



**APPLICATION TO BLABY DISTRICT COUNCIL UNDER S191  
OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS  
AMENDED)**

**FOR A CERTIFICATE OF LAWFULNESS FOR AN EXISTING  
DEVELOPMENT IN RELATION TO THE OPEN STORAGE OF  
BUILDING MATERIALS**

**ON LAND KNOWN AS THE OLD MARINA OFF WHARF WAY,  
GLEN PARVA, LEICESTER, LE2 9TF**

**ON BEHALF OF MR IAN SMITH**

**SUPPORTING STATEMENT**

**FEBRUARY 2024**



## 1. INTRODUCTION

- 1.1 This Statement sets out the full details of the case for the Applicant (Mr Ian Smith) in relation to an application for a Certificate of Lawfulness for an existing use, pursuant to Section 191 of the Town and Country Planning Act 1990 (as amended). The application seeks to demonstrate that the existing use of the land is lawful by virtue of the passage of the statutory time period (10 years), and is therefore immune from enforcement action.
- 1.2 It will be demonstrated that on the balance of probabilities land at the Old Marina at Glen Parva has been in use for open storage of building materials for at least 10 years prior to the date of this application. In order to make this case, this application is supported by a variety of evidence comprising statutory declarations from the Applicant, his family and their associates; historic aerial photographs; as well as further corroborating evidence.
- 1.3 Whilst the onus is on the Applicant to provide sufficient details to make out their case, the evidence for the Applicant need not be conclusive. Rather, the decision should be made on the balance of probabilities meaning the use in question is more likely than not to have commenced 10 years or more prior to the date of application. In addition, the decision is made on the facts meaning that planning policies and merits, for the purposes of this application, are not relevant.
- 1.4 The following sections set out the factual background to the application before discussing the legislative and legal framework followed by a summary, analysis and balancing of the evidence.



## 2. FACTUAL BACKGROUND

- 2.1 The Old Marina has been in the ownership of the Smith family since 1983. It was first owned by Ian Smith's grandmother and, in 2006, passed into the joint ownership of his mother, Patricia Smith, and Anthony Butler. Ian Smith, his family, and their associates, have used the site for their storage needs since the time it came into the family's ownership. The Old Marina has not operated as a marina for some time.
- 2.2 The storage needs of the Applicant, his family and associates have evolved over time, but they have largely revolved around the business concerns of the individuals involved. Ian Smith repairs, hauls and sells caravans and the site had been used for the long-term storage of excess caravans owned by Ian Smith, albeit this has not occurred in recent times. Ian Smith has also used the site for the long-term storage of cars he is repairing alongside various building materials. Likewise, Anthony and Wayne Butler being involved in the building trades have stored excess and salvaged materials at the site on a long-term basis which remained there until they were removed by Ian Smith and replaced by pallets of timber.
- 2.3 Associates of the family including Derek Alan Bright have stored items at the site on a long-term and continual basis and have observed the same to have taken place, as confirmed in his submitted Statutory Declaration.
- 2.4 Wayne Butler died in 2014 and those building materials belonging to him and to his father were left stored on the site from that point up until early 2023 when they were cleared by the Applicant and replaced with pallets of timber. As such, over the last 10 years the principal use of the site has been for the long-term open storage of building materials and the application has been framed on this basis.



### 3. LEGISLATIVE FRAMEWORK

- 3.1 Where a Certificate of Lawfulness is sought, the onus of proof is on the Applicant and the standard is the balance of probabilities. The Applicant's case is that the use of the Old Marina for the storage of building materials is lawful because the time for taking enforcement action against this use has expired.
- 3.2 Section 191(2) of the Town and Country Planning Act 1990 Act states that uses are lawful at any time if (a) no enforcement action may be taken in respect of them – in this case because the time for taking action has expired and (b) they do not contravene the requirements of any enforcement notice in force. Lawfulness is to be decided at the time of the application.
- 3.3 Subsection 191(2)(b) is met in this case in that there is no enforcement notice in force. With regard to subsection (a), section 171B(3) of the 1990 Act says where there has been a breach of planning control consisting of a breach unrelated to operational development, the change of use to a dwelling and relevant demolition; no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
- 3.4 To ascertain the lawfulness of a material change of use, it is necessary to address whether the change of use has occurred as a matter of fact and degree. The Planning Practice Guidance (PPG) states that:

*“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.”*



## 4. ASSESSMENT AND BALANCING OF EVIDENCE

4.1 This application is supported by the following evidence:

- Statutory Declaration of Ian Kenneth Smith
- Statutory Declaration of Patricia Rose Smith
- Statutory Declaration of Anthony David Butler
- Statutory Declaration of Derek Alan Bright
- Satellite images from Google Earth between 1999 and 2022
- Mr Ian Smith's Vehicle Operating Licence

4.2 Most of the Statutory Declarations submitted in support of this application derive from the Applicant and his family. The Applicant and his family have been involved with the site since 1983 and are in a position to authoritatively comment first hand on its use over time. Whilst Patricia Smith has not herself been involved in storing items on the site, she lives adjacent to it and is clearly in a position to attest to its use. The family's version of events is supported by the statutory declaration of Derek Alan Bright, who has stored items on the site himself and has also observed the same taking place.

4.3 The sworn statements of the Applicant and his family are specific as to the precise nature of the activities involved and the time periods and derive from first-hand knowledge. In the absence of any evidence to the contrary making the Applicant and his family's version of events less than probable, it is submitted that great weight should be attached to the Statutory Declarations.

4.4 The application is also supported by various satellite photos from 1999 to 2022.

4.5 The satellite photo from December 1999 (Figure 1) shows the Applicant's lorry (red) with a caravan in front as well as insulation panels, building blocks, a pallet of slates and the storage of vehicles around the sheds. From December 1999 until July 2006 there is no aerial imagery available. However, the nature of the items being stored and their position on the site as at July 2006 is clearly consistent with the 1999 photo.

4.6 The July 2006 photo (Figure 2) shows parked lorries, 3 static caravans, a boat and packs of bricks, blocks and slates belonging to Wayne and Tony Butler stored adjacent to the canal-side shed.



- 4.7 The next photo (Figure 3) is dated September 2008, which again shows a number of static caravans, building materials adjacent to the canal-side shed and drainage pipes; fittings and planks in the south eastern corner of the site.
- 4.8 The next photo (Figure 4) dates from December 2010 and shows the same nature and distribution of items and materials on the site as Figure 3.
- 4.9 The next photo (Figure 5) dates from September 2011. It shows bricks, slates and various building materials adjacent the canal-side shed. It also shows a variety of caravans and, in the south west corner, various items stored including pipes, fittings and planks.
- 4.10 The next photo (Figure 6) dates from April 2015. It shows various building materials such as insulation panels, bricks, slates and other materials to the west of the canal-side shed. These belong to Wayne and Tony Butler. There is also a damaged static caravan being stored to the west of the canal side building.
- 4.11 From April 2016 to April 2020 (Figures 7 to 9) little significant change occurred on the site, with it still hosting a variety of building materials and a damaged caravan as shown in the photo from April 2015. Between roughly April 2020 and March 2022 the site had become overgrown due to the restrictions on movement and business as a result of the COVID-19 pandemic. However, the image from March 2022 shows that once the foliage was cleared the materials present remained.
- 4.12 Satellite photos due to their nature only represent a point in time. There are also gaps in time between which no satellite photos are available. The gaps in the availability of satellite photos do not amount to gaps in the evidence. The Statutory Declarations are clear and unequivocal as to the nature of the use, the period over which it took place and its location on the site based on first-hand knowledge of the Applicant and his family, which is supported by the declaration of Derek Alan Bright. However, the satellite imagery at the points at which it is available clearly corroborates the content of the Statutory Declarations, which is that the part of the Old Marina concerned has been used for long-term open storage of items and materials. The length of time over which satellite images are available spanning 1999 to 2022 (23 years) always show the relevant part of the Old Marina in use for the storage of materials and items. In combination with the other evidence, this should attract substantive weight and assists to



corroborate the Applicant's version of events.

- 4.13 The satellite photos show a period of time during which the site became overgrown and this corresponded with the restrictions on business and movement which occurred during the COVID-19 pandemic. Two points should be made in respect of this.
- 4.14 The same materials were clearly shown to be on the site once the foliage had been removed in March 2022. Secondly, given the long-standing nature of the site's use before April 2020, immunity from enforcement action had already accrued as the minimum 10-year statutory period had elapsed prior to that date. The recent case of *Ocado Retail Ltd) v Islington London Borough Council [2021] EWHC 1509 (Admin)* established that any given use does not have to be continuous after immunity is gained. Once gained, the test is whether the use has been abandoned which clearly it had not been as the materials *in situ* remained.
- 4.15 The Applicant has also submitted a copy of his Goods Vehicle Operators' Licence appended to his Statutory Declaration. The licence dates from 2017 and was in force from 1992. It lists the operating centre for the vehicle as "The Marina, Wharf Way, Glen Parva, Leicester, LE2 9TF" which is the application site. Whilst in and of itself this is not conclusive, it does demonstrate that the Applicant has kept his lorry at the address which was used periodically to take caravans and materials to and from the site, which again speaks to the site's long-term use for open storage.



## 5. CONCLUSION

- 5.1 The balance of the evidence clearly confirms the Applicant's version of events. The Statutory Declarations should be given considerable weight. Aerial images confirm the Applicant's version of events as well as the Statutory Declaration from a long-term associate of the family with first-hand knowledge of the site and its history, as well as the supplementary evidence in the form of Ian Smith's Goods Vehicle Operator's Licence.
- 5.2 The particular mix of items stored at the site has evolved over time, but it has been consistently used for storage since at least 1999, principally building materials and caravans. Since around 2014, the site has been used for the long-term storage of building materials belonging to Wayne and Tony Butler and various associates of the family including Derek Alan Bright.
- 5.3 Given the content of this Statement and the supporting evidence, we consider that the Certificate of Lawfulness should be granted on the balance of probabilities and we respectfully request that the Local Planning Authority does so.