

Appeals Received and Decisions Made

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Appeals received and decisions made between 10 June 2024 and 04 July 2024

Appeal Decisions

3 Lunt Road Sefton L29 7WB

Reference: DC/2023/01653 (APP/M4320/D/24/3337988)

Erection of a dormer extension with a balcony to the rear of the dwellinghouse (Retrospective) (Alternative to DC/2023/00346 refused 07.07.2023)

Procedure: Householder Appeal

Start Date: 28/03/2024

Decision: Dismissed

Decision Date: 04/07/2024

Moor House The Northern Road Crosby L23 2RA

Reference: DC/2023/01952 (APP/M4320/Z/24/3337983)

Advertisement consent for the display of three non-illuminated signs. (Alternative to DC/2023/00799 refused 19 July 2023)

Procedure: Householder Appeal

Start Date: 10/05/2024

Decision: Dismissed

Decision Date: 28/06/2024

191 Moorhey Road Maghull L31 5LG

Reference: DC/2023/01855 (APP/M4320/D/24/3340729)

Erection of a new fence from a height of 1270mm to 1740mm along the side and the front of the dwellinghouse (Retrospective)

Procedure: Householder Appeal

Start Date: 26/04/2024

Decision: Dismissed

Decision Date: 25/06/2024

Land At Powderworks Lane Melling Liverpool L31 1AU

Reference: DC/2022/01968 (APP/M4320/X/23/3328561)

Certificate of Lawfulness for the continuation of use of Land at Powderworks Lane as an industrial site, used for storage of materials, with small existing workshop buildings.

Procedure: Written Representations

Start Date: 07/11/2023

Decision: Allowed

Decision Date: 18/06/2024

New Appeals

4 Palatine Road Birkdale Southport PR8 2BS

Reference: DC/2023/01289 (APP/TPO/M4320/9882)

Tree Preservation Order application to fell 7No. trees (G1/T1/T2) and crown lift 1No. tree (T3) (lies within TPO98.8)

Procedure: Householder Appeal

Start Date: 26/06/2024

Decision:

Decision Date:

Land Adjacent And South Of 4 Promenade Ainsdale

Appeals received and decisions made between [10 June 2024](#) and [04 July 2024](#)

Reference: DC/2023/01393 (APP/M4320/W/24/3344748)

Erection of a single storey storage building (B8).

Procedure: Written Representations

Start Date: 27/06/2024

Decision:

Decision Date:

Land Off Bankfield Lane Churchtown Southport

Reference: DC/2021/00924 (APP/M4320/W/24/3344143)

Erection of 9 houses, together with a new vehicular access and associated works (part alternative to application reference DC/2017/00821)

Procedure: Written Representations

Start Date: 02/07/2024

Decision:

Decision Date:



Appeal Decision

Site visit made on 25 June 2024

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 July 2024

Appeal Ref: APP/M4320/D/24/3337988

3 Lunt Road, Sefton L29 7WB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr S Proffitt against the decision of Sefton Metropolitan Borough Council.
 - The application Ref is DC/2023/01653.
 - The development proposed is the erection of a dormer extension with a balcony to the rear of the dwellinghouse.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the banner heading above is taken from the planning application form, with the exception of the reference to retrospective as it is not an act of development.
3. In situ at the time of my visit, the dormer extension is retrospective. Although appearing to accord in overall size and position with the submitted plans, there are deviations regarding the fenestration treatment and position.
4. Nevertheless, I am satisfied that there is sufficient detail on the supplied drawings, to properly assess the impact of the proposal in relation to the main issues. I am required to assess the development as proposed and not as built on site. The appeal has been determined accordingly.

Main Issues

5. The main issues in this appeal are;
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - The effect on the openness of the Green Belt;
 - The effect on the character and appearance of the area, including the Lunt Village Conservation Area (LVCA); and
 - Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate Development

6. Paragraph 154 of the Framework indicates that other than in connection with a small number of exceptions, the construction of new buildings should be

regarded as inappropriate in the Green Belt. The extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building, is one of the exceptions (154c). The Framework does not define a disproportionate addition.

7. Policy MN7 of A Local Plan for Sefton (LP) 2017 and the House Extensions Supplementary Planning Document (SPD) 2023 set out how the Council will apply and interpret the requirements of national Green Belt policy. They state that proposals to extend the original building by more than one third volume, either individually or cumulatively with other extensions will be considered disproportionate and therefore, inappropriate in the Green Belt.
8. Whether or not the Council has previously permitted other extensions at the appeal site that already exceed the MN7 Policy requirement, does not automatically justify more¹. The phrase 'in general' would apply to most cases and I have not been directed to any guidance to suggest that the policy would not be applicable here. When considered in combination with the previous extensions, the proposed dormer would result in a 72.5% increase in volume above that of the original dwelling².
9. Although relatively small scale in itself, and not increasing the footprint or overall height of the host dwelling, the proposed dormer extension would increase the amount of built form at the appeal site. It would also be a sizeable and boxy addition to the hipped roof, such that it could not be described as being proportionate to the section of the dwelling it relates to. In light of the significant departure from the volume permissible under Policy MN7 of the LP and the additional bulk that the proposal would add to the dwelling, it is clear that the extension would be cumulatively disproportionate.
10. Consequently, the proposal would be inappropriate development in the Green Belt. It would conflict with Policy MN7 of the LP and would not meet the exception for development set out in paragraph 154c) of the Framework.

Openness

11. Paragraph 142 of the Framework indicates that openness is an essential characteristic of the Green Belt with a key objective being to keep land permanently open. Openness has both a visual and spatial dimension.
12. The erection of a new extension to a dwelling, would result in a spatial loss of openness to the Green Belt, albeit limited due to the scale of development. Although located predominantly to the rear, the proposed dormer would due to the hipped roof, be partially visible from within the street scene and Lunt Road on the opposite side of the wide verge. The increased bulk and mass would also be apparent from the rear gardens of adjacent dwellings.
13. Consequently, the proposal would result in limited harm to the spatial and visual openness of the Green Belt that would endure for the lifetime of the development. Conflict is therefore found with paragraph 142 of the Framework.

Character and appearance

14. In accordance with the duty imposed by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I am required to pay special

¹ The appellant suggests that the previously approved 2-storey side and single storey rear extensions amount to a 68% increase in volume to the original dwelling as set out at paragraph 4.14 of the appellant's statement of case.

² As set out in the Council's email dated 17 June 2024 and is undisputed by the appellant.

- attention to the desirability of preserving or enhancing the character or appearance of the LVCA.
15. The LVCA is characterised by a loose arrangement of pre-war rural buildings to the north-east and a 1950's former Council built estate, located within a rural setting including agricultural land, village green and spacious verges framed by hedgerows. It is this spatial and historical composition that shapes the significance of the LVCA.
 16. The 1950's estate consists of 2-storey semi-detached and terraced dwellings that have a consistent building line and architectural style, with simple hipped and gabled roof forms providing a degree of uniformity that minor variations of house types and recent alterations and single storey extensions do not affect significantly. As a semi-detached dwelling, the appeal site makes a positive contribution to the LVCA.
 17. Despite sitting slightly below the ridge of the main roof, the proposed dormer would be large, filling the entire rear roof slope and extending onto the roof of the side extension, with little space remaining to the eaves. Its box-like form and elevated position would result in a top-heavy and dominant feature, such that it could not be considered as subordinate to the original roof form. Furthermore, it would jar with the simple, unextended roof forms of the estate dwellings that are characteristic of the LVCA.
 18. The proposed dormer would have an awkward arrangement overlapping the hipped roof above the side extension. This along with its large scale, would render it visible from within the street scene, albeit in relatively localised views and at an oblique angle, as well as from within Lunt Road to the south-east. Private views from the dwellings to the north-west would also be possible. Neither the use of sympathetic materials nor consideration of the estate as forming a suburban enclave,³ would mitigate the harmful impact of incongruous development that fails to take account of the host dwelling or its surroundings.
 19. Consequently, the proposal would cause harm to the character and appearance of the host dwelling and surrounding area. For these reasons, the development would not preserve or enhance the character or appearance of the LVCA and conflict is found with policies HC4, NH9 and NH12 of the LP. These policies seek to protect the significance of Sefton's heritage asset's including the simple rural character of village conservation areas, such as Lunt. Additionally, it would not comply with the provisions in the Framework which seek to sustain and enhance the significance of heritage assets.
 20. With reference to paragraphs 205 and 206 of the Framework, in finding harm to the significance of a designated heritage asset, the magnitude of that harm should be assessed. Given the scale and localised impact of the proposal, the harm would be 'less than substantial' but nevertheless important, given the harmful effect on the character and appearance of the LVCA. Paragraph 208 of the Framework advises that this harm should be weighed against the public benefits of the proposal, a matter to which I will return later in this decision.

Other Considerations

21. No specific 'very special circumstances' have been advanced by the appellant⁴. Whilst no reference to the appellant's personal circumstances have been

³ As described within section 4.1 of the Lunt Village Conservation Area Appraisal and Management Plan (2024) and referred to in paragraph 4.22 of the appellant's statement of case.

⁴ Paragraphs 4.12, 4.19 and 5.4 of the appellant's appeal statement.

- advanced during the appeal process, the Council's evidence indicates that the proposed dormer extension is required to allow a disabled family member to live in the dwelling with the appellant.
22. Therefore, I have had regard to the Public Sector Equality Duty contained in Section 149 of the Equality Act 2010. This requires me to consider the need to eliminate unlawful discrimination, to advance equality of opportunity and foster good relations between people who share a protected characteristic such as disability, and people who do not share it.
23. In the absence of any detailed information regarding a specific medical condition, it is not clear how the proposed dormer would facilitate accommodation for a disabled person, given its access via 2 flights of stairs. The reconfiguration of the dwelling would result in a more spacious layout, but there would not be a net increase in bedrooms to accommodate additional family members. The provision of living accommodation suitable to meet the needs of a disabled person does not therefore appear to be inherently reliant on the scheme before me. Carefully considered, the insufficient evidence before me is such that this matter attracts only limited weight.
24. The Council's SPD advises that in rare cases, very special circumstances to justify exceeding the one third volume additions to dwellings may be demonstrated if a site is in a village 'washed over' by Green Belt. It is not clear that this would be a rare case. Even if it were, exceeding the policy requirement would cause material harm to the character and appearance of the dwelling and the LVCA, and the openness of the Green Belt from the specific development proposed.

Balance and Conclusion

25. I have found that the proposal would be inappropriate development in the Green Belt, which is by definition, harmful and should not be approved except in very special circumstances. Harm would also be exerted on the openness of the Green Belt. In line with paragraph 153 of the Framework, I give this harm substantial weight.
26. Similarly, I have found that the proposal would result in harm to the character and appearance of the area, including less than substantial harm to the significance of the LVCA. I give this harm considerable importance and weight. No public benefits have been presented.
27. Having regard to the other considerations set out above and the limited weight that can be attached in favour of the proposal, it would not clearly outweigh the substantial weight which must be given to Green Belt harm and any other harm. Therefore, the very special circumstances required to justify the proposal do not exist.
28. Accordingly, for the reasons given above, the appeal is dismissed.

M Clowes

INSPECTOR



Appeal Decision

Site visit made on 25 June 2024

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2024

Appeal Ref: APP/M4320/Z/24/3337983

Moor House, The Northern Road, Crosby L23 2RA

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) against a refusal to grant express consent.
 - The appeal is made by Mr K Stanton [Kayess Holdings Ltd] against the decision of Sefton Metropolitan Borough Council.
 - The application Ref is DC/2023/01952.
 - The advertisement proposed is the display of three non-illuminated signs.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description in the banner heading above is taken from the Council's decision notice as it more accurately and concisely describes the advertisements proposed. The reference to an alternative scheme has been deleted as it has no relevance to the current proposal.
3. At the time of my visit, I saw that the advertisements were already being displayed at the appeal site. For clarity I have determined the appeal based on the submitted plans.
4. The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Regulations), paragraph 141 of the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (PPG), all confirm that advertisements should be subject to control only in the interests of amenity and public safety. Whilst the Council has drawn my attention to the policies it considers relevant to this appeal, and I have taken them into account as a material consideration, the Council's policies have not, by themselves, been decisive.
5. Reference is made in the Conservation Officer consultation response and subsequent officer report, to the proposal causing 'less than substantial harm' to the setting of a number of listed buildings. However, paragraphs 205-209 of the Framework relate to heritage related consent regimes under the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) and are not relevant to advertisement consent appeals. I have proceeded on that basis.

Main Issue

6. Both parties agree that the proposal would not harm public safety, such that I do not need to consider this further. Thus, the main issue of this appeal is the effect of the advertisements on amenity.

Reasons

7. The appeal site comprises the rear elevation of a single storey range of flat-roofed garages associated with the adjacent Moor House block of flats. Set back behind an open lawned area, it is located in a prominent position close to the well-trafficked roundabout and associated junctions of Moor Lane, The Northern Road, Moorland Avenue and the A565. Immediately to the east are the Grade II listed dwellings of No 28-34 Moor Lane.
8. The significance of the listed buildings lies in their 19th century origins, domestic scale and architectural quality, evident in the fine detailing including raised sandstone dressings and hornless sash windows. They therefore have historical, aesthetic and evidential value. Their setting is formed by the residential character of the area, including predominantly 2-storey dwellings of differing ages and architectural styles, set back behind small front gardens bounded by low walls and planting.
9. The statutory duty under section 66(1) of the Act which requires decision makers to 'have regard to preserving the listed building or its setting or any features of special architectural or historic interest,' only applies to the consideration of whether to grant planning permission or permission in principle. However, I have considered the contribution the listed buildings make to the general characteristics of the area in terms of amenity. Whilst the area has undoubtedly undergone change since the listed buildings were constructed, they contribute positively to the pleasant residential character which remains.
10. Paragraph 141 of the Framework acknowledges that the quality and character of places can suffer when advertisements are poorly sited and designed. The static adverts consist of a vinyl banner or aluminium dibond attached to a thin board, such that they are not of a particularly high quality.
11. From the approaches along Moor Lane on both sides of the roundabout, as well as from the junction with Moorland Avenue, the appeal site lies within the setting of the listed buildings, particularly that of No 28 Moor Lane which is immediately adjacent to the appeal site. Deliberately designed to attract attention by their large size and bright colours, the adverts are incongruous and conspicuous additions which visually compete with the listed buildings, detracting from and failing to preserve their residential setting.
12. Furthermore, the adverts take up the majority of the wall space on which they are sited, such that they appear out of scale with the host building. Their presence is particularly striking and harmful given the general absence of advertisements locally, especially of this scale. Given the importance of the listed buildings to the general character of the area, the adverts are harmful to visual amenity.
13. The appellant advises that advertising banners have been displayed at the appeal site over the past 5 years. Even if that is the case, there is no evidence before me that they had the benefit of advertisement consent. This does not affect my findings.
14. The advertisements harm amenity and therefore conflict with Policies EQ11, NH11 and NH9 of A Local Plan for Sefton (2017). Together these policies seek to ensure advertisements respect the scale of and are sympathetic to their immediate surroundings, including the setting of heritage assets.

Other Matters

15. The appellant cites the signs as an improvement to vandalism that has previously occurred at the appeal site. I observed there was no other graffiti in the surrounding area including on the garage block to the south of Moor House to indicate that it was particularly problematic in the area. Even so, there is no evidence before me that the advertisements are the only way to address the previous graffiti.
16. Although the advertisements promote 3 small to medium enterprises, none of the businesses are located at or within proximity of the appeal premises. It is likely therefore, that there are other ways of promoting these businesses without causing the harm identified.
17. Photographs of other signage at locations on Liverpool Road and Little Crosby Road do not affect my findings, as they are shown in isolation without evidence of their surrounding context or whether they have the benefit of advertisement consent. The adverts on College Road as depicted in the supplied photographs appear to have a commercial setting where other signage is prevalent, such that they are not comparable to the context before me.
18. It is a matter for the parties as to whether a suitable solution for the adverts may be available at the appeal site or an alternative location.

Conclusion

19. For the above reasons, the display of the advertisements is harmful to visual amenity. The appeal is dismissed.

M Clowes

INSPECTOR



Appeal Decision

Site visit made on 1 June 2024

by A Hartley, LLB(Hons), Solicitor, MBA

an Inspector appointed by the Secretary of State

Decision date: 25 June 2024

Appeal Ref: APP/M4320/D/24/3340729

191 Moorhey Road, Sefton, Maghull, Liverpool, L31 5LG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Thomas Armstrong against the decision of Sefton Metropolitan Borough Council.
 - The application Ref is DC/2023/01855.
 - The proposed development is erection of a new fence from a height of 1270mm to 1740 mm along the side and the front of the dwellinghouse.
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Decision

1. The appeal is dismissed.

Procedural Issue

2. At the site visit I noted that the appeal proposal had already been erected. The description given on the application form includes the word 'Retrospective' but as this is not a description of development, I have omitted it.

Main Issue

3. The effect of the proposal on the character and appearance of the building and the surrounding area.

Reasons

4. The appeal site is located on a bend along Moorhey Road. The dwelling is set back from the road with gardens to the front and side. The fence is in a particularly prominent position near to Moorhey Road and a footpath cutting across an area of open space and providing access to several properties. The surrounding development is a mixture of residential dwellings and retail units with parking. Low boundary walls and hedging predominate, together with large open grassed areas within the Moorhey Road street-scene.
5. Although my attention has been drawn to examples of other fences in the nearby area, their context differs from that of the appeal property. The appeal property is situated at a prominent corner, adjacent to a large expanse of public grassed area and in full view from the parade of shops and the car parking area opposite. In its position the fence is highly visible and due to its varying height and poor design in this context, it appears incongruous within the character of the area described above and adversely impacts on the character of the building by diminishing the sense of spaciousness around it.

6. Consequently, I find that the proposal conflicts with Policies HC4 and EQ2 of the Sefton Local Plan (2017) and Policy MAG4 of the Maghull Neighbourhood Plan (2019) in that it fails to respond positively to the characteristics of the area identified above.
7. National Planning Policy Framework paragraph 139 is also engaged which states that development that is not well designed, particularly where it fails to reflect local design guides, should be refused.

Other Matters

8. The Appellant states they are willing to work with the Council to find a solution and to change the design and colour of the fence. Although a condition could be imposed to change the colour and design of the fence, this would not overcome the identified harm caused by its height.
9. The Appellant requires the height of the fence marked A-B on the submitted plan to be 1740mm to prevent passers-by looking into their living room window and headlights shining into the living room at night from the car parking area opposite. However, I find that these purported benefits to living conditions do not outweigh the harm identified above.
10. The Appellant also states they are willing to reduce the height of that part of the fencing marked B-C. This amended proposal is not before me. However, even if it were, reducing the height of only part of the fencing would not overcome the fundamental harm caused by the height of that part of the fence marked A-B on the submitted plan, and would exacerbate the difference in height between the two areas of fencing, which would not be in keeping with the character of the area.
11. I have had regard to the third party representation in support of the proposal, however, this does not outweigh the harm caused by the proposal identified above.

Conclusion

12. Having taken into account all representations made, for the reasons given above, I conclude that the appeal should be dismissed.

A Hartley

INSPECTOR



Appeal Decision

Site visit made on 22 May 2024

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date 18 June 2024

Appeal Ref: APP/M4320/X/23/3328561

Land at Powderworks Lane, Melling, Liverpool L31 1AU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Gary Cringle against the decision of Sefton Metropolitan Borough Council.
 - The application ref DC/2022/01968, dated 10 October 2022, was refused by notice dated 26 January 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which an LDC is sought is 'B8 – Storage or Distribution'.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the existing use which is found to be lawful.

Procedural matter

2. An application has been made by the Appellant for an award of costs against the Council. This application is the subject of a separate Decision.

Reasons

3. The main issue is whether there is sufficient precise and unambiguous evidence to justify a conclusion that, on the balance of probability, the land has been in continuous use for 'B8 – Storage or Distribution' for a period in excess of ten years prior to the date of the application. The ten year period does not need to be immediately before the date of the application but if it isn't then the established lawful use must not then have been abandoned.
4. Powderworks Lane is a cul-de-sac and provides access to a mix of industrial, commercial and residential properties. On the land is a dilapidated building and, at the time of the site visit, some building materials. Much of the land is unused and partly overgrown. The land has an extensive planning history including the issue of an enforcement notice on 13 November 2020. The planning history, including the enforcement notice, is not relevant to consideration of whether the land had attained a lawful use on the date of the application.
5. As noted above the application, in answer to question 4 on the application form, sought to establish that the lawful existing use of the land is 'B8 – Storage and Distribution'. However, in his appeal statement the Appellant claims that "...what is being asserted is that for a considerable period, well in excess of 10 years this land has been used as an industrial site". Use classes are set out in the Town and Country (Use Classes) Order 1987 as amended (the Order). The Order

has been amended on many occasions but the version that exists now is that which existed on the date of the application. The Order now has two Class B uses – ‘Class B2 – General Industry’ and ‘Class B8 – Storage and Distribution’. The use of an industrial site falls under Class B2.

6. Question 5 on the application form requires the Applicant to fully describe the existing use for which an LDC is sought. The answer to this question is ‘Industrial site, used for the storage of materials, with small part derelict existing workshop building’. This answer suggests that the claimed ‘industrial site’ could be so defined because it has been used for, amongst other things, the storage of materials. Question 6 requires the Applicant to state why an LDC should be granted. Part of the answer to this question is “The application...seeks to establish the lawful use of B8 (storage and distribution) in order to continue the activity of storage and distribution in line with historic use of this and adjacent sites”.

7. The change of use of a Class B2 site to a Class B8 use is permitted development whilst the change of use of a Class B8 site to a Class B2 use is not permitted development. The use of land as an industrial site, a Class B2 use, cannot be a lawful use, as a matter of fact, if it is established that the land is in lawful Class B8 use. The nature of an application cannot be changed at appeal stage. The answers to questions 4 and 6 on the application form are unequivocal; the Applicant was, and the Appellant now is, seeking to establish that the lawful use of the land is ‘Class B8 – Storage and Distribution’, despite what is asserted in the Agent’s statement. The appeal will be determined on this basis.

8. The Council rely upon their Officer’s report on the application. It is clear that the Officer was distracted by the ambiguity in the application; the Officer stated that “There appears to be a misconception that the whole of the site...has an industrial use”. The Officer, rather than considering the application on the basis of the use for which an LDC was sought, ‘B8 – Storage and Distribution’, considered it on the basis that the use sought was ‘industrial site, used for storage of materials, with small existing workshop building’. The ‘Certificate Not Issued’ Notice continued this theme by describing the development as ‘continuation of use...as an industrial site, used for storage of materials, with small existing workshop building’.

9. The land was purchased by the Appellant in February 2020 from Samlouis Ltd, which is owned by Mrs Paula and Mr Mark Doyle. Samlouis Ltd purchased the land in 2007 and is one of three property businesses owned and operated by Mrs and Mr Doyle. The three businesses operate from different addresses but it is claimed that they all used the land to store new and reclaimed materials. Mrs Doyle, in a statement dated 15 October 2021, states that “Since 2007...the site...has always been used as a storage and stock depot...The depot is used by staff and employees of the businesses. The staff and employees would store equipment, stock materials, and sometimes vehicles on the site”.

10. The statement by Mrs Doyle is corroborated by Statutory Declarations, all properly sworn, signed and dated, by Mr R Seymour Senior, Mr J McLoughlin, Mr N Huntington, Mr P Cassidy and Mr R Gilmour. All five of the declarations, made by persons who were either employees of or who worked for the three companies owned by Mrs and Mr Doyle, paint a consistent picture of the storage use claimed by Mrs Doyle in her statement. The storage use did not occupy the whole site and the types of materials and equipment stored changed over time. But the land is a single planning unit and there was a continuity of storage use throughout the period of ownership by Samlouis Ltd between 2007 and 2020.

11. Owners of businesses on Powderworks Lane have written in support of the Appellant's application and appeal and paint the same picture of storage use described by Mrs Doyle and in the Statutory Declarations. Local residents are opposed to the appeal and some refer to the historical agricultural use of the land. This may have been a historical use of the land but there is certain evidence that such a use ceased before or when Samlouis Ltd purchased the site. Residents have referred to the overgrown nature of part of the land but other comments by them do corroborate storage use of the land. Nothing stated by residents undermines the evidence in the Statutory Declarations and given by Mrs Doyle.

12. The overgrown nature of parts of the land can be seen in aerial photographs submitted in evidence by the Council. Comments made in relation to a photograph of 2010 include "Materials stored in the open" and "...visible vehicle access and wearing of the surface of the land by storage and vehicle use...", in relation to a photograph of 2011 comments include "Increased materials stored in the open in multiple locations..." and "Clearly visible vehicle access and wearing of the surface of the land by storage...use...", and in relation to a photograph of 2012 comments include "Vehicle on site and clear hardstanding...", "Materials stored alongside front of land...", "Materials stored behind and at left hand side of building..."

13. Similar comments to those in the previous paragraph are also made by the Council in relation to aerial photographs of 2015, 2016, 2018 and 2019. The photographs and the comments made by the Council corroborate the evidence of Mrs Doyle and those who have submitted Statutory Declarations that the land was consistently used for storage between 2007 and February 2020. No enforcement action was taken during that 13 year period against the storage use which thus gained immunity from such action. The Appellant has submitted a properly sworn, signed and dated Statutory Declaration which claims that the storage use that became lawful through the passage of time has not been abandoned.

14. The Appellant's claim is corroborated by an aerial photograph of April 2021, taken over a year after he purchased the land; the Council has commented that the "Photo shows use of site and materials stored". There is no evidence of any industrial use of the land but there is sufficient precise and unambiguous evidence to justify a conclusion that, on the balance of probability, the land has been in continuous use for 'B8 - Storage or Distribution' for a period in excess of ten years prior to the date of the application, and that the use has not been abandoned.

15. For the reasons given the Council's refusal to grant an LDC for 'B8 - Storage or Distribution' at Land at Powderworks Lane, Melling, Liverpool was not well-founded and the appeal thus succeeds. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 10 October 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The existing storage use of the land has subsisted continuously for in excess of ten years and has not been abandoned and is thus immune from enforcement action.

Signed

John Braithwaite

Inspector

Date 18 June 2024

Reference: APP/M4320/X/23/3328561

First Schedule

Class B8 – Storage or Distribution

Second Schedule

Land at Powderworks Lane, Melling, Liverpool L31 1AU

IMPORTANT NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

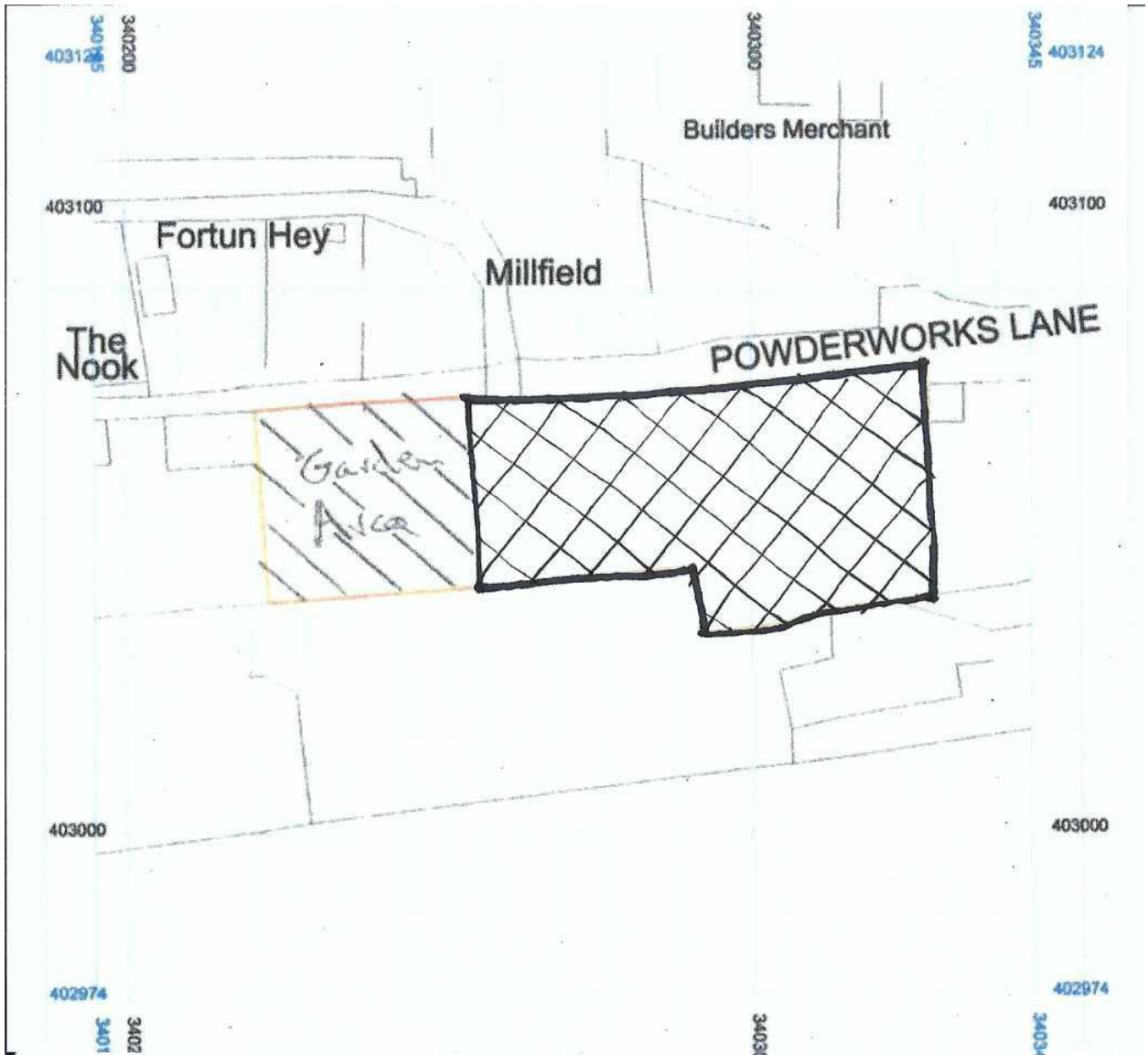
This is the plan referred to in the Lawful Development Certificate dated:

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

Land at Powderworks Lane, Melling, Liverpool L31 1AU

Reference: APP/M4320/X/23/3328561

Scale: Not to Scale





Costs Decision

Site visit made on 22 May 2024

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date 18 June 2024

Costs application in relation to Appeal Ref: APP/ M4320/X/23/3328561 Land at Powderworks Lane, Melling, Liverpool L31 1AU

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Gary Cringle for a full award of costs against Sefton Metropolitan Borough Council.
 - The appeal was against the refusal of an application for an LDC for 'B8 – Storage or Distribution'.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The enforcement notice dated 13 November 2020 is not relevant to the appeal and it is the Appellant, not the Council, who has failed to provide any information illustrating industrial use of the land. Instructing several professionals to act on his behalf is a choice made by the Appellant and does not, at all, constitute unreasonable behaviour by the Council.
4. The several professionals, in fact, have provided a confused case both to the Council and at appeal stage. The application sought an LDC for 'B8 – Storage or Distribution' but also referred to industrial use of the land, these being two different uses under the provisions of the Town and Country (Use Classes) Order 1987 as amended. This confused case was carried forward in the appeal. There is no evidence to support the claimed industrial use of the land whereas there is compelling evidence that the lawful use of the land is storage.
5. The Council, rightly, did not apply planning policy in their determination of the application because planning policy is not relevant to consideration of the lawful use of land, they did not apply a test higher than on the balance of probability, and they gave no weight to the location of the land within the Green Belt. The Council has not acted unreasonably and the Appellant has not therefore incurred unnecessary expense. An award of costs is not justified.

John Braithwaite

Inspector