



AGENT:	Miss Alison Cox - Stanfords The Livestock Market Wyncolls Road Colchester Essex CO4 9HU	APPLICANT:	Mr Alistair Gibson - Pro Gas Essex Clay Lane St Osyth Essex CO16 8HH
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CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191 (AS AMENDED BY SECTION 10 OF THE PLANNING AND COMPENSATION ACT 1991)

APPLICATION NO: 23/01459/LUEX **DATE REGISTERED:** 16th October 2023

NOTIFICATION OF REFUSAL OF CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

Tendring District Council hereby REFUSE the application for a Certificate of Lawful Existing Use in respect of the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto for the following reason(s):

- 1 The application seeks a Certificate of Lawfulness for an existing use of land and operational development under section 191 of the Town and Country Planning Act 1990. For the purposes of this Act, uses can be considered lawful when a continuous period of 10 years is demonstrated (s171B (3)) and substantial completion of operational development becomes lawful after 4 years (s171B (1)). This certificate has been made for both an existing use and development all within one red lined site area. The application is not supported by precise or unambiguous evidence to demonstrate the 10 and 4 year time limits required by the Act.

The certificate seeks confirmation that use of the front part of the site (as indicated in green on the accompanying coloured plan) is lawful as ancillary storage to the wider Sui Generis Use of the site.

The operational development comprising the installation of hardstanding for the citing gas cylinders to the rear portion of the site (as indicated yellow in the accompanying coloured plan) has not been in situ since 2019 as evidenced by the aerial images provided within the Planning Statement.

The storage element in excess of 10 years as claimed cannot exist as an ancillary element to an unlawful Sui Generis Use across the wider site facilitated by the operational development undertaken less than 4 years ago.

Based on the submitted evidence, the lawful certificate claimed fails to provide sufficient or precise information to establish the use or operational development as lawful. Consequently, this application for a Lawful Development Certificate for an Existing Use is refused.

DATED: 16th February 2024

SIGNED:



John Pateman-Gee
Head of Planning and Building Control

FIRST SCHEDULE

Certificate of Lawfulness for the use of the front/side part of the site for the storage of gas bottles as storage (ancillary to the wider Sui Generis use of the site) for more than 10 years before the date of the application (coloured green on the accompanying plan), and the development of a hardstanding and the siting of gas tank/bottling equipment on the side/rear part of the site for more than 4 years in association with the Sui Generis use of the site before the date of the application (coloured yellow on the accompanying plan).

SECOND SCHEDULE

Chapel Barn Crosslands Game Farm Clay Lane St Osyth

INFORMATIVES:

Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the agent. However, it has not been possible to resolve the issues and approval has not been possible.

Without prejudice and in the interests of being positive and proactive, based on the information provided by the applicant and applicant's agent, and the LPA's understanding of the site, officers would suggest that the use of the front/side part of the site for the storage of gas bottles appears to describe a storage and distribution use. As such, this element may fall under a Class B8 Use (Storage and Distribution). The applicant is claiming that the storage of gas bottles existed first. Consequently, officers would suggest that the applicant consider submitting a certificate of lawfulness application for the front portion of the site only, with a description relating the storage and distribution of gas bottles only (full gas bottles delivered to site from off-site provider). This appears to be the more logical approach in securing a lawful development certificate for the front portion of the site.

Plans and Supporting Documents

The Local Planning Authority has resolved to refuse the application for the reason(s) set out above. For clarity, the refusal is based upon the consideration of the plans and supporting documents accompanying the application as follows, (accounting for any updated or amended documents):

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- Application Form
- Site Plan
- Further information re: use - received 9 November 2023
- Agent draft revised description and main use details - received 13 November 2023

- Additional Information from Agent Re: Use and Description - received 20 November 2023
- Agent Confirmation of Description Change and Coloured Plan Submission - received 22 November 2023
- Coloured Plan Cover Email - received 9 November 2023
- Further information from agent re: Flogas not Calor Gas - received 18 December 2023
- New information on existing uses - received 11 December 2023
- Planning Statement (with Google Earth Imagery embedded)
- Appendix 1 Newly-opened Santander Business Account dated 3rd June 2011.
- Appendix 2 Sample of delivery notes from 2012
- Appendix 3 Sample of delivery notes from 2013 and the accounts ending April 2013 and April 2014
- Appendix 4 Sample of delivery notes from 2016 and the accounts ending April 2015
- Appendix 5 Sample of delivery notes from 2017 and the accounts ending April 2016 and April 2017
- Appendix 6 Sample of delivery notes from 2018 and the accounts ending April 2018 and April 2019
- Appendix 7 Accounts ending April 2019
- Appendix 8 Confirmation statement, Change of Accounting Reference Date and Financial Statement up to 31st July 2020 - all obtained from Companies House
- Appendix 9 Company Information for the Year Ended 31 July 2021 and for the Year Ended 31 July 2023
- Appendix 10 Electrical Installation Certificate and Service Report for a new installation in association with the Liquid Petroleum Gas

Notes

- Your attention is drawn to the fact that if you are aggrieved by this determination you have a right of appeal against it to the Planning Inspectorate under Section 195 of the Town and Country Planning Act 1990. Notice of the appeal should be made using a **Lawful Use or Development Appeal Form**, which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN (Tel: 0303 444 5000) or online at <https://www.gov.uk/planning-inspectorate>. **Please note, only the applicant possesses the right of appeal.**