

Our Ref: 5050

10th January 2025

Planning
High Peak Borough Council
Buxton Town Hall
Market Place
Buxton
Derbyshire
SK17 6EL

Dear Sir/Madam,

RE: APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR AN EXISTING USE OR DEVELOPMENT (CLEUD) AT JS BURGESS ENGINEERING LTD, BINGSWOOD TRADING ESTATE, WHALEY BRIDGE.

Introduction and Background

We hereby submit, on behalf of our client, JS Burgess Engineering Ltd. (referred to hereafter as “the Applicant”), an application for a Certificate of Lawfulness for Existing Development under section 191 of the Town and Country Planning Act 1990 at JS Burgess Engineering Ltd. at Bingswood Trading Estate in Whaley Bridge (hereafter referred to as “the Site”).

The development for which a certificate is sought comprises an industrial structure which was erected in March 2020 and has since been continuously used as a workshop for the welding and fabrication of skips and waste containers (Use Class B2).

The structure does not benefit from planning permission and evidence is provided within this Covering Letter demonstrating that the building has stood for more than four years and been used for the above described purpose since that time, therefore supporting the granting of a Certificate of Lawfulness.

Application Documentation

The application comprises the following suite of documentation and drawings:

- Completed application form;
- This explanatory letter which provides details of the built structure and the use that has been carried within it since March 2020, along with a statement setting out the Applicant’s interest in the land, the name and address of any other person known to the Applicant to have an interest in the land and confirmation that other interested parties have been notified. Supporting evidence in the Appendices, comprising;
 - Appendix 1: Google Earth images from June 2018 and April 2020.
 - Appendix 2: Affidavits from two employees working in the structure;
 - Appendix 3: Purchase Orders relating to machinery used in the structure;
 - Appendix 4: Invoices relating to the purchase of the structure.
- A Site Location Plan (Drawing No. 5050-PLA-01) clearly identifying with a red edge the land relevant to the CLEUD application;

- Statutory application fee of £3,538 (+ £70 service charge) has been paid via the Planning Portal.

This letter continues by providing background to the development, the legislation relevant to the CLEUD application and evidence that the structure was built more than four years ago.

The Applicant's Interest in the Land

The Applicant, JS Burgess Engineering Limited, is a tenant of the Site, with the freehold owner of the wider landholding being Carrwood Group Limited, whose registered address is James House, Stonecross Business Park, Yew Tree Way, Warrington, WA3 3JD.

There are no other individuals or entities with a legal interest in the land. We can confirm that Carrwood Group Limited has been made aware of the application for a CLEUD.

Background

JS Burgess Engineering Ltd. design and manufacture a range of products, including stillages, skips and waste containers. The entirety of its production takes place at Bingswood Trading Estate where it operates from several industrial / warehouse structures. The Trading Estate has a longstanding history of industrial and storage use and is well-screened and contained by substantial vegetation to all sides.

The structure subject to this application was erected without planning permission in March 2020, prior to the Applicant acquiring the Site. Since its erection, the structure has been used as a workshop for the welding and fabrication of skips and waste containers. The Applicant now wishes to regularise this unauthorised development. It should also be noted that a 'lean-to' was added to the structure in 2022. This latter element does not benefit from planning consent and has not been in place long enough to be included in this CLUED application. It is proposed that the lean-to element of the building is regularised through a separate planning application which is to be submitted during the determination of the CLEUD application.

Planning History

A review of High Peak Borough Council's online planning system confirms that there is no recent or relevant planning history relating to the Site of the structure. There is however planning history which appears to relate to land within the Applicant's wider premises, as follows:

- **App Ref: HPK/0002/7285** – *Building for Light Industrial Use*. Approved 29/11/1988.
- **App Ref: HPK/0002/8384** – *New Single Storey Workshop with Car Park and Storage Yard for Light Engineering*. Approved 11/10/1989.
- **App Ref: HPK/0003/1345** – *Change of Use from Light Industrial to General Industrial (Class B2)*. Approved 30/03/1992.
- **App Ref: HPK/2001/0045** – *Extension to Existing Factory Unit*. Approved 04/06/2001.
- **App Ref: HPK/2005/0152** – *Bridge over River Goyt to create access to Bingswood Industrial Estate*.

Legislation

Section 191(1) of the Town and Country Planning Act 1990 (TCPA) enables anyone to apply to the local planning authority to determine the lawfulness, for planning purposes, of an existing use, development or operation.

Section 191(2) defines how the planning authority should consider the question of lawfulness as follows:

- “(2) 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.”*

For the purposes of this CLEUD application, the relevant test is therefore whether enforcement action could now be taken against the erection of the structure.

Since changes under the Levelling Up and Regeneration Act (LURA) came into force on 25th April 2024, unauthorised development in England becomes immune from enforcement action if no action is taken within ten years and certain other criteria is met. Prior to 25th April 2024, under previous regulations, the required timescale was only four years for the type of development subject to this CLEUD application. However, there is a transitional arrangement in place which means that if the physical operations were substantially completed before 24th April 2024, it would still be subject to the previous four-year period.

Section 191(4) provides that:

- “(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.”*

In terms of the evidential test to be applied, the National Planning Practice Guidance (NPPG; para 006 17c-006-20140306) confirms it is that of the balance of probabilities, stating that: *“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.”* The NPPG also confirms that the burden of proof is on the applicant.

In this case, it is the Applicant’s position that the building was erected in March 2020 and has been operating continuously since this time. Therefore, the time for taking enforcement action against such change of use has expired, and the development is therefore now lawful. The evidence for this is set out below.

Evidence Base

As discussed above, the burden of proof is on the applicant and the relevant test of the evidence on such matters is 'the balance of probability'. Therefore, 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, then there would be no sound reason to refuse the application.

The following evidence shows that the building was erected in March 2020:

1. Screenshots of aerial imagery using Google Earth's historical imagery function from June 2018 and April 2020 showing that the structure was erected between these dates.
2. Affidavits from two employees of the business, confirming that the structures were erected in March 2020, have been used on a continuous basis since that time and have not been subject to any form of enforcement action.
3. Purchase Orders, dated 29th June, 30th June and 1st July 2020, relating to machinery bought for the structure.
4. 4no. invoices relating to the purchase of the structure. Invoice number 36136 refers to the completion of the installation on 18th March 2020.

As a result of the above listed evidence, it is clear that the structure was erected more than four years hence, has been used continuously under Use Class B2 since then, and is therefore now lawful development.

Conclusions

It is apparent from the information provided that the structure was erected more than four years ago and as a consequence is now lawful, having regard to the evidence submitted within this Covering Letter. The grant of the relevant Certificate of Lawfulness is respectfully requested with consideration to Section 191 of the TCPA and the LURA.

I trust that the scope of information provided is satisfactory and look forward to the application being duly processed. However, should you have any queries, either on an initial basis, or during the 8-week statutory determination period, please do not hesitate to contact me.

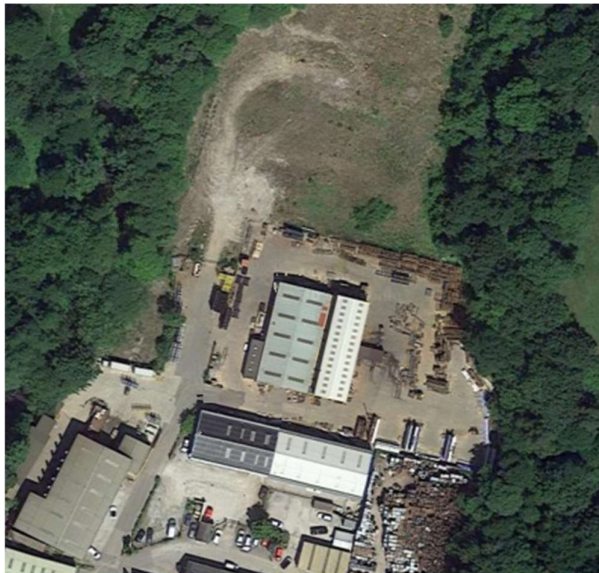
Yours sincerely,

Dan Whitney
Associate Planner

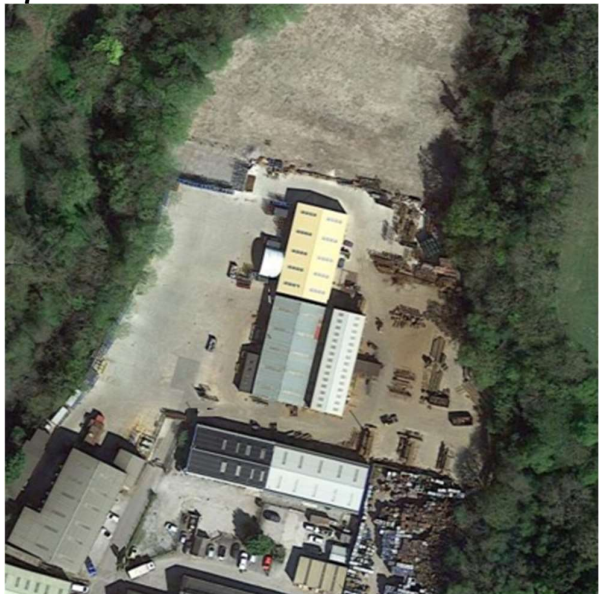
APPENDIX 1:

Google Earth images

June 2018:



April 2020:



APPENDIX 2:

Affidavits from employees working in the structure

2nd December 2024

Planning
High Peak Borough Council
Buxton Town Hall
Market Place
Buxton
Derbyshire
SK17 6EL

Dear Sir/Madam,

RE: APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR AN EXISTING USE OR DEVELOPMENT (CLEUD) AT JS BURGESS ENGINEERING LTD, BINGSWOOD TRADING ESTATE, WHALEY BRIDGE.

I write in support of the above-referenced application for a Certificate of Lawfulness for an Existing Use or Development (CLEUD) which has been submitted on our behalf by our planning agents, Axis.

The application seeks to evidence the fact that the structure was erected more than 4 years ago in March 2020, has been used on a continuous basis since that time and not been subject to any form of enforcement action.

Various articles of information have been provided including site plans, purchase invoices and aerial photography which, in and of itself, provides conclusive evidence that the structure has been in position since March 2020. However, by way of further evidence, I can confirm that I have been a member of the senior management team at the company since 2015 which includes the relevant period since March 2020 and I have therefore had first hand experience during the continuous use and operation of the structure.

I trust that this information is satisfactory. However, if you require any further information, please do not hesitate to contact our agents, who will be able to assist.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Linda Hall', followed by a period.

Linda Hall
Finance Director

2nd December 2024

Planning
High Peak Borough Council
Buxton Town Hall
Market Place
Buxton
Derbyshire
SK17 6EL

Dear Sir/Madam,

RE: APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR AN EXISTING USE OR DEVELOPMENT (CLEUD) AT JS BURGESS ENGINEERING LTD, BINGSWOOD TRADING ESTATE, WHALEY BRIDGE.

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The application seeks to evidence the fact that the structure was erected more than 4 years ago in March 2020, has been used on a continuous basis since that time and not been subject to any form of enforcement action.

Various articles of information have been provided including site plans, purchase invoices and aerial photography which, in and of itself, provides conclusive evidence that the structure has been in position since March 2020. However, by way of further evidence, I can confirm that I have been a member of the senior management team at the company since 2011 which includes the relevant period since March 2020 and I have therefore had first hand experience during the continuous use and operation of the structure.

I trust that this information is satisfactory. However, if you require any further information, please do not hesitate to contact our agents, who will be able to assist.

Yours sincerely,



David Brocklehurst
Technical Manager

APPENDIX 3:

Purchase Orders relating to machinery used in the structure

Purchase Order Confirmation

PO Number: TH22335 (To be quoted on all correspondence)

To:

Bison Metal Working Machinery
St Albans Road
Stafford
ST16 3DR

Deliver to:

Burgess Works,
Bingswood Industrial Estate,
Whaley Bridge,
SK23 7LY

Invoice To:

Accounts Dept
JS Burgess Engineering Ltd
Burgess Works,
Bingswood Industrial Estate,
Whaley Bridge,
SK23 7LY

Date: 29 June 2020

Your Ref: AccountRef: <No Ref Given> OrderRef: BISQ8598-06

Order requested by THEA

Item#	Description	Quantity	Price	Total	Delivery Date
1	Morgan Rushworth PBS CNC 4100/200 Hydraulic Pressbrake with R Axis 415V	1 Units	£52,000.00	£52,000.00	
2	delivery & installation etc.	1 Units	£1,500.00	£1,500.00	
3	Morgan Rushworth ASBR 2100/170 Powered Bending Rolls 415V	1 Units	£12,000.00	£12,000.00	

Delivery: £0.00

TOTAL: £65,500.00

Special instructions:

Package price as per your attached quotation.

PAYMENT 80% TO BE MADE TODAY

DELIVERY ON WEDNESDAY/THURSDAY THIS WEEK



JS Burgess Engineering Ltd

Burgess Works,
Bingswood Industrial Estate,
Whaley Bridge,
SK23 7LY

info@jsburgess.co.uk

Tel: 01663 719 300

Fax: 01663 719 301

VAT No. 861 3106 51

Reg No. 4663712



Purchase Order Confirmation

PO Number: TH22349 (To be quoted on all correspondence)

To:

Bison Metal Working Machinery
St Albans Road
Stafford
ST16 3DR

Deliver to:

Burgess Works,
Bingswood Industrial Estate,
Whaley Bridge,
SK23 7LY

Invoice To:

Accounts Dept

JS Burgess Engineering Ltd

Burgess Works,
Bingswood Industrial Estate,
Whaley Bridge,
SK23 7LY

Date: 01 July 2020

Your Ref: AccountRef: <No Ref Given> OrderRef: BISQ8598-06

Order requested by THEA

Item#	Description	Quantity	Price	Total	Delivery Date
1	delivery & installation etc.	1 Units	£0.00	£0.00	
2	Morgan Rushworth BHGS 4100/10 Hydraulic Swing Beam Guillotine	1 Units	£35,500.00	£35,500.00	

Delivery: £0.00

TOTAL: £35,500.00

Special instructions:

Package price as per your quotation.



JS Burgess Engineering Ltd

Burgess Works,
Bingswood Industrial Estate,
Whaley Bridge,
SK23 7LY

info@jsburgess.co.uk

Tel: 01663 719 300

Fax: 01663 719 301

VAT No. 861 3106 51

Reg No. 4663712



APPENDIX 4:

Invoices relating to the purchase of the structure

Invoice

Invoice No. 34937
Invoice / Tax Date 25/11/2019



To:

JS Burgess Engineering Ltd
Burgess Works
Bingswood Industrial Estate
Whaley Bridge
SK23 7LY

Portable Venues (Group) Limited
Manor House Farm
Dordon Hall Lane
Grendon
Warwickshire
CV9 2EX
01827 330000
VAT Reg No: 455795403

Customer Order No. L121664
FAO.

Account No. JSB001
Project. JSB001-1

Details

Net

For PURCHASE of 1 off 15mtr x 27mtr "600 Smart Space Building" as per Proposal dated
7th November 2019 prepared by Jason Lynock, ref number J.Patoff-071119-08.21.
Purchase Price @ £107,501.00

30% on confirmation of Order	32,250.30
40% on arrival of goods to site	
27.5% on completion of installation	
2.5% retention payable 6 months after completion.	

Payment due date: By return please to secure order.

Bank Details:	Total Net Amount	32,250.30
Sortcode: 404402	VAT Rate	20.00%
A/c No: 01191632	Total VAT Amount	6,450.06
Account Name: The Portable Venues Group Ltd	Invoice Total	£38,700.36

Portable Venues Group Ltd
Registered Office: Unit 25 Manor House Farm Dordon Hall Lane, Grendon Atherstone, WARWICKSHIRE
CV9 2EX
Registered in England No. 2171828

Invoice

Invoice No. 35670
Invoice / Tax Date 11/02/2020



To:

JS Burgess Engineering Ltd
Burgess Works
Bingswood Industrial Estate
Whaley Bridge
SK23 7LY

Portable Venues (Group) Limited
Manor House Farm
Dordon Hall Lane
Grendon
Warwickshire
CV9 2EX
01827 330000
VAT Reg No: 455795403

Customer Order No. L121664
FAO.

Account No. JSB001
Project. JSB001-1

Details

Net

For PURCHASE of 1 off 15mtr x 27mtr "600 Smart Space Building" as per Proposal dated
7th November 2019 prepared by Jason Lynock, ref number J.Patoff-071119-08.21.
Purchase Price @ £107,501.00

40% on arrival of goods to site	43,000.40
27.5% on completion of installation	
2.5% retention payable 6 months after completion.	

Payment due dat: On arrival of goods to site please.

Bank Details:	Total Net Amount	43,000.40
Sortcode: 404402	VAT Rate 20.00%	Total VAT Amount 8,600.08
A/c No: 01191632	Invoice Total	£51,600.48
Account Name: The Portable Venues Group Ltd		

Portable Venues Group Ltd
Registered Office: Unit 25 Manor House Farm Dordon Hall Lane, Grendon Atherstone, WARWICKSHIRE
CV9 2EX
Registered in England No. 2171828

Invoice

Invoice No. 36136
Invoice / Tax Date 18/03/2020



To:

JS Burgess Engineering Ltd
Burgess Works
Bingswood Industrial Estate
Whaley Bridge
SK23 7LY

Portable Venues (Group) Limited
Manor House Farm
Dordon Hall Lane
Grendon
Warwickshire
CV9 2EX
01827 330000
VAT Reg No: 455795403

Customer Order No. L121664
FAO.

Account No. JSB001
Project. JSB001-1

Details

Net

For PURCHASE of 1 off 15mtr x 27mtr "600 Smart Space Building" as per Proposal dated
7th November 2019 prepared by Jason Lynock, ref number J.Patoff-071119-08.21.
Purchase Price @ £107,501.00

27.5% on completion of installation 29,562.78
2.5% retention payable 6 months after completion.
Completion Date: 18th March 2020

Payment due date: By return please.

Bank Details:	Total Net Amount	29,562.78
Sortcode: 404402	VAT Rate 20.00%	Total VAT Amount 5,912.56
A/c No: 01191632	Invoice Total	£35,475.34
Account Name: The Portable Venues Group Ltd		

Portable Venues Group Ltd
Registered Office: Unit 25 Manor House Farm Dordon Hall Lane, Grendon Atherstone, WARWICKSHIRE
CV9 2EX
Registered in England No. 2171828

Invoice

Invoice No. 37850
Invoice / Tax Date 23/09/2020



To:

JS Burgess Engineering Ltd
Burgess Works
Bingswood Industrial Estate
Whaley Bridge
SK23 7LY

Portable Venues (Group) Limited
Manor House Farm
Dordon Hall Lane
Grendon
Warwickshire
CV9 2EX
01827 330000
VAT Reg No: 455795403

Customer Order No. L121664
FAO.

Account No. JSB001
Project. JSB001-1

Details

Net

For PURCHASE of 1 off 15mtr x 27mtr "600 Smart Space Building" as per Proposal dated
7th November 2019 prepared by Jason Lynock, ref number J.Patoff-071119-08.21.
Purchase Price @ £107,501.00

2.5% retention payable 6 months after completion.

2,687.52

Building Completion Date: 18th March 2020

Payment due date: By return please

Bank Details:	Total Net Amount	2,687.52
Sortcode: 404402	VAT Rate	20.00%
A/c No: 01191632	Total VAT Amount	537.50
Account Name: The Portable Venues Group Ltd	Invoice Total	£3,225.02

Portable Venues Group Ltd
Registered Office: Unit 25 Manor House Farm Dordon Hall Lane, Grendon Atherstone, WARWICKSHIRE
CV9 2EX
Registered in England No. 2171828