

09/00233/CLE: GENERAL MOTOR VEHICLE REPAIRS TO BUILDING AND SITE AT AUTO SPARKS, DUKESMEAD, WERRINGTON, PETERBOROUGH
 VALID: 25.02.2009
 APPLICANT: MESSRS AUTO SPARKS
 AGENT: MR T E TITMAN
 REFERRED BY: HEAD OF PLANNING SERVICES
 REASON: THE APPLICANT IS A COMPANY OWNED BY A COUNCILLOR
 DEPARTURE: NO

CASE OFFICER: Miss A McSherry
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1 SUMMARY/OUTLINE OF THE MAIN ISSUES

The main considerations are:

- Whether the evidence submitted satisfactorily demonstrates that the existing use on site for general motor vehicle repairs as taken place on site continuously for more than 10 years.

The Head of Planning Services recommends that the application is APPROVED.

2 PLANNING POLICY

In order to comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 decisions must be taken in accordance with the development plan policies set out below, unless material considerations indicate otherwise.

Material Planning Considerations

Decisions can be influenced by material planning considerations. Relevant material considerations are set out below, with the key areas highlighted:

Circular 10/97 – Enforcing planning control – legislative provisions and procedural requirements (1997)

3 DESCRIPTION OF PROPOSAL

This is a lawful development certificate for an existing use/operation. The existing use being considered is general motor vehicle repairs in the building and site, a B2 use.

4 DESCRIPTION OF SITE AND SURROUNDINGS

The application site is located within the Werrington General Employment area, OIW 1.09, as identified by the Local Plan. The site contains an industrial unit building, a yard and parking area. The site is screened by boundary hedging.

5 PLANNING HISTORY

No recent planning history.

6 CONSULTATIONS/REPRESENTATIONS

INTERNAL

None undertaken

EXTERNAL

None undertaken

NEIGHBOURS

No comments received

COUNCILLORS

No comments received

7 REASONING

A certificate of lawfulness application allows the owners to ascertain whether specific uses, operations or other activities are or would be lawful. In this instance the application is made to establish whether the existing use for general motor vehicle repair has taken place on the site continuously for more than 10 years, and so is now considered immune from enforcement action and can be considered lawful. For this type of application consideration can only be given to the evidence concerning the use of the land for the time period in question, and not the planning merits of the operation, use or activity.

In applications such as this onus of proof is firmly on the applicant. In support of the application the following documentation has been submitted:-

- Sworn affidavits from both partners Mr David Harrington and Mr Philip Popple.
- Two letters from customers Anker of Coates and Agricultural plant hire limited (aph) to say this company at this address has carried out general motor repairs for them for well over 10 years
- A bundle of true copies of Auto Sparks invoices dating back to 1993, referred to in the Partners affidavits, JNF2.
- Certificate of completion for compliance with building regulations dated 02/07/87.
- Copy of planning permission dated 05/10/84.
- Photographs
- Existing plans of site and building
- Emails from planning officers

The invoices, affidavits from partners and letters from customers all indicate that the use has been carried out on the site for more than 10 years. The relevant test when considering the submitted evidence is 'the balance of probability'. There is no other evidence, or evidence from others, to contradict or otherwise make the applicant's version of events any less than probable. Based on the information submitted it is considered that the use has taken place for more than 10 years, and can be considered lawful for planning purposes.

8 CONCLUSIONS

Subject to the imposition of the attached conditions, the proposal is acceptable having been assessed in the light of all material considerations, including weighting against relevant policies of the development plan and specifically:

It is considered that the evidence submitted does satisfactorily demonstrate that the existing use of the site for general motor vehicle repairs, has taken place on the site for more than 10 years. Therefore 'on the balance of probability' it is able to justify the grant of a certificate, deeming the existing use lawful for planning purposes.

9 RECOMMENDATION

The Head of Planning Services recommends that this certificate is GRANTED subject to the following reason:

- R1. The Local Planning Authority are satisfied, from the information submitted with the application, that the general motor vehicle repairs, a B2 use, has taken place on site for more than 10 years; such that on the balance of probabilities, as required by Circular 10/97, it can be considered as Lawful Development under Section 191 of the Town and Country Planning Act 1990 as amended.

Copy to Councillors *C. Burton, D. Fower, P. Thacker.*

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