

DELEGATED DECISION REPORT

HPK/2025/0008
Valid 07/02/2025

BURGESS WORKS
BINGSWOOD TRADING
ESTATE
WHALEY BRIDGE

LAWFUL DEVELOPMENT
CERTIFICATE FOR AN
EXISTING ERECTION OF
INDUSTRIAL STRUCTURE -
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).

(CERTIFICATE OF
LAWFULNESS - EXISTING)

MAIN ISSUES

- Whether, upon review of the facts of the case, the operational development and use cited in the description of development is lawful and does not require planning permission, having regard to Section 191 of the Town and Country Planning Act 1990

DESCRIPTION OF SITE

The application relates to a modest sized building within the far northern unit of the Bingswood Trading Industrial Estate, Whaley Bridge, occupied by JS Burgess Engineering Ltd, a company who as per their website, design and manufacture a range of products, including skips and waste containers.

The building is rectangular in form with a dual pitched roof, situated adjacent to a larger building and large area of hard standing, and following a review of the planning history associated with the site, does not benefit from planning permission.

PROPOSAL

This application seeks a Certificate of Lawful Development application for Existing Use under Section 191 of the Town and Country Planning Act 1990 which seeks to regularise the erection of the building (operational development) and its use as a workshop for the welding and fabrication of skips and waste containers, which falls within the B2 Use Class.

The following documentation and evidence has been submitted with this application:

- Application Form
- Cover Letter
- Google Earth images from June 2018 and April 2020
- Affidavits from 2no. employees working in this building
- Purchase Orders relating to machinery used in the structure
- Invoices relating to the purchase of the structure

CONSULTATION COMMENTS

Canals and Rivers Trust

No comment to make

Lead Local Flooding Authority

No comment to make

DCC Highways Authority

No comment to make

OFFICER COMMENTS

1. **Whether, upon review of the facts of the case, the operational development and use cited in the description of development is lawful and does not require planning permission, having regard to Section 191 of the Town and Country Planning Act 1990**

Legislation and PPG

Section 191(1) of the Town and Country Planning Act 1990 enables a person to apply to the Local Planning Authority to determine the lawfulness 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*

Further to the Levelling Up and Regeneration Act coming into force in April 2024, unauthorised development in England becomes immune from enforcement action if

no action is taken within 10 years. Prior to this legislation coming into force, the requirement timescale was only 4 years for the erection of a building and its use.

However, transitional arrangements are in place which means that if the physical operations were substantially completed before 24th April 2024 it would still be subject to the previous 4 year 'rule'.

Section 191(4) goes on to state 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*

Planning Practice Guidance makes clear that the evidential test to be applied is on the balance of probabilities:

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

Assessment

Taking each aspect of supporting evidence that accompanies the Cover Letter in turn, the Google Earth images at Appendix 1 are dated only in the form of a title, with no date incorporated on to the photograph. At the request of Officers, further information has been received in the form of a date stamped photograph taken from 29th June 2018, which shows no building in situ, and 24th April 2020, which shows the building in situ and substantially completed (fully constructed).

In addition, further investigations using Google Earth shows the building with an additional lean-to structure, which also does not benefit from any planning permission, to be in situ in March 2022. The Council hold historic photography imagery that dates between 2019 and 2023, which also shows the building with the additional lean-to in situ.

The employees working at the building are Linda Hall, Finance Director, and David Brocklehurst, Technical Manager.

The former states that Ms Hall has been a member of the senior management team since 2015 which includes the continuous period since March 2020 when it is submitted that the building and use dates from and has 'first hand experience' of the buildings operations. The latter signed by Mr Brocklehurst states that he has been working at the company since 2011 and also alludes to having 'first hand experience' of the building and its use.

Whilst not strictly affidavits, as they are not signed by a solicitor, they are signed letters by current employees of the company, and it is therefore reasonable to take this evidence on face value.

Lastly, the Purchase Orders date from June and July 2020, with the items includes within being machinery consistent with the practices of the company. Similarly, the invoice issued by "Smart Space Instant Buildings" is for a

"15m x 27m building as per proposal dated 7th November 2019 prepared by Jason Lynock, refer number J.Patoff 071119-08-21 for £107,501.00"

Both are consistent with the building and use that is subject of this application.

Conclusion

When considering all of the above evidence, the Council are satisfied and have no evidence to the contrary that the building has been in situ for a continuous period of 4 years and was substantially completed before 25th April 2024.

There is no evidence to the contrary that the use was not operational for 4 continuous years following the building being fully constructed in April 2020.

It is therefore concluded that a Certificate of Lawfulness can be granted for both the operational development (i.e. the construction of the building) and the use of the building for purposes as described within the description of development.

Crucially, and as agreed by the applicant both verbally and in writing within the Cover Letter, the Certificate does not extent to the lean-to structure that appears to have been constructed at some point in 2022, consistent with the assertions of the agent, and will be subject to a future retrospective planning application.

OFFICER RECOMMENDATION : Grant Certificate

Case Officer: James Stannard

Recommendation Date: 10th April 2025

X 

Signed by: Ben Haywood

On behalf of High Peak Borough Council