

# Report

Report to:	<b>Hamilton Area Committee</b>
Date of Meeting:	<b>27 September 2006</b>
Report by:	<b>Executive Director (Enterprise Resources)</b>

Application No	<b>HM/04/0548</b>
Planning Proposal:	<b>Use of Site for Storage Purposes (Certificate of Lawfulness - Existing)</b>

## 1 Summary Application Information

- Application Type : Certificate of Lawfulness (Existing)
- Applicant : KV Limited
- Location : Former Waterworks  
Strathaven Road  
Hamilton

## 2 Recommendation(s)

### 2.1 The Committee is asked to approve the following recommendation(s):-

- (1) Refuse Certificate of Lawful Use or Development (Existing) for the reason stated.

### 2.2 Other Actions/Notes

None.

## 3 Other Information

- ◆ Applicant's Agent: James Barr
- ◆ Council Area/Ward: 50 Cadzow
- ◆ Policy Reference(s): Circular 4/1999 – Planning Enforcement Town and Country Planning (Scotland) Act 1997 – Certificates of Lawful Use or Development

### ◆ Representation(s):

0 Objection Letters  
0 Support Letters  
0 Comments Letters

### ◆ Consultation(s):

None required.

## **Planning Application Report**

### **1 Application Site**

- 1.1 The application relates to an area of land on Strathaven Road to the southern edge of Hamilton. The application site is bounded on all sides by agricultural land except to the west where it is bounded directly by Strathaven Road.
- 1.2 The site extends to approximately 2.24 hectares and is rectangular in shape. The site includes areas of hard surfacing, street lighting and structures above ground with continuous stone walls to the west and iron railings to the east. The site includes limited vegetation cover in addition to areas of 'made-up' ground.

### **2 Proposal(s)**

- 2.1 This is an application for a certificate of lawfulness or development for Class 6 (storage) under the terms of the Town and Country Planning (Use Classes) (Scotland) Order 1997.

### **3 Background**

#### **3.1 Local Plan Policy**

- 3.1.1 Applications for Certificates of Lawfulness or Development are required to be assessed on the evidence submitted and not against local plan policy.

#### **3.2 Planning History**

- 3.2.1 The current application for a certificate of lawfulness or development was submitted to the Council on 21 July 2004. A detailed planning application for the erection of 9 houses and associated works within the same site was submitted to the Council on 10 October 2005 and refused planning permission on 16 August 2006.

### **4 Consultation(s)**

- 4.1 Applications for Certificates of Lawfulness or Development are required to be assessed on the evidence submitted and should not take into account the content of any consultations undertaken.

### **5 Representation(s)**

- 5.1 Neighbour notification procedures are not required to be undertaken for this type of application.

### **6 Assessment and Conclusions**

- 6.1 The determining issues in the consideration of this application are whether or not it has been satisfactorily demonstrated that the use of the land as storage (Class 6) has been in existence for a period in excess of 10 years from the date of the application. In order to grant the certificate of lawfulness, the Planning Authority requires clear, substantiated evidence of the continuing use of the site for the purpose claimed, without interruption, over the statutory period of 10 years. The onus of proof is firmly on the applicant to satisfy the Authority of the position, and the standard of proof is the balance of probability. In terms of Section 150(4) of the Act, the Authority has no discretion on the matter, and if it is not satisfied, it shall not issue the certificate.
- 6.2 The main evidence submitted in support of the application includes a planning assessment providing a history of the site which states that the site was first purchased by the Hamilton Town Commissions Water Works Committee in 1903. It was designed to hold 1.25 million gallons of water and was operational in 1904 until

sometime in the late 1960's. The construction of the water works included a variety of buildings and engineering facilities which are prevalent today. In 1966 the facility was replaced by a covered reservoir on a different site. The site was then used as a storage depot by the former West of Scotland Water and their predecessors and also by Strathclyde Regional Council and their predecessors continuously from the 1960's until the sale of the site to the applicant in May 2000 at which time it was being used as a storage depot and continued to be so by the sellers, West of Scotland Water, for some time after. The applicant has continued to use the site as a storage depot from their time of acquisition until the present time. It is, therefore, claimed that the site has been utilised as a storage depot for a period of approximately 40 years and continues to be so used.

- 6.3 Other evidence submitted to the Council includes: an extract from the Register of Vacant and Derelict Land Survey 2002 which describes the site as derelict; a letter from South Lanarkshire Council confirming this status; a letter from the Scottish Executive which discusses the reasoning behind land within 1 kilometre of settlements being included in the Scottish Vacant and Derelict Land Survey; an extract from a committee report for a crematorium in High Blantyre which refers to the former waterworks site as a brownfield site and a letter from Wrights Solicitor confirming the history of the site. A subsequent letter was also submitted from Scottish Water stating that West of Scotland Water used the site for storage of materials since 1960's on a continual basis. The frequency of distribution and the use of these materials, by the nature of the Company's operations, fluctuated but were continuous and the site was still operational in terms of storage of materials up to the time of sale.
- 6.4 It is accepted that the site is brownfield in its nature and that it is recorded as derelict land in the Scottish Vacant and Derelict Land Survey. However, having fully considered all of the relevant information provided by the applicant and available to the Council I am not convinced that sufficient evidence has been submitted in support of the application to demonstrate that the site has been used for storage on a continuous basis for ten years. Nor has it been demonstrated that the type of storage is not materially different to that at the beginning of the ten year period and that the scale of operations is the same now as at the start of that period.
- 6.5 It is also clear that the type of storage that has taken place on the site relates to open storage and based on the limited information submitted I am not satisfied that more intrusive uses such as a haulage yard or distribution centre have been operated from the site. Furthermore, the storage has also been taking place within a very small part of the site rather than the whole of the application site as outlined on the submitted plans.
- 6.6 On the basis of a number of site visits undertaken it has been noted that the site contains a limited number of metal storage containers in poor condition. No information has been supplied as to what, if anything, is stored within the containers. At the time of the application the entrance to the site from Strathaven Road was marked by concrete blocks and a fence which suggests that the access to the site is irregular at best. Furthermore, an aerial photograph taken in recent years did not identify any storage taking place within the site at the time. It could, therefore be argued that any storage use that was in operation can now be considered to be abandoned.

6.7 In summary, I am not satisfied that the use of the land, as storage under Class 6 of the Use Classes (Scotland) Order has been used for storage on a continuous basis for ten years. Given the above, it is considered that the Certificate of Lawful Use or Development should not be granted.

## **7 Reason for Decision**

7.1 It has not been satisfactorily demonstrated that the site has been used for storage (Class 6) on a continuous basis for ten years.

**Iain Urquhart**  
**Executive Director (Enterprise Resources)**

**12 September 2006**

## **Previous References**

- ◆ Circular 4/1999 – Planning Enforcement Town and Country (Scotland) Act 1997 – Certificate of Lawful Use or Development.

## **List of Background Papers**

None

## **Consultations**

None required

## **Representations**

None

## **Contact for Further Information**

If you would like to inspect the background papers or want further information, please contact:-

Jim Blake, Planning Officer, 4<sup>th</sup> Floor Brandon Gate, Hamilton  
(Tel : 01698 453508 )  
E-mail: Enterprise.hamilton@southlanarkshire.gov.uk

Certificate of Lawfulness (Existing)

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**REASONS FOR REFUSAL**

- 1        It has not been satisfactorily demonstrated that the site has been used for storage (Class 6) on a continuous basis for ten years.



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