Statement in Support of Application for Certificate of Lawfulness of Existing Use – Buildings at Monier Tileworks, Moorhouse

Introduction

This statement supports an application for a Lawful Development Certificate for existing development on land forming part of the Monier Tileworks. The application context is complex, but simply put the Certificate seeks confirmation that the lawful use of buildings erected at the site prior to the appointed day (i.e. 1st July 1948), and certain buildings since erected, is for tile manufacture and storage (within Use Class B2), and that the use is not subject to restriction by planning conditions. The application is made under Section 191 of the Town & Country Planning Act 1990 as amended by Section 10 of the Planning and Compensation Act 1991.

This document sets out the grounds on which this Certificate is sought and introduces evidence to demonstrate that the use of the buildings in question is lawful.

The Site

The application site boundary adopts the extent of land leased by the site owners (The Trustees of the Titsey Foundation and The Trustees of the G A Innes 1992 Settlement) to the Monier Group for the purposes of tile manufacture. The application boundary is identified by the red line on the site plan at Appendix A. It is an irregularly shaped parcel of land lying to the west of Clackett Lane and reached by a private access from the A25. The area as a whole extends to about 8.4 hectares. The premises are in use for tile manufacture and are regarded as a single planning unit.

Recent discussions

During the latter part of 2012, representatives of the site’s owners met with Officers from both Tandridge District Council and Surrey County Council to discuss the site. During these discussions, the owner’s agent indicated that they would be submitting applications for Certificates of Lawfulness having undertaken a comprehensive review of the site’s planning history. It was agreed during those discussions that tile manufacturing and storage constituted an industrial use and as such, the Certificates of Lawfulness should be addressed to Tandridge District Council as the relevant local planning authority.

Planning History

The site has a long and very complex planning history. This has been comprehensively explored by the applicant, supported by appropriate legal advice. A large number of applications appear on the Statutory Register. This Statement does not purport to review of each and every application that has been submitted. Instead, it reviews the planning history insofar as it is relevant evidentially to the Lawful Use Certificate application itself.
Early History

Tile manufacture began very many years ago at this site. Indeed, an original lease for the manufacture of tiles was granted by the owners on 24th March 1935. The origins of this site are confirmed in a Committee report in connection with an earlier application for an Established Use Certificate (TA/87/1301, paragraph 3 – Appendix B).

Recent Times

Tile manufacture has continued ever since, although the use has expanded onto a larger area than that originally established. There is a range of ancillary activities including storage of materials and product, research facilities, offices, welfare and parking for staff and commercial vehicles. As the planning history demonstrates, there are many planning consents for individual buildings. There is no planning permission as such for the overall use of the site. However, the Established Use Certificate application referred to above was approved by Decision Notice dated 8th March 1989. The Certificate confirms that on 27th November 1987, the use of land for:

- Importing, storage, manufacture and distribution of concrete tiles.
- Importing and storage for cement, sand and other materials to be used in the manufacture of concrete tiles.
- Importing, storage and distribution of accessories to concrete roofing products; and
- Importing and storage of sand for burning and the storage and distribution of the burnt sand

was an Established Use. A copy of the Established Use Certificate and plan is at Appendix C.

Established Use Certificates remain valid today but do not confer the same rights as Lawful Development Certificates. Since 1987, a number of other planning applications have been made and approved at the site.

The purpose of this application is to secure by way of a Lawful Use Certificate, confirmation that all buildings that existed at the site at the appointed day in 1948, can be lawfully used for tile manufacture, storage and ancillary purposes. The applicant also wishes for confirmation that additional buildings, for which express planning consent cannot currently be identified, can also lawfully be used for the same purposes. The applicant also seeks confirmation that the use of the buildings identified are not subject to restriction by planning conditions. This application is not intended to supersede the Established Use Certificate that has been granted. It is not an application for the “conversion” of the existing Established Use Certificate into a Lawful Use Certificate.

The relevant provisions are set out in the Planning and Compensation Act 1991 (commencement no. 11 Transitional Provisions) Order 1992 (No 1630), Article 3 (2). There would be no inconsistency between the Established Use Certificate that was granted in 1989, and the grant of a Lawful Use Certificate for the use of buildings in a form now sought by the applicant.
The Evidence

Evidence of the “appointed day” development (i.e. use as at 1st July 1948) is gleaned from aerial photography and Ordnance Survey Sheet records. Appendix D is a set of Ordnance Survey plans from the late 19th Century to 1951/52 but also including an aerial photograph dated 1947. The mapping in this set is at 1:10,560 scale. There is no evidence of tile manufacture activity on the 1914 map. The 1933 map at this scale did not cover the application site. The earliest map available after the appointed day is that published in 1951. This plan identifies a number of buildings within the application site, primarily of rectangular form. The original Moorhouse sand pit can be seen to the east of the buildings, south of Westwood Farm. The commentary in the top right corner of the map box notes that the published date given for the mapping is often some years later than the date of the survey on which the mapping is based. The aerial photography is noted as sourced by the Ordnance Survey, and is dated 1947. It is useful to compare the information on the aerial photograph with the 1951 1:10,560 scale plan. It is worth noting that the extent of the sand pit shown in the 1947 photograph extends beyond the area indicated in the 1951 O/S sheet, which could potentially be explained by the O/S sheet being based on earlier survey information. However, a number of buildings can be determined on the old photograph, in broadly similar locations to that indicated on the 1951 O/S sheet.

A separate copy of the 1947 photograph has been obtained, at slightly improved quality. This photograph has been analysed in detail in relation to structures present on site today (as evidenced by a recent building survey – see Appendix E) and in relation to a bundle or O/S extracts at 1:2,500 scale published between 1964 (the first such plan available after the appointed day since 1912) and 1992 (copies at Appendix F). From this exercise we have produced a plan (copy at Appendix G) identifying those buildings which presently exist, which can be regarded as having been present at the site at the appointed day. These have been coloured yellow.

We have also undertaken an analysis of all planning permissions granted on the site, and have identified those permissions which relate to buildings which currently exist today. Please note that this does not extend to land uses (such as tile stacking) but specifically to approved structures. A schedule of the relevant applications is at Appendix H. These permissions can of course be checked against your own records.

We have prepared at Appendix I a plan identifying in solid green those existing buildings that are subject to those permissions. Putting the two plans side-by-side, it can be seen that the overwhelming majority of structures at the property either derive from the appointed day or from express planning consent thereafter.

There are a small number of buildings for which we have been unable to find records of planning approval. These buildings are coloured blue on the plan at Appendix J. It is of course possible that the operator’s considered their provision to be Permitted Development at the time. It is also possible that some of these buildings were present at the appointed
day but are too small to be apparent on aerial photography, or have not been surveyed on the historic OS mapping. Finally, they may have been subject to planning permissions that the applicant has been unable to trace. The second element of this application is for determination that these structures can be lawfully used for tile manufacturing, storage and ancillary purposes (within Use Class B2).

The relevant test as far as the lawfulness of a use is concerned is whether or not the use has subsisted at least 10 years prior to the date of this application. In that respect, the evidence of aerial photography and O/S drawings is relevant.

The position at the appointed day has already been reviewed and the buildings that were present then and continue to be so are represented on the plan at Appendix G. Clearly those buildings were present at the appointed day and continue to be present. Their use for in excess of 10 years prior to the application date is also something that cannot be in question.

To establish the position with the buildings coloured blue on Appendix J, we have compared these to an aerial photograph dating from 1999. A copy of the relevant aerial photograph is at Appendix K. On this photograph we have outlined the position of each of the buildings identified on the plan at Appendix J for ease of reference. We have also included in the same appendix a clean copy of the aerial photograph. It can therefore be seen that all of the buildings for which planning records are unavailable, were present on the site in 1999.

All the buildings subject to the Certificate of Lawfulness application lie within an area leased by the owners, for tile production. The most recent lease was dated 28th February 1990. The head page of that lease together with a plan and relevant extracts is at Appendix L. This lease is current and occupation by the tenant company (now the Monier Group) continues to the present day. The lease area is synonymous with the application site plan and is considered to be the relevant planning unit. The planning unit as a whole is used for the manufacture and storage of tiles and ancillary uses. The use is more fully described in the Established Use Certificate granted on 8th March 1989, a copy of which is at Appendix C. The use remains unchanged since that time.

The applicant is conscious that the relevant test of proof for an application for a Certificate of Lawfulness is “the balance of probability”. In this case, there can be no doubt that the property on the subject site has been used for tile manufacture for at least the last 10 years, and that the buildings identified in the application form part of the planning unit. Confirmation is sought by way of a Lawful Use Certificate to the effect that the buildings identified in the application can be used for tile manufacture, storage and ancillary purposes, and that there are no planning conditions which relate to the use of these buildings. The evidence that has been provided ought to be sufficient to allow the decision-maker to reach the same conclusion, not least given the existence of the Established Use Certificate granted in 1989. In the applicant’s view, the existence of the Established Use Certificate reduces the burden of proof on the applicant in respect of this CLEUD application.
Appendices

Appendix A – Site plan identifying application boundary by red line

Appendix B – Committee Report TA/87/1301

Appendix C – Copy of the Established Use Certificate granted on 8th March 1989

Appendix D – Set of O/S plans at 1:10,560 scale and aerial photograph

Appendix E – Recent building survey

Appendix F – Set of O/S extracts at 1:2,500 scale

Appendix G – Plan of buildings present today and at the Appointed Day

Appendix H – Schedule of relevant applications

Appendix I – Plan identifying buildings and associated permissions

Appendix J – Plan identifying buildings where planning permission unavailable

Appendix K – Copy of 1999 aerial photograph with overlay

Appendix L – Lease extracts

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January 2013