

Planning

Growth & Development

Delegated officer report for planning application

Application no. 143647/LE/2025
Date registered valid: 2 September 2025
Proposal: Open air storage (Use Class B8)
Address: Former Site Of Irkdale Mill , 29-31 Smedley Road, Manchester
Ward(s): Harpurhey Ward

Applicant: Mr Akbar Babakhani Paul Ashton Architects
Agent (if any): Mr Paul Ashton Paul Ashton Architects Ltd
Case officer: Robert Tyrer
Tel: 0161 234 4068
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Recommendation: Refuse
Date of recommendation: 27 October 2025

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit: 21 October 2025

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

No neighbour notifications have been printed and sent.

Site notice

No site notice has been produced

Press advert

No press advert had been published

Departure from Development Plan: No

Environmental Statement: Not required

Description of site/building

Application site relates to land located between the River Irk and Smedley Road, it is said to be the former site of Irkdale Mill, located to the north east of City Centre. The site is accessed from Smedley Road via gates.

The surrounding area is a mixture of industrial and residential streets located in and around the River Irk valley.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of development

A certificate of lawfulness of existing use or development for the use site as open air storage (Use Class B8)

Consultations & Notification Responses

None – Due to the location of the application site there are no immediate neighbouring properties to notify of the application.

Legislative Issues

Sections 191 and 192 of the Town and Country Planning Act 1990 provide for anyone (not just a person with a legal interest in the land) to apply to the local planning authority (LPA) for a lawful development certificate (LDC). A certificate is a statutory document certifying:

1. in the case of an application under section 191, the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition; or
2. in the case of an application under section 192, the lawfulness of proposed operations on, or use of land.

The onus of proof in regard to (1) is firmly on the applicant and the issue of a certificate will depend on the on factual evidence provided about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The relevant test of the evidence in this matter is "the balance of probability" and the applicants own evidence does not need to be corroborated by independent evidence. If the LPA have no evidence to contradict the applicant's version of events or make them less than probable, there is no good reason to refuse the issue of a certificate.

In regard to (2), this provides that, if the LPA are supplied with information satisfying them that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect; and, in any other case, they shall refuse the application.

In short, the purpose section 192 is to enable any person who wishes to find out whether any proposed use or operations would be lawful to apply to the LPA for that purpose.

The application needs to describe the proposal with sufficient clarity and precision to enable the LPA to understand (from a written description and plans) exactly what is involved in the proposal; and to submit whatever supporting information or legal submission that are to be relied upon in order to satisfy the LPA that a certificate should be granted for the proposal.

In making their decision on an application under section 192, the LPA ask themselves the hypothetical question - "If this proposed change of use had already occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?" In doing so, the LPA will not only consider whether the proposal would involve "development" requiring an application for planning permission, but whether it would involve a breach of any existing condition or limitation imposed on a grant of planning permission which has been acted upon, and which therefore constrains what can be done on the land. The LPA will not make a proposal fit a scenario; the only question is whether the proposal made by the applicant is lawful at the time of submission.

The Application

This application is pursued under subsection (1) of section 191 which provides for an application to determine whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land is lawful for planning purposes.

The applicant is seeking a certificate of lawful development existing use of the site as open air storage (Use Class B8).

In a case of this type, the onus is on the applicant to substantiate his or her case, on the balance of probability. The applicant needs to demonstrate that the use of site as open air storage (Use Class B8) commenced more than ten years prior to the date of the application (i.e. by 5th August 2015) and continued without a significant break for ten years.

The Planning Practice Guidance points to the need for evidence to be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

The relevant test, established by the court in *Thrasyvoulou v SSE* [1984], is the balance of probabilities – whether something is more likely than not.

Assessment of Evidence

Planning history

Planning history for the site shows that there has been one previous planning application at this address.

- Application reference **F15796** - Planning permission was **granted** on the 1st July 1981 to allow the use of part of industrial premises as a private car hire office.

Applicants Evidence

Planning permission was given in 1981 to allow the use of part of the industrial premises as a private car hire office, unfortunately records could not be located to show exactly what part of the site related to the private car hire office. There has been no other planning application at the site up to the date of this report.

The application form states that the site began being used for open air storage on the 6th April 1981. The site is described as being fenced, gated and currently hosts temporary storage units and portacabins.

The applicant's planning statement asserts that the site has not been abandoned and remains in a usable physical condition. While acknowledging that some structures have been removed over time, the applicant states that the site currently accommodates temporary storage and portacabins. It is also noted that boundary fences have been repaired periodically, with receipts provided as evidence. The site has also been treated for Japanese Knotweed.

The applicant states that the site has been used for open-air storage throughout the ten-year period, although they acknowledge that activity on the site has varied at times. However, the overall character and type of use are said to have remained consistent.

The application is supported by three affidavits, the first affidavits has not been witnessed and has been included for reference, this document covers the period 1981 to 2014 and falls outside of the 10 years required to demonstrate the use of the site since 5th August 2015 up to the date of the application 5th August 2025.

The second affidavit covers the period 2014 to 2017, states that the site was used to store construction materials, including but not limited to scaffolding, timber, metal works and other building supplies linked to the business of the signee. The third affidavit covers the period 2017 to 2022 and states that the site was used to store construction materials, plant and machinery and lists timber, aggregates, scaffolding and site equipment, in connection with the construction operations of the company of the signee.

A copy of a lease has been provided dated 2nd November 2022, of a lease term from 3 to 5 years to a company called Samy skip Ltd.

The applicant also includes aerial photographs 2016 to 2025 of the site and there are a number of documents relating to the treatment of Japanese Knotweed and other maintenance expenses.

The photographs show a site with dense green vegetation along the riverbanks, although the density varies. This variation may coincide with the Japanese Knotweed treatment, which began on 28 November 2016, as well as natural seasonal changes. Activity appears to be concentrated in the lower southwest corner, near the former railway viaducts and the entrance from Smedley Road. While it is not clear what specific activity is taking place, the images suggest that most of activity was concentrated between 2021 and 2023 and continues up to the most recent aerial photograph from March 2025.

As part of the assessment, the case officer visited the site on the 21st October 2025 and found there to be no readily identifiable signage, buildings or structures of note in connection with a B8 use.



Photograph 1 to 3 Site Photographs taken on 21/10/2025

Five enforcement notices have also been issued under Section 4 of the Prevention of Damage by Pests Act 1949, dated between 2019 and 2025. These were due to the accumulation of refuse on the site, which could provide harbourage or attract vermin or other pests. The letter references accompanying photographs; however, these have not been included in the submission.

On 4th November 2024, an email was sent to Neighbourhood Services following a request made under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976, dated 28 October 2024. The request sought information regarding the ownership of the land and any other parties with an interest in it. The response stated that the land is owned by Riverside Holmes Ltd and is occupied by [REDACTED]. It also noted that [REDACTED] was in the process of cleaning the site and was willing to meet with the Council on-site during the first week of December 2024.

Although undated, it appears that a response to email was sent from the Council to the landowner requesting a meeting on 3rd December. This email refers to the site being used as a waste transfer site, which would constitute this being a *sui generis* use.

The last email submitted as part of the evidence dated 29th January 2025, mentions that shipping containers have been moved, there is still a number of large skips with waste inside and a demolished caravan still on site. The email also provided a final extension to the legal notice until 28th February 2025.

Planning Practice Guidance emphasizes the need for evidence to be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

Based on the evidence provided, it is considered that, on the balance of probability, the applicant has failed to demonstrate that the use of site as open air storage (Use Class B8) commenced more than ten years prior to the date of the application (i.e. by 5th August 2015) and continued without a significant break for ten years.

Whilst the two affidavits state that the site has been used to store construction materials and in the case of the second affidavit plant and machinery are included, the aerial site images show a site that's covered mostly in dense vegetation with some activity in the south west corner of the site which appears to be concentrated between 2021 to 2023 with activity up to the last image in March 2025.

However, it is unclear what is being stored on the site. The correspondence and enforcement notices issued by the Council indicate that the site has been used as a waste transfer facility, with references to skips containing waste and the accumulation of refuse. The lease provided is for a company named "Samy Skip Ltd," signed in 2022, with an amendment signed in the same year confirming both parties agreed to extend the lease term from three to five years. No further information has been provided about Samy Skip Ltd or the nature of its business, although the presence of skips is mentioned in correspondence with the Council.

Both a waste transfer site and a skip hire operation are considered *sui generis* uses and do not fall within Use Class B8.

It is therefore recommended that the application for a Certificate of Lawfulness be refused.

Other Legislative Requirements

Equality Act 2010

Section 149 (Public Sector Equality Duty) of the Equality Act 2010 requires due regard to the need to: Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act and; Advance equality of opportunity between persons who share a protected characteristic and persons who do not share it. The Equality Duty does not impose a legal requirement to conduct an Equality Impact Assessment. Compliance with the Equality Duty involves consciously thinking about the aims of the Equality Duty as part of the process of decision-making.

Human Rights Act 1998 considerations

This application needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the applicants (and those third parties, including local residents, who have made representations) have a right to a fair hearing and to this end the local planning authority must give full consideration to their comments.

Protocol 1 Article 1, and Article 8 where appropriate, confer(s) a right of respect for a person's home, other land and business assets. In taking account of all material considerations, including Council policy as set out in the Core Strategy and saved policies of the Unitary Development Plan, the Director of Planning, Building Control & Licensing has concluded that some rights conferred by these articles on the applicant(s)/objector(s)/resident(s) and other occupiers and owners of nearby land that might be affected may be interfered with but that that interference is in accordance with the law and justified by being in the public interest and on the basis of the planning merits of the development proposal. She believes that any restriction on these rights posed by the recommendation given is proportionate to the wider benefits of and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

Recommendation: Refuse

Condition(s) to be attached to decision for approval OR Reasons for recommendation to refuse

The applicant has failed to demonstrate that the use of the site as open air storage (Use Class B8) as defined by the Town and Country Planning (Use Classes) Order 1987 (as amended), has continued for a 10-year period up to the date of the application.

Appendix 1 – List of consultees & neighbours notified

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4

Coal Authority - Development High Risk - Name: DEVELOPMENT_HIGH_RISK_AREA

Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA

Coal Authority - Surface Coal Resources - Name: Coal bearing strata at surface

Flood Zones Type 2 (low to medium risk) -

Flood Zones Type 3 (high risk) -

Benefitting From Flood Defences -

Susceptible to Surf Water Flood (Less) -

Susceptible to Surf Water Flood (Middle) -

Area Team Boundary - Name: CENTRAL