

**Our ref:** CP/Powell

5<sup>th</sup> July 2023

Vale of Glamorgan Council,  
Planning Enquires,  
Dock Office,  
Subway Road,  
Barry,  
CF63 4RT

*Willis & Co.*

Chartered Town Planners  
30 The Causeway  
Chippenham  
Wiltshire  
SN15 3DB

Telephone: (01249) 444975  
Facsimile (01249) 655556  
Email: Willisplan@aol.com

Dear Sir,

**Town and Country Planning Act 1990  
Certificate of Lawfulness in respect of a storage yard at Former  
Peterston Railway Station Site, Station Terrace, Peterston-Super-  
Ely, CF5 6LU.**

Introduction

1. We are instructed by Ms M. Powell to prepare and submit this application for a Certificate of Lawfulness for Existing Development for the use of the land for Class B8 (Storage and Distribution) use. The Certificate of Lawfulness is for an application made under the provisions of Section 191(1)(a) and 172(B)(1) of the above Act.

2. Please find enclosed in support of this application;
- a) The covering letter;
  - b) The complete CLEUD application forms and certificates;
  - c) The location plan (GP-JH-01) with the application site outlined in red;
  - d) The signed statutory declaration of R. Powell, dated 14<sup>th</sup> June 2023;
  - e) The signed statutory declaration of M. Powell dated 14<sup>th</sup> June 2023;
  - f) The signed statutory declaration of J. Smith, the renter dated 14<sup>th</sup> June 2023;
  - g) Aerial photographs of the site dated 2009, 2013, 2016, 2020 & 2022; and,
  - h) The appropriate application fee of £462.

Site

3. The site relates to the former Peterston-Super-Ely railway station site. The mainline Cardiff to Swansea railway line runs immediately adjacent to the site.

4. The site is accessed from the public highway by an updated entrance serving a commercial property and residential properties at Station Terrace. The area is served by a public footpath network and a public footpath, which runs to the south of the site to link up with the main road into Peterston-Super-Ely exists onto this access lane.

Contd.../

Vale of Glamorgan DC

5<sup>th</sup> July 2023

**Former Peterston Rail Station Site, Station Terrace, Peterston-Super-Ely, CF5 6LU.**

5. The highway to the site has a tarmacadam surfaced path leading back to the main road and to the village of Peterston-Super-Ely.

Planning History

6. The following applications have been identified which relate to the site:

- 2015/00874/OUT; *Construction of twelve one, two and three bedroom affordable semi-detached and terraced housing and parking.* Refused, 2016.

Town and Country Planning Act 1990 (as amended)

7. The key statutory framework for such applications and their determination is set out in sections 191 to 193 of the Town and Country Planning Act 1990 ("the Act").

8. The statutory framework covering "lawfulness" for lawful development certificates is set out in Section 191(2) of the Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

9. Section 191(4) of the Act states that if the local planning authority is provided with information to satisfy it of the lawfulness of the use, it must issue a certificate to that effect.

10. Under Section 171B(3) of the Town and Country Planning Act 1990 for this application to succeed, the onus of proof lies firmly with the Applicant to demonstrate, on the balance of probability, that the land had been used for a period of at least 10 years prior to the date of the application and is as a result immune from enforcement action. The Council must also be satisfied that the applicant has not deliberately concealed the use. There is no other legal impediment to the grant of a Certificate of Lawfulness for an existing use.

11. Regard cannot be given to any objections to this application on planning grounds. The determination of this application turns on the facts of the case and their interpretation in the light of relevant planning law and judicial authority.

12. The Courts have held that an applicant's evidence does not need to be corroborated by 'independent' evidence in order to be accepted. It was held in *Gabbitas v Secretary of State for the Environment [1985] JLP 630*

Contd.../

**Former Peterston Rail Station Site, Station Terrace, Peterston-Super-Ely, CF5 6LU.**

that the relevant test of the evidence is the 'balance of probability'. The Courts have held that in order to have a 10 year period of immunity, an applicant must demonstrate that the use has been carried on continuously throughout the 10 year period.

13. By virtue of Section 191(6) of the 1990 Act, the lawfulness of any use, operations or other matter for which a certificate is in force under this section is conclusively presumed.

14. As set out in DOE Circular 10/97 and the Planning Practice Guidance (lawful development certificate paragraph 006), unless the LPA have some significant evidence to undermine or contradict the applicant's version of events, there is no good reason to refuse such an application.

***In the case of applications for existing use, if a local planning authority has no evidence itself, nor from any others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, providing the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. [Paragraph 006 Reference ID: 17c-006-20140306]***

Certificate of Lawful Existing Use

15. To assist the Council in the determination of this application, statutory declarations are attached from the applicant, the father of the applicant and a renter which support the case. The evidence shows that the use of the land is 'storage use' which in planning guidance is defined under Class B8 (General Storage and Distribution). This has spanned over 10 years before the date of the LDC, since May 2009.

16. There is further evidence by way of various aerial photographs dated from 2009 to 2022 showing the site in question where the storage containers lay in. The site is also gated from the East, separating the 'unit' from the highway. NB: For the purposes of the Certificate of Lawfulness, guidance states that you do not need to include the access of the land like you would have to submit as part a planning application. Please see the location plan (MP-JH-01) for details of the site area.

17. The applicants wish to obtain a certificate of lawfulness for the existing Class B8 (Storage and Distribution) use. The land is was owned by Mr. R. Powell, the father of the applicant and transferred to Ms Michelle Powell a few years ago. For many years it was occupied by a series of

Contd.../

Vale of Glamorgan DC

5<sup>th</sup> July 2023

**Former Peterston Rail Station Site, Station Terrace, Peterston-Super-Ely, CF5 6LU.**

tenants where the tenants used the site for general storage. In our view, having regard to the planning history of the site, the Railway yard is now a Class B8 (General and Distribution) use. This CLEUD application is to establish that the use of the land is Class B8 (storage and distribution) use and the intention of this application is that a certificate of lawfulness is sought via Section 171B(3) - thus the '10 year rule' applies. Section 171B(3) of the Planning Act summaries the breaches which do not involve a dwelling:

***In the case of any other breach of planning control, no enforcement action may be taken after the period of ten years beginning with the date of the breach.***

18. As the red-lined application site was drawn around the whole of the application site, and having regard to the judgement in *Burdle c SSE [1972]* it is reasonable to conclude that the whole of the site was at that time a single planning unit in Class B8 (Storage and Distribution use).

19. We are advised that there is *the former railway land at Station Terrace Peterston-Super-Ely has been utilised for open storage shortly after the purchase of the said property in April 2005 and is still being used today for various items. The most memorable use was for the production crew and their vehicles in 2009 whilst they were filming the wedding of Nessa and Dave for series 3 of Gavin and Stacey in the Peterston-Super-Ely church which was aired in January 2010.*

20. The land has also been rented for the storage of Welsh Water vehicles, cabins, plant and materials whilst extensive works were carried out in the village on a large upgrade to the water supply. The land has also been rented for the storage of Great Western Railway vehicles, cabins, plant and materials whilst extensive works were carried out to the main railway tracks.

21. On the basis of the evidence set out above, we are instructed to apply for this Certificate of Lawfulness application for the use of the land for B8 (Storage and Distribution) Use, which first occurred a period in excess of 10 years ago under the provisions of Section 191(1)(a) which states:

***191 Certificate of lawfulness of existing use or development  
(1) If any person wishes to ascertain whether -;  
(a) Any existing use of buildings or other land is lawful;***

Contd.../

Vale of Glamorgan DC

5<sup>th</sup> July 2023

**Former Peterston Rail Station Site, Station Terrace, Peterston-Super-Ely, CF5 6LU.**

Abandonment

22. It is evident from the Statutory Declarations and the aerial photographs that the land has been in continuous use and has not been abandoned.

Concealment

23. The applicants have not sought to conceal the use at any time.

Continuous Use

24. The applicants have used the land for storage continuously (as demonstrated in the site photographs dated from 2009 until 2022. The use has not been interrupted during this time. With this in mind, the applicants have not sought to conceal or abandon the use for storage.

25. Given the above evidence and advice from Counsel, the only reasonable conclusion that can be reached is that the land has been continuously used for the storage of goods and containers for in excess of 10 years.

Concluding Remarks

26. There is a lengthy history of the land having been continuously used for general storage supported by the statutory declarations supplied by the applicant, her father, and some of the renters of the site. On the basis of the evidence set out above, we are instructed to apply for this Certificate of Lawfulness applications for the use of the site for storage use, which first occurred a period in excess of 10 years under the provisions of Section 191(1)(a).

27. Sufficient evidence has been submitted demonstrating that the use has taken place continuously for in excess of 10 years under Section 191(1)(a) such that any breach of planning control has obtained immunity by virtue of the passage of time. Section 191(3) of the Act provides that development becomes lawful if the time for the taking enforcement action has expired. The Applicant has in our view discharged the onus of proof and met the relevant tests on the balance of probability such that the LDC, as applied for, should be issued.

28. This is an application for the certificate of lawfulness for the use of the land. The evidence shows the use of the land for storage since 2009, more than 10 years ago.

Contd.../

Vale of Glamorgan DC

5<sup>th</sup> July 2023

**Former Peterston Rail Station Site, Station Terrace, Peterston-Super-Ely, CF5 6LU.**

29. Evidence of lawfulness has been submitted by meeting the tests via photographic evidence and signed signatory declarations. The evidence corroborates that the land in question has been continuously used as distribution and storage use. The evidence also demonstrates that the applicants have not sought to conceal the use.

30. I trust this is clear. Please do not hesitate to contact me should you require any further information or clarification.

Kind Regards,



Chris Popkin