

DELEGATED DECISION REPORT

**HPK/2023/0046
VALID 23/03/2023**

**GARAGE AND LAND TO
REAR OF 1 NEW
COTTAGES, GRINLOW
ROAD, HARPUR HILL,
BUXTON, DERBYSHIRE**

**LAWFUL DEVELOPMENT
CERTIFICATE FOR AN
EXISTING USE - B8 STORAGE
OR DISTRIBUTION
(CERTIFICATE OF
LAWFULNESS –EXISTING)**

MAIN ISSUES

Whether the land identified within the application has been in use for storage and distribution (Use Class B8) in excess of 10 years, and as such is lawful.

DESCRIPTION OF SITE

The application site relates to a detached garage and land which lies to the rear of No.1 New Cottages on Grinlow Road. The site lies within an area of countryside as defined by the Local Plan Policies Map. The site lies at the end of a row of detached outbuildings to the rear of terraced dwellings which are set back from Grinlow Road. To the rear of the site is the Stanley Moor Local Wildlife Site.

PROPOSAL

The application seeks a Lawful Development Certificate to establish that the existing use of the garage and land is lawfully in use as a site for storage and distribution (B8).

PLANNING HISTORY

HPK/2023/0047 - Permission to retain existing shipping container placed on land to rear of 1 New Cottages – Pending

HPK/2018/0131 - Outline application for 4 proposed terraced dwellings – Refused – 11/09/2020. Appeal Dismissed. Relates to adjacent site.

CONSULTATION RESPONSES

3 representations received from residents:

The existing use was for 1 lorry and was owned, at the time, by the resident of number 1 New Cottages. The resident knew everyone and especially where children would be playing on the lane (as they still do), not like the 6+ vehicles daily who are using the lane to get to the garage and land in question, who are not residents and don't know where children reside. The "location plan" shows access only at the side of No.1 so therefore the 6+ vehicles should not be using the rest of the lane at the back of numbers 2-12, part of which I own, like a racetrack. The private lane, with excess vehicles using it, has never been in such a state of disrepair

Business Growth – business grown in last few years from one van and infrequent deliveries to increase in employees, vans and deliveries

Business Size – is it suitable for this area

Intensification of businesses – indication that the site will be used for multiple businesses including caravan cleaning and maintenance

Operating hours – site operating before 8am, affecting living conditions

Council Incentives – are there Council incentives for the business to develop elsewhere in Buxton

Refused applications – applications have been refused for housing development adjacent, would the use make it easier for approval of a dwelling

Waste disposal – site has been used for burning of materials, concern over future intensification not acceptable in residential area.

Wear and Tear of site access – concern over upkeep of access road used by residents. Large vehicles also back down the lane.

Impact on House prices – use would potentially have a negative effect on house prices.

Lack of consultation with residents

OFFICER COMMENTS

Background and Relevant Legislation

This certificate has been submitted under s.191 of The Town and Country Planning Act to determine whether an existing use of land and garage to the rear of No.1 New Cottages, for storage (B8), is lawful. S.191(2) states that uses and operations are lawful at any time if no enforcement action may be taken in respect of them. S.171B sets out the time limits for where no enforcement action may be taken and confirms, that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. In this instance, therefore, it needs to be established whether the use has endured continuously for a period of more than 10 years from the date that the application was submitted to the LPA. The relevant date is therefore 3rd February 2013, from which a continuous use must be demonstrated.

S.191(4) states that if the LPA are provided with information satisfying them of the lawfulness at the time of the application of the use then they shall issue a certificate to that effect. Planning Practice Guidance also confirms that the applicant is responsible for providing sufficient information to support an application and, in the case of applications for existing use, of a LPA has no evidence itself, nor any from others, to contradict or make the applicants version of events less than probable

there is no good reason to refuse the application, provided that the evidence alone is sufficiently precise and unambiguous to grant on the balance of probability.

Evidence Submitted

The application has been supported by a number of signed declarations which are summarised below.

Alun Lloyd (of Harpur Hill) – Land and garage has been in use for storage since their arrival at the site in 2016. Storage container also been present and in use during that time.

David Hobson (of Congleton) – Has used the land, garage and container since approximately June 2009 to present day for purposes of storage for chimney and fireplace installation company. Includes the storage of bricks, scaffolding, slates, sand and cement. Confirms deliveries to the site and excess materials stored at the site. Suggests that prior to 2009 the land had been in similar use since 2000.

Daniel Mellor (of Harpur Hill) – Since 2009 David Hobson has used the land and garage for the storage of business materials. Vehicles, trailers, supplies and building materials have been stored on the land. Prior to 2009, the land was used by Philip Heathcote for storage of vehicles and materials. Storage container was delivered in 2014 by Philip Heathcote and used for storage purposes.

Kevin Mellor (of Harpur Hill) - Since 2009 David Hobson has used the land and garage for the storage of business materials. Vehicles, trailers, supplies and building materials have been stored on the land. Prior to 2009, the land was used by Philip Heathcote for storage of vehicles and materials. Storage container was delivered in 2014 by Philip Heathcote and used for storage purposes.

Philip Heathcote (of Harpur Hill) – From May 2000 to December 2022 used the land for purpose of storage as a builder. Storage included vehicles, trailers, bricks, blocks, pavers and pipes.

Alison Heathcote (Leek) – comments within application form. One of the uses at the current time is by David Hobson. David's business 'Firefly Chimney Services' is not registered at this site and is not the business address. He services customers chimney's, flues and fireplaces, so works in and on customers' homes and has used the site since 2009. Uses the garage and land to store equipment and items required for his business (i.e. chimney linings, stoves etc) and for personal use. Deliveries are usually to the customers home but sometimes to this address if they are larger than two chimney liners in preparation for the job. Building materials are usually delivered once every two months. Customers do not come to this address. David has to have various sizes of ladders, scaffolding, hoists, wheel barrows and other items of equipment to enable him to do all aspects of his work that are too valuable to leave outside and need space, these are stored in the garage. Trailers are parked on the land. David has acquired the land to the side of the garage that was owned by Philip Heathcote who is a builder. This land has a large amount of hard standing from a long time ago when it was railway sidings. The only area used is a strip about 15 meters wide. The rest is rough overgrown ground. Phillip has let David use this land

too since starting his business. Phillip was regularly coming and going from this site for decades either picking up or dropping off supplies and waste from jobs. There was some accumulation of Phillips waste from his building work which was sometimes added to with numerous fly tipping on this site and this was burned. David intends to install lockable gates to stop access to and prevent anyone from tipping rubbish there and no more bonfires. Since starting the business David has steadily built up his equipment and stores and needs the inside and outside space for storage. Continue to store items there i.e. logs, bricks, stone etc on the land and have some items in the garage i.e. metal table, vice etc. The garage (52.5 sq m) is being used for secure storage of equipment and business items and also some personal items - ladders, scaffolding, barrows, flue piping, stoves, cement etc. The drive and a 15-meter-wide area from the side of the garage on the land is used for parking of trailers and vehicles.

Any other Evidence

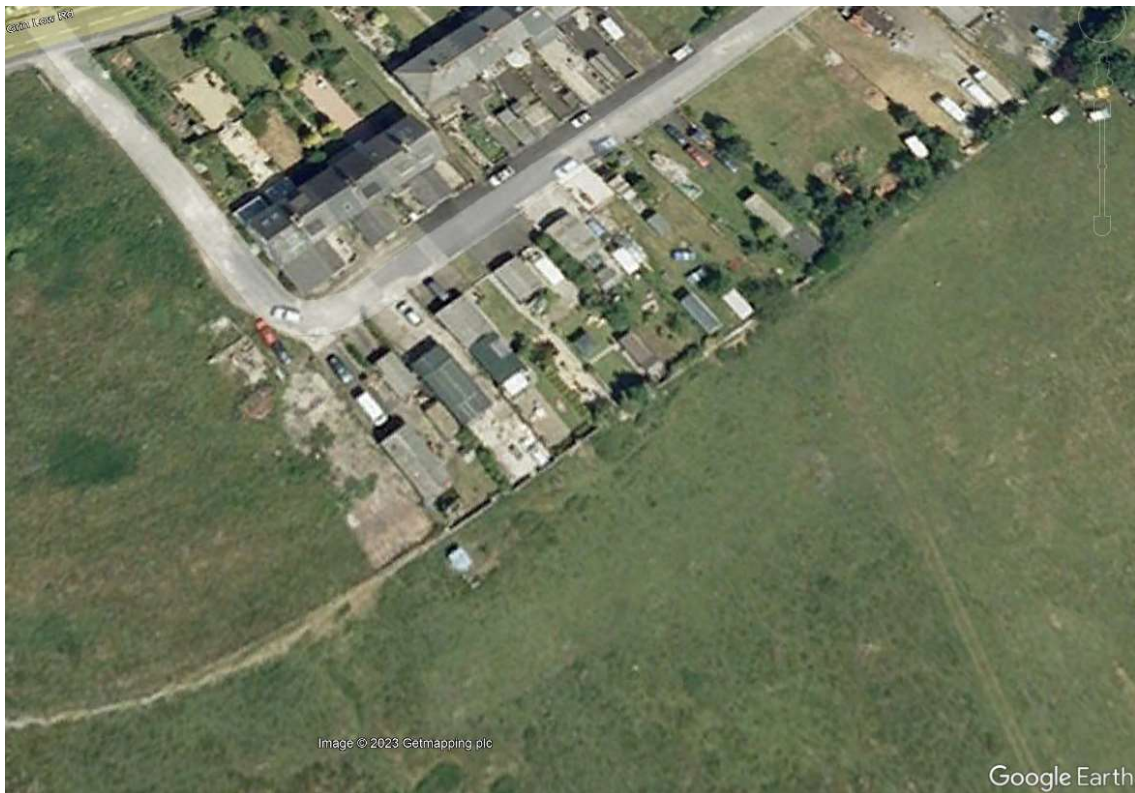
Other information publicly available

Aerial Photography, whilst not definitive, is a useful tool in determining activities and the extent of where those activities have taken place through time.



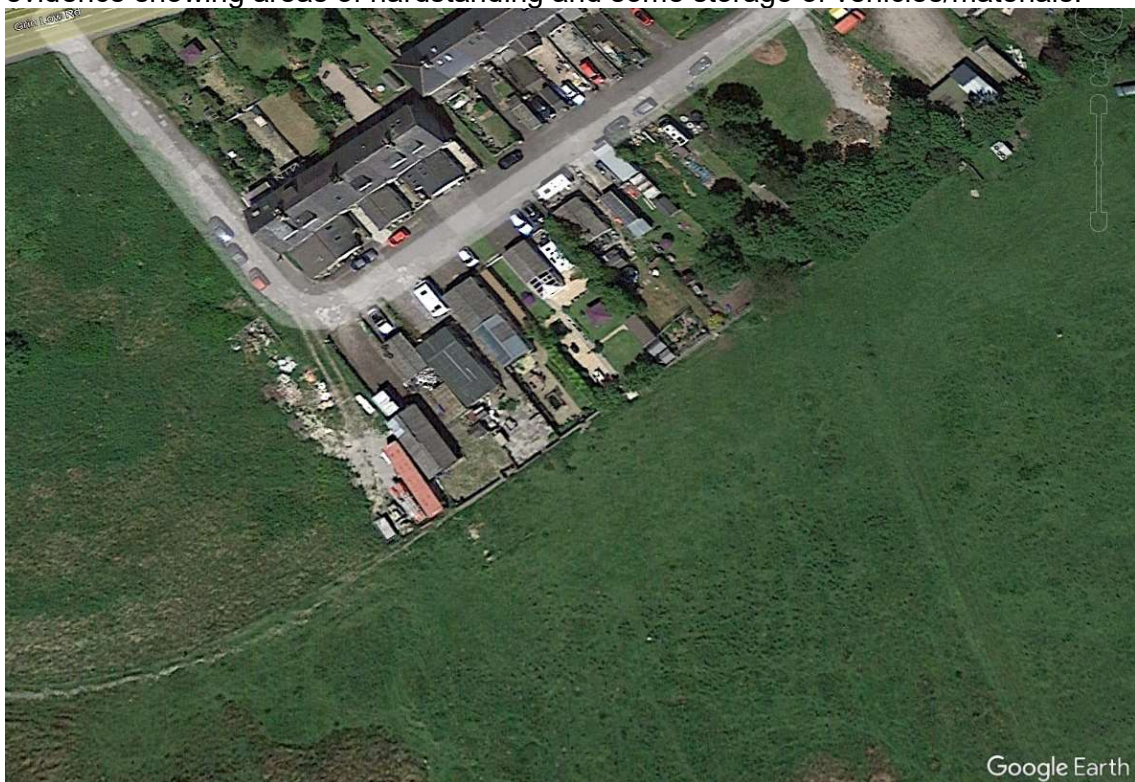
Google Earth © - September 2005

In the above image from 2005, there appeared to be little activity on the land to the west of the garage.



Google Earth © - December 2006

However, in December 2006 the nature of the land had clearly changed with evidence showing areas of hardstanding and some storage of vehicles/materials.



Google Earth © - June 2017



Google Earth © - June 2018

In both June 2017 and 2018 the same area of land had changed in character with the above aerals indicating the site in use for storage of vehicles and materials. A shipping container was present on the land at this point. Vehicular track marks are also evident.

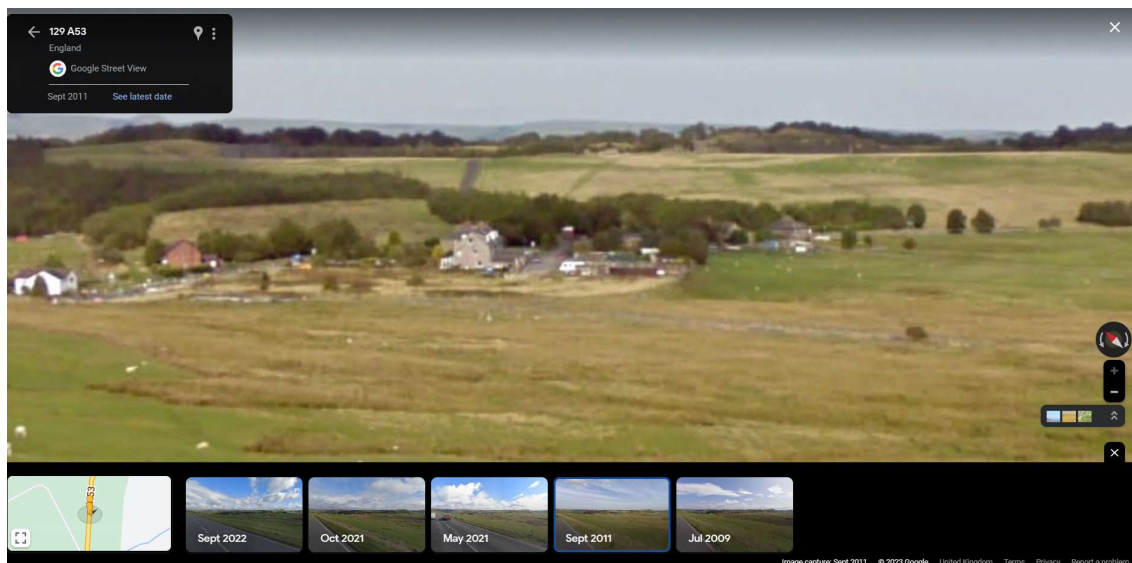


Google Earth © - April 2021



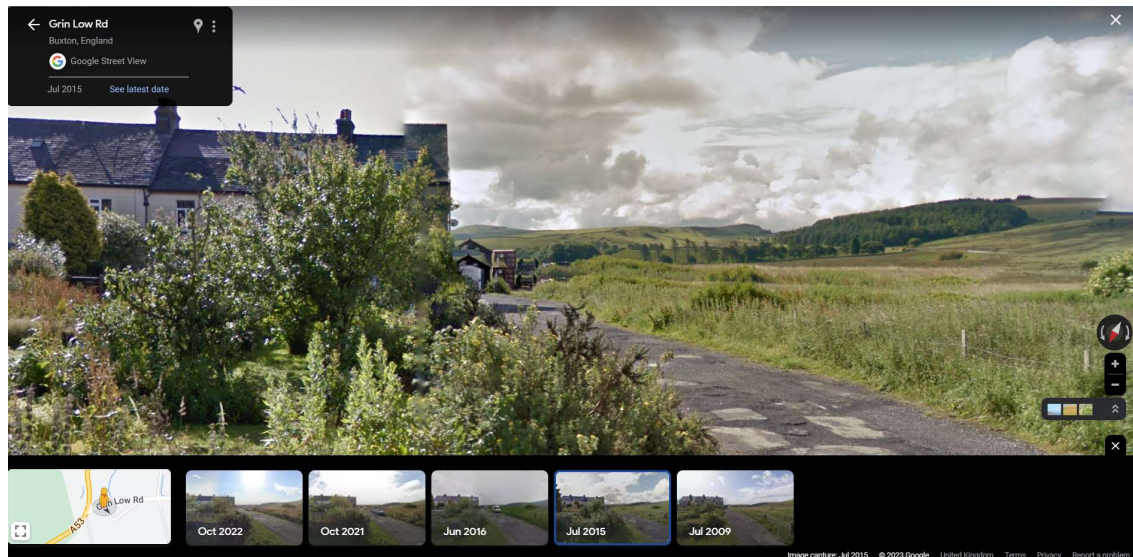
Google Earth © - March 2022

Aerial photography from 2021 and 2022 show the continuation of the use of the land for storage purposes.



Google Streetview © - From A53 - September 2011

Google Streetview © imagery from September 2011, appears to show the presence of the storage container on the land, although the extent of land in use at that time cannot be ascertained from this vantage point.



Google Streetview © - From Grinlow Road – July 2015

Google Streetview © imagery from Grinlow Road in July 2015 shows the storage container and some materials stored to the site.

Third Party Representations

A number of representations have been received by third parties with regard to the use of the site. The majority of the concerns raised are with regard to the impact of the use rather than any evidence which suggests that the use is not lawful. It is not for this application to determine whether the use is appropriate for the location or to encourage directing the use to alternative sites. Concerns relating to noise and waste disposal (burning) can be dealt with through Environmental legislation outside of the consideration of this submission. With regard to wear and tear of the access track, which is understood to be privately maintained, this is a legal matter. With regard to other future business uses on the site, this is not a matter for this application, which seeks to establish the lawfulness of a B8 use. In addition, any future application for residential development, is not relevant and any such application would be considered on its merits in the context of the Development Plan. Finally, the impact on house prices is not relevant to the application.

The third party representations do not dispute that a business use has been occurring on the site, but do evidence that the use has intensified over recent years.

Analysis of Evidence

The documentation submitted with the application appears to indicate that the land has been used for the storage of business equipment. Firstly, it is understood that the garage and land has been used in association with the building operations of Philip Heathcote, from 2000 onwards. At some point during 2009, the land has been used by David Hobson, for the storage of materials and equipment in association with their fireplace and chimney installation business. It is noted that the evidence presented does not include sworn statements witnessed by a solicitor, which lessens the weight which can be attached to this evidence to a degree.

Additional available evidence from aerial and roadside photography identifies that a significant change in the character of the land occurred in 2006 where the land to the west of the garage appeared to be in use for storage of some nature. The following aerial photography appear to show a continuation of that use across the land.

The aerial photography appears to corroborate the comments which have been made as part of the application submission. Therefore, in the absence of any evidence to the contrary to the version of events presented, on the balance of probabilities a B8 storage use has been continuing on this site in excess of 10 years from the date the application was validated i.e. between 3rd February 2013 and 3rd February 2023.

While third party representations appear to have indicated an intensification of the use over recent months/years this does not mean that the use of the land has not been established.

The red edge submitted with the application includes the access track from Grinlow Road to the side of No.1 New Cottages. This has been used for residential purposes and is one of the two access roads serving the row of dwellings. It is considered that this parcel of land ought to be excluded from red edge on any certificate issued.

CONCLUSIONS

There is sufficient evidence, on the balance of probabilities, that the land and garage to the rear of No.1 New Cottages, has been in continuous use for storage purposes in excess of 10 years and is lawful.

OFFICER RECOMMENDATION: Approve Certificate

Case Officer: Declan Cleary
Recommendation Date: 17/05/2022

X 

Signed by: Ben Haywood

On behalf of High Peak Borough Council