

DELEGATED DECISION REPORT

HPK/2023/0378
Valid 05/09/2023

LAND BETWEEN RANDALL
CARR BROOK AND
CHAPEL ROAD
WHALEY BRIDGE

APPLICATION FOR A LAWFUL
DEVELOPMENT CERTIFICATE
FOR AN EXISTING USE OF
BUILDERS YARD

(CERTIFICATE OF
LAWFULNESS - EXISTING)

MAIN ISSUES

- Whether the claimed existing use as a Builders Yard, is lawful, having regard to the period of time that has elapsed since its inception based on the facts of the case, in accordance with Sections 171 & 191 of the Town and Country Planning Act 1990

DESCRIPTION OF SITE

The application refers to a parcel of land south of the B5470 (Chapel Road) a short distance from Whaley Bridge in the open countryside.

The site is accessed via a field gate, with a single track constructed of tarmac extending southwards to the main part of the site which contains a number of structures, plant and machinery.

The public highway runs west-east along the northern boundary whilst Randall Carr Brook runs in a similar direction to the south of the site.

PROPOSAL

Following a complaint and subsequent enforcement investigation, the applicant originally applied for a Certificate of Lawful Development for an Existing Use under HPK/2023/0042. This application was withdrawn following comments from Officers, due to the imprecise nature of the description of development and that shown on supporting plans, and because it clearly included areas of operational development on a wider parcel of land which had occurred within recent years.

The applicant has since instructed a new planning agent to submit a Certificate of Lawful Development for an Existing Use described as a "Builders Yard" that relates to a smaller parcel of land than that covered by the previously withdrawn application, as defined by the red edge on the Location Plan.

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

- Location Plan
- Cover Letter dated 27th October 2023 (The Rural Planning Practice)

- Statutory Declaration Darren Hague (Applicant) dated 1st September 2023
- Exhibit of Darren Hague
 - Document 1 Site Plan
 - Document 2 Land Registry Records Relating to Site Ownership
 - Document 3 Letters Attesting to Use of the Site
 - Document 4 Letter from Mike Whelan
 - Document 5 Email from Lynn and Peter Hodgson
 - Document 6 Photographs from 2009 and 2010
 - Document 7 Aerial Photographs from 2017 and 2018
 - Document 8 Block Plan of Randall Carr Farm
 - Document 9 Email from Andy Thomas (Enforcement Officer)
 - Document 10 Email from James Stannard (Planning Officer)
 - Document 11 Aerial Photographs from 2011 and 2018 as provided by James Stannard

The Cover Letter that supports this application confirms that the wider area of land owned by the applicant outside of the red edge remains in agricultural use or has been subject to unauthorised development which is not covered by this application.

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

- | | |
|---------------|--|
| HPK/0001/5355 | Proposed stable block for housing approximately 3no. horses
(Approved) |
| HPK/2023/0042 | Lawful Development Certificate for an Existing Use Joint
Agricultural and General Builders/Ground-workers Yard
(Withdrawn) |

OFFICER COMMENTS

Whether the claimed existing use as a Builders Yard, is lawful, having regard to the period of time that has elapsed since its inception based on the facts of the case, in accordance with Sections 171 & 191 of the Town and Country Planning Act 1990

Section 171B of the Town and Country Planning Act 1990 refers to Time Limits associated with breaches of planning control and enforcement action and states that:

- (1) *Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, minor or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years from the date on which 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 dwellings house, no enforcement action may be taken after the end of four years beginning with the date of 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 with the date of breach.*

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.”*

The online Planning Practice Guidance (PPG) originally published by DCLG (2014) provides further guidance for applicants and Local Planning Authorities. With regards 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 applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass 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.”

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

Revision date: 06.03.2014

“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.

In determining an application for a prospective development under Section 192, a local planning authority needs to ask “if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?”

A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is, however, advisable to seek the applicant’s agreement to any amendment before issuing the certificate. A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.”

Paragraph: 009 Reference ID: 17c-009-20140306

Revision date: 06 03 2014

The starting point for assessing whether the cited use of the site has been in continuous use in excess of 10 years, is to consult the aerial satellite images held by the Local Authority.

The below image taken from 2011 makes clear that the access track and a relatively small area of land was in situ, which contains a large structure in the south-eastern corner of the site. The use of the site however is inconclusive.



Above: Aerial Satellite Image of the site from 2011 showing access track and small area of land which contains a large built structure

The next image held by the Local Authority dates from 2018, and shows a site area which is broadly consistent with that seen in 2011.



Above: Aerial Satellite Image of the site from 2018 showing site area that is broadly consistent with that seen in 2011.

The last image held by the Local Planning Authority dates from 2021, and shows a clear expansion and intensification of the site with an additional area of hard standing, other structures, and a concentration of plant and machinery.



Above: Aerial Satellite Image of the site from 2021 showing expansion and intensification of the site with additional hard surfacing, structures, plant and machinery.

With regards to the supporting evidence, the Title Deeds show that the applicant inherited the land in 2016. The Cover Letter states that historically, the applicant's Mother kept horses and sheep on the land from the 1970's onwards.

The building that is shown in the south-eastern corner of the site is marked on the (revised) Site Plan as 'Building A' and was inspected on site, as per the photographs below.



Above: Photographs of building on site referred to on Site Plan as 'Building A'.

The siting and appearance of this building is consistent with the building that was granted planning permission under HPK/0001/5355 for a Stable Block for housing 3no. horses. Taken as a whole (i.e. the stable block and associated timber agricultural building) the building (Building 'A') has clearly been in situ for over 10 years, and has a mixed agricultural and equestrian use, that is consistent with the claims by the applicant that his Mother kept horses and sheep on the site.

6no. letters of support (although not officially Statutory Declarations) have been submitted that seeks to substantiate the claim that Mr Hague has been operating a builders yard business from this site. The following points are made:

- Building related business has operated on site for last 20 years
- Various machinery, vehicles and plant on site for this period
- Containers on site used for storage of items relating to business
- Other buildings are also used for storage of items
- Visit to site in 2008 with plant and machinery being on site
- VOSA operator's licence relating to land for 2 years
- Mr Hague has been storing various machines, vehicles, plant, scaffolding equipment on site since we have worked with him 25 years ago

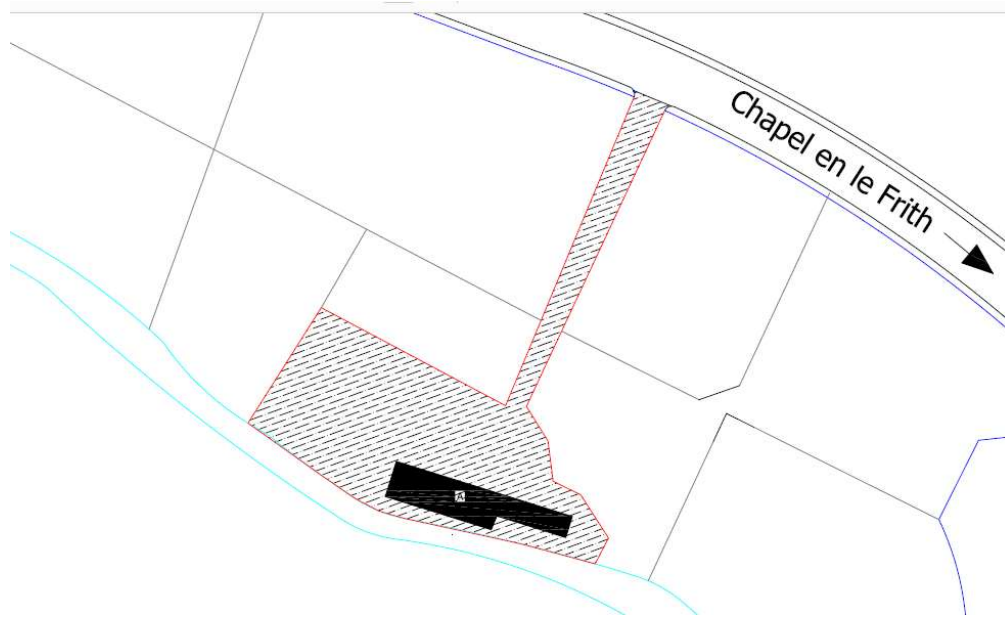
The sole Statutory Declaration that accompanies the submission is provided by the applicant Mr Hague and in summary, states the following:

- *I am the freeholder of the land*

- *Mother purchased the land in 1970's with the intention of keeping horses on the land, secured by way of planning permission for a Stable Block under HPK/0001/5355*
- *Horses kept on site until 2014 when she was no longer able to look after them*
- *Sheep also kept on the land over many years*
- *I inherited land in August 2016 and was registered in December 2016*
- *I have operated general building and groundworks business since 2005*
- *From 2005 until present day I have continuously used part of the land as a builder's yard to store business vehicles, machinery and materials relating to it.*
- *Improved access track has been in situ since 2011*
- *Business has grown over the years and machinery and vehicles currently consist of a twin drum roller, 2 x pedestrian rollers, a Kamatsu digger, 2.6 tonne mini digger, loading shovel, a 7.5 tonne waggon, and 3.5m tonne plant trailer.*
- *Wagon has its operator centre registered at the site (Licence Number: OC2032520) and Waste Carried Licence is also registered at the site (Licence Number: CBDU187434)*
- *Since 2016, the business has grown and I have increased the use of the site as a yard. Aerial images from 2017 and 2018 show the hardstanding, access and buildings on site at that time*
- *Building 'A' remains in a mixed use. Part of the shelter is for accommodating pigs, another area is used for storing hay, and loft area is used as a dry store for timber used in construction business.*
- *Agricultural use has continued on site albeit at a smaller scale. Family keep 11 ewes, 3 rams, 2 pigs, 34 chickens and ducks, and 2 goats on site.*

In assessing this evidence, it is clear that the extent of the land shown by way of a red edge on the Location and Site Plan originally submitted with the application extends beyond that which existed in 2011. Indeed, the evidence acknowledges that the expansion of the site occurred at some point in 2017/2018 and as such, the applicant was advised that the only way in which the Local Authority can issue a positive Certificate would be to reduce the red edge to that which is consistent with the extent of the site as existed in 2011.

A revised Site Plan was duly submitted on 3rd January 2024 which shows a reduced red edge, which only includes the Stable Block and Agricultural Building that was in situ in 2011 that has benefited from planning permission referred to as Building 'A'.



Above: Screenshot of revised Site Plan showing reduced red edge and Stable Block and Agricultural Building (Building 'A').

Whilst it is the view of the Local Planning Authority that there is very little hard evidence that establishes that the site has been in use as a Builders Yard for a continuous 10 year period, with a distinct absence of any marketing or signage denoting it, it must be recognised that there are 6no. letters from local tradesman that certify that such use has existed, in addition to the applicant's statutory declaration which carries weight, having regard to relevant case law referred to within the Cover Letter.

In light of the Local Authority holding no counter evidence to the contrary, it is accepted that on the balance of probability. the site has been in use as a Builders' Yard since 2013 (i.e. 10 years before the application was submitted), and as such a Certificate can be granted for this use.

However, it is clear that the site as it stands today has been unlawfully expanded as per the Satellite image dating from 2021, and contains structures that due their degree of permanence, require planning permission. Such structures include amongst other aspects, 2no. steel containers, a portacabin, and additional stable block. Based on the evidence available, a Certificate cannot be granted for such development.

Having regard to the guidance contained within the PPG, and in the spirit of working positively and proactively with the applicant, Officers have written to the applicant's agent to suggest an alternative description of development (First Schedule), as follows, which accurately describes the lawful use of the site:

Use of land edged red as Builder's Yard, specifically defined as the storage of building materials, plant and machinery on open ground outside of any enclosed structure or building. Mixed use of single storey building referred to as 'Building A' on Site Plan (Ref: LP/01) comprising part stables, part agricultural use, and part storage of building materials.

The applicant is satisfied that the above is a fair and accurate representation of what lawfully exists on site, and acknowledges that retrospective planning permission is required for the use of land that goes beyond the amended red edge and physical structures on site other than 'Building A'.

On this basis, it is recommended that a Certificate be granted as per the above revised description (First Schedule) and in relation to the amended red edge as shown on the amended Site Plan (Second Schedule).

OFFICER RECOMMENDATION : Grant Certificate

Case Officer: James Stannard

Recommendation Date: 19th February 2024

X *B.J. Haywood*

Signed by: Ben Haywood

On behalf of High Peak Borough Council