

DELEGATED REPORT

Application No:	P/22/0070
Site Address:	Land South Of Unit 7 Efi Industrial Estate Brecon Road Merthyr Tydfil CF47 8RB
Development:	Certificate of lawful development relating to an existing use for storage within Use Class B8, parking of vehicles and hard surfaced area
Case Officer:	David Cross
Application Expiry Date:	16th May 2022

APPLICATION SITE

This application relates to an area of vacant land located on the southern side of the Efi Industrial Estate. The site is broadly triangular in shape and measures approximately 0.31 of a hectare. The majority of the site consists of a combination of disturbed ground, rubble material and hardstanding with overgrown vegetation along parts of its boundaries.

The site is bound to the north by existing industrial units and a hardstanding area, which is currently used as a car park and for the placement of shipping containers. To the east of the site is a sheer embankment with residential properties above that form part of Pandy Close. To the west and south is a woodland area along a steep embankment, which slopes down to the River Taff. To the west is the Pont Y Cafnau Bridge, (Grade II Listed Building and Scheduled Ancient Monument) which provides a link across the watercourse to the Taff Trail.

The application site is located within the Cyfarthfa Conservation Area and is in close proximity to Cyfarthfa Park and Gardens (approx. 100m) to the north. Within the vicinity are also archaeological remains of Blast Furnaces, which are Scheduled Ancient Monuments, the nearest being within 15m of the site on the opposite side of the River Taff.

PROPOSED DEVELOPMENT

A certificate of lawful development is sought under Section 191 of the Town & Country Planning Act for the existing use of the site for storage (within Use Class B8) and parking of vehicles and a hardstanding area. In support of the application a planning statement and justification report has been submitted, which includes aerial photographs of the site, a witness statement from the applicant and letters from the adjacent business owners.

It has been set out in the planning statement that the above mentioned activities clearly started in the 1990's and have operated for a period of at least 10 years, with different levels of activity which have not been abandoned. It is contended that the applicant has had a material interest in the site since 2013 and has used it in connection with his business, including open storage of machinery, storage containers and parking vehicles associated with his vehicle recovery business. The applicant then purchased the site in 2020 and is now using it for parking and storage. The applicant has set out that he has known the site to be used as a yard by the previous owner for over 15 years.

The applicant has acknowledged that there is no planning permission in place for the use of the land for storage or parking of vehicles. However, given the passage of time, it is set out in the planning statement that the use of the site is now immune from enforcement action. Additionally, the planning statement notes that the operational development, being the provision of hardstanding area across the site, has been in place for more than 4 years and is thus considered to be immune from enforcement action.

The aerial photos submitted in support of the application illustrate a snap shot of the site in 1999, 2008, 2010, 2013, 2014 and 2017. Photographs of the site, taken in 2020 have also been submitted, which provide a more recent illustration of the application site.

PLANNING HISTORY

The relevant planning history relating to the site is listed below:

- P/21/0261 - Provision of dwelling (live/work) together with parking, landscaping and ecological enhancements.
Permission REFUSED on 16.11.2021
- P/18/0310 - Erection of 10 light industrial units (use class B1) with associated access road and parking areas.
Permission REFUSED on 23.11.2018 and subsequently dismissed at appeal (ref: APP/U6925/A/19/3229505) on 05.09.2019
- P/04/0022 - Change of use to architectural salvage yard.
Permission REFUSED on 25.05.2004

The relevant planning enforcement history relating to the site:

- PE/20/0009 - Complaint received on 22.01.2020 in relation to the parking of commercial vans and scrapping of vehicles, with skips on site.
Case was closed on 13.04.2021 following site visit indicating all skips and scrap metal had been removed from the land and no business appeared to be operating from the site.
- PE/18/0021 - Complaint received on 15.02.2018 in relation to the tipping of material down the embankment of the site.

Case was closed on 06.03.2018 as the matter was referred to Natural Resources Wales and Environmental Health.

PE/12/0225 - Complaint received on 27.11.2012 in relation to a quantity of soil and hardcore material being tipped on the site.

Case was closed on 07.01.2013 as there appeared to be no development or engineering works taking place.

PUBLICITY

No publicity exercise was undertaken.

CONSULTATION

No consultation exercise was undertaken.

POLICY CONTEXT

The determination of this application does not require consideration of the planning merits of the proposed use. Therefore, the policies in the Merthyr Tydfil Replacement Local Development Plan (LDP) 2016-2031 are not of direct relevance in so far as they go to the merits of the proposed use.

Welsh Office Circular 24/97: Enforcing Planning Control, Annex 8, deals with 'Lawfulness and the Lawful Development Certificate':

Paragraph 8.14 states that if the LPA are supplied with information satisfying them that the lawfulness, at the time of the application, of the use, operations or other matter described in the application, they shall issue a certificate to that effect and, in any other case, they shall refuse the application. The burden of proof is firmly on the applicant.

Paragraph 8.17 states that the lawful development certificate must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a 'use class' of the use class order. In all cases, the description must be more than simply a title or label, if future interpretational problems are to be avoided. The lawful development certificate should therefore state the characteristics of the matter so as to define it unambiguously. This is particularly important for uses which do not fall within any 'use class', such as a 'sui generis use'.

Paragraph 8.21 states that it is generally accepted that any 'sui generis' use which is not in a 'use class' in the Use Classes Order, such as a builder's yard or many haulage depots, can be 'materially' different in planning terms from another use which nevertheless falls within the same general description

PLANNING CONSIDERATIONS

In order to determine that the proposed use of the land within the application site is lawful and does not require planning permission or that it is immune from any enforcement action, it first needs to be demonstrated that either:

- A planning permission has previously been granted; or

- The site has been used, as described by the applicant, continuously for a period of 10 years and the time for taking enforcement action has expired.

Similarly, in respect of the operational development, being the construction of a hardstanding area, it needs to be demonstrated that either:

- A planning permission has previously been granted; or
- The hardstanding area was constructed at least 4 years ago and that the time for taking enforcement action has expired.

Lawful use of the land

A number of planning applications have previously been submitted to use the site as an architectural salvage yard, for the construction of industrial units and for a residential use. In each case, the applications were refused permission. There are no records of any other planning permissions having been granted to use of the land for storage or for the parking of vehicles. Therefore, the main consideration in regard to the lawful use of the land is whether the site has been used for storage purposes within Use Class B8 and for the parking of vehicles for a continuous period of at least 10 years.

It is the applicant's position that the 1999 and 2008 aerial photographs (within the planning statement) demonstrate a significant number of vehicles and storage units were located on the site, which is stated clearly falls within Use Class B8. The subsequent aerial photographs from 2010 to 2017 illustrate the site to be largely cleared. In response to this the applicant has referred to case law (*Panton & Farmer v Secretary of State for the Environment, Transport and the Regions*, 1999), which sets the need to consider whether an unauthorised use is lost by abandonment, formation of a new planning unit or a further material change of use. The applicant has stated that the site was not abandoned in any way, the planning unit has not changed significantly and no further uses have been introduced.

It can be reasonably observed from the aerial photograph taken in 1999 and from the letters provided by the neighbouring business, that the site was used at some point in association with the wider industrial estate. There is no evidence to illustrate how the site was used prior to 1999 and so for the purpose of this application, it is assumed that 1999 is the period of time when the claimed change of use occurred, albeit, there is no specific date provided.

Whilst the aerial photograph in 1999 illustrates some sort of activity on site, it is not clear from this alone what the nature of the use was or how it operated. It does not appear to have been used in connection with a specific business that may otherwise be able to further validate the nature of the use. The applicant's reference to the site being used for B8 storage is perhaps too vague in this instance. It is not clear what the primary use of the site was or what proportion of the site may have been used for storage or for the parking of vehicles. The supporting letters from the local businesses indicate that the site was used as a haulage yard, but little evidence has been provided to substantiate this, other than two aerial photographs taken in 1999 and 2008. In this regard, it is noted that the site circumstances also appears to change over time between 1999 and 2008 where the eastern part of the site becomes subsequently cleared. The aerial photographs from 2010 to 2017 further illustrate the site being cleared.

It could be reasonably surmised that some of the larger vehicles within the adjoining car park occasionally encroached into the application site and that occasionally other items may have been stored within the site and subsequently removed. Notwithstanding this, there is no evidence to demonstrate how the site was used in 2000 to 2007 to further demonstrate a continuous use of the land. The applicant largely relies on aerial photographs to illustrate a continuous use of the land, but these only provide a snap shot in time and it is evident that the site circumstances have not been consistent to demonstrate a continuous use for a period of at least 10 years.

It is acknowledged that photographs of the site have been provided, which were taken in December 2021, to further illustrate the use of the site. However, this simply reflects the recent activity in parts of the site and does not support a continuous use of the land, particularly as there appears to have been little to no activity on the site for a considerable period of time between 2010 to 2020. Nor do the photos necessarily reflect the past use of the site. Although the site appears to have been used in some capacity in 1999, this does not mean the use at that time continues in perpetuity when the site is subsequently cleared of any activity within the 10 year period, regardless of whether there was intent to continue using the land in the future for the same purpose.

In regards to the use of the site for B8 storage, this appears to be a broad term as there is little information provided to describe or define the nature of this use, which presents a degree of ambiguity. The planning statement refers to storage containers within the site between 1999 and 2008 as shown in two of the aerial images, but does not adequately elaborate on this to better understand the nature of the storage use. For example, what was stored on the site, which parts of the site were used for storage, was it the primary use, was it part of a business, how long were things stored on the site, did it form part of a wider industrial process etc. This information is important to clearly define the use in order to determine if it falls within B8 of the Use Classes Order. In situations where there is no clear primary use of a site or where it may incorporate a mixture of uses, it may be determined that the use is 'sui generis' and does not fall neatly into any specific land use category. In this regard, it is not known if the parking of vehicles on the land was the primary element to the use, which is deemed to fall within a 'sui generis' use.

In the planning statement reference is made to case law, as noted above, that considers whether a use has been abandoned. In order for this consideration to apply, it first needs to be demonstrated that the storage use and the parking of vehicle has taken place for a period of at least 10 years across the entire site. The aerial photograph taken in 1999 is the only substantive evidence that illustrates some form of activity across the entire site. There is no certainty as to whether this unauthorised use of the land first took place in 1999 and there is little evidence to show that such activities continued across the entire site for a continuous period of at least 10 years. Indeed, between 2012 and 2022 (being the 10 year period prior to the submission of this application), there is insufficient evidence to show that the site has been used for storage and the parking vehicles continuously during this time, other than the photographs of the site taken in 2021.

For the above reasons and on the balance of probability, there is insufficient evidence to demonstrate that the continuous use of the site for storage within Use Class B8 and for the parking of vehicles has taken place for a period of at least 10 years without enforcement action being pursued.

Operational development

The applicant has acknowledged in the planning statement that the laying of hardcore material on land falls within the definition of operational development as set out under Section 55 of the Town & Country Planning Act 1990. It is the applicant's position that a hardcore area across the site is apparent in the 1999 aerial photograph. The applicant also notes that this hardcore area was later extended to the east and south as shown on the 2008 aerial photograph in materials to match existing. Given that a period of 9 years has subsequently passed between the two images, the applicant is of the view that the operational development has been in place for more than 4 years and that those works are now immune from enforcement action.

Whilst it is reasonably evident that the site comprises an area of disturbed ground within the site with little vegetation at the centre, in contrast to the woodland areas along its boundaries, there is insufficient evidence to demonstrate that the plateau comprised of a hardcore surface in 1999 or in 2008. The aerial photographs provided on google earth in 2013, 2016 and 2018 clearly illustrate vegetation present in the western, eastern and southern parts of the site. In 2020 and 2021 the aerial photographs on google earth illustrate a visible change in the characteristics of the site, with much of the vegetation having been cleared, which may suggest that some operational development took place at this time. Notwithstanding this is, it is not evident if any hardcore material was introduced from these images alone.

It was noted in an earlier site visit, undertaken in July 2021 as part of application P/21/0261 that some hardcore material was evident in various parts of the site, but this did not cover the whole area, with compacted soil and grassy patches still visible in places. However, in the ecological appraisal (dated August 2021) of the site that was submitted in support of the application P/21/0261, the report notes the characteristics of the site to comprise bare ground with dense scrub along the boundaries. Within this report, the photographs of the site clearly shows that works was being carried on the site, with loose soil material evident on the ground and piles of what may be hardcore material to be laid.

For the above reasons and on the balance of probability, there is insufficient evidence to demonstrate that the plateau within the site comprised of a hardcore surface that dates back to 1999. Whilst there are recent photographs of the site that illustrate some hardcore material in various parts of the site, there remain areas that were notably compacted soil. Furthermore, it is evident that works have been undertaken on site in 2021 to clear the vegetation and to provide a new surface to the plateau area. Therefore, the applicant has failed to demonstrate any hardcore material within the site has been in place for more than 4 years without enforcement action being pursued.

CONCLUSIONS

For the above reasons, insufficient evidence has been provided, to demonstrate the use of the site for storage (within Use Class B8) and for the parking of vehicles for a period of 10 years. Insufficient evidence has also been provided to demonstrate the hardstanding area comprising hardcore material was created within the site and has been in place for at least 4 years. Therefore, planning permission is required and a Lawful Development Certificate cannot be issued. Accordingly, the following recommendation is made:

RECOMMENDATION: the certificate of lawfulness **BE REFUSED**

1. Insufficient evidence has been provided to demonstrate the continuous use of the site for storage purposes within Use Class B8 and for the parking of vehicles for a period of at least 10 years. Planning permission is therefore required and a Lawful Development Certificate cannot be issued.

2. Insufficient evidence has been provided to demonstrate that a hardstanding area comprising hardcore material was created within the site and has been in place for at least 4 years. Planning permission is therefore required and a Lawful Development Certificate cannot be issued.

RECOMMENDATION ENDORSED



Head of Town Planning

DATE:

11/5/22