directly contradicting the suggestion by Mrs George that it was in 2019. There is also evidence of hardstanding on the aerial photograph from 2005. The balance of probabilities test is not based on photographic evidence alone. The application is also accompanied by statements of truth from four parties who explain that the land was purchased in 2003 to allow the business to expand, that a hardcore base was laid in the early 2000s and has been used for storage in some form continuously since this time.

- 2. With regard to the statement of the laying down of hardcore to extend areas for storage and parking in section 5 of the planning statement, it is not clear until section 5.8 as to the reliability of the written statements as to when the extension of these areas actually took place. The compliance officer clearly has been in contact some time in 2017 about extended activity but this is only 5-6 years ago and the 2005 Google image only shows some attempt to lay a hardcore track across the area edged red in 1.1, on the marshy field between the canal feeder and the brook.**

The statements of truth indicate that hardcore was laid on the site sometime between 2003 (when the land was purchased) and 2006 when Tony Wood retired (see points 1 and 4 of the statement of truth of Tony Wood). The statement from Mr Joulé explains the process of laying the hardcore and that areas have been reinforced as the underlying soil and grass has grown but does not provide a specific timeframe. He does however, confirm that the area continues to be used for the storage and parking of vehicles as it has been since the mid 2000s. Mr Thorp states that he has carried out the repair and maintenance of the existing hard core as and when required during the whole of the 14 year period he has been retained by JEML (i.e. back to 2010). Although the specific

date cannot be proven, the evidence points to the hardcore being first laid at some point in the 2000s and the evidence is very definitely that the hardcore has existed and been maintained, by the person providing a statement of truth, for approaching 20 years. No evidence to counter this has been produced unless the suggestion is that the statements of truth are untrue.

Ms George agrees that the 2005 Google image shows some hardcore on the land. It is clear from this that the land has been accessed from the JE Morten site since at least 2005 and used as part and parcel of the business operations when required.

3. **The applicant has shown no consideration towards the environmental issues arising from the attempted use of this land with its proximity to the adjacent water courses. In times of heavy rain which lead to flooding downstream from here, this land acts as an important sponge to soak-up and slow release water. This development and seemingly unlawful extension of this parking area will not only decrease surface water retention but increase surface water run-off increasing flood risks and with the added potential of pollutants entering the water course due to the very nature of this business.**

This is noted however, it is not relevant to the current application. The applicant has been in discussions with both the Environment Agency and the Canals and Rivers Trust regarding the water course and canal feeder.

4. **We can see quite clearly from the 2005 image that the red outline in the image in 5.9 has been extended along the roadside. This area was screened with the seemingly deliberate purpose by planting of a Leylandii hedge to screen the operations from the residents across the road. Planted inside the existing hedge and tree lined boundary, it appears most operations were not extended until this hedge provided that screen. This may appear to be a deliberate intention to deceive and as time has gone by and gaps appear there have been storage containers placed blocking any view through to the expanding area across the canal feeder.**

The red outline in the image at 5.9 is outside the application area. This part of the site has been used for commercial purposes and the use of this land is not in dispute. We strongly dispute the suggestion that there has been a deliberate attempt to conceal. We understand from our client that the Leylandii hedge was planted in the late 1970s and pre-dates the use of the land in any event and we note there is no indication from Mrs George as to when she thinks the hedge may have been planted save for seeking to cast doubt and make an unsubstantiated statement about concealment. Furthermore, the site in question is visible from the public footpath and there has been no attempt to screen the site from view.

5. **We are well aware of the use of the land to the east of the red zone in the 5.9 image and have no issues with this nor potentially the majority of the area edged red in 5.9 but we see no substantial evidence, other than the attempted hardcore track across the boggy field, to suggest that it has been used for storage or parking of heavy goods vehicles for more than 6 years.**

The hardcore shown on the 2005 aerial photograph is evidence. Together the evidence presented by the applicant demonstrates that there the land has been used for a period in excess of 10 years and we would re-iterate that this is set out in statements of truth prepared by witnesses who were well aware of their obligations when signing these statements.

6. **The plans and Google images supplied by Emery Planning in (1.1) seems to demark a red random shaped outline which on the face of it would extend this area of the field in question. The environmental risks still remain and would increase. There is also an inconsistency in their presentation which confuses the reader, as this boundary outline changes from red in 1.1 to blue in 5.9 where it also is a much revised shape and size.**

There is some confusion on the part of Ms George here. The plan at 1.1 of our statement shows an extract from the location plan accompanying the application. This has been drawn around the area used for storage. There

is an argument that the entirety of the field has a lawful use for storage as it forms part of the planning unit as it remains within the control and for the same use as the rest of the land, however, our client wishes to confirm the lawfulness of a defined area only.

The aerial at paragraph 5.9 is taken from the attachment to the letter from High Peak Borough Council in May 2019, the red edge does not relate to the application site.

### **M Leonard, Riversdale**

We understand from land registry that M Leonard purchased Riversdale in December 2018. It is not clear how the writer claims to have knowledge from before this date.

Notwithstanding this, we address points 1-10 and 20-25 below. Points 11-16 relate to detailed points of the planning application for the industrial building on the site and are not relevant in the context of this response on this particular application. Points 17-19 relate to the timescales for enforcement which do not require a response.

- 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.**

This is not a consideration as part of this application as that is a matter of planning policy and not a fact related to the use of the land and its lawfulness.

- 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.**

The writer considers that the factual position is that commercial storage has been taking place on a smaller area of land for a period in excess of 10 years and that this area relates to the land in use on the 2017 aerial. The acknowledgement of the lawfulness of the use is welcomed.

However, we address the point of the fluctuation of the level of use at paragraphs 5.14 and 5.15 of the planning statement and as we have done earlier in this response in answer to the same point made by other respondents. The land was incorporated into the business and has formed part of the same planning unit as JE Morten since its purchase for the purpose in 2003. Whilst the level of use has fluctuated to accommodate the needs of the business at any one time, it is clear that it has been used as part and parcel of the wider site for a period in excess of 10 years, there has been no further change of use since this time. The land in question has a functional relationship with the uses taking place within the rest of the planning unit and is within the same control. There is nothing to suggest that this area has operated independently of the rest of the uses at the site, nor could it have done for the various reasons of access and the nature of the use that has been set out in detail in our submissions. There is no basis to suggest the application area or an area smaller or larger than that applied for can or should be considered as a separate planning unit which would be the only basis for disputing that it has been used on a fluctuating basis as part and parcel of the business of JE Morten. This is the correct approach to have taken rather than that of the various respondents who have sought to assess discrete areas or elements of

use to try and counter what has been applied for on a basis starting with establishing the correct use and the relevant planning unit that the use is taking place within.

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.

This is correct however, it demonstrates the intention of the owner at that time. It was then incorporated within the business as part of the same planning unit which is part of the starting point for assessing and then establishing the lawfulness of any use.

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.

This is covered in our response to point 2 above but we would again emphasise that Google Earth images demonstrate what may be on the ground at a snapshot in time and do not adequately deal with uses that can and do fluctuate in planning terms, and are lawful.

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.

The statement of truth of Mr Thorp explains the recent work that was undertaken. This hardcore is not new but is repair and maintenance of previously laid hardcore.

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.

The photographs are relevant evidence and should be read in conjunction with the statements of truth and there is no basis for them being 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.

The evidence should be read in conjunction with the various documents related to the use and lawfulness and taken as a whole.

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.

We have no comments to make in relation to points 8 and 9.

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.

We address this point in paragraphs 5.8 to 5.10 of the planning statement.

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.

We refer to our comments under point 2.

### **M Look, Milton House**

The comments from M Look are identical to the numbered comments from Ruth George which we address above. Furthermore, this casts doubt on who wrote the comments and the reliability and knowledge of the writer.

### **Conclusions**

The applicant's evidence comprises statements of truth from 4 parties which all confirm that the land was purchased in 2003 to allow the business to expand, a hardcore base was laid in the 200s and has been used continuously for parking of vehicles and the open storage of materials for a period in excess of 10 years. The representations from third parties are confused in part and the weight to be attached to these should be considered carefully given that two of the writers have lived in the area for considerably less than 10 years. The other two writers have produced identical representations which brings into question whose recollection it is. Notwithstanding this, none of the information in the representations provides evidence to contradict the evidence provided by the applicant.

Yours sincerely  
Emery Planning

**Caroline Payne BA (Hons), DIP TP, MRTPI, PIEMA**  
Director

01625 442 798  
[carolinepayne@emeryplanning.com](mailto:carolinepayne@emeryplanning.com)