

**CUMBERLAND COUNCIL
DELEGATED PLANNING DECISION**

1.	Reference No:	4/23/2139/0E1
2.	Proposed Development:	CERTIFICATE OF LAWFULNESS FOR AN EXISTING USE - BUILDING CONTRACTORS ACTIVITIES, STORAGE, WAREHOUSE AND CRUSHING FACILITY
3.	Location:	WINDER BROW FARM, WINDER, FRIZINGTON
4.	Parish:	Arlecdon and Frizington, Lamplugh
5.	Constraints:	ASC;Adverts - ASC;Adverts, Coal - Off Coalfield - Data Subject To Change
6.	Publicity Representations &Policy	Neighbour Notification Letter: NO Site Notice: NO Press Notice: NO Consultation Responses: See report Relevant Planning Policies: See report
7.	Report:	<p>Site and Location This application relates to Winder Brow Farm, located on the south eastern edge of Winder, Frizington.</p> <p>Relevant Planning History</p> <ul style="list-style-type: none"> - Conversion of first floor of attached outbuilding into a flat, approved in January 2001 (application reference 4/00/0821/0 relates); - Notice of intention to construct an implement shed, approved in November 2004

(application reference 4/04/2726/0 relates);

- Erection of extension to cottage apartment, approved in July 2007 (application reference 4/07/2360/0 relates);
- Two storey extension to provide car port with extension over and external staircase, approved in July 2009 (application reference 4/09/2196/0 relates).

Proposal

This application seeks a lawful development certificate for the existing use of the site for building contractors activities, storage, warehousing and a crushing facility.

Consultation Responses

There is no statutory requirement to consult third parties including parish councils or neighbours. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.

Public Representation

One letter of objection has been received raising the following concerns:

- The application form states that there has been no development since 2010, but development has been ongoing since then;
- The site location plan does not include the second agricultural building;
- Operations are undertaken outside the approved times;
- The site is not used for agricultural purposes, but for crushing and builders storage;
- Google photographs show no evidence of crushing;
- The PPC certificate is for a mobile crusher and not for permanent crushing on the site;
- Crushing should not be undertaken in the small hamlet of Winder;
- Crushing has only been undertaken for 3 or 4 years and has steadily increased since;
- The operations are not screened;
- The operations negatively affect local amenities such as the coast to coast cycleway



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and neighbouring amenity;

- The burning of various materials has been undertaken on the farm;
- Mounds of waste material are being stored on the site;
- There could be asbestos on the site;
- The crushing may be having a negative effect on Winder Beck and therefore the protected SSSI of the River Ehen;
- The access road is not suitable for the operations;
- Local residents have been intimidated into not objecting to the proposal.

Planning Policy

Town and Country Planning Act 1990 – Section 191 as amended by Section 10 of the Planning and Compensation Act 1991

Assessment

A lawful development certificate enables applicants to establish whether a proposed or existing development is lawful for planning purposes. In this instance it is claimed that the use of the site subject to this application has been ongoing on this land for more than 10 years. The following evidence has been submitted to support this lawful development certificate:

- Application Form;
- Site Location Plan;
- Planning Statement;
- Appendix 1 - Decision Notice 4/99/0740/0 for erection of builders store and joinery workshop;
- Appendix 2 - Decision Notice 4/04/2726/0 for notice of intention to construct an implement shed;
- Appendix 3 - Declaration by Gibbons Chartered Accountants and Tax Advisors including the transfer agreement dated 1st July 2003;
- Appendix 4 - Invoices for building works and materials dated 28th July 2004, 7th September 2010 and 30th September 2010;
- Appendix 5 - Machinery invoice and lease purchase agreements dated 19th July 2012;
- Appendix 6 - Google image showing external works dated 2016;

- Appendix 7 – Goods Vehicle Operator’s License dated 3rd September 2002;
- Appendix 8 – Certificate of Registration Under the Waste (England and Wales) Regulations 2011 dated 29th October 2011;
- Appendix 9 – Declaration by Graeme Gilpin – employee dated 13th April 2023;
- Appendix 10 – Declaration by Mr and Mrs Stephenson – neighbouring property, dated 12th December 2022 and declaration by Mr and Mrs Clark – neighbouring property, dated 30th March 2023.

Based on the evidence submitted, on the balance of probability and based on the facts of the case and the relevant planning law it is reasonable to conclude that the use of the site for building activities, storage, warehousing and crushing is lawful.

Although an objection has been received from a local resident in relation to this Lawful Development Certificate, the objections mostly relate to issues that are not related to planning and no evidence is provided to the contrary of the submitted information by the Applicant.

The purpose of this Lawful Development Certificate however is to establish that the use is now lawful given the time since implementation and the site is now immune from enforcement action. The neighbouring objection to the application states that the use has been undertaken at this location since 2010, providing further evidence that the use is lawful.

On this basis it is appropriate for a lawful development certificate to be granted in this case.

8. **Recommendation:**
Approval of Certificate of Lawfulness

Case Officer: Sarah Papaleo

Date : 05/07/2023

Authorising Officer: N.J Hayhurst

Date : 10/07/2023

Dedicated responses to:-