

**WELWYN HATFIELD BOROUGH COUNCIL
ASSISTANT DIRECTOR (PLANNING)**

DELEGATED APPLICATION

Application No: 6/2022/2726/LAWE
Location: Colesdale Farm Northaw Road West Northaw Potters Bar
 Hertfordshire EN6 4QZ
Proposal: Certificate of lawfulness for the existing storage or distribution
 Class B8
Officer: Ms Ashley Ransome

Recommendation: Granted

6/2022/2726/LAWE

Context	
Application Description	<p>The applicant seeks a Certificate of Lawfulness (Existing) for the commercial storage use of land and outbuildings at unit 12 of Colesdale Farm.</p> <p>The land and building in question is outlined in green on the block plan and is to the north-west of the site. The applicant has stated that this land and outbuilding has been used for commercial storage purposes for a minimum of ten years consecutively.</p>
Relevant Planning History	<p>Application Number: E6/1953/0893/ Decision: Refused Decision Date: 19 November 1953 Proposal: Site for residential development.</p> <p>Application Number: E6/1955/0870/ Decision: Refused Decision Date: 30 September 1955 Proposal: Site for farmhouse and pair of semi-detached houses</p> <p>Application Number: S6/1976/0687/ Decision: Granted Decision Date: 24 March 1977 Proposal: Use of yard and buildings for the business of an agricultural contractor.</p> <p>Application Number: S6/1977/0106/ Decision: Refused Decision Date: 16 June 1977 Proposal: Conversion of existing storage building to a single domestic dwelling.</p> <p>Application Number: S6/1979/0074/ Decision: Granted Decision Date: 01 June 1979 Proposal: Extension of existing cottage into adjoining storage building</p> <p>Application Number: S6/1990/0272/FP</p>

Decision: Granted
Decision Date: 07 May 1990
Proposal: Two storey rear extension and single storey rear conservatory

Application Number: S6/1991/0395/OP
Decision: Withdrawn
Decision Date: 22 November 1993
Proposal: Outline application for the demolition and partial conversion of existing farm buildings and erection of new buildings to provide 33 dwellings, car parking; change of use of land to community forest

Application Number: S6/1992/0725/AG
Decision: Granted
Decision Date: 10 December 1992
Proposal: Erection of hay barn

Application Number: S6/1992/0662/FP
Decision: Refused
Decision Date: 17 December 1992
Proposal: Change of use of yard and buildings from an agricultural contractors use to haulage contractor/machinery removal specialist use

Application Number: S6/1992/0663/FP
Decision: Refused
Decision Date: 17 December 1992
Proposal: Retention of existing portakabin used for small scale office facilities in connection with haulage contractor machinery removal specialist use

Application Number: S6/1992/0664/FP
Decision: Granted
Decision Date: 17 December 1992
Proposal: Change of use of part of existing single storey outbuildings from agricultural use to the housing of owners own private motor vehicles

Application Number: S6/1992/0665/LU
Decision: Granted
Decision Date: 16 March 1993
Proposal: Application for a certificate of lawfulness for the use of barn for the sale of agricultural produce and animal foodstuffs

Application Number: S6/1992/0666/FP
Decision: Granted
Decision Date: 18 March 1993
Proposal: Retention of existing portakabin for use as office/reception facility in connection with the sale of agricultural produce and animal foodstuffs

Application Number: S6/1993/0670/FP
Decision: Refused
Decision Date: 16 December 1993
Proposal: Change of use of existing barn and area of yard for storage and repair of steel cable timber drums

Application Number: S6/1994/0675/FP

Decision: Granted
 Decision Date: 24 November 1994
 Proposal: Change of use of barn for storage of cable drums

Application Number: S6/1997/0274/FP
 Decision: Granted
 Decision Date: 26 August 1997
 Proposal: Erection of rear conservatory and double garage

Application Number: S6/1999/0876/FP
 Decision: Withdrawn
 Decision Date: 09 December 1999
 Proposal: Conversion of barn to dwelling, demolition of existing buildings and erection of two dwellings and three detached garages.

Application Number: S6/2000/0805/FP
 Decision: Granted
 Decision Date: 24 July 2000
 Proposal: Temporary use of land as set for television programme including stationing of temporary buildings and fences

Application Number: S6/2000/0922/FP
 Decision: Granted
 Decision Date: 21 August 2000
 Proposal: Demolition of existing buildings and conversion of existing barns to create three residential units

Application Number: S6/2005/0009/FP
 Decision: Granted
 Decision Date: 11 August 2005
 Proposal: Renewal of planning permission S6/2000/0922/FP for the demolition of existing buildings and conversion of existing barns to create three residential units

Application Number: S6/2007/1731/PA
 Decision: Prior Approval Not Required
 Decision Date: 29 November 2007
 Proposal: proposed revision to planning application S6/2005/0009/FP

Application Number: S6/2007/1505/FP
 Decision: Refused
 Decision Date: 10 December 2007
 Proposal: Erection of single storey rear extension and single storey extension to garage with glazed link

Application Number: S6/2008/0310/FP
 Decision: Granted
 Decision Date: 10 April 2008
 Proposal: Erection of single storey rear extension

Application Number: S6/2008/2224/MA
 Decision: Refused
 Decision Date: 06 February 2009
 Proposal: Change of use of land to c3 dwelling houses, extensions and conversion of barn to create six bed dwelling plus staff accommodation.

	<p>Erection of four two storey dwellings comprising of; 1x three bed, 1 x four bed, 2 x five bed dwellings and ancillary car parking and landscaping following demolition of existing buildings</p> <p>Application Number: S6/2013/2483/FP Decision: Refused Decision Date: 27 January 2014 Proposal: Sub-division of existing dwelling to form two dwellings and the erection of a two storey side extension and part single, part two storey rear extension</p> <p>Application Number: S6/2015/0175/FP Decision: Granted Decision Date: 23 July 2015 Proposal: Erection of agricultural building following removal of existing buildings</p> <p>Application Number: 6/2018/2936/LAWE Decision: Granted Decision Date: 18 February 2019 Proposal: Certificate of lawfulness for use of buildings as commercial</p> <p>Application Number: 6/2019/0882/OUTLINE Decision: Refused Decision Date: 01 August 2019 Proposal: Outline permission for residential development of site of up to 38 dwellings following demolition of the existing buildings and structures with all matters reserved apart from access</p> <p>Application Number: 6/2019/2544/FULL Decision: Granted Decision Date: 07 January 2020 Proposal: Retention of existing use of buildings (1a, 1b, 2b) for storage (use class B8)</p> <p>Application Number: 6/2020/3390/LAWP Decision: Withdrawn Decision Date: 24 March 2021 Proposal: Certificate of lawfulness for demolition of existing two storey extension and erection of proposed two storey rear extension with rooflights to dwellinghouse</p> <p>Application Number: 6/2021/1172/LAWP Decision: Refused Decision Date: 25 June 2021 Proposal: Certificate of lawfulness for the demolition of historical rear two storey extension, and erection of a two storey rear extension projecting off the original rear wall with rooflights installed to the side and rear roof pitches.</p> <p>Application Number: 6/2021/3069/LAWP Decision: Granted Decision Date: 24 December 2021 Proposal: Certificate of lawfulness for the demolition of historical rear two storey extension, and erection of a two storey rear extension projecting</p>
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off the original rear wall with rooflights installed to the side and rear roof pitches.

The main issues are:

Whether use of the land and buildings to the north-west of the Colesdale Farm site, known as unit 12 as outlined in green on the submitted block plan, has been used for commercial storage for a minimum period of ten years in line with Section 171B(3) of the Town and Country Planning Act 1990 (as amended)

Discussion

Background

The site comprises a metal roofed building, part of a smaller building to the south east and a storage area in between to the north west of the Colesdale Farm site. The green roofed barn has had 5 different users between 2012 and the present day. The smaller building and storage area in between the two buildings has been occupied by one occupier for the entire ten-year period. This smaller building has been added to subsequently but the application site includes only the part that has been in place for 10 years.

As viewed in the history section of this report, there has been extensive planning activity on the site since the late 1990's, with application reference 6/2018/2936/LAWE being noteworthy for a certificate of lawfulness being granted for units 3/3A, 3B, 5, 10, 10A and 11 as a B8 use and unit 2A as a sui generis (B2/B8) use.

The key consideration for this application is: whether the applicant has proved, on the balance of probabilities, that the land and outbuilding to the north-west of the site, as outlined in green on the submitted block plan, has been used as commercial storage for a period of at least ten years and has therefore become lawful under the terms of Section 171B of the Town and Country Planning Act 1990 (as amended).

Evidence submitted with application

- Annotated Aerial Photograph
- Timeline of Occupiers at Colesdale Farm
- Statutory Declaration- S Marrinan- Parents have owned and managed the Colesdale Farm site since 1994
- Statutory Declaration- J Marrinan- Owner/Manager of the Colesdale Farm site since 1994
- Statutory Declaration- H Brosnan- Prepared planning applications on behalf of the late Mr Marrinan since January 1999
- Statutory Declaration- D Shipton- Resident of Colesdale Farmhouse since 2003 (can see the buildings on site from the rear of his property)
- Aerial photographs
- Account documents for:
§ Kanvas Ltd

- § Brinden Ltd
- § Kenza Ltd
- § MZMTEX Ltd
- § Rumen Stanchev & Pasho Toshkov
- § Keogh Building Services Ltd

Appraisal of the evidence of use

The onus of proof in a lawful development certificate application is firmly on the applicant and the courts have held that the relevant test of the evidence on such matters is “the balance of probability”. Moreover, the Court has held (see F.W. Gabbitas v SSE and Newham LBC [1985] J.P.L. 630) that the applicant’s own evidence does not need to be corroborated by “independent” evidence in order to be accepted. If the Local Planning Authority has no evidence of their own, or 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”.

The evidence supplied by the applicant sufficiently evidences that, on the balance of probabilities, the area outlined in green on the block plan has been used as commercial storage for a period of over 10 years.

Conclusion

The decision is based on the evidence available and on the balance of probabilities. The evidence shows that the land and building in question has been used for commercial storage for a minimum of ten years and is considered to be sufficient to meet the test of “on the balance of probability”. It is therefore recommended that a Certificate of Lawfulness be granted.

DRAWING NUMBERS

The development/works shall not be started and completed other than in accordance with the approved plans and details:

Plan Number	Revision Number	Details	Received Date
918100		Location plan	1 December 2022
		Block plan	5 December 2022

REASON: To ensure that the development is carried out in accordance with the approved plans and details.

Determined By:

Mr Mark Peacock
21 February 2023