

Item 5 **12/00245/CLEUD**

Case Officer **Mr Peter Willacy**

Ward **Coppull**

Proposal **Application for certificate of lawfulness in respect of mixed use of agriculture and milk processing**

Location **Yew Tree House Farm 53 Coppull Hall Lane Coppull Chorley Lancashire**

Applicant **J & B Woodcock & Sons**

Consultation expiry: 23 April 2012

Application expiry: 8 May 2012

Proposal

1. The application site relates to a farm complex and associated agricultural land, and seeks confirmation that the land and buildings identified in the application have been in use for more than ten years for the purposes of agriculture and milk processing.

Government Circular 10/97 is clear that the test when considering such an application is whether, on the balance of probability, the evidence submitted supports the claim that the use commenced more than 10 years before the application was made and has continued over that period.

Members should be aware that the application is being reported to committee for their information because of previous enforcement action taken in respect of the site and there has been significant public interest in the application. However members are advised that the only matters for consideration are matters of evidence rather than the planning merits of the case and these must relate to the lawfulness of the use during the ten years preceding the application.

Recommendation

2. It is recommended that a certificate is granted.

Planning History

3. In 2009 the Council received complaints concerning the volume of heavy goods traffic accessing the farm. Following an investigation it was found that the site was being used for agriculture and the processing, bottling and distribution of milk. Historically milk has been produced from a milking herd on site with milk also being imported for processing and that fact is not contested by anyone who has commented on the application. Breaches of planning control were identified and four Enforcement Notices were issued in September 2010 in respect of the following breaches and appeals were lodged against the notices: -

- EN 631- Without planning permission the erection of a building for the processing, packaging and distribution of milk. The requirements of the notice were to demolish the building and remove the resulting from its demolition from the land.
- EN 632- Without planning permission the change of use of an agricultural building to the processing, packaging and distribution of milk. The requirements of the notice were to cease the use of the building for the processing, packaging and distribution of milk.
- EN 633- Without planning permission the formation of an area of hardstanding for the parking and manoeuvring of vehicles. The requirements of the notice were to break up the hardstanding and remove the material used to form the hardstanding from the land.
- EN 634- Without planning permission the erection of silos for the storage of milk. The requirements of the notice were to dismantle the silos and remove them from the land.

4. The steps required for compliance with the Enforcement Notices have been carried out and were completed by the applicant in October 2012 and the requirements of the notices are now discharged.
5. No enforcement action was taken against the use of the site for milk processing as it appeared that the use of the site for this purpose had been taking place for a number of years and was therefore lawful.
6. Following the lodging of the appeals against the enforcement notices, the applicant took the decision that the site could no longer sustain the level of activity brought about as result of the unauthorised development. The applicant then purchased a new site in Skelmersdale in order to relocate to and the new premises came into operation on the 3 October 2012 which has enabled the applicant to comply with the enforcement notices. (having withdrawn the appeals).

Representations

7. A number of letters have been received making comments in relation to the application which I summarise below:
 - Nature of the business at the site has changed and has intensified.
 - Levels of milk production referred to in the application are not based on the figures from 10 years ago based on observations of traffic movements to the site.
 - There is noise from the site day and night which operates 24 hours.
 - There is road congestion caused by milk tankers and lorries and it is unsafe for pedestrians who use the narrow country lanes which lead to the site.
 - Damage has been caused by HGVs to road surfaces in the area.
8. Some of the comments made relate to the planning merits of the development and raise concerns about the disturbance, noise, vibration and damage caused by the movement of heavy goods vehicles to and from the site on the living conditions of local residents. Concerns are also raised that work is carried out at the site all hours of the day and night throughout the week which has increased noise levels from the site which impacts on the amenities of nearby residents.
9. Some of the comments received confirm that milk processing has taken place at the farm, however they consider that the scale of the operation has now moved away from processing of milk from their own herd and some imported milk to one of industrial proportions with the volumes of milk now being processed far in excess of volumes previously processed at the farm. These observations are based on the numbers of vehicles which have been seen to increase over the years travelling to and from the site and as a result of the unauthorised development which had taken place at the farm.
10. The comments were made last year at a time when the premises had not yet opened at Skelmersdale, nor had the enforcement notices been complied with. Since then circumstances have changed. The premises at Skelmersdale came into operation on 3 October 2012 with the bulk of milk processing now transferred there and the enforcement notices have now been complied with. This has had the effect of reducing the amount of milk which is now processed at the site.
11. Many of those who have commented are concerned about the volume of milk processed and the hours of operation and associated noise, these matters will be addressed later in the assessment section of this report.
12. As explained earlier in the report, the planning merits of the application do not fall to be considered therefore many of the comments received which raise planning concerns have no bearing on the application and cannot be taken into account.
13. Many of the comments received confirm that the processing of milk has taken place at the site for many years and certainly in excess of the time required for the use to become lawful.

Applicants Case

14. The application has been submitted with a supporting statement from the applicants including:
 - A statutory statement from one of the partners
 - Letters from engineers who have installed/maintained equipment

- Letters from milkmen who purchased milk for their rounds
- Environmental health inspection certificates
- Letter from milk bottle supplier
- Letter from supplier of hygienic cleaning products
- Letters from suppliers of raw milk
- Letters from customers

to substantiate a mixed use of agriculture and processing of milk throughout the 10 years preceding the application.

Assessment

15. The applicant has submitted evidence to support the claim that the use commenced more than 10 years ago and has continued until the present day. The application specifies a weekly milk processing volume of 495,000 litres per week and as currently the hours of operation are unrestricted.
16. The issue to be determined is whether on the balance of probability the evidence put forward is sufficient to enable a certificate of lawfulness to be issued.
17. What is clear from the information submitted is that the farm has produced milk from their own cows over the years and there has been importation of milk from elsewhere. The production and processing of milk whether from cows on the site or imported is in planning terms an industrial process. The milking of cows has now ceased however the applicant has indicated an intention to start up a new milking herd and continues to farm other land.
18. The bulk of milk production has now been transferred to a new site at Skelmersdale. However the applicant has maintained and it has been accepted by the Council and highlighted in response to consultation letters that there has always been processing of milk at the site. The outstanding issue to resolve is 'what is the extent of processing which can be lawfully undertaken?' and the Certificate of Lawful Use seeks to establish that level.
19. In recent years the erection of a new building without planning permission; the use of agricultural buildings for non-agricultural purposes; the formation of hardstanding to enable vehicle parking; and the erection of silos has led to an opportunity to increase the processing of milk on the site. As a result of these changes and the increase in storage capacity traffic movements increased leading to an increase in noise generated, damage to the highway and visual harm to the Green Belt. These changes to the site brought about a change in the character of the use and were a different scale of operation rather than simply increasing the level of production using existing facilities which on its own would not constitute a material change in use.
20. In dealing with such applications it is important that the Council if minded to grant a certificate of lawfulness clearly defines what is permitted and sets out the extent of the use considered to be lawful. This is important as there should be no misunderstandings as to what has been permitted and to provide a benchmark against which the Council can consider any further changes which may occur in the future in determining whether planning permission is required and whether there has been any breach of planning control.
21. It is considered appropriate to ensure that any other enforcement issues relating to the site (other than those addressed via the enforcement notices issued in 2010) are resolved before reaching a decision on this application. This includes the removal of old machinery and equipment which have littered the site in order to ensure clarity upon what is permitted and where on the site. An officer site visit will take place before Committee to ensure that this matter has been addressed, and the matter will be reported on the addendum. The applicant has been advised that if all equipment has not been removed from the site as requested, then the application will be withdrawn from the agenda.
22. A plan and schedule has now been produced which defines the use of all buildings on site based on the evidence submitted by the applicant, from site inspections by officers and investigation of the planning site history. Now that the enforcement notices have been complied with, the site plan has been amended to exclude those areas subject to enforcement action. A copy of the plan and schedule is appended to this report.

23. The plan shows the use of each building on the site which allows the extent of the use to be defined. The floor area which had previously been used and had been created without planning permission in connection with the processing of milk had a total area of 2,210 square metres. The amount of floor space which may now be used in connection with milk processing is 712 square metres.
24. Notwithstanding earlier comments in respect of the levels of production, the applicant has given an undertaking to limit the volume of milk processing to 495,000 litres per week which is a significant reduction from the 1,500,000 litres which had been previously processed. The reduction also means that the previously unrestricted 24 hour operation can now be reduced and the applicant is willing to give an undertaking that no operations will be carried out before 4.00am or after 10.00am.
25. At the time this report was drafted the applicant had been requested to consider reducing those hours further and an update will be given at the meeting.
26. The voluntary undertakings given by the applicant to limit the processing of milk to 495,000 litres per week and hours of operation are normally outside the control of a lawful use application, however the applicant is willing to agree to a unilateral undertaking which would limit the level of milk processing and hours of operation which would be a legally enforceable document.

Overall Conclusion

27. Based on the evidence submitted not only by the applicant, it is considered that on the balance of probability that the site has been in a mixed use of agriculture and milk processing for more than 10 ten years and on that basis a Certificate can be granted in accordance with the plan and schedule received from the applicant on the 28 May 2013.

Recommendation: Grant Certificate of Lawfulness