
Appeal Reference:	2022/E0006
Appeal by:	Mr Conor Rooney (OTMNI Ltd)
Appeal against:	The refusal of a Certificate of Lawfulness of Existing Use or Development
Proposed Development:	Building used as storage, with the hardstanding area to front as a parking area for vehicles.
Location:	Old pump house, 8/8a Balmoral Park, Belfast
Planning Authority:	Belfast City Council
Application Reference:	LA04/2022/0274/LDE
Procedure:	Written representations and Commissioner site visit 17 th May 2024
Decision by:	Commissioner Kenneth Donaghey dated 10 th June 2024

Decision

1. The appeal is dismissed.

Reasons

2. The main issue in respect of this appeal is whether the use of the building for storage is lawful.
3. Section 169 of the Planning Act (Northern Ireland) 2011 (the Act) makes provision for the issue of a Certificate of Lawfulness of Existing Use or Development (CLEUD). Section 169(1) states that “if any person wishes to ascertain whether – (a) any existing use of buildings or other land is lawful; (b) any operations which have been carried out in, on, over or under land are lawful; or (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, that person may make an application for the purpose to the appropriate council specifying the land and describing the use, operations or other matter”.
4. Section 169(2) indicates that “for the purposes of this Act uses and operations are lawful at any time if – (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force”.
5. Section 169(4) states that “if, on an application under this section, the council is provided with information satisfying it of the lawfulness at the time of the application of the use, operations or other matter described in the application, or

that description as modified by the council or a description substituted by it, the council must issue a certificate to that effect; and in any other case it must refuse the application”.

6. Section 132 of the Act refers to time limits for taking enforcement action against breaches of planning control. Section 132 (1) states that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of 5 years beginning with the date on which the operations were substantially completed. Section 132 (2) of the Act states that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling-house, no enforcement action may be taken after the end of the period of 5 years beginning with the date of the breach. Section 132 (3) of the Act states that in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 5 years beginning with the date of the breach.
7. In the case of an application for a CLEUD, the onus is on the applicant to provide evidence of the lawfulness of the use or development cited in the application forms. The issue in this case is whether the submitted evidence is sufficient to demonstrate, on the balance of probabilities, that the building has been used for storage for a period of 5 years or more. Immunity from enforcement action could also be achieved if the use had been continuous for the requisite period at some time in the past and had not been abandoned or superseded by another use when the CLEUD application was made. The application for a CLEUD was received by the Council on 8th February 2022. The application was refused on 16th May 2022. This appeal was made under Section 173 of the Planning Act against the Council's refusal of the application. Therefore, the critical date for the demonstration of immunity is 8th February 2017.
8. The appellant entered into contract to purchase this building in 2016 and took possession of the building on the 2nd August 2018. At this point the building was no longer used as a pumping station, hence its disposal by NI Water. The appellant further stated that much of the equipment which was previously associated with the use of the building as a pumping station remained in situ. It is the view of the appellant that as this equipment was no longer in use for its required purpose it was being stored. The appellant argues that consequently the use for the building as a pumping station had been abandoned at the point which the equipment was no longer in use and was replaced by a storage use. The appellant argues that that as he took possession of the building in August 2018, after entering into contract to purchase the building from 2016, that this is evidence of its storage use beyond the critical date as it had not been in use as a pumping station for a significant period before this change in ownership.
9. The appellant's submitted evidence in respect of the position above includes the following:-
 - Records from the NI Water website stating that in 2016/17 NI Water sold 10 redundant sites which have been disused for a number of years;

- Cover page of a sales agreement from McKibbin Commercial Property Consultants showing an agreement between the appellant and NI Water to purchase the site, dated 17th October 2016;
- An electronically redacted copy of a letter from McKinty and Wright Solicitors to the appellant concerning the proposed purchase of NI Water pumping station and the plant and apparatus contained within it, at Balmoral Park, dated 5th December 2016;
- Pages 1 - 2 of 9 of a quotation for land liability insurance at Balmoral Park, Finaghy, Belfast. The quotation was provided by Commercial Express for the appellant and is dated 17th October 2016;
- Scanned copy of the cover page of the property contract referring to the transfer from NI Water to OnthemoveNI Ltd, dated 2nd August 2017;
- A valuation certificate issued by Land and Property Services referring to a former pumping station now valued as poor stores, dated 10th October 2017 but stated as being effective from 8th August 2017;
- Copies of rate bills for the period 2017 – 2021 and 2021 – 2023;
- A photograph of two manhole keys, two photographs of electrical equipment, undated;
- Email correspondence from the appellant to various utility companies offering the sale of the electrical control panel which was included in the sale of the site, the date of these emails is illegible;
- Invoice from Baloo Hire for the hiring of various pieces of pumping equipment by the appellant, dated 19th September 2017;
- Copy of an email showing an eBay advertisement placed for an ABB Kent Taylor Flow Meter. The date on this email is illegible;
- An invoice for paint dated 10th September 2018;
- Photographs of electrical components, undated;
- A photograph of a concrete structure within the fence line of the site, undated;
- Email exchange between the appellant and Meehan Drilling, dated 22nd March 2019;
- Extracts from several planning documents referring to site as an ex pumping station;
- Invoice from Balloo Hire for the hiring of rock breaking equipment by the appellant dated 25th May 2021;
- Photograph showing Meehan Drilling undertaking work at the site, undated.
- Photograph showing pipework within the basement floor of the building, undated;
- Two photographs showing interior of the building, undated;
- An affidavit, signed by the appellant outlining that the site was used for storage since the use as a pumping station ceased;
- External photographs of site showing removal of concrete structure, undated;
- Five letters which the appellant has exchanged with the Council's Planning Department, dated 19th November 2021, 3rd February 2022, 6th May 2022 and 15th September 2022;
- Photograph of a pair of boots and a small green plastic box, undated;
- Two external photographs of site showing parking of cars on hard standing, undated;
- Postage label to site, dated 9th May 2022, and,

- Information taken from a planning application submitted by the appellant for the change of use of the building to a dwelling.
10. In addition to the above, several pieces of evidence were provided to the Council at application stage. Whilst hard copy of some of these elements has not been provided in support of this appeal, they were accepted, noted and recorded by the Council and as such form part of the consideration of this appeal. In reaching its decision, the Council considered that the change of ownership of the site was not sufficient to demonstrate that a storage use was active at the site. Similarly, the Council do not accept that upon the cessation of water pumping activities a class B4 storage use occurred at site.
 11. Once a lawful use has been implemented, this use remains until such times as it is abandoned or supplanted by another use. The appeal building was granted permission as a 'borehole pumping station'. The use as a pumping station is Sui Generis. Parties do not dispute that this permission was properly implemented. The exact date of the cessation of the borehole pumping at the site has not been provided by either party. Furthermore, it is not disputed that the appellant took ownership of the site in August 2018, or that he was in negotiations to purchase the site for a period prior to this date. The appellant argues that upon the cessation of pumping activities at the site, the previous planning approval was no longer being utilised and as such the use itself had ceased. This approach is incorrect. The use as a pumping station was properly approved and implemented. The cessation of actual borehole pumping does not necessarily extinguish this use. The activity associated with the use may have ceased, however the use itself was not automatically abandoned.
 12. The appellant has provided limited documentary evidence to demonstrate that any materials have been stored at the site. There are several undated photographs of various items such as manhole keys, boots and a green plastic box. This is not sufficient to demonstrate that a material change of use to storage has taken place at any point. There are also several photographs of items which remained in the building after its sale, such as pipes and electronic equipment which were associated with the use as a pumping station. These photographs are again undated and of limited evidential value. The storage of materials which were transferred as part of the sale of the site is not necessarily a separate storage use. The retention of these items such as the pipe work and large electronic control panels points towards the continuation of the use as a pumping station rather than demonstrating a material change of use to storage.
 13. It is the appellant's view that the storage of any items at the site, including those used in connection with the established use, constitutes a material change of use to storage. Whilst much of the photographs provided in evidence are undated, they refer to materials and items associated with the use as a pump house which were purchased by the appellant. The evidence then suggests that the appellant went through a period of decommissioning the building. The appellant argues that rather than decommissioning, it was a process to further enlarge the requisite storage space within the building. The actual decommissioning of the site and the removal of the pump house infrastructure would go some way to demonstrating the abandonment of the previous use. The dates on the emails regarding the sale of the electronic control panels are illegible. However, the email exchange between

the appellant and the drilling company took place in March 2019, evidence states that borehole abandonment works were undertaken between the 13th – 19th July 2021. The appellant has provided various photographs showing the completion of these decommissioning works. These undated images show the quantum of works which were carried out, such as the removal of pipe work, the stopping up of apertures into the structure, the removal of the associated electronic equipment and the addition of flooring. It is evident that these decommissioning works were undertaken after the critical date of August 2017.

14. The statement of rate bills provided for the site are of note as they demonstrate that the appellant has paid rates for the building since the change in ownership and that it was regarded as a store for the purposes of rate collection. However, this is the only piece of dated evidence which refers to a use of the building as a store. It does not demonstrate that the building was actually in use as a store. It does not of itself or in combination with the other evidence demonstrate, on the balance of probabilities, that the building has been used as a store since the critical date.
15. The use of the hardstanding area to the front of the building for the parking of vehicles also comprises part of the consideration. Of the submitted evidence, three images show vehicles parked on this area. These images are undated and are of limited assistance in establishing if this hardstanding has been used for the parking of vehicles since the critical date.
16. In the evidential context assessed above, it has not been demonstrated, on the balance of probabilities, that the building has been used for storage with the hardstanding area to the front as a parking area for vehicles. Therefore, the Council's reason for refusal is well founded. The appeal is dismissed.

This decision is based on Drawing 01, site location plan at 1:1250, stamped received by the Council 10th December 2021

COMMISSIONER KENNETH DONAGHEY

List of Documents

Planning Authority:- "A1" – Statement of Case
"A2"- Rebuttal Statement

Appellant:- "B1" – Statement of Case and Appendices