

**COMMITTEE
REPORT ON
AL/31/09/CLE**

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CERTIFICATE OF EXISTING LAWFUL DEVELOPMENT REPORT

REF NO: AL/31/09/CLE

LOCATION: Shed and land
(south of Keymer Cottage)
Hook Lane Aldingbourne

PROPOSAL: Application for Certificate of Lawfulness for an existing use of a shed and adjacent land for the commercial storage of electrical equipment and supplies and electrical prototype testing.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION This is an application for a Certificate of Lawfulness for an existing use for an electrical commercial use. The applicant must provide evidence that the use has been established for 10 continuous years.

SITE AREA	0.2 hectares
RESIDENTIAL DEVELOPMENT DEN	N/A
TOPOGRAPHY	Slightly undulating land.
TREES	None of any significance affected by the proposed development.
BOUNDARY TREATMENT	Field hedging and five bar wooden gate along Oving Road.
SITE CHARACTERISTICS	Grassed access path which had not been compacted. Wooden shed along the boundary.
CHARACTER OF LOCALITY	Rural location with some sporadic housing around the settlement of Church Lane/ Hook Lane, Aldingbourne which is west of the site.

RELEVANT SITE HISTORY

AL/49/96	Temporary storage of touring caravan	Refused 13-08-1996 Appeal: Dismissed 02 06 1997
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AL/31/09/CLE

AL/55/00/

Outline planning application for one single storey dwelling

Refused

22-09-2000

**Appeal: Dismissed
18 01 2001**

REPRESENTATIONS

Representations received:

Aldingbourne Parish Council

West Sussex Wildlife Protection

Land needs checking for possible wildlife.

One Letter of Objection

Have lived at Keymer Cottage since 1994 and am not aware of the land and shed at the rear of the garden being used for the storage of electrical equipment etc. The site in question was used as a recreational garden until the death of Mr. Willard in approximately 2005. Since that date it has been left unattended and allowed to become overgrown. It has only been in the last two to three months that any work has been carried out to clear the site. The stream/drainage ditch which flows through my garden and then through the application site had become blocked due to the overgrown state of the site. I regularly mow the grass verge adjacent to Oving Road which includes the area where the entrance to the application site is and when I have not done it, it has become overgrown. I note supporting evidence includes two Statutory Declarations which contradict each other. One is from the John Herbert Willard which supports my observations.

Comments on Representations received:

Noted.

CONSULTATIONS

Planning Solicitor

Consultations responses received:

Planning Solicitor

I recommend you grant for reasons that follow, subject to your finding any contradictory evidence.

The applicant somewhat confuses the operational development of the shed and its use for B8 storage of electrical goods. However the essence of this claim is change of use of the shed from garden/domestic use to commercial. The Land Use Gazetteer confirms that storage is B1/B8. The time period is 7th April 1999 to 7th April 2009 (10 years).

The evidence shows that P Willard has owned the land since 1989.

Insurance papers from Norwich Union and HGI have arranged insurance for the store from 1990 onwards.

The evidence of P Willard - query could the equipment be stored in the open air, this is doubtful, whereas the shed is more specific.

Evidence of Ford, Smith and King is lacking in detail.

Planning history does not specifically refer to the shed and its use.

Council tax may not have been informed of the use as the claimant were possibly being surreptitious.

Neighbouring evidence has not been seen.

District Council Tax

As far Council Tax records are concerned there is no mention of the use of the whole or any part of the property for anything other than domestic purposes.

Comments on Consultation responses:

Comments noted. The neighbours letter corroborates the evidence of John Willard, which contradicts with that of Paul Willard with regard to the use of the land. It is considered that this contradiction is sufficient to provide doubt that the balance of probability should grant consent for a use of the land for a change of use from residential to commercial storage of electrical equipment. However, the site visit clarified that the shed is being used for storage of specialist equipment.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

CLE/CLP

Section 192(2) of the Town and Country Planning Act 1990 states:-

If, on an application under this section, the local planning authority are provided 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.

1. Principle

Section 191 to 195 Town & country Planning Act 1990 and DOE Circular 10/97 Annex 8 have the effect of requiring these applications to be determined having regard only to the evidence adduced and not planning policy.

(i) What is judged on a balance of probability.

(ii) The onus of proof is on the applicant (and not the LPA) to adduce the evidence.

(iii) The LPA may have on its files relevant evidence either supporting or contradicting that of the applicant.

1.1 The relevant time limit for the material change of use of the land is for 10 years from 9th April 1999 to 9th April 2009 is 10 years.

2. Assessment

2.1 The submitted Evidence consist of:

A Land Registry Title Register has been provided to state that Paul Willard was Registered Owner from 2nd October 1989.

HGI Insurance Policies for the site from 31st January 2000 to 1st August 2008 from Norwich Union for the timber construction adjoining Keymer Cottage 24th May 1990.

Statutory Declaration

(i) John Herbert Willard, the land originally formed part of the area belonging to Greenacres, Hook Lane. In 1977 I purchased Keymer Cottage and an additional piece of land belonging to Greenacres boundary hedging. In 1987 a run down implement shed was replaced by the existing shed. The gate onto the main road (Oving Road) is an established access point. In the late

1980's the land was transferred to my son. In 1994 I sold Keymer Cottage. I then took back the land in question to use as a private garden. I cut the grass, trim the hedges, prune the trees and maintain the stream. The touring caravan on site is ideal for me to use as an ancillary facility. The declaration is signed 13th May 1997.

(ii) Paul John Willard. I have been Director of Willard Electrical Limited from 1982 until 2007 and continue as Director of Willard Conservation Ltd. The property was owned by my father and transferred to me in 1989. The structure was erected in 1987 and has been used, together with the surrounding land for the storage of stock and equipment belonging to the company. A set of keys are kept at the company office to enable staff to gain access to the site. Signed 16th February 2009.

Three Standard Declarations from Phillip John King, Andrew Ford and Andrew Smith all stating that the keys are kept at the company office and that they regularly visit the site in connection with responsibilities as employees of the company (the responsibilities are not defined).

2.2 The evidence collaborated from the Council's records consists of:

Application AL/55/00 Outline Planning Application for one single storey dwelling was dismissed at Appeal. During the site visits of both the Planning Case Officer and the Planning Inspector, no evidence was observed of the electrical business, indeed the land was quite overgrown. This is further supported by the letter from the current owner of Keymer Cottage.

Application AL/49/96 Temporary Storage of Touring Caravan, at this appeal the Inspector stated "your case on grounds was that the caravan was ancillary to the lawful use of the land as a private garden". He goes on to state that "He needs the caravan because he needs to be able to take intervals of rest. The shed would not serve the same purpose because it has no other facilities".

Council Tax evidence is that there is no mention of the use of the whole or part of the land being assessed/used for anything other than domestic ancillary purposes.

2.3 Other evidence:

A letter from the neighbour at Keymer Cottage states that the land has been used as recreational garden land since he purchased Keymer Cottage in 1994.

A site visit was undertaken to inspect the inside of the shed on 30th July 2009. The items inside the shed were noted as being specialist art and conservation restoration equipment as stated on the attached list. There storage was not of general electrical equipment. There was no equipment outside of the shed.

OTHER MATERIAL CONSIDERATIONS

CONCLUSIONS

3. Conclusion

3.1 Grant

3.2 This application is for a Certificate of Lawfulness for an Existing Use of the land and shed to the rear of Keymer Cottage for the commercial storage of electrical equipment and supplies and electrical prototype testing. The quality of the evidence has been judged on a balance of probability and it is considered that the evidence is ambiguous and contradictory and therefore does not meet the standards required in 10/97 Annex and Paras 8.12 - 22 to prove the use as described has been operating for at least ten years.

A letter from the neighbour at Keymer Cottage corroborates with the evidence submitted by John Herbert Willard that the land has been used as recreational garden land since he purchased Keymer Cottage from John Willard in 1994.

Both these pieces of evidence from the Council's own records, concur with the evidence of John Herbert Willard and is contrary to that of Paul John Willard.

Evidence from Mr. John Herbert Willard states that from 1977 until 13th May 1997 he used the land as ancillary garden land. Mr. Paul John Willard states that from 1989 the land was transferred to him and used by him for the storage of electrical stock. These two statements are in direct conflict. The current neighbour at Keymer Cottage has stated that the land was used as recreational land until the death of John Herbert Willard, this concurs with the statement of John Herbert Willard.

Submitted with the application is an insurance policy with the sum insured being £127,581 covering machinery and plant. The insurers HGI have stated that they have insured the equipment at the site since 1999. As the nature of the machinery and equipment is specialist to the conservation of art work, this sum assured would support the nature of the equipment stored in the shed, and therefore adds the balance of probability in favour of the use of the shed for the specialist equipment for the qualifying ten years.

3.3 The submitted evidence together with the Council's own records and the letter from the neighbour at Keymer Cottage who purchased the property from John Willard in 1994 are contradictory. The evidence submitted from 3 employees of the company Willard Electrical (Willard Conservation Ltd) are lacking in substance and therefore ambiguous.

3.4 However, a site visit to the interior of the shed confirms that the shed is being used for the storage of specialist restorative electrical equipment as listed in the attached list of contents. These items appeared to have been there for some considerable time. The Council has no evidence to the contrary that this has not been the case for 10 years or more. The various site visits undertaken by officers of the Council have not found any evidence of storage on the land outside of the shed. Therefore on the balance of probability and for the reasons given above it is considered that the Application for a Certificate of Lawfulness for an Existing Use should be granted for the reasons stated below, for the shed only and not for the land surrounding the shed.

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Summary

It is considered that the balance of probability the evidence submitted

RECOMMENDATION

APPROVE

- 1 The Arun District Council hereby certify that on the 7th April 2009 the use hereby described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged boldly on the plan attached to this certificate was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as

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amended), for the following reason; that on the balance of probability the shed has been used for the storage of specialist art conservation electrical equipment for a period of 10 years.

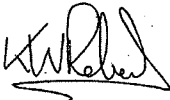
- 2 Use of the shed at land south of Keymer Cottage, Hook Lane, Aldingbourne for storage of specialist restorative conservation electrical equipment as specified on the attached schedule.
- 3 Use of the shed only for storage of specialist electrical equipment for the restoration and conservation of specialist art work.
- 4 Shed on land south of Keymer Cottage, Hook Lane, Aldingbourne, West Sussex which is shown on the plan attached to this certificate, within the area edged boldly in black.

**DECISION NOTICE
ON AL/31/09/CLE**

APPLICATION NO: AL/31/09/CLE
TOWN AND COUNTRY PLANNING ACT 1990
SECTION 191 AND 192
(as amended by section 10 of the Planning and Compensation Act 1991)
TOWN AND COUNTRY PLANNING GENERAL DEVELOPMENT PROCEDURE
CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

The Arun District Council hereby certify that on the 7th April 2009 the use hereby described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged boldly on the plan attached to this certificate was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason; that on the balance of probability the shed has been used for the storage of specialist art conservation electrical equipment for a period of 10 years.

Signed



Karl Roberts
Assistant Director Planning Services &
Housing Strategy

On behalf of Arun District Council

Date of Decision: 30th October 2009

Date Decision Issued 30th October 2009

Case Officer: Mrs S Leeson

First Schedule

Use of the shed at land south of Keymer Cottage, Hook Lane, Aldingbourne for storage of specialist restorative conservation electrical equipment as specified on the attached schedule.

Extent of Use

Use of the shed only for storage of specialist electrical equipment for the restoration and conservation of specialist art work.

Second Schedule

Shed on land south of Keymer Cottage, Hook Lane, Aldingbourne, West Sussex which is shown on the plan attached to this certificate, within the area edged boldly in black.

IT IS IMPORTANT THAT YOU READ THE NOTES ATTACHED TO THIS DOCUMENT

NOTES RELATING TO CERTIFICATE OF EXISTING LAWFUL USE OR DEVELOPMENT

TOWN & COUNTRY PLANNING ACT 1990

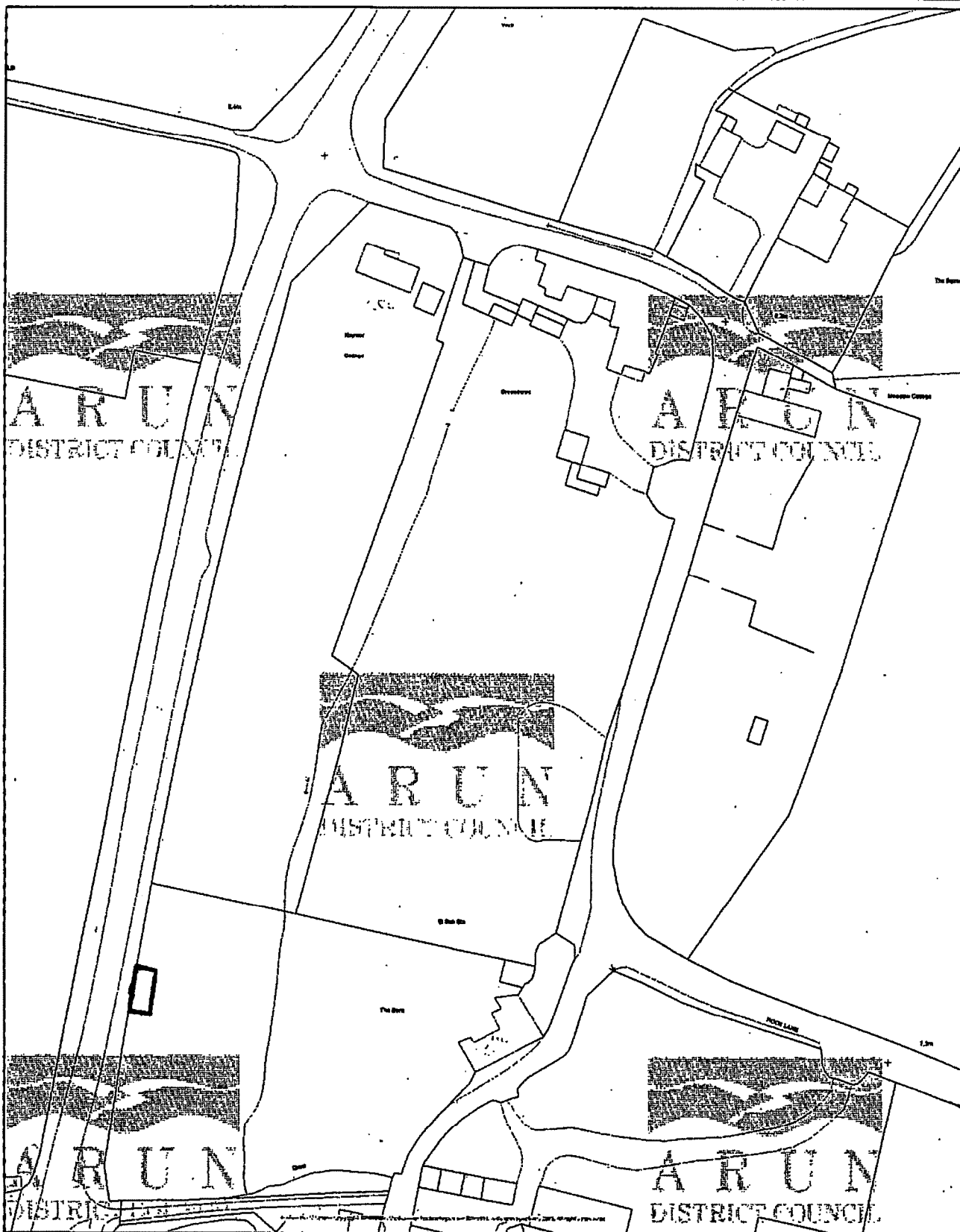
This certificate is issued solely for the purpose of section 191 of the Town & Country Planning Act 1990 (as amended).

It certifies that the use specified in the First Schedule taking place on the land described in the Second Schedule was lawful, on the specified date and thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.

Please note that this decision notice only relates to matters under the Planning Acts and does not give consent under any other legislation that may apply to the development. You will need to carry out your own checks to determine whether any other consents or permissions are required. For example, the Building Regulations are likely to apply to most developments, and a Highways Licence may be required from West Sussex County Council for any development within the public highway (including the placing of skips on highway land).

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ARUN
DISTRICT COUNCIL

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Arun District Council 100018487.

Scale 1/1250

Date 26/10/2009

Centre = 492576 E 105287 N

Items in Shed at Keymer Cottage as seen on 30th July 2009

Tractor
Shelves
Old saws, hacksaw, bench saw
Historical accounts
Tools
Public Address System
Prototype hood
Racks with fire alarm and test equipment
Old furniture
Switch gear
Pumps
Fan blades
Display stand
Drawing board
Worktop
Prototypes of conservation equipment for the conservation of works of art.
Hampton Court pump
Flexible hose
Test machine for voltages
Painting being repaired