

APPLICATION REPORT – 21/00545/CLEUD

Validation Date: 3 May 2021

Ward: Chorley South East And Heath Charnock

Type of Application: Certificate of Lawfulness (Existing Use)

Proposal: Application for a certificate of lawful development seeking confirmation that unit(s) which comply with the requirements of the Caravan Sites and Control of Development Act 1960, 1968 and 2006 amendments in terms of their design, mobility, size and construction are permitted on the land for recreational purposes

Location: Land Adjacent To Wigan Lodge Wigan Lane Chorley

Case Officer: Amy Aspinall

Applicant: Mr Dave Balbi, Interlec Systems Ltd

Agent: N/A

Consultation expiry: N/A

Decision due by: 28 June 2021

RECOMMENDATION

1. It is recommended that the application for a certificate of lawfulness for an existing use is refused for the following reason:
2. The information contained within the application is not sufficiently precise and unambiguous. Chorley Council as the Local Planning Authority is not satisfied that, on the balance of probabilities, a material change of use of the land (as shown on the submitted Location Plan) has not occurred. The use as described is not, therefore, proven to be lawful within the meaning of Section 191 of the Town and County Planning Act 1990.

SITE DESCRIPTION

3. The application site is located within the Green Belt as defined by the Chorley Local Plan Policies Map. It comprises an area of land that was historically associated with the adjacent Wigan Lodge, a grade II listed building, but has been segregated to form an independent parcel of land. The trees within the site are protected under Chorley Borough Council Tree Preservation Order 5 which is a woodland grouping.
4. A certificate of lawful use has been granted previously to confirm, on the balance of probabilities, that the land been used for recreational purposes.

DESCRIPTION OF PROPOSED DEVELOPMENT

5. The application has been submitted under section 191 of the of the Town and Country Planning Act 1990 which seeks "confirmation that unit(s) which comply with the requirements of the Caravan Sites and Control of Development Act 1960, 1968 and 2006 amendments in terms of their design, mobility, size and construction are permitted on the land for recreational purposes".

6. The wording is taken from the application form at the request of the applicant.
7. The application for the certificate relates to the area as defined by the red edge and shown on the submitted Location Plan.

PLANNING CONSIDERATIONS

8. The application is made pursuant to section 191 of the Town and Country Planning Act 1990 in respect of an existing use and the application is determined on this basis.
9. Section 191 (1) states:
If any person wishes to ascertain whether—
 - (a) any existing use of buildings or other land is lawful;
 - (b) any operations which have been carried out in, on, over or under land are lawful; or
 - (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter
10. Section 191 (2)
Provides that for the purposes of this Act uses and operations are lawful at any time if—
 - (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
 - (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force
11. For the purposes of a certificate, lawfulness is to be decided at the time of the application.
12. Article 39 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 states that:
 - (1) An application for a certificate under section 191(1) or 192(1) of the 1990 Act (certificates of lawfulness of existing or proposed use or development)(1) must be made on a form published by the Secretary of State (or on a form substantially to the same effect) and must, in addition to specifying the land and describing the use, operations or other matter in question in accordance with those sections, include the particulars specified or referred to in the form.
 - (2) An application to which paragraph (1) applies must be accompanied by—
 - (a) a plan identifying the land to which the application relates drawn to an identified scale and showing the direction of North;
 - (b) such evidence verifying the information included in the application as the applicant can provide; and
 - (c) a statement setting out the applicant's interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application.
13. In respect of any evidence, the onus of proof of the use rests with the applicant and the evidence must be relevant, clear and unambiguous. The decision is made on the 'balance of probabilities' (i.e. that it is more likely than not).
14. A Local Planning Authority has the right to canvass for evidence if it so wishes before determining an application. If the Local Planning Authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.
15. In the case of applications for existing use, if a Local Planning Authority has no evidence itself, nor any 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.

16. The application form at section 4 asks the applicant to confirm why they are applying for a lawful development certificate. The applicant has specified 'for an existing use' and further states that the relevant use class is 'Free standing recreational use – Sui Generis'

17. The application form at section 6 specifies the grounds for the certificate being sought: "Existing use. The units do not require planning permission and there is no material change of use".

18. Within the same section, the reason why a Lawful Development Certificate should be granted is stated as:

- (i) In terms of design, mobility, size and construction, any unit(s) which comply with the requirements of the Caravan Sites and Control of Development Act 1960, 1968 and 2006 amendments do not require planning permission.
- (ii) There is a lawful development certificate for the use of the land for recreational purposes, therefore there would not be a material change of use.

19. The application is accompanied by a supporting letter from the applicant which states the following:

*20. I am proposing to station a mobile home on my land known as 'land adjacent to wigan lodge',
21. located on Wigan Lane, Duxbury, Chorley, PR7 4DB*

I understand that I do not need planning permission to station a mobile home and would be grateful to receive your confirmation.

The mobile home would be a twin-unit type complying with the legal definition of a caravan. In terms of its design, mobility, size and construction, the unit complies with the requirements of the Caravan Sites and Control of Development Act 1960, 1968 and 2006 amendments and, therefore, does not require planning permission.

The unit would not be fixed to the ground and is neither a 'building' or 'erection'.

The mobile home would be used by myself, family members and guests for recreational use. There is a lawful development certificate for the use of the land for recreational purposes, therefore, there would not be a material change of use.

As you are no doubt aware, I already have two caravans on the land and would be replacing one or possibly both of these with the aforementioned item.

22. Where an application has been made under section 191, what is lawful relates only to the state of affairs on the land at the date of the certificate application.

23. The supporting letter states that there are two caravans on the land and that he (the applicant) would be replacing one or possible both of these with a twin unit mobile home. Whilst no evidence has been submitted to confirm that there were 2no. caravans on the site at the date of the application, the Council is satisfied that this is correct based on their own evidence. The Council is also satisfied that these 2no. touring caravans fall within the definition of a caravan, as set out in the Caravan Sites and Control of Development Act 1960 and subsequent amendments. These caravans were still on site at the time of report preparation.

24. When determining a certificate, the onus of proof of the use rests with the applicant and the evidence must be relevant, clear and unambiguous. However, the application is confusing, as the certificate relates to an existing use, but the supporting information refers to potential future state of affairs (i.e. the continuing recreational use of the site, albeit, including the siting of a mobile home twin-unit).

25. No information has been submitted to demonstrate that the caravans are used for purposes consistent with the lawful use of the land. In the absence of sufficiently precise and unambiguous evidence, the Council is unable to confirm, on the balance of probabilities, that a material change of use has not occurred.

CONCLUSION

26. The information contained within the application is not sufficiently precise and unambiguous. Chorley Council as The Local Planning Authority is not satisfied that, on the balance of probabilities, a material change of use of the land (as shown on the submitted Location Plan) has not occurred. The use as described is not, therefore, proven to be lawful within the meaning of Section 191 of the Town and County Planning Act 1990.

27. It is, therefore, recommended that the application is refused.

RELEVANT HISTORY OF THE SITE

Ref: 19/00375/FUL **Decision:** REFFPP **Decision Date:** 12 December 2019
Description: Construction of a new entrance onto Wigan Lane including gate and blocking up of existing access point

Ref: 19/00645/CLEUD **Decision:** PEREUD **Decision Date:** 13 December 2019
Description: Application for Lawful Development Certificate seeking confirmation that the use of the land for recreational purposes has never been abandoned and that the time for enforcement action in respect of the breach of planning control has expired.

Ref: 19/00868/TPO **Decision:** PERTRE **Decision Date:** 17 December 2019
Description: Application for works to protected trees - Chorley BC TPO 5 (Chorley) 2008: Crown lift trees to 5.5m over highway and fell two sycamore trees in centre of site

Ref: 20/00050/FUL **Decision:** REFFPP **Decision Date:** 6 May 2020
Description: Construction of a new entrance onto Wigan Lane including gate and blocking up of existing access point