

DARLINGTON BOROUGH COUNCIL

PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 10th April 2013

Page

APPLICATION REF. NO:	13/00086/LU
STATUTORY DECISION DATE:	05/04/13
WARD/PARISH:	Heighington and Coniscliffe
LOCATION:	Twinsburn Farm, Heighington
DESCRIPTION:	Application for a Lawful Development Certificate for an Existing Use or Operation which include the following. Processing of waste wood products in the form of sawdust and shavings. The storage and distribution of processed sawdust, ancillary office space related to the business and the parking of HGVs used for distribution
APPLICANT:	Mr Edgar Shepherd

CONTEXT TO THIS APPLICATION

This application is an application for a Certificate of Lawful Use under section 191 of the Town and Country Planning Act 1990.

This is not a usual planning application that Members will be familiar with, as it seeks to establish the lawful use of the property.

The Town and Country Planning Act allows for;

If any person wants to know if;

- [a] an existing use; *or*
- [b] an operation already carried out; *or*
- [c] a failure to comply with a condition or limitation in planning permission,

is lawful, he/she can obtain the answer by applying for a Certificate of Lawfulness from the Local Planning Authority.

An existing use or operation such is the case here is lawful if;

- [a] no enforcement action can be taken against it for any reason, including expiry of the relevant time period or the fact that it does not involve development and

[b] there is no contravention of any existing enforcement notice.

The Act is very clear, if the local planning Authority is satisfied that the existing use as described in the application is lawful, they must issue a certificate of lawful use.

A certificate of lawful use can be used as conclusive proof of the lawfulness of the specified activity.

In this particular circumstance therefore based on the information submitted, the Local Planning Authority are required solely, to determine on the balance of probabilities if the use as described in the application has been in existence for the last 10years. The merits of the planning case in applications such as this one are therefore irrelevant and should not be taken into account.

APPLICATION AND SITE DESCRIPTION

The property known asTwinsburn Farm is located in open countryside some 350 metres to the south west of Heighington village.

It has been in the applicant's family ownership since 1960, when it was a poultry and dairy herd farming enterprise.

Since that time this farming activity has ceased (in 1985) and the applicant has diversified into collecting sawdust wood shavings for conversion into bedding for cattle, as well as industrial burning, compost and for use in the particle board industry. This business has expanded over the years and is now the main activity on the site. The more recent wood chippings collection business is a further diversification which is the subject of a separate planning application, which will be determined on it's planning merits and does not form part of this Lawful Development Certificate application.

Wood shavings, sawdust and other sawmill products are collected from source locations throughout the UK in the applicant's own vehicles and processed and packaged at Twinsburn Farm and then redistributed again throughout the UK.

PLANNING HISTORY

*03/00948/FUL	GWC	18.11.2003	Extend building to provide tipping bay and additional storage and removal of silo.
78/00216/MISC	GWC	26.04.1978	Twinsburn Farm, Heighington.:- erection of an agricultural tower silo over 20 metres in height.
*87/00630/MISC	W	07.01.1988	Use of land for the parking of 12 trailers, use of agricultural building as a sawdust preparation building and use of land for material sorting (timber).
88/00138/MISC	R	01.06.1988	Twinsburn Farm, Heighington. :- C/U to a mixed use for agriculture and for the siting of two wood milling machines, the parking of thirty HGV's trailers, seven HGV's and twenty skips together with ancillary offices.

APPLICATION REFERENCE NO		13/00086/LU	PAGE
88/00139/MISC	R	01.06.1988	Twinsburn Farm, Heighington. :- C/U from agricultural use to a mixed use for agriculture and for the siting of two wood milling machines, the parking of seven HGV's (five with trailers) and four skips together with ancillary offices).
89/00389/MISC	GWC	21.06.1989	Erection of first floor extension comprising kitchen, living room and bedroom to form a self contained dwelling unit (as amended by plans received 21st June, 1989).
89/00582/MISC	R	13.09.1989	Use of land for the parking of five HGV.'s with trailers.
*93/00117/MISC	GWC	03.06.1994	Retention and use of building for processing/riddling and bagging of sawdust.
*99/00524/FUL	GWC	18.11.1999	Erection of extensions to existing buildings to accommodate sawdust processing operations
07/00245/AG	GWC	05.04.2007	Agricultural Determination application for the erection of an agricultural storage building
11/00836/CU	GWC	24.02.2012	Change of Use from agricultural storage building to HGV and vehicle service and repair workshop (Use Class Sui Generis) (Retrospective) (Amended description)
12/00162/FUL	WDN	14.11.2012	Erection of storage building (amended plans received 10 April 2012)

Of the above applications, only those planning decisions which relate to the specific uses and operations that have been carried out at Twinsburn Farm and are the subject of the current Lawful Development Certificate application are marked *

RESULTS OF CONSULTATION AND PUBLICITY

A site notice was posted and nearby residents consulted.

There have been 21 objections received to this application – the following issues were raised:

- Granting lawfulness will encourage more unsuitable activities on site.
- Appears to be more lorries on site than approved for.
- On site activities are not B1 use class.
- Access to the site not suitable for large lorries.
- Airborne dust is a regular problem.
- Light pollution is a problem.
- Noise from the site causes a nuisance at all times – there are no restrictions on hours of working.
- Lorries are being loaded and unloaded outside the buildings

PLANNING ISSUES

It is emphasised that the purpose of this application is to establish what activities currently taking place at Twinsburn Farm are lawful in terms of planning legislation i.e. they have been in existence for at least ten years. The merits or otherwise of the activities taking place are not an issue to be considered as part of this application. If it were the case that there are activities taking place that transgress existing planning permissions or are not otherwise immune, then enforcement action is available.

It is clear that planning permissions are in place which permit certain activities to take place at Twinsburn Farm, and the applicant has submitted evidence in support of this, in the form of planning decision notices with an accompanying plan showing the locations of various activities, which have been verified with planning records.

An issue that has been raised by some objectors is that the decision notices all refer to Use Class B1 (office/light industry) within the conditions attached to the notice, rather than what might be considered the more appropriate Use Class B2 (general industry).

This anomaly appears to have begun with the 1993 permission when it was decided at that time that the activities warranted a Use Class B1 classification. Since that time the activities have evolved in such a way that they may now be more appropriately be put into Use Class B2, nevertheless the Use Class B1 condition remains.

As it transpires this anomaly does not affect the validity or robustness of the planning permissions as they are very specific to the activities included in the application submissions. The current Lawful Development Certificate application does not have the effect of "changing" the approved uses from B1 to B2, it merely has the effect of confirming what uses are lawful in planning terms. Officers have examined the activities in detail on site and reached the conclusion that they reasonably should be included within the B2 [general industry] classification.

In support of the application the applicant's agent has also submitted evidence in the form of letters from employees describing the work they do and how long they have been employed at Twinsburn Farm, together with a bundle of customer activity summaries which give details of customers' requirements and costs over the required ten year period preceding the application.

For clarification the applicant has confirmed that the reference in his evidence to "wood pellets" as being within the lawful existing uses on the site is incorrect and should not be included within the Statutory Declaration.

It appears to Officers on the balance of probability, that the evidence that has been supplied by the applicant's agent, together with the information already available and provided historically from the planning register, that the activities and operations (excluding the wood chippings/pellets operation) currently being carried out at Twinsburn Farm, and as described in the application particulars, are lawful under the Town and Country Planning Act 1990, Sections 191 (as amended).

SECTION 17 OF THE CRIME AND DISORDER ACT 1998

The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely the duty on the Council to

exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. It is not considered that the contents of this report have any such effect.

CONCLUSION

Over the years the activities and operations being carried out at Twinsburn Farm have evolved from a low key livestock bedding manufacturing business alongside some agricultural activities, into an intensive business which is national in its extent. These activities have resulted in some complaints from residents of Heighington and those issues are highlighted above by the objectors who have commented on the application.

A more recent activity that has started at the site relates to the delivery, storage and onward transfer of wood based materials for use as biomass fuel. This activity is not part of the current Lawful Development Certificate application but is the subject of a separate planning application, which has yet to be determined.

Since 1993 planning permissions have been granted which give authorisation for the other activities and operations taking place at the application site; any transgressions in relation to these permissions may be dealt with via enforcement action or statutory nuisance procedures should that be necessary.

Whilst the issues raised by residents relate to matters that could be taken into account had this been an application for planning permission, no evidence has been provided by third parties to suggest that on the balance of probabilities that a Lawful Development Certificate should not be granted based on the strict assessment as required by law, that is the use of the site as described in the application has been carried out for 10 years.

RECOMMENDATION

That a Lawful Development Certificate be **Granted** for the activities and operations described by the applicant in the application, but excluding the storage and distribution of wood products for use as a biomass fuel.