



MEK Town Planning and Design
Consultants Ltd

SUPPORTING STATEMENT

for

Application for a Lawful Development Certificate for an Existing Use or Operation or Activity for continued use as a vehicle repair workshop that has been in existence for more than 10 years following planning application DA/13/01030/COU allowed under appeal reference APP/T2215/A/14/2214664 (Certificate of Lawfulness s191).

At

Garage Rear Of 105 Burnham Road, Dartford, Kent DA1 5AZ

On Behalf

Mr. Baljit Gill

18 December 2023

Prepared By



Mr Moses Ekole (BCs Hons, MA Urban & Regional Planning)

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1.0. BACKGROUND CONTEXT -INTRODUCTION

- 1.1. MEK Town Planning and Design Consultants Ltd act on behalf Mr. Mr Baljit Gill of 101 Shepherds Lane, Dartford, Kent, DA1 2PA. The statement provides additional information in support of the resubmitted certificate of lawfulness application for an existing use or operation for continued use as a vehicle repair workshop that has been in existence there for more than 10 years.
- 1.2. The use as a vehicle repair workshop was established towards the end of 2012, however; the retrospective application was submitted and received by the Council on 8th August 2013 under planning application reference 13/01030/COU. Subsequent applications were submitted including appeals as discussed within the body of this supporting statement. The site address is described as the Garage Rear of 105 Burnham Road Dartford Kent DA1 5AZ and the local planning authority is Dartford Borough Council.
- 1.3. The applicant sought a certificate of lawfulness of existing use or development (CLEUD) under Section 191 of the Town and Country Planning Act 1990 (as amended) however this was refused on 26th October 2023. The reason of refusal was:

“It has not been demonstrated, on the balance of probabilities, that the use as a vehicle repair workshop is lawful as there is evidence which demonstrates that it has not been carried out for 10 years. The evidence submitted is ambiguous, not detailed and imprecise”



- 1.4. The CLUED application process is to establish that the requisite time-limits referred to in Section 171B (3) of the Town and Country Planning Act 1990 are met or lawful, and therefore not requiring planning permission. The applicant has now provided additional evidence in form of tax returns for the last 10 years. This is to demonstrated that the use as a vehicle repair workshop has been carried out for 10 years at the premises and the Council should not have issues confirming that no planning permission would be required because the development is now lawful.
- 1.5. Overall, the following information is submitted as evidence in support of the certificate of lawful application for the existing use or development:

TAX RETURNS FOR MORE THAN 10 YEARS FROM APRIL 2012 TO APRIL 2023.

DECISION_NOTICE_OCTOBER_2013: Change of use of detached garage to vehicle repair workshop (retrospective application). Refused 24th October 2013.

EXAMPLE_DECISION_NOTICE__SEPTEMBER_2019: Change of use of detached garage to vehicle repair workshop (retrospective application). Refused 25th September 2019.

EXAMPLE_DECISION_NOTICE _SEPTEMBER_2022: Continued use as a vehicle repair workshop. Installation of additional shutter door on the front elevation which would remain closed when garage is in operation. Removal of shutter on side elevation facing towards 105 Burnham Road and bricking up of the door opening. Introduction of administrative office to include door and window on front elevation. Installation of exhaust extraction systems and new air compressor. Provision of inspection pit. Refused 21st September 2022.

APPEAL_DECISION_19TH_JUNE_2014: Ref: APP/T2215/A/14/2214664: The development proposed was described in the application form as “double garage change of use to workshop: The appeal is allowed and planning permission is granted for the change of use of detached garage to vehicle repair workshop at 105 Burnham Road, Dartford DA1 5AZ in accordance with



the terms of the application, Ref DA/13/01030/COU, dated 25 July 2013, subject to the conditions.

APPEAL_DECISION_29TH_AUGUST_2023: APP/T2215/W/22/3308693

The development proposed is continued use as a vehicle repair workshop following lapse of planning permission DA/13/01030/COU allowed under appeal reference APP/T2215/A/14/2214664. Installation of additional shutter door on the front elevation which would remain closed when garage is in operation. Removal of shutter on side elevation facing towards 105 Burnham Road and bricking up of the door opening. Introduction of administrative office to include door and window on front elevation. Installation of exhaust extraction systems and new air compressor. The appeal was dismissed and planning permission was refused 29 August 2023.

Location Plan AD-100 PA-02.

Existing Block Plan.

Declaration statements from Mr JASDEEP SINGH GILL

Declaration statement from Mrs PARAMJEET GILL

Declaration statement from Mr BALJIT SINGH GILL.

Existing Floor, Elevations Plans.

2.0. PLANNING LEGISLATION

- 2.1. The legislation relevant to a Certificate of Lawful Existing Use or Development ('CLUED') is Section 191 of the Town and Country Planning Act 1990 (as amended).
- 2.2. Section 191 advises that an application for a CLUED can be submitted to the Local Planning Authority (LPA) to ascertain whether the existing use of the building at rear of 105 Burnham Road as a car repair garage is lawful.
- 2.3. Under Section 191(2) of the Town and Country Planning Act 1990 as amended, uses are considered lawful if no enforcement action may be taken against them and they are not in contravention of any enforcement notice.



- 2.4. With respect to this application, an existing use can be considered lawful if it benefits from a planning permission and has been implemented; or the time taken for enforcement action has expired.
- 2.5. The time taken for enforcement action is defined at Section 171B of the Act, with 4 years being the time limit associated with dwellings and 10 years for other uses.
- 2.6. As such, in order to confirm the lawful use of the sites as a car repair workshop, it must be demonstrated that the use has been either subject to a planning permission or the use has occurred for a period of more than ten years without being subject to any enforcement action.
- 2.7. Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 specifies the information to be provided with a CLUED application. Information is to include:
 - A plan identifying the land.
 - Evidence verifying the use of the land.
 - A statement setting out the applicant's interest in the land.
- 2.8. Such evidence can include planning application documents, ownership information, and statements from individuals and other parties. To that end, the applicant has submitted three declaration statements, previous planning decisions, tax returns from April 2012 to April 2023 to demonstrate that the use has been there for more than 10 years and therefore lawful. That evidence is attached in support of the application.

3.0. ANALYSIS OF FACTS

- 3.1. The question of whether the Application meets the test in section 191 is, ultimately, a question of fact for the decision maker. It must be made, however, taking into account all material considerations and in accordance with the statutory guidance.
- 3.2. The Planning Practice Guidance: Lawful Development Certificates provides (as relevant): "The Applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an Applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so



wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the Applicant who needs to have the opportunity to comment on it and possibly produce counterevidence”.

“In the case of applications for existing use, if a local planning authority has no evidence itself, nor any 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.”

- 3.3. The PPG: Lawful Development Certificates provides a framework for approaching questions of fact under section 191. In the instant case the decision maker must determine, on a balance of probabilities, whether the use occurred more than ten years prior to the date of the application. Where there is no evidence to contradict the Applicants’ case, the correct approach is to grant the application save where the Applicants’ evidence is insufficiently precise and unambiguous. Where contrary evidence exists, the correct approach is to weigh the evidence that supports the application against the contrary evidence and consider whether, on a balance of probabilities, the alleged use had been extant for more than ten years.
- 3.4. For the application to succeed the Applicant must prove that the land has been in Continuous use as a vehicle repair workshop for a period exceeding ten years. The following evidence weighs in favour of that contention:
 - (a). The Applicant, in both his written submissions and statutory declarations given evidence that the garage to the rear of 105 Burnham Road has been in use as a vehicle repair workshop for more than ten years and have retained this use until today.
 - (b). The Applicant’s account is corroborated by two further statutory declarations each made by individuals with direct experience of the site.
 - (c). Furthermore, the applicant’s account is also supported by the previous relevant planning history of the site. Those previous planning decisions have been attached as part of application submission, and are also available on your local planning authority website.



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- (d). Finally, the applicant's account is supported by the tax returns for the last 10 years -starting from April 2012 to April 2023. These have been attached as a new additional evidence following the first refusal of the certificate application.

4.0. CONCLUSION

- 4.1. In the light of the above, the balance of probabilities falls unambiguously in favour of the Applicant. This is because the previous evidence together with the additional evidence being tax returns for over ten years would overcome the Council's previous reason of refusal. It would, in my view, be very difficult for a properly informed and reasonable council, applying the correct test and appropriate guidance, to lawfully refuse to grant a CLUED for this application.