

Status of the Vacant Land south of the Application Site and Potential of it's at Unrestricted Industrial Use Occupying this Site

Abandonment: Notwithstanding the acceptability of the relationship between the two uses it is the applicant's firm assertion that the vacant land referenced above could not be reinstated to industrial use as its former use for industrial purposes has clearly been abandoned.

Trustees of Castell-y-Mynach Estate v SoS 10/7/84 set out criteria to be considered when determining whether a use or building has been abandoned which were then accepted in subsequent cases. The four criteria are:

- 1) Physical condition;
- 2) Period of non-use;
- 3) Use for any other purposes; and
- 4) Owner's intentions.

Dealing with each of these in turn:

Period of Non-Use: We understand that the site has not been for industrial purposes since prior to the demolition of the former industrial building on the site, a fact supported by evidence from aerial photography. The aerial photograph appended to this letter (???) show that, by ??? June 2000, the building on the site had been cleared and that the site had already become overgrown with vegetation. Subsequent aerial photographs show and no change in the use or condition of the land other than a gradual deterioration as a result of the continued growth of vegetation. The site has therefore not been used for a period of at least 14 years, quite probably longer.

Physical Condition: As identified above, the site previously housed an industrial building. When the industrial use of the site ceased this building was demolished and the site cleared of any structures associated with its former industrial use other than the hard-standing. In the subsequent years (at least 14) there has been no apparent effort to maintain the site and the hard-standing has slowly deteriorated whilst the vegetation cover has become more established (as evidenced by the current state of the site and the attached aerial photographs).

Use for Other Purposes: A small part of the site, we understand, was used as a car park for a period of time. Other than this the site has not been used for any purpose since the cessation of the industrial use.

Owner's Intentions: Evidence of intent in respect of this site is as follows:

- The site was cleared of all industrial structures and paraphernalia when the previous industrial use of the site ceased.
- The site is now owned by a company called 'C Front Trading LLP', a boat accessory company based in Brighton, as opposed to an industrial operation.
- The site has been successfully promoted by its owner for residential purposes as part of the Local Development Plan process.
- The owner has approached Greenhill Construction Limited with a view to selling the site for residential development.

There is no quantifiable evidence to suggest that the owner intends to reinstate the former industrial use of the site.

Relevant Case Law: The following case, taken from DCP Online, has strong parallels with the above site:

“An enforcement notice directed against the change of use of a former concrete batching plant to use for the recycling of construction and demolition materials was upheld. A reporter found that it was not immune from enforcement action. Using the four factors to determine if abandonment had occurred the reporter found that prior to the appellants occupation of the site in January 2006, the site was described as being disused and derelict by a reporter in another appeal in 2003 and by the owners in 2005, the site had not been used for any industrial activity for a period of more than six years, it had been used intermittently for another use, ownership of the site had changed and the new owners had investigated alternative uses for the site. Taking all this into account the reporter found that industrial use of the site had been abandoned in 1998 and that planning permission was therefore required for the present use, see Edinburgh 27/03/2007”

It is our firm opinion, in the face of relevant case-law and the evidence presented above, that the industrial use of the site has unequivocally been abandoned. Were we to submit a Certificate of Lawfulness to confirm a nil-use of the site on the basis of this evidence it is difficult to see how, on the balance of probabilities, the LPA could possibly reach a different conclusion. It is therefore asserted that the LPA can confidently progress with our current application for residential redevelopment without fear of future conflict with a possible unrestricted industrial use being reinstated on the adjacent land.

Nuisance Legislation: Even if the adjacent land were to be reinstated to industrial use and the noise generated from that use was so great as to have a significant detrimental impact on the amenity of future residents, the local authority have the ability, under existing nuisance legislation, to curtail any noise at source. Any potential industrial occupier would be fully aware of this, as well as the proposed residential development, and would undoubtedly give this due consideration before taking occupancy of the land. It is fully understood that nuisance legislation should be used as a last resort only and that potential conflict should be designed out in the first instance however, given the circumstances identified above, the likelihood in this instance of a scenario arising which would give rise to the need for the use of nuisance legislation is so remote as to be practically non-existent.

In summary with regard to noise the evidence set out above identifies that:

- There is no intention for the land in question to be reinstated for industrial purposes;
- The former industrial use of the adjacent land has been abandoned and so it could not be in any instance;
- If the adjacent land were reinstated to industrial use there would be no unacceptable impact on the residents of the proposed dwellings.
- Existing nuisance legislation could be utilised to mitigate any detrimental impact on residential occupiers in the highly unlikely event that the industrial use were to be reinstated to the detriment of residential occupiers.

The application scheme clearly therefore represents an acceptable form of development in respect of noise. Any attempt to resist the development on noise grounds would be wholly unreasonable.