

JP/01/YO1056

Chief Planning Officer  
Northamptonshire County Council  
Planning Services  
NCC Place  
One Angel Square  
Angel Street  
Northampton  
NN1 1ED

FAO Mr. Dan Szymanski

15<sup>th</sup> March 2019

Dear Sir/Madam

**Section 191 Town and Country Planning Act 1990  
Application for Certificate of Lawfulness of Existing Use or Development  
Land to North East of Pury Hill Business Park, Alderton Road, Paulerspury NN12 7TB**

nineteen47 is instructed on behalf Pury Hill Limited to submit an application under the provisions of Section 191 of the Town and Country Planning Act 1990 for a Certificate of Lawfulness for Existing Use or Development in respect of use of land to the north east of Pury Hill Business Park, Alderton Road, Paulerspury for the purposes of outdoor storage of materials and parking of machinery and vehicles.

### The Site

The Site comprises a parcel of land measuring approximately 0.4 hectares located immediately to the north east of the Pury Hill Business Park. The Site is identified with a red line on the site location plan which accompanies this submission.

Historically, as was the case with all the land and buildings associated with the Business Park, the Site was used in connection with the dairy farm which once operated from this location and known as Pury Hill Farm. Approximately 25 years ago, the agricultural operations ceased and the buildings and land were converted to offices and ancillary uses into what is today known as the Pury Hill Business Park.

The Business Park to this day continues to evolve and there have been continuous building works ongoing since its original inception.

The Applicant retains ownership of approximately 25.4 hectares of the surrounding land to the north and south of the Business Park which remains in agricultural use. The farmland is mainly pasture land with some environmental tree planting. The routine farming operations are spraying weeds and applying fertilisers, pasture topping and chain harrowing. The land is well fenced and is grazed by sheep which occurs on a seasonal basis. Some pasture is cut for hay and haylage. As well as routine farming operations, fencing and maintenance operations are required from time to time.

The Site which is the subject of this application for a Certificate of Lawfulness has been used for the storage of materials and parking of vehicles and machinery on a continual basis since 2006/2007 immediately prior to this, the land was quarried for stone in 2006.

This quarrying was undertaken without the benefit of planning permission although the provisions of Schedule 2 Part 6 Class A.2(1)(b) of the General Permitted Development Order 2015 would have applied, with this allowing for the extraction of any mineral from the land on agricultural units of 5 hectares or more on the basis that it was reasonably necessary for the purposes of agriculture within that unit. The extracted stone was used exclusively for laying of farm tracks on the Applicant's surrounding land.

### The Application

The Application seeks a Certificate of Lawfulness which confirms the use of the Site for outdoor storage and processing of materials and the parking of machinery and vehicles (B2/B8 use) and thereby immune from enforcement action.

### Case in Support of the Application

An application under Section 191(1)(a) of the Town and Country Planning Act 1990 ("the Act") enables a person to seek a decision that any existing use of buildings or other land is lawful. Section 191(1)(b) of the same Act allows a person to ascertain whether any operations which have been carried out, in, on, over or under land are lawful. In both instances "he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter."

By virtue of Section 191(2) uses and operations are lawful if no enforcement action may be taken against them because the time for enforcement action has expired and they are not in contravention of any enforcement notice which is in force.

Section 171(B) of the Act sets out the time limits in which enforcement action must be taken in respect of unauthorised development. This confirms inter alia that in relation to operational development, the relevant time period that enforcement action must be brought about is 4 years and in respect of change of use of land, the period is 10 years.

Based upon the provisions of the Act, it is necessary in this instance to demonstrate that the Site has been used for the processing of materials and storage purposes for in excess of 10 years on a continual basis

In matters such as this where a Certificate of Lawfulness is being sought, the burden of proof is placed upon the Applicant and the Courts have held that the relevant tests when assessing evidence is on the "balance of probability." A Certificate should not be withheld on the basis that the applicant has failed to discharge the stricter criminal burden of proof, namely "beyond reasonable doubt".

Accompanying this submission, are various forms of evidence to support the case with these being as follows'

- Statutory Declaration from Mr. Neill Taylor, owner of the Site and Pury Hill Business Park
- Statutory Declaration from Dr. J. Penbury, employee at Flowmaster International Ltd
- Historic aerial images from 2006, 2009, 2017

Each of the documents is discussed in turn below;

#### Statutory Declaration of Mr. Neill Taylor

Neill Taylor of Pury Hill Limited is the owner of the Pury Hill Business Park and is ostensibly the Applicant in this matter. Mr. Taylor has owned the Business Park for 25 years and has been responsible for the transition from dairy farm to business park.

In 2005/2006 Mr. Taylor quarried stone from the area of land which is the subject of this application. The sole purpose of this stone was to lay farm tracks on the surrounding agricultural land within his ownership. At this time, Mr. Taylor had just subdivided this land into smaller parcels of grass fields, hedges and woodland. This quarrying took place as a single phase and since then, no further quarrying has taken place.

The aggregate that was removed comprised approximately 40% stone and 60% fines and was then screened to separate the two. Immediately upon screening the material, the northern half of the quarry was backfilled with these fines in order to create an area for parking of vehicles and machinery.

The southern half of the quarry following extraction of material was subsequently used as a material storage and processing area. During the construction of buildings on the Business Park, old agricultural buildings were removed and the concrete walls and bases (thousands of tonnes) put into the quarry until such time as there was sufficient quantity to warrant the hire of a crusher. This crushed material created was subsequently left in the quarry until it was needed for the construction of the new offices within the Business Park.

In 2010, the northern half of the quarry which following it being backfilled was left uncapped and then was grassed and was subsequently hardcored so that it could be used for the parking of vehicles and machinery all year around without them getting stuck.

Mr. Taylor confirms that the storage of material within the southern half of the quarry has been continuous. For example, during the construction of Rickyard Barn which is one of the offices within the business park between 2014 and 2017 approximately 1000+ tonnes of concrete from demolition of units 4C and 5C which stood in its place was stored in the quarry and is still awaiting crushing. There is also further aggregates and road planings which are being stored which means that the quarry presently is full to capacity.

## Statutory Declaration of Dr. J Penbury

Dr. Penbury is an engineer employed continuously by Flowmaster International Limited who reside in The Maltings office at Pury Hill Business Park. Dr. Penbury has been based at Pury Hill when Flowmaster leased the office in 1997 immediately after its construction.

During Dr. Penbury's lunch breaks he regularly runs or walks around the Pury Hill estate and has observed all of the many changes that have occurred over the years. Dr. Penbury recalls the quarry being worked as he has regularly visited this part of the site as on land to the west Flowmaster used to have a shipping container which they used to store archive material.

Dr. Penbury confirms that he has seen vehicles and machinery parked on the northern part of the land which was quarried and is aware through conversations with Mr. Taylor that the southern end of the quarry is used to store and process materials from the demolition of agricultural buildings in the Business Park which have been redeveloped.

## Historic Aerial Images



Photo 1

Photo 1 is dated 26<sup>th</sup> June 2005. In this picture, the minerals extraction had just started, eventually extending to the north and south as shown in the later pictures



Photo 2

Photo 2 is dated 31<sup>st</sup> December 2006 and shows the northern part of the quarry refilled following the initial extraction of stone and vehicle tracks showing where machinery and vehicles had been parked. The southern half of the quarry had been half filled with demolition materials from agricultural barns as part of the ongoing development of the Business Park.



Photo 3

In Photo 3 which was taken on 31<sup>st</sup> May 2009, the northern part of the quarry had been temporarily grassed. This provided occasional grazing land but as will be seen on the photographs from the marks on the land, was also being used for parking of vehicles and machinery. Shortly after this photograph in 2010, this land was hardcored so vehicles could park on this throughout the year and not get stuck. The southern part of the quarry was being used to store and process materials and, in this photograph, it appears full.



Photo 4

Photo 4 was taken on 8<sup>th</sup> April 2017 and shows the southern part of the quarry to be full of materials following the demolition of barns which were removed to make way for Rickyard Barn offices which was in the process of being constructed. The northern part of the quarry was still being used to park vehicles and machinery with a number of these being evident in the photograph.

## Conclusions

This application is made under the terms of Section 191 of the Town and Country Planning Act 1990 and seeks a Certificate of Lawfulness in respect of land to the north east of Pury Hill Business Park.

The Certificate being sought relates to the use of land for the purposes of outdoor storage and processing of materials together with parking of vehicles and machinery (B2/B8 use).

It has been shown within the evidence presented as part of this submission that on the "balance of probability" the land in question has been used for the activities listed for a period in excess of 10 years and as such is lawful.

In support of this application, the following information is provided;

- Completed application form
- Statutory Declaration from Mr. Neill Taylor, owner of the Site and Pury Hill Business Park
- Statutory Declaration from Dr.J Penbery
- Historic aerial images from 2006, 2009, 2017

The statutory application fee of £462 is to be paid via the Planning Portal.

On the basis of the above, it is respectfully requested that a Certificate of Lawfulness be requested.

Yours faithfully

**Jamie Pyper**

Director

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