



RODWAY PLANNING
CONSULTANCY LIMITED

STATEMENT OF CASE

***'Certificate of Lawfulness for an existing use
or development - continuance of the use of
land for up to 50 no. one-storey storage
containers since before July 2009
(resubmission of withdrawn application
CM/24/17/CLE).***

**Unit W, Rudford Industrial Estate,
Ford Road, Ford BN18 0BD**

July 2019

STATEMENT OF CASE

**CERTIFICATE OF LAWFULNESS IN RELATION TO AN EXISTING USE:
UNIT W, RUDFORD INDUSTRIAL ESTATE, FORD ROAD,
FORD, WEST SUSSEX BN18 0BD**

1.0 INTRODUCTION

- 1.1 I am instructed on behalf of my client, Mr Duggin (who operates the site under the company name 'Rudford Self-Storage'), to submit an application to Arun District Council for a Lawful Development Certificate in relation to Unit W, Rudford Industrial Estate, Ford. The application seeks to obtain a Legal Development Certificate as legal confirmation that the premises are lawfully in use for storage purposes and the site accommodates up to 50 single storey storage containers.
- 1.2 The site in question is well-established in terms of its use for storage purposes primarily through siting of single storage containers. The evidence provided makes it clear that the subject site has been in continuous commercial use (B8 use class) since at least **July 2003**, up to the present time.
- 1.3 This statement sets out a brief history of the site and then addresses the legal basis for the application and the evidence submitted to justify the facts of the case. We consider that this evidence sufficiently demonstrates, on the balance of probability, that the site has been used for storage via the siting of **up to** 50 (fifty) single storey storage containers (falling within B8 use class purposes), and has been operating in this fashion continuously for longer than the 10-year qualifying period. We therefore consider there to be no reasonable basis to withhold a Lawful Development Certificate.



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2.0 SITE DESCRIPTION

- 2.1 The application site is located on an established Industrial Estate within the rural area. The Estate is immediately bordered by predominantly open fields; with Horsemere Green Lane and a residential housing development further south.
- 2.2 'Unit W' of the site, which is the subject of this application, immediately adjoins paddocks to the south and east sides. To the north is the Industrial Estates main access road. Finally, to the east lies an internal access road to the estate with industrial units beyond that vary in size.
- 2.3 'Unit W' contains an associated workshop/office building, which is single storey and positioned in the southeast corner of the site running parallel with the eastern boundary. The site has vehicular access to its western boundary.





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- 2.4 The site is bordered by metal palisade fencing and close boarding fencing to boundaries.
- 2.5 The closest residential properties are located some distance away from the site. The site and its surroundings are outlined in further detail below.



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3.0 PLANNING HISTORY

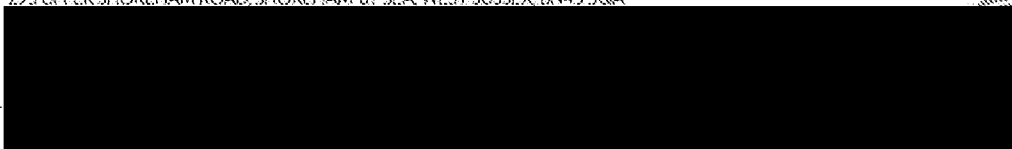
- 3.1 Following our assessment of the planning records held by Arun District Council, it is understood that the relevant planning history for Unit W is as follows:

Application reference: CM/24/17/CLE – *‘Certificate of Lawfulness for an existing use or development - continuance of the use of land for one-storey and two-storey storage containers since before July 2007’* – Withdrawn 19 January 2018

Application reference: CM/2/14 – *‘Removal of existing workshop and replacement with 7 No. lock-up units; providing Use Classes B1, B2 and B8 (the same use as existing)’* – Approved Conditionally 11 June 2014

Application reference: CM/29/02 – *‘Change of use to open storage of scaffolding and parking for cars and lorries. Retaining existing building for office and storage’* – Approved Conditionally 15 November 2002

- 3.2 The wider site was subject to a planning approval under reference CM/5/86 for *‘Outline application for industrial development on land allocated for such purposes’*. This application was approved subject to a Section 106 Agreement, on 28 April 1988.





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4.0 CONSIDERATIONS

Legal Background

- 4.1 The statutory framework covering “lawfulness” for lawful development certificates is set out in section 191(2) of the Act. In summary, 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. Therefore, for the purpose of obtaining a certificate of lawfulness, Section 191 of the Town and Country Planning Act 1990 states:

Certificate of lawfulness of existing use or development

(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—



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(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.

(3A) In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if—

(a) the time for applying for an order under section 171BA(1) (a “planning enforcement order”) in relation to the matter has not expired,

(b) an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or

(c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.]

(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.

(5) A certificate under this section shall—

(a) specify the land to which it relates;

(b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);

(c) give the reasons for determining the use, operations or other matter to be lawful; and

(d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

(7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission—

(a) section 3(3) of the M1 Caravan Sites and Control of Development Act 1960;

(b) section 5(2) of the M2 Control of Pollution Act 1974; and

(c) section 36(2)(a) of the M3 Environmental Protection Act 1990.]

4.2 In respect of the ‘time for enforcement action’ Section 171B(2) of the 1990 Act states in respect of change of use not relating to a residential use that:

“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.”

4.3 Furthermore, the National Planning Practice Guidance (NPPG) states:

“The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

In the case of applications for existing use, if a local planning authority has no evidence itself, nor any 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, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority

to understand exactly what is involved.” (Paragraph: 006 Reference ID: 17c-006-20140306)

(i) Time Limits

- 4.4 The Planning and Compensation Act 1991 introduced rolling time limits within which local planning authorities can take planning enforcement action against breaches of planning control.
- 4.5 The time limits are:
- 1) four years for building, engineering, mining or other operations in, on, over or under land, without planning permission. This development becomes immune from enforcement action four years after the operations are substantially complete;
 - 2) four years for the change of use of a building, or part of a building, to use as a single dwelling house. Enforcement action can no longer be taken once the unauthorised use has continued for four years without any enforcement action being taken;
 - 3) 10 years for all other development. The 10 year period runs from the date the breach of planning control was committed.
- 4.6 Once the relevant time limit has passed, the development and/or use becomes lawful, in terms of planning.

Evidence

- 4.7 The above-mentioned extracts provide the legal basis for this application and subsequently we have provided the following evidence to demonstrate that Unit W been used for storage purposes, including the siting of single storey storage containers, for a continuous period in excess of 10 years:

(i) Statutory Declaration by Mr. Clifford Duggin (father of the applicant), signed and dated 10th July 2019

It confirms that on 10th July 2019 Mr. Duggin has occupied the application site since July 2003. Prior to this date the site was owned by Mr Ken Rudd who used the site for a storage container business. Mr Duggin is aware of the November 2002 planning permission which granted permission for the site to be used for 'open storage of scaffolding and parking for cars and lorries. Retaining existing building for office and storage' (application CM/29/02 refers).

Mr Duggin confirms that in addition to open storage, the site has been used for storing storage containers from commencement of his occupation of the site in July 2003 up to the present day. These number up to 50 containers being situated on-site at any one time. The site has also been used to store cars, boats, caravans and plant. The original building has been retained in-situ, and has been in use continuously by Mr Duggin for the manufacture of PVC and canvas goods etc. under the name CD Tarpaulins Ltd.

(ii) Statutory Declaration by Mr Chris Peck, signed and dated 10th July 2019

It confirms that Mr Peck has occupied Unit G2 at Rudford Industrial Estate since 2008. It essentially confirms that the content of Mr Duggin's Statutory Declaration (as summarised above) is correct insofar as it is Mr Peck's understanding.

(iii) Statutory Declaration by Mr Robert Finnigan, signed and dated 10th July 2019

It confirms that Mr Finnigan has occupied Unit G11 at Rudford Industrial Estate since 2001. It essentially confirms that the content of Mr Duggin's Statutory Declaration (as summarised above) is correct insofar as it is Mr Finnigan's understanding.

(iv) Statutory Declaration by Ms Kaye Harding, signed and dated 10th July 2019

It confirms that Ms Harding has occupied Unit G4 at Rudford Industrial Estate since 2003. It essentially confirms that the content of Mr Duggin's Statutory Declaration (as summarised above) is correct insofar as it is Ms Harding's understanding.

(v) Statutory Declaration by Mr Jamie Gray, signed and dated 10th July 2019

It confirms that Mr Gray has occupied Unit E7 at Rudford Industrial Estate since 2016, and prior to that he occupied Unit G19 from 2013 to 2016, and Unit U2 from 2003 to 2013. It essentially confirms that the content of Mr Duggin's Statutory Declaration (as summarised above) is correct insofar as it is Mr Gray's understanding.

(vi) Local Authority Evidence

It is understood from an email from the previous Planning Officer, Mr David Easton, dated 5 January 2018, that the Council has in its possession aerial images dating back to 2001. Mr Easton, in his email, stated "*it is apparent that these images (sic) that the site has been used for B8 storage and distribution uses for necessary 10 year period*". We have not had sight of these aerial images, but we are of the opinion that they do support the case hereby being made. Evidently Mr Easton raised a question mark as to the number of storage containers being positioned on-site. However, it must be remembered that this application now seeks for a Certificate to be issued for up to 50 containers at any one time. The reality is that the quantum of containers positioned on the site varies greatly depending on the operating circumstances of the applicant and his customers. Often the number of containers is less than 50. Indeed, Mr Easton states in his email that the 2015 image shows 18 containers, whilst in 2012 a total of 21 containers were present. This of course represents just a 'snapshot' of the site conditions at two different moments in time. It is likely that, if the aerial photograph was taken a week earlier, then a different number of containers would be present; and similarly, the same

could be said about a week later. What it does demonstrate is that storage containers have been present on the site, although the number differs from time to time.

Evidently, the Council have confirmed via Mr Easton's email that the B8 use of the site is lawful. Therefore, the only question mark is relating to the number and scale of containers held on-site.

There seems to be no dispute that storage containers have been located on the site during the qualifying period (4 years for operational development). However, in order to acknowledge the fluctuating nature of siting and using storage containers at this site, this CLE application is for 'up to 50' in total to be sited at any one time. In addition, the previously CLE application (CM/24/17/CLE refers) included for double storey containers – but reference to this has now been deleted from this resubmitted application.

Use Class

- 4.8 The Town and Country Planning (Use Classes) Order 1987 sets out at Part B as follows:

Class B8. Storage or distribution

Use for storage or as a distribution centre.

- 4.9 Given the evidence obtained in support of this Certificate of Lawfulness application, it is clear that the subject site has been in a B8 use, to include the siting of up to 50 (fifty) single storage containers at any one time for in excess of 10 years. This has been the case since at least July 2003, when the site came into the ownership of Mr Duggin.



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5.0 SUMMARY

- 5.1 This application seeks to obtain legal confirmation that an existing premises known as Unit W, Rudford Industrial Estate, Ford, has a lawful use as storage (B8 use class) to include the siting of up to 50 single storey storage containers, in line with Section 191 of The Town and Country Planning Act 1990.
- 5.2 We conclude that on the basis of the evidence supplied, that the sites use for storage including single storey storage containers is lawful and has been operating for longer than the qualifying periods set out in Section 171B of the 1990 Act. It is clear from the evidence supplied that Unit W has been in storage use since at least 2003 when the site came into the ownership of the applicant. Since this time the site has been used for storing storage containers (up to 50 in total) for purposes associated with the storage use. On the balance of probability the actual date that this use commenced was earlier still, when the site was in the ownership of Mr Ken Rudd. The use of the site for a B8 use, including the siting of up to 50 single storey storage containers has been continuous for at least 10 years, and in planning terms it is therefore lawful.
- 5.3 Taking into consideration the legal tests by which a Lawful Development Certificate application should be considered, we believe that we have adequately shown, on the balance of probability, that Unit W is lawfully in a B8 use class (storage), and includes for the siting of single storey storage containers (up to 50 at any one time). Furthermore, the National Planning Practice Guidance provides that if a local planning authority has no evidence itself, nor any 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. We therefore respectfully request that a Certificate of Lawfulness be granted.

July 2019

