

## An Explosive Situation

Last January Mr Milner of Sputnik Fireworks received a letter threatening enforcement action by West Borsetshire Borough Council (following a complaint that they had received from a concerned neighbour)...



**BACKGROUND:** Mr Milner had been selling fireworks online and hiring out event equipment from a large shed at his home address for a considerable period of time, *inadvertently* and only quite recently, the company had started *retailing* fireworks direct to the public. Display cases in their office reception area were used to display 'dummy' products for sale and on-site sales were increasing rapidly from passing trade and speculative visitors as word of mouth about the company had spread.

In addition to year-round online and mail order sales, Sputnik are one of the region's biggest and most widely seen public firework display companies and consequently hold many tonnes of fireworks in large *storage magazines* elsewhere in the county throughout the year.

**CAUSE FOR COMPLAINT:** The neighbours' complaint was initially raised when they [incorrectly] deduced that *a large* quantity of fireworks was being stored next to their own house, obviously concerned that a health and safety risk existed, they wrote to the Council to investigate. Had the neighbour raised their concerns with Mr Milner directly - he would have explained that the relatively small quantity of fireworks were, in fact, stored in approved **and registered** facilities approved by Trading Standards - and therefore already registered and approved by the Borough Council!

**IMPORTANT NOTE:** It is wrong to assume that because one Council department has 'approved' or even 'licensed' an activity (and probably taken a significant fee to do so) - that the 'approved' activity is lawful...

A licence or permit does not necessarily grant **any** official permission for the activity to continue [in planning terms at-least]. If you are in any doubt whether planning permission *is* required [in similar cases to this] we strongly recommend that you take independent professional advice...

**A WORD OF WARNING:** If you approach the Planning Department for advice on whether an existing use is 'lawful' you risk alerting the Enforcement Department that a potentially unlawful use *is* actually occurring. By requesting advice from independent professionals [such as the Keith Farmer Associates Planning Team] the same information can be ascertained - but without risking undue Council interest... and thus *potentially* preventing undesirable enforcement action.

Despite West Borsetshire Bourough Council's Trading Standards approved 'registration' of the business the Planning Department decided that Sputnik were performing an 'unlawful operation' [in planning terms] from their home address... They subsequently contacted Mr Milner and recommended that he should take professional advice and if appropriate to apply for a Certificate of Lawful Use or Development - without which they would shortly be taking decisive enforcement action!!!

Mr Milner instructed Keith Farmer Associates to assist...

**At this point it's probably useful to point out that Mr Milner was actually a tenant and not the owner of his home... the landlord currently lives in Australia!**

Prior to Mr Milner moving to the property the landlord (Mr Hole) had been running a small, precision engineering business from the property for many years - but had never applied for, or received, any form of planning permission for the workshops and offices that he had built in the garden.

## **PERHAPS UNSURPRISINGLY - WHEN THE HOUSE WAS ADVERTISED - NO REFERENCE WAS MADE IN THE AGENTS' PARTICULARS TO THE FACT THAT THE 'EXISTING' BUSINESS USE WAS 'UNLAWFUL'...**

Mr Milner took the property **because** of the business space and the storage that was available there... If it wasn't for these specific features - they would have sought alternative accommodation elsewhere in the county.

Thankfully, Mr Hole had masses of evidence to prove that the business use of the property had continued uninterrupted for well in excess of 10 years and had extensive receipts and information to prove that the buildings were erected in the mid 1990s. This would provide incontrovertible evidence that a Certificate should be granted...

...BUT, when Mr Hole was approached about the situation, he made it quite clear that, while he was happy to support any planning application, he did not want to take **any** responsibility for it [despite the expected result improving the rental and market potential of the property!].

This posed a significant problem for Mr Milner - he didn't want [or need] to improve Mr Hole's situation at his own personal expense...

## **OUR ADVICE:**

- The buildings used by the business had been erected for well in excess of the required 4 years without challenge and therefore *should* be simply regularised through an application for a Certificate of Lawful Development (see: [Lawful Development Certificates](#) [1]).
- In addition to the physical existence of the buildings - there had clearly been continuous use of the buildings for business use for a period well in excess of 10 years; a Certificate of Lawfulness for the existing use would therefore be appropriate.
- **WE ADVISED MR MILNER TO CEASE RETAIL ACTIVITY IMMEDIATELY** (this included removing any signs or advertising that may have insinuated that the retail of fireworks was occurring) - it was quite clear that local planning policy would resist any retail from occurring in an otherwise residential area and the activity had not occurred for more than 10 years and so there was no case to answer.
- **HOWEVER** As the use of the site *could* be properly established via a certificate of lawfulness - we advised that 'trade' sales *could* continue provided that 'retail' sales ceased immediately. Customers should only be allowed to visit the site by prior appointment; for the collection of pre-purchased fireworks, or, for the purposes of 'other' business meetings necessary for the function of the business.
- To assist with future anticipated interest from the council we further advised that every visitor should be required to sign in / out of the site - thus keeping an accurate record of all further business activity.

NOTE: IF Mr Milner was the property owner - we would have advised to proceed with an application for a CLEUD for both the development of the buildings *and* the 'business use' of the buildings, however;

Mr Milner was a tenant of the property we advised that *any* expense met by him would ultimately, be outside his long-term financial interest (the landlord could readily serve 2 months notice to quit at any time) therefore an alternative approach to resolving planning issues was advisable;

**FINAL SOLUTION:** Through negotiation with the Enforcement Department 'business' use of the existing site *could* continue without challenge from the Borough Council - it transpired that the Enforcement Officer involved was not interested in pursuing the unlawfully constructed buildings - as clear evidence existed from historic aerial photographs that the buildings were definitely in excess of 4 years old...

As the buildings were thus established to be 'lawful' used solely by Mr Milner and his family (all of whom resided at the property) this business was considered 'home working' and therefore no planning consent was required for business to continue...

... However, looking outside of the box and in order to enhance the business and to avoid future complaint, we recommended that Mr Milner should look to end his tenancy and to move to a smaller house - and then, using the £1000 / month saving on rent, he should then relocate the Sputnik Fireworks business to a commercial premises in a more appropriate location - ideally one where substantial passing trade would generate increased interest in the business (thus serving as a marketing boost as well as providing improved Council relations).

**RESULT:** Sputnik Fireworks recently relocated to a large 'business & trade park' location with new premises situated directly opposite the entrance to a very busy ASDA supermarket. New storage bunkers were constructed on-site to comply with Trading Standards storage requirements. In addition Mr Milner

so, In adjacent premises he has now opened up a new arm to the business which has developed company sales and grown customer numbers six-fold...

Sputnik Fireworks opened up a trade counter to resell fireworks and event equipment and has recently introduced a free to join 'trade club' enabling regular, registered buyers to purchase stock direct from the new premises at trade prices.

Since opening the new premises Mr Milner has not received any complaints from neighbours, has employed two new full-time members of staff and has just filed the company's most profitable year to date... despite the recession and a change of address.

**BREAKING NEWS** "West Dorsetshire Council have just confirmed an order with Sputnik for a professional display providing the finale to a large, public spectacle this Summer!"

**PLEASE NOTE:** This is a genuine story concerning a genuine case - due to the sensitivity of the situation, circumstances, names and details have been changed to protect the guilty...

*(any similarity with any other person, company or organisation is entirely incidental)*

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**Source URL:** <https://www.keithfarmer.co.uk/planning-development/explosive-situation>

**Links:**

[1] <http://www.keithfarmer.co.uk/planning-development/lawful-development-certificates-guidance>

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