

Item 4g **12/00173/FUL**

Case Officer **Caron Taylor**

Ward **Eccleston And Mawdesley**

Proposal **Application to retain use of land for storage of building materials, parking of vehicles and associated purposes and provision of landscaping to site**

Location **Towngate Works Dark Lane Mawdesley Lancashire**

Applicant **Thomas Mawdsley Building Contractor**

Consultation expiry: **28 March 2012**

Application expiry: **16 April 2012**

Proposal

1. This report relates to three applications for Certificates of Lawfulness for existing use or development and three applications for planning permission at Towngate Works, Mawdesley.
2. Members will recall that a report was brought before Development Control Committee on 3rd November 2011 in relation to three breaches of planning control at the site and authority given to issue Enforcement Notices in respect of them. These related to:
 - i. Without planning permission the material change of use of the land from agriculture to use of land for storage purposes and as a builders yard (Breach A);
 - ii. Without planning permission the erection of three industrial/storage units (Breach B);
 - iii. Without planning permission the siting of four industrial/storage containers on the land (Breach C).
3. The Council has now received a number of applications in relation to the site which cover the three breaches listed above.
4. The following applications for Certificates of Lawfulness have been received:
 - 12/00177/CLEUD: Application for a Certificate of Lawfulness for an existing development in respect of siting of a container unit;
 - 12/00178/CLEUD: Application for a Certificate of Lawfulness for an existing development in respect of storage of building materials, parking and related activities, plus related storage bunkers and buildings;
 - 12/00179/CLEUD: Application for a Certificate of Lawfulness for an existing development in respect of 3 storage buildings
5. The following applications for planning permission have been received:
 - 12/00173/FUL: Application to retain use of land for storage of building materials, parking of vehicles and associated purposes and provision of landscaping to site;
 - 12/00174/FUL: Retention of use of land for open storage, parking and provision of landscaping;
 - 12/00176/FUL: Retain 3 storage containers

Recommendation

6. 12/00177/CLEUD: Application for a Certificate of Lawfulness for an existing development in respect of siting of a container unit. **Recommend Certificate is Granted.**
7. 12/00178/CLEUD: Application for a Certificate of Lawfulness for an existing development in respect of storage of building materials, parking and related activities, plus related storage bunkers and buildings. **Recommend Certificate is Granted.**
8. 12/00179/CLEUD: Application for a Certificate of Lawfulness for an existing development in respect of 3 storage buildings. **Recommend Certificate is Granted.**
9. 12/00173/FUL: Application to retain use of land for storage of building materials, parking of vehicles and associated purposes and provision of landscaping to site. **Recommend that planning permission be refused.**
10. 12/00174/FUL: Retention of use of land for open storage, parking and provision of landscaping. **Recommend that planning permission be granted subject to conditions.**
11. 12/00176/FUL: Retain 3 storage containers. **Recommend that planning permission be granted subject to conditions.**

Certificates of Lawfulness:

12. A certificate of lawfulness is a statutory document confirming that the use, operation or activity named in it is lawful for planning control purposes.
13. Circular 10/97 provides the Council with advice on determining certificate applications. Members should note that the burden of proof in a certificate application is on the applicant and the test for the Council is "the balance of probability". If the Council have no evidence of their own, or 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 planning merits of the operation, use or activity, are irrelevant to the consideration of the purely legal issues which are involved in determining certificate applications.
14. Taking the three certificate applications in turn:

12/00177/CLEUD: Application for a Certificate of Lawfulness for an existing development in respect of siting of a container unit.

15. The application is accompanied by five statutory declarations from John Mawdsley the owner, partner John Andrew Thomas Mawdsley, Andrew Mason who has occupied premises at the site, Lloyd Farley who owns a business that occupies premises at the site and Simon Littler who has also occupied premises at the site.
16. From the information submitted it can be established that the container has been on the site since January 2004 until the present time. The Council has no evidence to contradict these statements and therefore it is recommended that the certificate be granted.

12/00178/CLEUD: Application for a Certificate of Lawfulness for an existing development in respect of storage of building materials, parking and related activities, plus related storage bunkers and buildings

17. This certificate relates to the eastern part of a storage yard known by the applicants as 'The Compound'. The other part of The Compound is the subject of a planning application considered later in this report (12/00173/FUL).
18. The certificate application is accompanied by four statutory declarations from John Mawdsley, John Andrew Thomas Mawdsley, Rodney Bell, owners of RB Motorsport who have been at Town gate works since November 2000 and Anthony Dixon who lived at Haydene, Dark Lane which backs onto the works and who parked his van in The Compound.

19. These establish that The Compound was created in March 2001.
20. The Council have aerial photographs which shown that the area was not in existence in 2000 but was there by 2005, there is therefore no evidence to contradict these statements and therefore it is recommended that the certificate be granted.

12/00179/CLEUD: Application for a Certificate of Lawfulness for an existing development in respect of 3 storage buildings

21. This certificate application relates to 3 storage buildings.
22. Statutory declarations relating to them from John Mawdsley, John Andrew Thomas Mawdsley, Alan Cornwell who built the units and Philip Rodgers of a company that has used the units as additional storage since they were completed in April 2007.
23. All the statutory declarations establish that the units have been there since April 2007. The aerial photographs shown that they not in existence in 2005 but were there by 2009, there is therefore no evidence to contradict these statements and therefore it is recommended that the certificate be granted.

Planning Applications:

24. The Parish Council have objected to all three applications. They state they feel the greenbelt is being encroached by stealth due to the time limit. There should be conditions to protect the greenbelt:-
 - Boundary screening with landscaped mounds;
 - A design for the screening to be approved by planning;
 - No permanent structures to be allowed on the site;
 - The conifers on the South boundary to be maintained which are currently growing out of control.
25. One letter has been received from a neighbour on application 12/00176/FUL, see below.

12/00173/FUL: Application to retain use of land for storage of building materials, parking of vehicles and associated purposes and provision of landscaping to site

26. The application relates to an area of land approximately 0.114ha which forms the west part of The Compound (the east part is subject to one of the Certificate applications detailed above which has been recommended to be granted as it has existing for more than 10 years). The west part of the compound has not been in existence for 10 years and is not therefore immune from enforcement action.
27. To the south of this area of the site are business/industrial units, to the west and north are fields.
28. The site has been laid with hardstanding, which is an engineering operation. Engineering operations can be appropriate development providing that they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. Although the hard standing on its own is unlikely to impinge upon openness, the works were a means to an end, not an end in themselves. The hardstanding is used for storage consequence of what the hard standing has facilitated, the openness of the Green Belt has not been preserved. In addition the works encroach into the countryside which is considered contrary to the third of the 5 purposes of including land in Green Belts set out in paragraph 80. The development is therefore considered inappropriate development.
29. Inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances.

Applicant's Case

30. The applicant acknowledges the development is inappropriate development and has put forward a case of very special circumstances in support of the application.

31. The applicant states that Towngate Works is a long established employment use in the Green Belt and Government policy seeks to promote sustainable economic and other development in rural and other areas. The Compound area was created and later extended to provide a secure and safe area for the storage of building materials, the parking of vehicles and associated purposes, all to serve the Applicant's business, which is a significant local business in Mawdsley and the wider Chorley area. Towngate works site is a busy and successful rural employment centre accommodating 30 to 40 mainly small businesses. Due to the nature of the site and the businesses involved, the site is very active and fragmented and accommodates significant areas of parking around the individual units. Landscaping on the western boundary is not particularly effective and therefore the site is quite open to views across the fields from Hall Lane to the North West and from the residential area further to the west. Against the background it is suggested that there are, indeed, very special circumstances which outweigh any harm to the Green Belt.
32. The applicant argues there are two very special circumstances which, individually and collectively, outweigh the harm to the Green Belt by reason of inappropriateness. These are:
- Economic Viability
 - Lack of alternative sites

Economic Viability

33. Aerial photographs of the site and the topographic survey drawing of it, both clearly show that the Towngate Works site is fully developed and has no scope for additional open storage and parking, should it become necessary to relocate the open storage and parking which is presently located on the application site. It was due to the congestion of the main site that the Applicants relocated their open storage and parking functions in 2001 (for the eastern part of the Compound) and 2003 (for the western part of the Compound – the current application site).
34. As the topographic survey drawing makes clear, the eastern part of the Compound cannot accommodate the storage functions of the western part as there would be insufficient space to allow delivery vehicles to bring building materials onto the site and to store them in the open storage containers. The remainder of the Towngate Works site does not contain any areas of land large enough to accommodate any further open storage and, in any event, it would not be desirable to locate such functions closer to the dwellings on Dark Lane. Consequently, if planning permission is not granted to retain the storage and parking use of the application site, the Applicants would suffer significant damage to their business by reason of having to relocate this function elsewhere. The present situation, which has the Applicant's office, internal workshops and external storage all on the Towngate Works site, close to the homes of the business partners, is ideal from a business point of view. Any changes to this, even if a suitable alternative could be found, would involve additional expense at a time of great economic uncertainty and would inevitably be much less satisfactory.
35. The consequences of the loss of the application site could therefore significantly endanger the economic livelihood of the Applicant's business, which could, in turn, lead to the loss of jobs in this rural area. The very clear policy advice provided by PPS 4 is that rural businesses should be supported as far as possible. This application, it is suggested, is one which the Council should support (subject to the landscaping conditions referred to below) as it would ensure the continued financial health of a long-standing local business which, directly and indirectly, provides many jobs for the local economy.

Lack of Alternative Sites

36. Even if it were possible to separate the open storage and parking functions of the application site from the other part of the Compound, there is simply no alternative site where their uses could be relocated. As noted above, the remainder of the Compound and the Towngate Works does not have any spare capacity. In any event, the very reason that the storage and parking uses were relocated to the Compound in the first place was to relieve pressure from the main site and to reduce any conflicts with other occupants of the site.

37. Beyond the Towngate Works site, there are no non-Green Belt sites with suitable access or availability to which the relevant uses could be relocated. Beyond Mawdesley, there may be non-Green Belt sites which could accommodate the relevant uses but it would make no business sense to attempt to split the activities in this way.
38. Although not a very special circumstance in itself, a third factor which should nevertheless be given some weight in the decision-making process is the opportunity which this application gives to provide a good quality landscaped and bunded area at the western edge of the application site to screen and mitigate the visual impact of the application site and the wider Towngate Works site beyond. It is envisaged that this matter could be adequately dealt with by a planning condition requiring the submission of a landscaping scheme within, say, two months of the approval of the application and the implementation of the scheme in the next planting season. At this stage, no landscaping scheme has been prepared, but it is considered that a bunded area, around 5-7m deep on the western edge of the site, with a planting schedule showing a suitable variety of native species would be appropriate.
39. Finally, the Council in its enforcement report expressed concern regarding the incursion of the application site into the open countryside, it is suggested that the very special circumstances relating to the Green Belt policy and the proposed landscaping scheme would equally address the open countryside issue. The application site represents a relatively small incursion into the open countryside and is boarded by an existing part of the Towngate Works site to the south in any event. Consequently, the visual impact of the incursion, even without the proposed landscaping scheme, is mainly limited to views from the north and north east. Given the strong economic/business arguments in favour of the retention of the site, it is respectfully suggested that minimal impact of the incursion into the open countryside is one which carries little weight in the overall decision-making process.

Assessment

40. The NPPF states that when considering any planning application, Councils should ensure that substantial weight is given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
41. Towngate Works is an established site in the Green Belt but the current application must be considered in the context of the history of the site. The Compound to the west is not lawful due to the passage of time rather than through the grant of planning permission. In addition although immediately to the south of the site is part of the Towngate Works site, part of this area is the subject to a separate application for planning permission. There are also two other applications for Certificates of Lawfulness for buildings that have been put on the wider site without the benefit of planning permission. There are therefore a large number of buildings and operations that have been undertaken over the years without the benefit of planning permission but which have become lawful over time. The Council now find themselves in a position where the applicant is arguing a case of very special circumstances of impact on the business, when they failed to gain the correct permissions in the first place. For the Council to keep allowing incremental extensions to the site over time, even though small in its own right will cause harm to the Green Belt, which it is not considered is overcome by the circumstances put forward by the applicant. It is noted that the applicant is prepared to undertake landscaping including a bunded area at the western edge of the application site to screen and mitigate the visual impact of the application site and the wider Towngate Works site beyond. However, it is not considered that views from Hall Lane are so detrimental of the site that this would weight significantly in favour of allowing the permission if the application were finely balanced.
42. The application is therefore recommended for refusal.

12/00174/FUL: Retention of use of land for open storage, parking and provision of landscaping

43. The application site is an existing area approximately 680m² in the southwest corner of the site which does not benefit from planning permission. To the south and west are open fields separated by hedgerows.

44. In 1995 retrospective permission was granted for the erection of three workshop units and one storage unit (ref: 95/00571/FUL). There were a number of condition attached to this permission including:
- Condition 1 – No materials or equipment shall be stored on the site other than inside the building;
 - Condition 2 – No industrial, display or storage activities shall take place on the site other than inside a building;
 - Condition 7 - All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the date of this notice, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
45. Condition 7 secured an area of landscaping on the area that is now the subject of this application.
46. In 1996 an application (ref: 96/00883/FUL) was submitted to extend two of the units (know as E and F). It was noted at the time of the site visit for this application that the landscaping required by condition 7 of the 1995 permission had not been carried out and this later application sought an amendment to it to allow adequate manoeuvring space.
47. In 1997 the Council served a Breach of Condition Notice due to failure to comply with conditions 1 and 7 of the 1995 permission. The conditions were complied with and no further action was taken.
48. The area has however been since used for open storage and parking, which has not yet become lawful over time and is therefore the subject of this application.
49. As is normal with landscaping conditions the one on the 1995 permission did not require the retention of the approved landscaping scheme beyond a five year period. In addition, the permission granted in 1995 did not remove any permitted development rights to provide an area of hardstanding for the adjacent business units and to use such an area for related business purposes. The later permission ref: 96/00883/FUL for the extension to the buildings did not remove permitted development rights either. Industrial and warehouses have permitted development rights to provide a hard surface within their curtilage. The area the subject of the application is considered to be within the curtilage of the buildings. Hardstanding could therefore be put down without the need for planning permission.
50. Condition 1 on the 1995 permission stated that no materials or equipment shall be stored on the site other than inside the building and this could still be enforced on the site. However, this was before the hardstanding was laid under permitted development rights.

Applicant's Case

51. The approach which has been pursued, in this application, is to propose a revised landscaping area in the south west corner of the application site and along the western boundary of the Towngate Works site up to the area of land known as The Compound which is the subject of a planning application to retain its open storage use. As a part of the proposals for that area of land, a bunded landscaped area is proposed.
52. The Government are in favour of encouraging sustainable economic development and consequent growth of the economy. The proposed retention of a valuable part of the Towngate Works site would assist in the achievement of this policy, albeit on a local scale.
53. In section five of this statement it has been demonstrated that the local planning authority is constrained in its ability to control the use of the application site due to its complex planning history. To regain a significant degree of control over the use of this land and to provide more effective landscaping of the overall works site, this application proposes the retention of much of the open storage uses and parking, subject to the submission of an appropriate

landscaping scheme and a condition to restrict the height of any stored materials. There is, therefore, it is suggested, a compelling case for approving this application, subject to suitable conditions. It is therefore hoped that the application will be approved and the benefits which the proposals will generate can be delivered.

Assessment

54. The same issue as outlined in the previous application regarding Green Belt relates to this application. The proposal is inappropriate development in the Green Belt and permission should not be granted unless there are very special circumstances sufficient to outweigh that harm.
55. The situation is somewhat different to the application above recommended for refusal in the hardstanding can and has been laid without planning permission. Although the Council could enforce the condition requiring no outside storage on the 1995 permission, the area it could not require the hardstanding to be removed. Taking this into account it is considered that the most appropriate way forward for this part of the site is to permit the application but apply conditions allowing the Council to secure landscaping to the boundary and control the height of any outside storage.
56. The application is therefore recommended for approval subject to conditions.

1 2/00176/FUL: Retain 3 storage containers

57. The three storage containers are already in existence and are located in the north-east corner of the Towngate Works site, immediately to the north of Unit T5 behind 16 Dark Lane. The containers are painted green to the front and are in total 7.5m wide and 5.5m deep and 2.9m high.

Representations

58. The owner of 16 Dark Lane confirms that two of the containers were placed on the land in September 2008 and the third added later. They state that if the siting of the storage containers does not render the land concerned more vulnerable to further development and hard surfacing they would not oppose it, but if it does, they would oppose it. If the containers are to be retained they would ask that the green paint applied to the front would also be applied to the back to reduce the eyesore they have presented for over 3years.

Applicant's Case

59. The three storage units which are the subject of this application are used by businesses which rent units on the Towngate Works site. The use of the storage units allows the business units to be more effective by allowing dead space for storage to be separated from active manufacturing or production space. The small storage units therefore represent an important part of the overall offer on the works site.
60. The Interim Enforcement Officer's report to committee states that, at the time of his site visit in August 2011, there were 'in excess of 20 units that were either vacant or to let.' However, as of December 2011, there were only five vacant units on the site. Three of the vacant units are at the southern end of the site, approximately 120m, 130m and 150m from the storage containers in question. The other two units are closer to the containers but are larger business units which attract higher rentals and are not suitable for short or long term ancillary storage use. Consequently, there are no suitable alternative small storage units available on the works site which could be used in preference to the ones in question. It is therefore considered that the very special circumstances in this case are the lack of suitable alternative storage facilities on the works site and the need to retain the container units to provide small-scale storage facilities to serve the needs of the businesses on the site. In any event, it is suggested that any harm caused by loss of openness in the Green Belt is not, in this case, significant due to the location of the units within an established business park which already has an impact on such openness. Any additional impact on the openness of the Green Belt in this area caused by the retention of the storage units would, it is suggested, be very difficult to identify.

61. Furthermore, it is suggested that the retention of the storage containers would not cause any other form of harm to either the Green Belt or other interests of acknowledged importance. On the contrary, the only harm which would occur would be the detrimental impact on the businesses which use the containers if they were required to be removed from the site. Such an impact would be directly in conflict with the policies of the existing and emerging local and national planning policies. As noted above, the local planning authority's own evidence base (Employment Land Review) identifies the Towngate Works site as one which has "potential opportunities for expansion/intensification /infilling" and it would therefore be contrary to this assessment to require the removal of valuable ancillary storage facilities.

Assessment

62. The same issue as outlined in the previous applications regarding Green Belt relates to this application. The proposal is inappropriate development in the Green Belt and permission should not be granted unless there are very special circumstances sufficient to outweigh that harm.
63. The NPPF states that planning policies should support economic growth in rural area in order to create jobs and prosperity by taking a positive approach to sustainable new development. It states plans should support the sustainable growth and expansion of all types of businesses and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings. Although the containers are not well designed, they provide a simple and secure method of storage for businesses on the site.
64. Although the NPPF states that planning should support economic growth in rural areas this must still be read in the context of Green Belt policy set out above. However, the containers are within the existing confines of the site between existing buildings and a residential property. Therefore although strictly development in the Green Belt would reduce its openness it is considered that as it is between existing buildings this impact is minimal. In addition the NPPF supports new buildings in rural areas to support sustainable growth and expansion of all types of businesses and enterprise. It is considered that a new building (rather than containers) could have more impact on the openness of the Green Belt as well as the neighbour to the east.
65. For this reason the application is recommended for approval subject to a condition requiring it to be painted green to the sides and rear to reduce the impact on the neighbouring property.
66. The application is therefore recommended for approval subject to conditions.

Overall Conclusion

67. 12/00177/CLEUD: Application for a Certificate of Lawfulness for an existing development in respect of siting of a container unit. **Recommend Certificate is Granted.**
68. 12/00178/CLEUD: Application for a Certificate of Lawfulness for an existing development in respect of storage of building materials, parking and related activities, plus related storage bunkers and buildings. **Recommend Certificate is Granted.**
69. 12/00179/CLEUD: Application for a Certificate of Lawfulness for an existing development in respect of 3 storage buildings. **Recommend Certificate is Granted.**
70. 12/00173/FUL: Application to retain use of land for storage of building materials, parking of vehicles and associated purposes and provision of landscaping to site. **Recommend that planning permission be refused.**
71. 12/00174/FUL: Retention of use of land for open storage, parking and provision of landscaping. **Recommend that planning permission be granted subject to conditions.**
72. 12/00176/FUL: Retain 3 storage containers. **Recommend that planning permission be granted subject to conditions.**

Planning Policies

National Planning Policies:

NPPF

Adopted Chorley Borough Local Plan Review

Policies:DC1, EM5

Most Recent Planning History

Ref: 95/00571/FUL **Decision:** Permitted **Decision Date:** 9 November 1995

Description: Retrospective Application for the erection of 3 workshop units and 1 storage unit.

Ref: 96/00137/FUL **Decision:** Refused **Decision Date:** 28 August 1996

Description: Provision of first floor over existing workshop and office.

Ref: 96/00883/FUL **Decision:** Permitted **Decision Date:** 11 March 1998

Description: Single-storey extensions to units E and F.

Ref: 06/00333/FUL **Decision:** Refused – APPEAL ALLOWED **Decision Date:** 26 April 2006

Description: Removal of condition No 8 of planning approval Ref 05/00015/FUL relating to obscure glazing in the front elevation first floor windows

Application: 12/00173/FUL

Recommendation : Refuse Full Planning Permission

Reasons

1. **The development is inappropriate development in the Green Belt. It is not considered that the arguments put forward in favour of the application are very special circumstances sufficient to outweigh the harm to the Green Belt. The proposal is therefore considered Policy DC1 of the Adopted Chorley Borough Local Plan Review and the NPPF.**