

**Case Officer:** Rebekah Morgan

**Recommendation:** Refuse

**Applicant:** Grundon Waste Management

**Proposal:** Certificate of Lawfulness of Existing Use for use of site as depot, workshops, outdoor storage and associated offices.

**Expiry Date:** 28 September 2021

**Extension of Time:**

## **1. APPLICATION SITE AND LOCALITY**

- 1.1. This application relates to a 3 hectare site on the eastern side of the railway just south of Banbury railway station. It is currently used as an operational base for waste freighters operated by the applicants. It consists in part of surfaced and unsurfaced yard areas and contains some buildings.
- 1.2. The site is accessed off Higham Way, which in turn are linked through Merton Street to Middleton Road.

## **2. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 2.1. The application seeks a lawful development certificate for uses listed as 'depot, workshops, outdoor storage and associated offices' and the applicant maintains these have been in continuous use on the site for more than 10 years.
- 2.2. For clarity, the description of suggested existing use is stated on the application form as "*the supporting documentation (the aerial photographs in particular) shows the location of the various elements of use comprising: Depot, workshops, outdoor storage and associated offices*".

## **3. RELEVANT PLANNING HISTORY**

- 3.1. There is no planning history directly relevant to the proposal.

## **4. PRE-APPLICATION DISCUSSIONS**

- 4.1. No pre-application discussions have taken place with regard to this proposal.

## **5. RESPONSE TO PUBLICITY**

- 5.1. There is no requirement to undertake publicity on an application for a lawful development certificate.

## **6. RESPONSE TO CONSULTATION**

- 6.1. There is no requirement to undertake consultations on an application for a lawful development certificate.

## **7. RELEVANT PLANNING POLICY AND GUIDANCE**

- 7.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.2. Other Material Planning Considerations
- National Planning Policy Framework (NPPF)
  - Planning Practice Guidance (PPG)

## 8. APPRAISAL

- 8.1. A certificate of Lawfulness of Existing Use can only be granted under section 191 of the Town and Country Planning Act 1990 (as amended) if the applicant can demonstrate, on the balance of probability, that the use, operation or other matter is lawful because no enforcement action can be taken against it (either because it does not involve development or require planning permission or because the time for the enforcement action has expired or for any other reason), and because it does not constitute a contravention of any of the requirements of any enforcement notice currently in force.
- 8.2. The key issue for consideration in this case is whether the land has been used as described for a period of more than ten years and is therefore immune from enforcement action.
- 8.3. The and the subsequent decision are based solely upon a judgement of the evidence presented against the requirements of Section 191 of the Principal Act.
- 8.4. National Planning Practice Guidance (PPG) on Lawful development certificates states *'an application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate'*.
- 8.5. It goes on to state *'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'*.
- 8.6. The description of existing use is given on the application form as *"the supporting documentation (the aerial photographs in particular) shows the location of the various elements of use comprising: Depot, workshops, outdoor storage and associated offices"*.
- 8.7. The application included the following supporting documentation:
- Four aerial photographs from Google Maps dated 2004, 2006, 2009 and 2017
  - An Environment Agency permit dating from 1995
  - A Goods Vehicle Operators Licence dated 2005
  - A set of photographs from a report dated 2001
  - A set of photographs ranging from 2008 to the present day
  - Historical maps from 1885 to 1995 (from the same 2001 report as the photographs above)
- 8.8. The description of use as set out in the application form is not precise and it is not clear what uses are being sought for inclusion in a lawful development certificate. The description lists the generic uses of 'depot, workshops, outdoor stage and associated offices'. Although the applicant is listed as 'Grundon' which is a well-

known waste disposal operator, the supporting evidence doesn't specify how this site operates within the context of that wider business use.

- 8.9. The site plan includes all of the land within the applicant's ownership and does not specify the use claimed for each area. The google map aerial photographs have been annotated but again do not show the extent of land included within each use.
- 8.10. Aerial photographs (taken from Google Maps) have been submitted as supporting evidence and annotated with the listed use.
- 8.11. With regards to the outdoor storage, the photographs are not sufficient to show the type of goods/material/objects being stored. It is also not clear if these are permanent storage as some of the items appear to be bins which one expects to be taken off site to be used as part of the waste disposal business. In addition, the photographs show large areas of landscaped (vegetation covered) land that is identified as external storage and included within the redline; however, the photographs suggest very limited storage or no storage in some of these areas. Therefore, the evidence is not sufficient to support a claim that these areas have been used for external storage for a period of ten years.
- 8.12. The areas identified as 'workshop and offices' on the photographs do demonstrate that some of those buildings have been on site for a period exceeding ten years, but the photographs only identify the presence of the buildings and not the listed uses. There is a white roofed building shown in the 2017 aerial photograph that does not appear in the earlier aerial photographs.
- 8.13. With regards to the depot use, this is a vague description and the aerial photographs show distinctly different levels of use and extent of use – this could be due to the time of day they were taken, but it is for the applicant to supply sufficient information to support their application.
- 8.14. An Environment Agency permit (and subsequent variations) has been included to demonstrate the site was permitted as a waste transfer station between 1995 and 2019 when the licence was surrendered. The applicant has not explained how this relates to the uses listed in the application. If the site was being used as a waste transfer station until 2019, does that differ to the use that is being claimed has been present for in excess of 10 years? This point is unclear in the application.
- 8.15. The Goods Vehicle Operators Licence is useful to support the claim that commercial vehicles operate from the site. However, the licence is for a maximum number of vehicles (so does not provide evidence of what vehicles have actually been on the site) and only lists the location without a plan to demonstrate the extent of the land to which it applies.
- 8.16. A set of site photos (included within an abstract from a report dated 2001) have been included. It would be difficult to legally rely on these photographs as it is not specified when they were taken, just the date of the report. (The aerial photos labelled 2004 and 2006 are the same (identical) photo, which would suggest that, if correctly dated, there was no activity whatsoever on site between the 2004 photo and the 2006 photo.)
- 8.17. The second set of photographs (date 2008- to present day) comprise five photographs. These are captured in a word document and no meta data has been provided to authenticate the date of the photographs. They are also limited in the area of the site shown and do not provide internal pictures of all the buildings.

8.18. The historical photographs cover a period between 1885 and 1995 and are therefore prior to the 10-year period required by the application. Furthermore, the maps do not provide sufficient information to conclude a definitive planning use of the site at the time.

8.19. Overall, the description of uses sought and the supporting documentation is not considered sufficient to demonstrate a 'use' for the purpose of seeking a lawful development certificate.

## **9. PLANNING BALANCE AND CONCLUSION**

9.1. In this instance, on the balance of probability and given the description of the uses and supporting documentation that was submitted, the Planning Authority cannot support the application.

## **10. RECOMMENDATION**

Schedule 1 – Use of land comprising of depot, workshops, outdoor storage and associated offices.

Schedule 2 – S Grundon Services Ltd, Merton Street, Banbury, OX16 4RN.

Schedule 3 – On the balance of probabilities, the Council is not satisfied that the use (as described) has been continually carried out on the land for a period of 10 years or more.

Case Officer: Rebekah Morgan

DATE: 28/09/2021

Checked By: Nathanael Stock

DATE: 28.09.2021

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