

DELEGATED DECISION REPORT

HPK/2023/0084
Valid 13/03/2023

THE LAURELS STERNDALE
MOOR
BUXTON

**CERTIFICATE OF LAWFUL
USE FOR EXISTING
COMMERCIAL, BUSINESS
AND SERVICE (PAUL VAINES
ENGINEERING LTD) USE
WHICH INCLUDES ALL LAND
WITHIN THE AREA MARKED
RED INCLUDING BUILDING
NO.1 AND BUILDING NO.2
LIMITED TO THAT WHICH
FALLS UNDER CLASS E(G) OF
THE USE CLASSES ORDER
2021**

**(CERTIFICATE OF
LAWFULNESS - EXISTING)**

MAIN ISSUES

- Whether, on the facts of the specific case, the specific matter set out within the description of development is lawful, having regard to Sections 171B and 191 of the Town and Country Planning Act 1990

DESCRIPTION OF SITE

The application relates to a parcel of land situated to the east of and accessed from the A515 Buxton-Ashbourne Road, approximately 2 miles to the south of Buxton, and to the rear of 2no. detached properties known as 'Dale View' and 'Hill Crest'.

At the time of considering this application the site is characterised by a small cluster of single storey light industrial buildings, none of which has any former planning history. A larger building (building 1) sits immediately to the rear of the neighbouring properties that based on a review of the authorities photographic records, has been in situ since at least 2011. Similarly, building 2 with a smaller footprint is located towards the north-eastern boundary has been on site for this amount of time.

The site contains an established engineering business 'Paul Vaines Engineering Services' which the applicant submits has been run by the applicant since the early 1990's. The business provides bespoke testing equipment specifically aimed at the environmental and hazardous area industries.

The site is subject to a live planning application which seeks retrospective planning permission for a second industrial/commercial unit on the site under HPK/2022/0496.

Officers have informed the applicant that in the absence of any planning history, it is the case that until such time as the industrial/commercial unit has been the subject of a Certificate of Lawful Development, it would not be possible to positively determine this application having particular regard to Local Plan Policy EQ3, which supports the expansion of existing businesses in the rural area.

PROPOSAL

At the request of the Local Planning Authority, in connection with the live pending application that seeks retrospective planning permission for a building under HPK/2022/0496, the applicant seeks a Certificate of Lawful Development for the Existing Use of the site for Commercial, Business and Service, operated under Paul Vains Engineering Services Ltd.

In the interests of clarity and accuracy, the applicant was asked to redraw and amend the Location Plan to align with the evidence held by the Council. The description of development has also been amended to specify the precise use class.

The application is made up of the following plans and documentary evidence:

- Location Plan (Rev F)
- Supporting Statement
- Appeal Decision (APP/H1033/A/05/1176358) dated 27th June 2006
- Invoice addressed to Buxton Lime Industries Ltd dated 25th June 2005
- Invoice addressed to AC Property Developments Ltd dated 6th May 2006
- Invoice addressed to Federal Mogul dated 21st December 2006
- Letter from Hindlow Technical dated 13th March 2023

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

HPK/2004/0032	Erection of One Detached Dwelling (Refused 03/03/2004)
HPK/2004/1013	One Detached Dwelling (Refused 16/12/2004)
	Appeal Dismissed - APP/H1033/A/05/1176358 (27 th June 2006)
HPK/2022/0496	Retrospective application for retention of a storage building (Pending)

PUBLIC COMMENTS

2no. objections have been received in connection with this application. Both objections relate to a proposed change of use of the land from agricultural to commercial, focusing on material planning issues. Neither objection challenges the evidence submitted by the applicant in support of the application, although one person comments that the site has been in use for 20 years.

As such, given the specific nature of the application seeking to establish the lawful use of the land, comments relating to material planning objections cannot be taken into account in this application.

OFFICER COMMENTS

Whether, on the specific facts of the case, the specific matter set out within the description of the development is lawful, having regard to Sections 171B and 191 of the Town and Country Planning Act 1990

Section 191 of the Town and Country Planning Act 1990 relates specifically to applications seeking a Certificate of Lawfulness of an Existing Use or Development

Section 191(1) states:

If any person wishes to ascertain whether –

- (a) any existing use of buildings or other land is lawful*
- (b) any other matter constituting a failure to comply with any condition or limitation 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*

Section 191(2) goes on to state:

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*

With regards to Lawful Development Certificates, the following guidance is considered to be relevant to the assessment and determination of the application.

“The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an application who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvas evidence if it so wishes before determining an application. If a local planning authority 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.

In the case of applications for existing use, if a local planning authority has no evidence itself, nor 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.

In the case if applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved."

Paragraph: 006 Reference ID: 17c-006-20140306

Revision Date: 06.03.2014

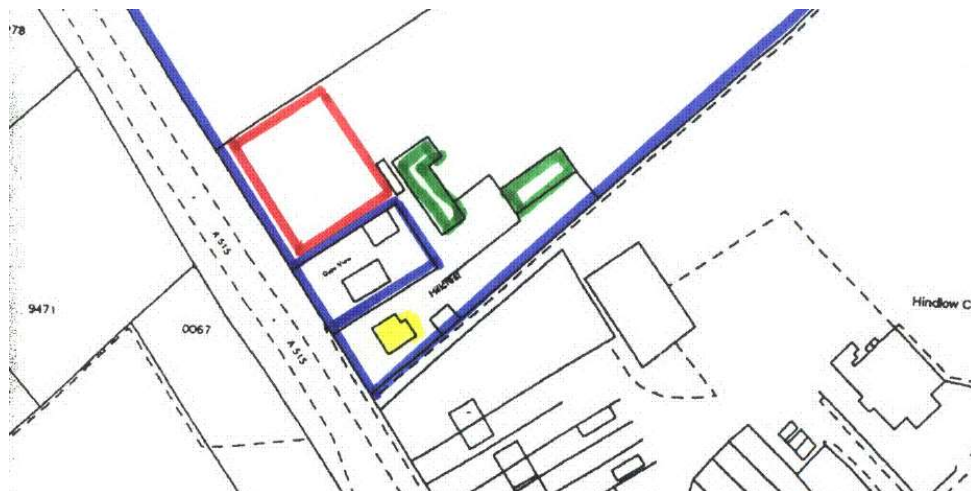
The applicant has submitted a Supporting Statement accompanied by documentary evidence that they believe demonstrates that the existing business Paul Vaines Engineering Services Ltd, has been operating on site for at least 10 continuous years.

The Location Plan submitted with the application (Rev F) shows the layout of the site which is made up of an access from the A515, an area of hard standing (permeable hardcore), two buildings annotated as No.1 and No.2, and the building that is subject to a live pending retrospective application under HPK/2022/0496.

The Appeal Decision dating from June 2006, relates to a parcel of land that lies a short distance outside of the red edge, but nevertheless makes reference to the site subject of this application, at the following paragraphs:

5. *The appeal site comprises part of a field, which itself forms part of an agricultural holding. I understand that the farmland is mainly used for hay making and owned by the appellant's mother. **Two workshops lie on the field immediately behind the site; these were built to house animals and later used for agricultural engineering. They are now used by the appellant in this electromechanical equipment design business.** The access to the workshops is shared with that to a residential property, Hillcrest, also owned by the appellant's mother. (My Emphasis)*

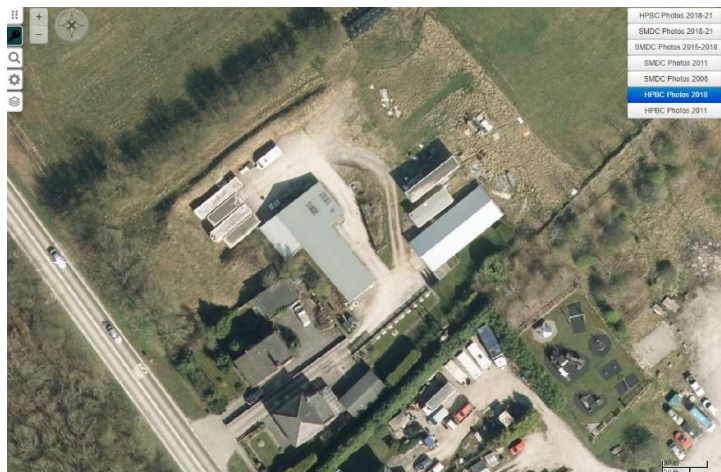
A screenshot of the Location Plan that was submitted in relation to the application that was refused and subject of the quoted Appeal Decision is shown below:



It is evident that the two buildings marked by a green line are the buildings that are in situ today. Historic satellite imagery held by the Council from 2011 (below) also show these two buildings in situ



The 2018 image is shown below, which is broadly consistent with the 2011 image:



The above provide clear evidence that supports the applicants claim that the engineering business has been trading from the site for a significant number of years, certainly from 2011. This is also corroborated by the responses from local residents, including from Dale View who immediately back onto the site who has commented as follows:

*"I object to the planning application to change 'The Laurels' from Agricultural Land Use to Commercial & Business Use. Firstly, **the company has been operating from this site for over 20 years** without the authority to do so." (My Emphasis)*

In addition, invoices issued by the business that operates from the site have been submitted dating from various months in 2005 and 2006 to different clients. These

documents provide further supplementary evidence that supports the applications claim.

The objections to this application do not contain any counter evidence to the above. Similarly, the Local Planning Authority does not hold any evidence (e.g. enforcement files) that counter the applicant's evidence, and as such, having regard to Sections 171B and 191 of the Act 1990, it is considered that the use as described and two buildings annotated on the Location Plan as buildings No.1 and No.2 are lawful.

CONCLUSION / PLANNING BALANCE

Having regard to Section 171B and 191 of the Town and Country Planning Act 1990, and relevant guidance within the online Planning Practice Guidance (PPG), it is concluded that there is sufficient and satisfactory evidence which proves, on the balance of probability, that the site (depicted by the red edge on the Location Plan) containing two buildings, has been in use as a Commercial Business (Paul Vaines Engineering Ltd) for a continuous period of at least 10 years from the date on which the application has been submitted.

As such, it is recommended that a Certificate of Lawfulness be granted in accordance with the amended description of development, and revised Location Plan (Rev F).

OFFICER RECOMMENDATION : Grant Certificate

Case Officer: James Stannard

Recommendation Date: 10th May 2023

X 

Signed by: Jane Colley Signature

On behalf of High Peak Borough Council