



LAND ADJACENT TO CHURCH FARM BARN
HORSEMERE GREEN LANE
CLYMPING
BN17 5QX

CERTIFICATE OF LAWFULNESS FOR AN EXISTING USE

SUPPORTING STATEMENT FOR:

Use of land for Class B8 (Storage)



REF: NJA/18/257

May 2020

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APPENDICES

Appendix NJA-1 Signed Declaration

1.0 INTRODUCTION

1.1 This Certificate of Lawfulness application seeks to regularise the use of land adjacent to Church Farm Barn for the purposes of storage (Use Class B8). This statement demonstrates that the land has been used for this purpose, rather than for agriculture, for a period in excess of ten years and therefore under the provisions of Section 191 of the Town and Country Planning Act (TCPA) 1990 the siting is now lawful and exempt from enforcement action.

1.2 Section 191 of the TCPA 1990 states the following:

(1) If any person wishes to ascertain whether—

(a) any existing use of buildings or other land is lawful;

(b) any 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 condition 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.

(2) 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.

(3) 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 or breach of condition notice then in force.

(4) 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 a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

1.3 Section 171A of the Town & Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) is of relevance as it states:

'(1) For the purposes of this Act –

(a) carrying out development without the required planning permission.

(b) failing to comply with an condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.

1.4 Section 171B Time Limits is also relevant whereby this states:

(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 on which 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 dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with 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 ten years beginning with the date of the breach.

(4) The preceding subsections do not prevent—

(a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

(b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.]

2.0 SITE DESCRIPTION

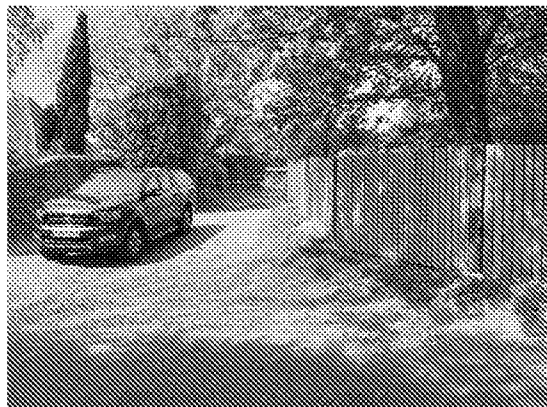
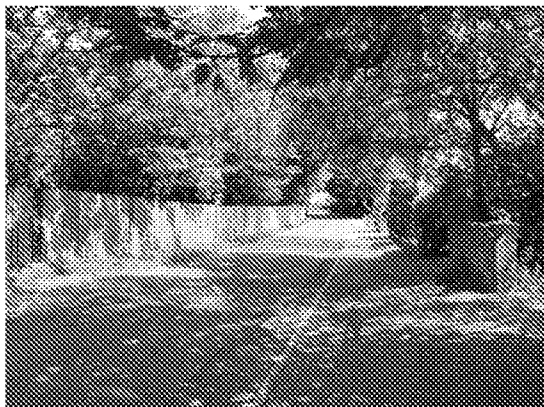
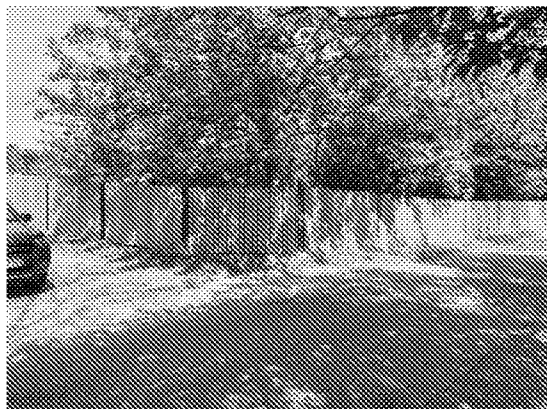
- 2.1 The site comprises a broadly rectangular parcel of land positioned to the west of Church Farm Barn, Horsemere Green Lane, Clymping. Church Farm Barn itself is a detached residential dwelling formed from a former flint barn set under a grey pitched roof with hipped ends which is afforded screening from the highway by high conifer hedging set behind a brick wall.
- 2.2 Within the site itself, the land is broadly level and laid to scrub grassland and hardstanding. Whilst historically the site was used for the grazing of horses, this use has long since ceased with the land now used for storage, mainly of vehicles and with other non-domestic paraphernalia. The boundaries to the site are demarcated by overgrown hedgerows with trees, with the frontage to the highway also benefitting from timber fencing. Tended hedgerow divides the site from the curtilage to Church Farm Barn.
- 2.3 Access is taken from the south west corner of the site via a bell mouth junction with gates set into the site to allow for vehicles to exit the highway and to also ensure appropriate visibility along the highway. The access is secured by an existing metal field gate. Within the site the access extends beyond the site itself to serve outbuildings to the rear of Church farm Barn.
- 2.4 The wider street scene along this section of Horsemere Green Lane has a domestic appearance with well-maintained front gardens and boundary treatments, which includes a mix of timber fencing, soft landscaping and brick walling. Whilst the majority of frontages are softened by landscaping, there is no overriding materials used for site boundaries, giving a varied appearance to the street scene.
- 2.5 The site is located within a countryside location characterised primarily by detached residential properties of individual design and materials commensurate with the period of build and giving no overriding architectural character. The properties are set within good sized mature curtilages which front onto the highway giving a strong relationship to the public domain. The

planting to the site boundaries and to the adjacent agricultural land provides a low density and bucolic appearance to the area.

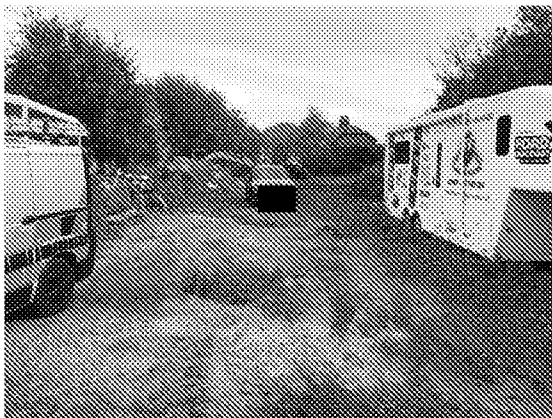
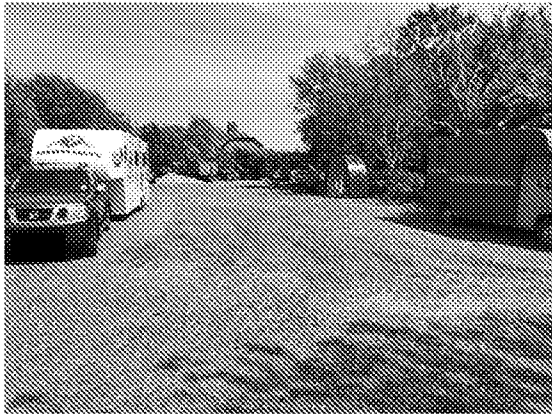
2.6 Set out below are some photographs of the site which provides further context.



Land adjacent to Church Farm Barn



View of site from public domain



Views across site

3.0 PLANNING HISTORY

3.1 Church Farm Barn lies within the administrative area of Arun District Council for planning purposes. An examination of the online planning register reveals the following planning history:

- CM/36/19/PL – Retention of replacement fencing & proposed replacement entrance gates. Permission granted 30th September 2019.
- CM/21/03 – Single dwelling. Refused 26th August 2003. Appeal dismissed 29th April 2004.

4.0 EVIDENCE

- 4.1 The evidence before the Council demonstrates that the land subject of this application for a Certificate of Lawful Existing Use has been used for storage for a period in excess of 10 years constituting a change from the previous grazing pasture. The current owner of the site seeks to regularise the use of the land as Use Class B8 (storage).
- 4.2 The evidence submitted with this Certificate of Lawfulness application comprises a sworn statement as attached at Appendix NJA/1 completed by Ms Linda Rudd as the owner of the land. This states that the land has been used for storage purposes only for a continuous and uninterrupted period that predates the submission of this application by at least 10 years.
- 4.3 In having regard to Section 336 of the Town and Country Planning Act 1990 (as amended) it is confirmed by Ms Rudd that no activities in the form of *“...horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes...”* have taken place on the land over the required period. The land has simply been land used to store vehicles, trailers and other ancillary non-domestic paraphernalia unrelated to any agricultural activities on this or surrounding land.

5.0 PLANNING LEGISLATION AND COMPLIANCE ASSESSMENT

- 5.1 Lawful Development Certificates are based upon sections 191-193 of the Town and Country Planning Act 1990. Section 191 allows a Local Planning Authority to grant a certificate confirming that an existing use is lawful where no planning permission has been secured for the change of use from agriculture to storage.
- 5.2 Section 191 (2) states that for the purposes of the Act, uses and operations are lawful at any time if ***'no enforcement action may then be taken in respect of them (whether because they did not involve development or planning permission or because the time for taking enforcement action has expired or for any other reason'.***
- 5.3 Section 171B of the 1990 Act specifies time limits for taking enforcement action. If action is not taken within certain time limits the breach of planning control becomes "immune" from planning enforcement action. Relevant to this situation at Church Farm Barn, Section 171B (3) of the Town and Country Planning Act 1990 (as amended), states that a breach of planning control becomes immune ***"after the end of the period of ten years beginning with the date of the breach"***. The onus is therefore on the Applicant to demonstrate that the change of use of the land from agriculture to Use Class B8 for storage has occurred continuously over the required period with no intervening uses.
- 5.4 The Courts have held that the relevant test of evidence submitted with Certificate of Lawfulness application is ***'the balance of probability'***, therefore Applicants are not required to discharge the stricter, criminal burden of proof namely 'beyond reasonable doubt'. The Courts have also held (see *FW Gabbittas v SSE and Newham LBC 1985*) that the Applicant's own evidence does not need to be corroborated by other evidence in order to be accepted. Accordingly the sworn statement submitted by Ms Linda Rudd must be accepted as credible and accurate evidence.

- 5.5 If the Local Planning Authority has no evidence of its own, or from others to contradict or otherwise make the Applicants' version of events less probable, there is no good reason to refuse to issue a Certificate of Lawfulness. This is provided that the Applicants' evidence alone is sufficiently precise and unambiguous to justify the grant of a Certificate ***'on the balance of probability'***. Furthermore, the planning merits of the operation, use or activity are not relevant to the purely legal issues which are involved in determining a Certificate of Lawfulness application.
- 5.6 Further guidance is set out in section ID 17c of the online Planning Practice Guidance (PPG). This notes that lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or for which planning permission is not required. The Guidance notes that the Applicant is responsible for providing sufficient information to support an application. The evidence must be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability (PPG ID17-006). The Applicants' evidence does not need to be corroborated by independent evidence. However in practice it is usually helpful for contemporaneous evidence to be provided to corroborate the Applicant's own version of the history of the use (PPG ID17c-006). Paragraph ID17-008 of the PPG makes clear that the planning merits are irrelevant.
- 5.7 Given the provision of the sworn statement confirming the use of the land for storage purposes, it is clearly proven beyond the ***'balance of probabilities'*** that the use has occurred in excess of ten years and that this use is now lawful. Therefore, as stipulated by Section 191 (2), no enforcement action may be taken because the time for taking such action has expired.

6.0 CONCLUSION

- 6.1 In summary, the land has not been used for agricultural purposes well in excess of ten years and instead has been in Class B8 for storage and therefore is demonstrated to be lawful. The use has continued up to and including the date of this application. Accordingly, the Certificate applied for should be granted for the change of use of the land.