



Planning Statement

Application for a Certificate of Existing Lawful Use or Development in relation to a storage container and use of land for independent commercial use/storage (B8) and residential storage (C3) – on access road at rear of Oakfield Court, New Broughton, Wrexham, LL11 6ER

for Landbank Management Ltd

Emery Planning project number: 21-688



Project : 21-688
Site address : Access road at rear of
properties on Oakfield Court,
New Broughton, Wrexham,
LL11 6ER
Client : Landbank Management Ltd
Date : 05 July 2022
Author : Caroline Payne

Important notes:

This report has been prepared for the client by Emery Planning with all reasonable skill, care and diligence.

No part of this document may be reproduced without the prior written approval of Emery Planning.

Emery Planning Partnership Limited trading as Emery Planning.

Contents:

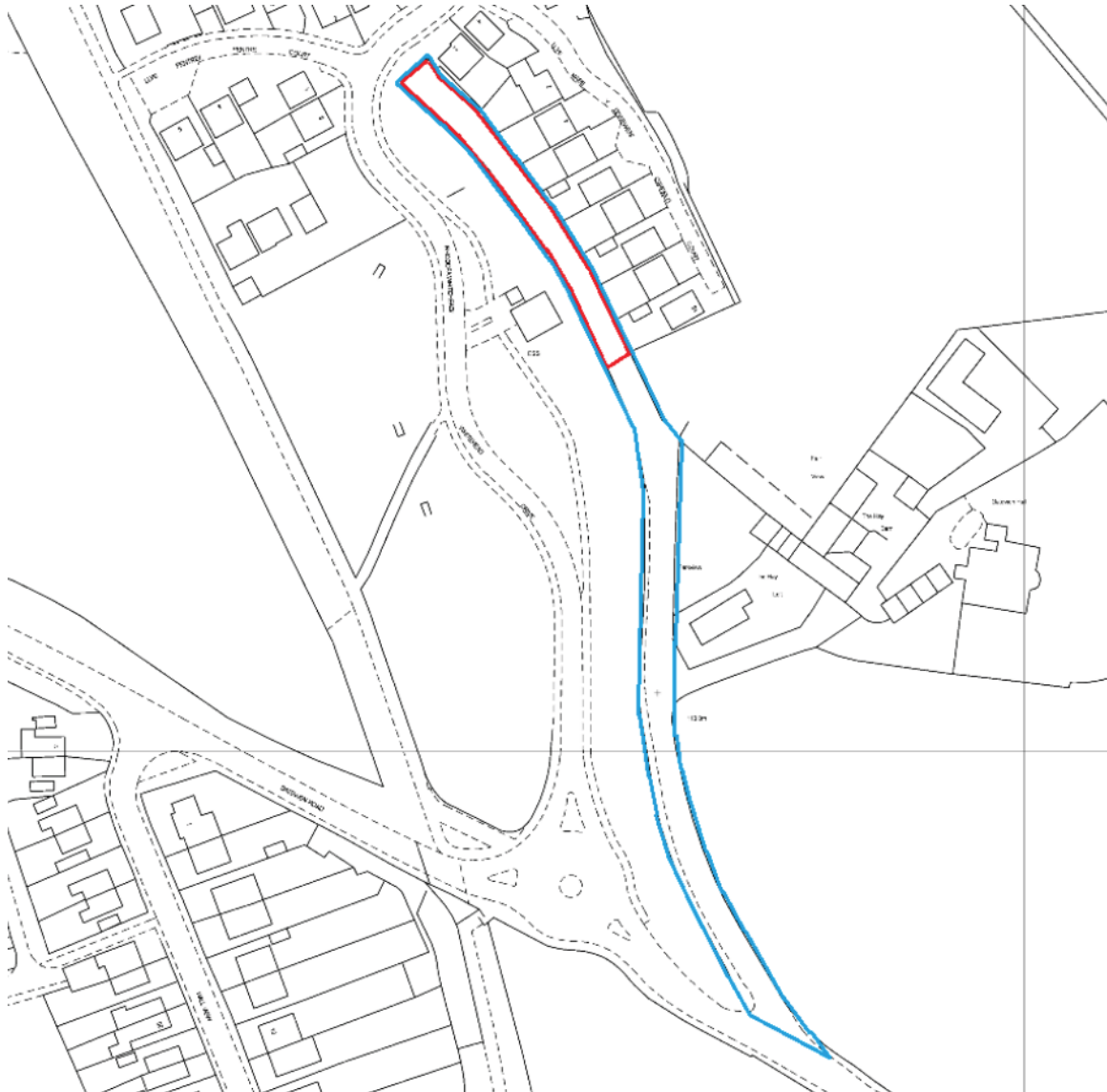
1. Introduction	1
2. The application	3
3. Context	4
4. Legislative context	6
5. Planning context	8
6. Summary and conclusions	12

Appendices:

EP1.	Land registry
EP2.	Appeal decision

1. Introduction

- 1.1 This statement supports an application for a certificate of lawfulness in respect of a storage container and the use of land for independent commercial use/storage (B8) and residential storage (C3) on the access road at the rear of Oakfield Court, New Broughton, Wrexham. The land in question is shown on the plan below:



- 1.2 The application is not a planning application to be determined on the merits of the case but an application seeking for a certificate of lawfulness to be determined based on the factual position. This statement demonstrates that the use of the land for independent commercial use/storage

and residential storage has been taking place for a period in excess of 10 years and that the storage container has been on the land for a period in excess of 4 years. This statement sets out and summarises the evidence in respect of the application.

2. The application

2.1 The CLEUD application comprises this planning statement and the following:-

- Application form and ownership certificate
- Location plan
- Statements of Truth

2.2 The Statements of Truth are made by:

- Mr C Brown, owner of Gatewen Hall
- Mr A Mackinlay-Brown, local resident
- Mr M Buckley, self-employed contractor
- Mrs E D Blair-Park, local resident
- Mr P Brownrigg, joinery contractor

2.3 Other evidence comprises:

- Title deed of land (EP1)

2.4 The submitted evidence shows that the land has been used for independent commercial use/storage and residential storage for a period in excess of 10 years and that the storage container has been on the land for a period in excess of 4 years without restriction on operational usage times and/or days. They are therefore lawful, in accordance with Section 171B of the Town & Country Planning Act 1990.

3. Context

Site location and description

- 3.1 The site is situated to the north of Gatewen Road (B5433). It is accessed off a private drive leading from Gatewen Road. It forms a cul-de-sac situated to the rear of properties on Oakfield Court to the east with a belt of trees to the west. Photographs of the site taken in January 2021 are below:



Relevant planning history

3.2 Relevant planning history comprises:

- BRO P/2008/0790 – Variation to conditions 1, 6, 11 and 17 on planning permission P/2007/0700 to allow site infrastructure and other associated site preparation works to take place in advance of the approval of details relating to the number, siting and design of dwellings at the former Gatewen Colliery Site, Gatewen Road, Wrexham – approved 8 September 2008.

Condition 10 on this permission states that the existing means of access to the site from Gatewen Lane i.e. the application site shall be permanently closed in accordance with details to be agreed in writing with the local planning authority.

- BRO P/2020/0561 – outline application with all matters reserved for the erection of one dwelling and a storage unit – refused 29th September 2021

4. Legislative context

Town and Country Planning Act 1990

4.1 Section 171B of the Town and Country Planning Act 1990 states that:

"(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date when the operations were substantially completed".

"(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of 4 years beginning the date of the breach."

"(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 10 years beginning the date of the breach."

4.2 Section 191 refers to Certificates of Lawfulness of Existing Use or Development. Sub-section (1) states:

"If any person wishes to ascertain whether:

- a) Any existing use of buildings or other land is lawful;*
- b) Any other operations which have been carried out in, on, over, or under land are lawful; or*
- c) Any other matter constituting a failure to comply with any conditions or limitation subject to which planning permission has been granted, is lawful, he may make an application for the purpose to the Local Planning Authority specifying the land and describing the use, operations or other matter."*

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter."

4.3 Section 191 (2) states:

"For the purposes of this Act uses and operations are lawful at any time if- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force".

4.4 Section 191(3) states:

"For the purposes of this act, any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful

at any time if: (a) the time for taking enforcement action in respect of the failure has then expired; and (b) it does not constitute a contravention of any of the requirements of any enforcement notice of breach of condition notice then in force."

4.5 Section 191 (4) states:

"If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application."

5. Planning context

- 5.1 The information below provides a summary of the key dates in the use of the land at the access road at the rear of properties on Oakfield Court, New Broughton, Wrexham.
- 5.2 Mr and Mrs Brown purchased Gatewen Hall and surrounding grounds in 1997.
- 5.3 On 16th June 2003, Landbank Management Ltd, a company that Mr Brown is a director of, purchased the site subject to this application as part of a wider parcel of land known as Gatewen Lane. Mr Brown explains in his statement of truth that the main purpose of purchasing the land was to protect the amenity of Gatewen Hall. A copy of the title deeds are enclosed at Appendix **EP1**.
- 5.4 Between January and March 2012, upgrading works took place to the road. The use of the land for storage purposes commenced in February/March 2012 and has been used for this purpose since this time. This is confirmed by the supporting Statements of Truth accompanying the application. All spoil from the upgrading works was deposited at the far end of the lane. Building materials, architectural salvage and rubber mats were also stored on the land (see Statement of Truth of Mr Buckley).
- 5.5 Condition 10 on planning permission reference P/2008/0790 dated 8th September 2008 requires the land subject to this application to no longer be used to service the new housing development known as 'Gatewen Village' and the end of the lane was to be blocked. This was blocked at some point prior to 8th June 2012.
- 5.6 Correspondence between the local planning authority and Mr C Brown/Landbank Management Ltd is appended to the Statement of Truth of Mr C Brown and is summarised below.
- 5.7 An initial letter relating to the external storage of materials on the road was sent to Mr Brown of Gatewen Hall on **5th March 2012**. This states that the enforcement officer visited the property on 20th February 2012. Mr Brown responded on **8th March 2012**. A further letter was sent to Landbank Management Ltd from the enforcement officer on **19th March 2012** requesting that the material was removed by 22nd March 2012. A response was issued by Landbank Management on **23rd March 2012**.

- 5.8 On **10th April 2012**, Wrexham Council wrote to Mr and Mrs Brown in relation to the tipping and storage of waste and parking of heavy goods vehicle trailer on the track at Gatewen Hall. The letter stated that the use of land represented a material change of use which required the benefit of planning permission. A Planning Contravention Notice was enclosed with the letter and was completed and returned on 3rd May 2012.
- 5.9 A further letter from Wrexham Council dated **24th May 2012** explains that as it was stated that the soil and scrapings are intended to be used that this does not represent a change of use of land. However, the letter notes that there is the matter of the time period which the material is stored for. At that time, as it has already been stored for three months without being re-used, the letter stated it would be unreasonable for it to be stored for a further significant period of time.
- 5.10 On **14th August 2015**, Wrexham Council again wrote to Mr Brown stating that further waste material was being stored on the access track as well as bricks and roofing materials. The letter required that all materials were removed from the land by the end of September 2015. A further letter was sent on **26th October 2015** stating that enforcement action would now be taken. The materials were not removed and no action was taken.
- 5.11 The use of the land falls within a mixed residential and commercial use. The land and storage container are used for storage of materials in connection with Mr Brown's business as well as his occupation of Gatewen Hall.
- 5.12 The land has been used regularly and continuously for mixed commercial and residential purposes since February/March 2012. This is confirmed by the Statements of Truth enclosed with the application.
- 5.13 There is no evidence to contradict or make the applicant's version of events less probable. Indeed, the council's own previous correspondence confirms that a change in use of the land had commenced in February 2012. The evidence provided is sufficiently precise and unambiguous to justify the grant of a certificate on 'the balance of probability'.

Relevant compliance period for the storage container

- 5.14 The most recent case law on what falls within the definition of development in respect of the storage container and section 55 of the 1990 Act is set out in the 'Woolley Chickens' case (R (Save

Woolley Valley Action Group Ltd) v Bath and North East Somerset Council [2012] EWHC 2161 (Admin).

- 5.15 Judge Lang held that the Council had erred in law by taking too narrow an approach to the meaning of “development” in section 55. The term “building” in section 336(1) of the 1990 Act has a wide definition which includes “any structure or erection”. This definition has been interpreted by the courts to include structures which would not ordinarily be described as buildings. Reference was made to other cases whereby the erection of a marquee for an eight month period was found to be a building and that the erection of polytunnels also comprises the erection of a building.
- 5.16 It was found that the Council should have carefully considered whether a poultry unit was an “erection” or “structure” within the meaning of section 336(1), particularly bearing in mind the substantial size and weight of each unit. Furthermore, the Council did not have regard to the relevant authorities when it concluded that the units were chattels, not buildings, by reason of the fact that they were capable of being moved around the site.
- 5.17 The Judge advised that permanence has to be construed in terms of significance in the planning context. In *Skerritts of Nottingham Limited v SSETR* [2000] the judge said in relation to permanence: “in situ for how long, to which I would answer: for a sufficient length of time to be of significance in the planning context”.
- 5.18 In this case, the container has been permanently on site since February 2016.
- 5.19 This approach is also consistent with comparable applications determined by Wrexham Council. For example, a positive Certificate of Lawfulness was granted by Wrexham Council on 21 July 2010 for the ‘siting of metal storage unit’ at Gatewen Hall (BRO P/2010/0383). The reason for issuing the positive certificate was that the operations were carried out more than four years before 5th May 2010. A positive Certificate of Lawfulness was also granted on 29th September 2021 for a metal building, two storage containers and hardstanding of business use (B1)/Storage (B8) and residential storage (C3) at land adjacent to the Stables at Gatewen Hall. Again, the reason for issuing the certificate was that the operations were carried out more than four years before 23rd June 2021.

Burden of proof

5.20 The requisite principles that govern the consideration of such applications are as follows:

- The requisite standard of proof is the balance of probabilities. A LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely 'beyond reasonable doubt'.
- The burden of proof lies on the applicant to establish that a certificate should be granted for the development sought.
- If the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable there is no good reason to refuse the application.
- The courts have confirmed that the appellant's own evidence does not need to be corroborated by 'independent' evidence, particularly if it is unchallenged, in order to be accepted, see for example Gabbitts v SSE and Newham LBC [1985] JPL 630.

5.21 We enclose an appeal decision at **EP2** which relates to a certificate of lawful use for garden land (APP/W4223/X/16/3143392) where the accompanying evidence comprises two sworn affidavits, photographs taken in 1998 and 2002 and google earth images taken in 2000 and 2005. The Inspector stated:

"4. The onus is on the appellant to demonstrate that, on the balance of probability, the land has been used as a garden for a continuous period of 10 years. The Council does not provide evidence to contradict the evidence provided by the appellant. Rather, the Council considers that the evidence provided is not sufficient to demonstrate the continuous use of the land.

7. The affidavits are rather limited but nevertheless clearly explain how the land in question has been maintained and used as a garden since 1987. Given that any person who lies about the information contained in an affidavit could be prosecuted for the crime of perjury, and if convicted may be ordered to pay significant fines or sentenced to time in jail, I give these significant weight.

9. Whilst I agree with the Council that both the aerial images and photographs do not demonstrate a continuous use of the land, when considered in the round alongside the sworn affidavits and in the absence of any evidence to the contrary, I consider the appellant has discharged the onus of proof, on the balance of probability, incumbent upon him."

5.22 In this case, the application is accompanied by statements of truth from 5 parties. These all confirm that the land has been used continuously for the open storage of materials since 2012 and that the container has been on site since 2016.

6. Summary and conclusions

- 6.1 This statement supports an application for a certificate of lawfulness in respect of a storage container and the use of land for independent commercial use/storage and residential storage at the access road to the rear of Oakfield Court, New Broughton, Wrexham. The land and container have been used for commercial and residential purposes without restriction on operational usage times and/or days.
- 6.2 The application demonstrates that land has been used for independent commercial use/storage (B8) and residential storage (C3) for a period in excess of 10 years and that the container has been on the land for a period in excess of 4 years. On this basis, a certificate of lawfulness should be granted

EP1

Title Number : CYM130543

Rhif Teitl : CYM130543

This title is dealt with by Land Registry, Wales Office.

Gweinyddir y teitl hwn gan Gofrestrfa Tir, Swyddfa Cymru.

The following extract contains information taken from the register of the above title number. A full copy of the register accompanies this document and you should read that in order to be sure that these brief details are complete.

Mae'r detholiad canlynol yn cynnwys gwybodaeth o gofrestr y teitl uchod. Darperir copi llawn o'r gofrestr gyda'r ddogfen hon a dylech ddarllen hwnnw er mwyn sicrhau bod y manylion cryno hyn yn gywir.

Neither this extract nor the full copy is an 'Official Copy' of the register. An official copy of the register is admissible in evidence in a court to the same extent as the original. A person is entitled to be indemnified by the registrar if he suffers loss by reason of a mistake in an official copy.

Nid yw'r detholiad hwn na'r copi llawn yn 'Gopi Swyddogol' o'r gofrestr. Derbynnir copi swyddogol o'r gofrestr fel tystiolaeth mewn llys i'r un graddau â'r ddogfen wreiddiol. Mae hawl gan berson gael indemniad gan y cofrestrydd os yw'n dioddef colled o ganlyniad i gamgymeriad mewn copi swyddogol.

This extract shows information current on 11 NOV 2009 at 09:21:57 and so does not take account of any application made after that time even if pending in the Land Registry when this extract was issued.

Mae'r detholiad hwn yn dangos gwybodaeth sy'n gyfredol ar 11 NOV 2009 am 09:21:57 ac felly nid yw'n ystyried unrhyw gais a gyflwynwyd ar ôl yr amser hwnnw hyd yn oed pe byddai'n aros i'w brosesu yn y Gofrestrfa Tir ar adeg darparu'r detholiad.

REGISTER EXTRACT

DETHOLIAD O'R GOFRESTR

Title Number : CYM130543

Rhif Teitl

Address of Property : Gatewen Lane Gatewen Road, New Broughton, Wrexham

Cyfeiriad yr Eiddo

Price Stated

: [REDACTED]

Pris a Ddatganwyd

Registered Owner(s) : LANDBANK MANAGEMENT LIMITED (Co. Regn. No. 4766717)
of The Coach House Gatewen Hall, Gatewen Road,
Perchnogion Cofrestredig Wrexham LL11 6YZ.

Lender(s) : None

Rhoddwr Benthg

This is a copy of the register of the title number set out immediately below, showing the entries in the register on 11 NOV 2009 at 09:21:57. This copy does not take account of any application made after that time even if still pending in the Land Registry when this copy was issued.

This copy is not an 'Official Copy' of the register. An official copy of the register is admissible in evidence in a court to the same extent as the original. A person is entitled to be indemnified by the registrar if he suffers loss by reason of a mistake in an official copy. If you want to obtain an official copy, the Land Registry web site explains how to do this.

Copi yw hwn o gofrestr y rhif teitl isod. Mae'n dangos y cofnodion ar y gofrestr ar 11 NOV 2009 am 09:21:57. Nid yw'r copi hwn yn ystyried unrhyw gais a gyflwynwyd ar ôl yr amser hwnnw hyd yn oed os yw'n aros i'w brosesu yn y Gofrestrfa Tir ar adeg darparu'r copi hwn.

Nid yw'r copi hwn yn 'Gopi Swyddogol' o'r gofrestr. Derbynnir copi swyddogol o'r gofrestr fel tystiolaeth mewn llys i'r un graddau â'r ddogfen wreiddiol. Mae hawl gan berson gael indemniad gan y cofrestrydd os yw'n dioddef colled o ganlyniad i gamgymeriad mewn copi swyddogol. Os hoffech dderbyn copi swyddogol, mae gwefan y Gofrestrfa Tir yn esbonio sut i wneud hyn.

A: Property Register / Cofrestr Eiddo

This register describes the land and estate comprised in the title.

Mae'r gofrestr hon yn disgrifio'r tir a'r ystad a gynhwysir yn y teitl.

WREXHAM/WRECSAM

- 1 (19.06.2003) The Freehold land shown edged with red on the plan of the above title filed at the Registry and being Gatewen Lane Gatewen Road, New Broughton, Wrexham.
- 2 (19.06.2003) The mines and minerals together with ancillary powers of working are excepted with provision for compensation in the event of damage caused thereby.

B: Proprietorship Register / Cofrestr Perchnogaeth

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Mae'r gofrestr hon yn nodi'r math o deitl ac yn enwi'r perchennog. Mae'n cynnwys unrhyw gofnodion sy'n effeithio ar yr hawl i waredu.

Title absolute/Teitl llwyr

- 1 (19.06.2003) PROPRIETOR: LANDBANK MANAGEMENT LIMITED (Co. Regn. No. 4766717) of The Coach House Gatewen Hall, Gatewen Road, Wrexham LL11 6YZ.
- 2 (19.06.2003) The price stated to have been paid on 13 June 2003 was £2,500.

C: Charges Register / Cofrestr Arwystlon

This register contains any charges and other matters that affect the land.

Mae'r gofrestr hon yn cynnwys unrhyw arwystlon a materion eraill sy'n effeithio ar y tir.

C: Charges Register continued / Parhad o'r gofrestr arwystlon

- 1 (19.06.2003) The land is subject to the following rights reserved by a Conveyance of the land in this title dated 7 November 1972 made between (1) Thomas Geraint Evans (Vendor) and (2) John Brian Bolton (Purchaser):-

"Except and reserving a right of way for the Vendor and his successors in title and all persons authorised by him or them at all times and for all proper purposes and with or without vehicles and animals over the said roadway and a right to a flow of water through the water main thereunder including the right to connect therewith and to enter upon the property hereby conveyed in order to make any necessary connection and to carry out any works necessary to maintain a proper supply of water to the adjoining property but make good any damage done to the surface of the said roadway"

End of register / Diwedd y gofrestr

These are the notes referred to on the following copy of the title plan.

Dyma'r nodiadau y cyfeirir atynt ar y copi canlynol o'r cynllun teitl.

This is a copy of the title plan on 11 NOV 2009 at 09:21:59. This copy does not take account of any application made after that time even if still pending in the Land Registry when this copy was issued.

Copi yw hwn o'r cynllun teitl ar 11 NOV 2009 am 09:21:59. Nid yw'r copi hwn yn ystyried unrhyw gais a gyflwynwyd ar ôl yr amser hwnnw hyd yn oed os yw'n aros i'w brosesu yn y Gofrestrfa Tir ar adeg darparu'r copi hwn.

This copy is not an 'Official Copy' of the title plan. An official copy of the title plan is admissible in evidence in a court to the same extent as the original. A person is entitled to be indemnified by the registrar if he suffers loss by reason of a mistake in an official copy. If you want to obtain an official copy, the Land Registry web site explains how to do this.

Nid yw'r copi hwn yn 'Gopi Swydddogol' o'r cynllun teitl. Derbynnir copi swydddogol o'r cynllun teitl fel tystiolaeth mewn llys i'r un graddau â'r gwreiddiol. Mae hawl gan berson gael indemnïad gan y cofrestrydd os yw'n dioddef colled o ganlyniad i gangymeriad mewn copi swydddogol. Os hoffech gael copi swydddogol, mae gwefan y Gofrestrfa Tir yn esbonio sut i wneud hyn.

The Land Registry endeavours to maintain high quality and scale accuracy of title plan images. The quality and accuracy of any print will depend on your printer, your computer and its print settings. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 7 - Title Plans.

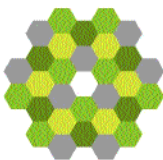
Mae'r Gofrestrfa Tir yn ymdrechu i sicrhau bod delweddau cynllun teitl o safon uchel a bod y raddfa yn gywir. Bydd ansawdd a chywirdeb unrhyw argraffiad yn dibynnu ar eich argraffydd, eich cyfrifiadur a'i osodiadau argraffu. Mae'r cynllun teitl hwn yn dangos safle cyffredinol, nid union linell y terfynau. Gall fod gwyriadau yn y raddfa. Mae'n bosibl na fydd mesuriadau wedi eu graddio o'r cynllun hwn yn cyfateb â mesuriadau rhwng yr un pwyntiau ar y llawr. Gweler Cyfarwyddyd Cyhoeddus 7 - Cynlluniau Teitl y Gofrestrfa Tir.

This title is dealt with by Land Registry, Wales Office.

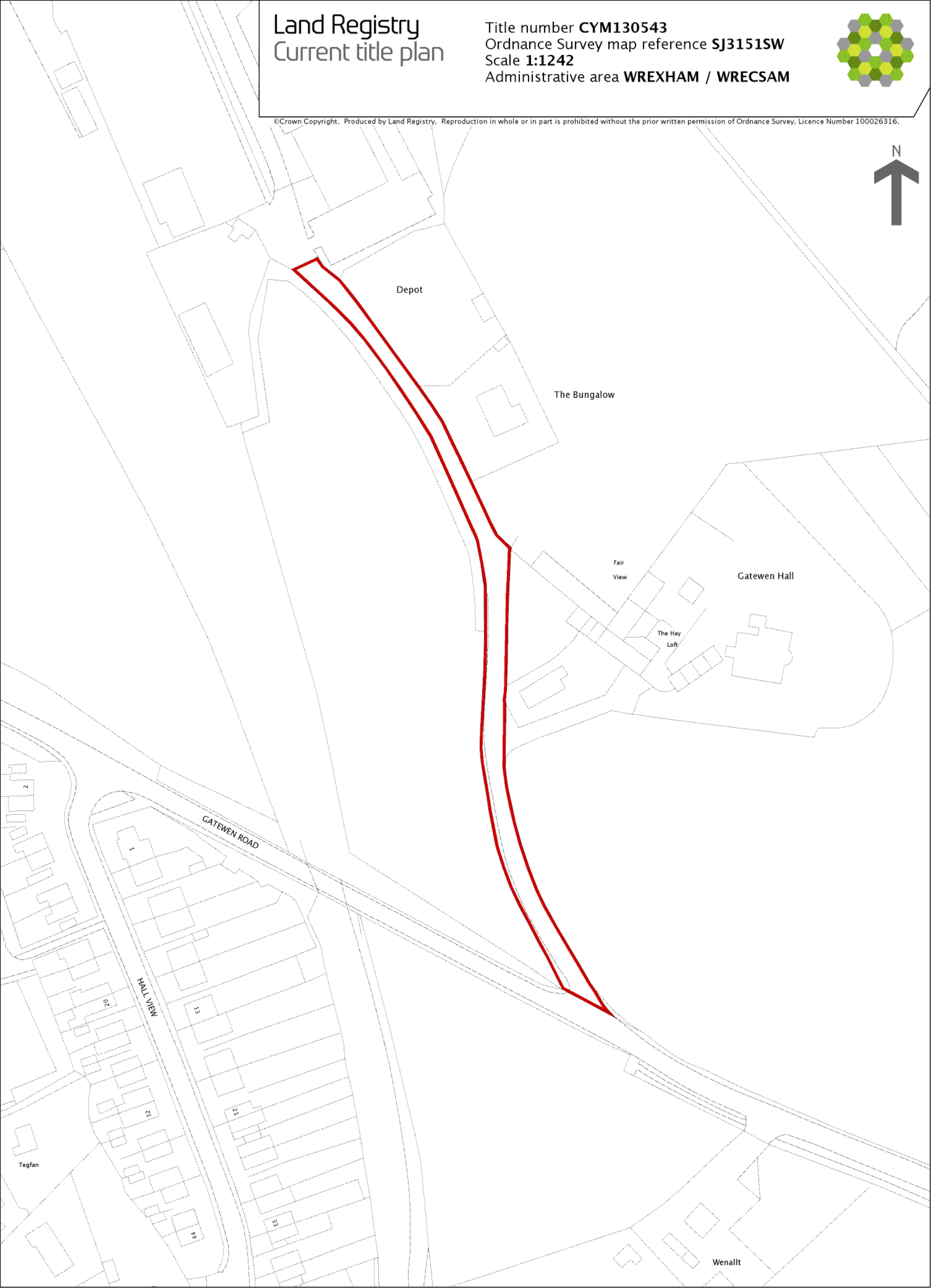
Gweinyddir y teitl hwn gan Gofrestrfa Tir, Swyddfa Cymru.

Land Registry
Current title plan

Title number **CYM130543**
Ordnance Survey map reference **SJ3151SW**
Scale **1:1242**
Administrative area **WREXHAM / WRECSAM**



©Crown Copyright. Produced by Land Registry. Reproduction in whole or in part is prohibited without the prior written permission of Ordnance Survey. Licence Number 100026316.



EP2



The Planning Inspectorate

Temple Quay House
2 The Square
Bristol
BS1 6PN

15-049-GS

Direct Line:
Customer Services:
0303 444 5000
Email:
despatch.admin@pins.gsi.gov.uk

www.gov.uk/planning-inspectorate

Mrs Helen Leggett
Emery Planning
Unit 2-4 South Park Business Court,
Hobson Street
Macclesfield
Cheshire
SK11 8BS

Your Ref: 15-049:HL/GS
Our Ref: APP/W4223/X/16/3143392

04 August 2016

Dear Mrs Helen Leggett,

Town and Country Planning Act 1990

Appeal by Mr J Jaskolka

Site Address: Land rear of 748 Ripponden Road, Oldham , Lancashire , OL4 2LP

I enclose a copy of our Inspector's decision on the above appeal(s), together with a copy of the decision on an application for an award of costs.

If you wish to learn more about how an appeal decision or related cost decision may be challenged, or to give feedback or raise complaint about the way we handled the appeal(s), you may wish to visit our "Feedback & Complaints" webpage at <https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure>.

If you do not have internet access you may write to the Customer Quality Unit at the address above. Alternatively, if you would prefer hard copies of our information on the right to challenge and our feedback procedure, please contact our Customer Service Team on 0303 444 5000.

The Planning Inspectorate is not the administering body for High Court challenges and cannot change or revoke the outcome of an appeal decision. If you feel there are grounds for challenging the decision you may consider obtaining legal advice as only the High Court can quash the decision. If you would like more information on the strictly enforced deadlines and grounds for challenge, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

Guidance on Awards of costs, including how the amount of costs can be settled, can be located following the Planning Practice Guidance.

<http://planningguidance.communities.gov.uk/blog/guidance/appeals/how-to-make-an-application-for-an-award-of-costs/>

We are continually seeking ways to improve the quality of service we provide to our customers. As part of this commitment we are seeking feedback from those who use our

service. It would be appreciated if you could take some time to complete this short survey, which should take no more than a few minutes complete:

https://www.surveymonkey.co.uk/r/Planning_inspectorate_customer_survey

Thank you in advance for taking the time to provide us with valuable feedback.

Yours sincerely,

Kelly Frost

Kelly Frost

Where applicable, you can use the internet to submit documents, to see information and to check the progress of cases through GOV.UK. The address of the search page is - <https://www.gov.uk/appeal-planning-inspectorate>



Appeal Decision

Site visit made on 4 July 2016

by **C Sherratt DipURP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 August 2016

Appeal Ref: APP/W4223/X/16/3143392

748 Ripponden Road, Oldham, Lancashire OL4 2LP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr J Jaskolka against the decision of Oldham Metropolitan Borough Council.
 - The application Ref CL/336820/15, dated 9 April 2015, was refused by notice dated 11 August 2015.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is garden land (C3).
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Application for costs

2. An application for costs was made by Mr J Jaskolka against Oldham Metropolitan Borough Council. This application is the subject of a separate Decision.

Reasons

3. Section 191(4) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. Accordingly, it is necessary to consider whether, on the balance of probability, the land has been used as a garden for a continuous period of ten years or more prior to the date of the application.
4. The onus is on the appellant to demonstrate that, on the balance of probability, the land has been used as a garden for a continuous period of 10 years. The Council does not provide evidence to contradict the evidence provided by the

appellant. Rather, the Council considers that the evidence provided is not sufficient to demonstrate the continuous use of the land.

5. The evidence submitted to support the application includes two sworn affidavits, photographs taken in 1998 and 2002 and google earth images taken in 2000 and 2005.
6. The sworn affidavits confirm that the appellant purchased the property in 1987 together with the adjacent field. Shortly after purchasing the land it was ploughed, levelled and seeded. Some trees were planted and there was no formal separation between the garden associated with the dwelling and the adjacent land. The affidavits state that the land has been used for purposes incidental to the enjoyment of the dwelling since 1987 and been mowed throughout the growing season.
7. The affidavits are rather limited but nevertheless clearly explain how the land in question has been maintained and used as a garden since 1987. Given that any person who lies about the information contained in an affidavit could be prosecuted for the crime of perjury, and if convicted may be ordered to pay significant fines or sentenced to time in jail, I give these significant weight.
8. Although the affidavits suggest other people could confirm the use of the land during this time, no further statements or affidavits are submitted. The aerial images provide further support at least in so far as they reflect the circumstances of the particular dates the images were taken. There is no explanation as to how the appellant recalls the year that the photographs were taken which reduces the weight that can be afforded to them but they nevertheless offer further support.
9. Whilst I agree with the Council that both the aerial images and photographs do not demonstrate a continuous use of the land, when considered in the round alongside the sworn affidavits and in the absence of any evidence to the contrary, I consider the appellant has discharged the onus of proof, on the balance of probability, incumbent upon him.
10. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of garden land (C3) was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Claire Sherratt

Inspector



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 9 April 2015 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability, the land has been used as a garden for a continuous period of 10 years or more.

Signed

Claire Sherratt

Inspector

Date 4 August 2016

Reference: APP/W4223/X/16/3143392

First Schedule

Garden area

Second Schedule

Land at 748 Ripponden Road, Oldham OL4 2LP

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

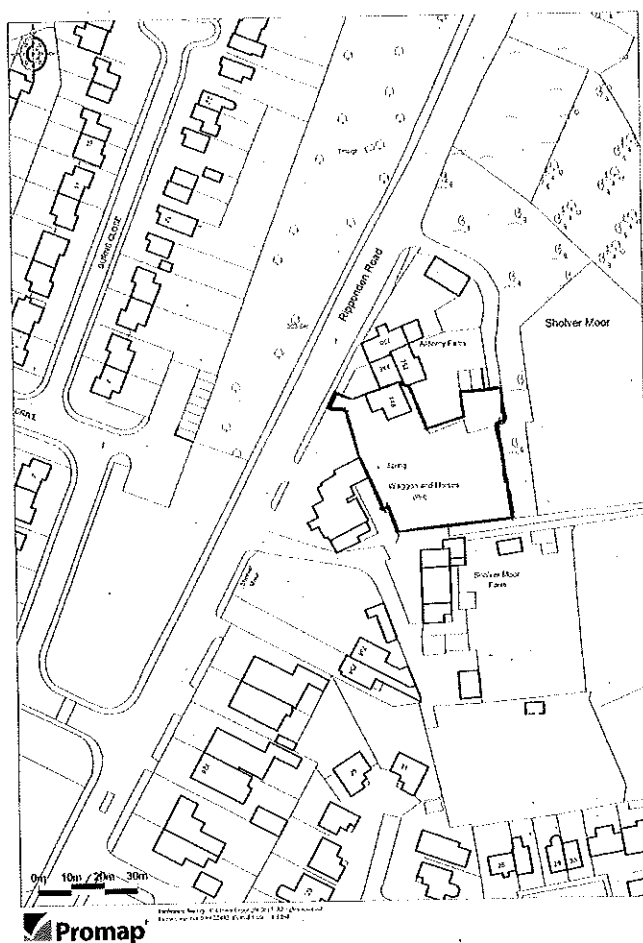
This is the plan referred to in the Lawful Development Certificate dated: 4 August 2016

by **C Sherratt DipURP MRTPI**

Land at: 748 Ripponden Road, Oldham OL4 2LP

Reference: APP/W4223/X/16/3143392

Scale: Not to scale



Costs Decision

by **C Sherratt DipURP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 August 2016

**Costs application in relation to Appeal Ref: APP/W4223/X/16/3143392
Land rear of 748 Ripponden Road, Oldham, Lancashire OL4 2LP**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr J Jaskolka for a full award of costs against Oldham Metropolitan Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for use as garden area.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The case of the applicant is made in writing and there is therefore no need to repeat it here. No response was received from the Council.
3. In submitting an application for a certificate of lawfulness the onus is firmly on the applicant to demonstrate that the use is lawful, on the balance of probability. Like the Council I take the view that the aerial images and photographs are simply a snap-shot in time and fail to demonstrate any continuous use of the site. There is no explanation to clarify the dates of the photographs. Whilst the affidavits claim many people could confirm the use of the site over the years, no additional statements were submitted. The application and subsequent appeal therefore turns primarily on the affidavits to demonstrate a continuous use.
4. The Council's statement does not refer to the statutory declarations. The delegated report only refers to the statutory declarations briefly. The Council are entitled to make a judgement about whether they considered the affidavits to be sufficient to demonstrate a continuous use, even in the absence of any contradictory evidence. However, it is not clear to me how the Council assessed the statutory declarations other than to acknowledge they formed part of the evidence.
5. In my view the Council has failed to substantiate its reason for not issuing a certificate looking at the evidence as a whole. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the

Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

6. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Oldham Metropolitan Borough Council shall pay to Mr J Jaskolka, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
7. The applicant is now invited to submit to Oldham Metropolitan Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Claire Sherratt

Inspector