

Recommendation Report for Lawful Development Certificate for an Existing Use or Operation or Activity including those in breach of a planning condition.

REF NO: CM/60/19/CLE

LOCATION: Clymping Mill
Climping Street
Climping
BN17 5RN

PROPOSAL: Application for a Lawful Development Certificate for an Existing operation - Excavation of ground to re-deposit earth within and around the boundary of the site.

DESCRIPTION OF APPLICATION

The proposal is for the retention of earthworks carried out in July 2018 within the site at Clymping Mill. Earth has been excavated to create a pond (approx. 26m wide and 4m deep) and the spoil has been re-deposited at various locations on the site. It is asserted that this is in order to form basic flood defences along the perimeter of the site.

The hole was formed using heavy machinery and involved the digging out and relocation of earth around the site. The land in this area was previously relatively level and flat.

The earth was deposited mainly to the South-West boundaries of the site on the boundary line to the adjacent agricultural land and covered the base of existing trees located on the boundary. The earth has been formed into rough mounds, approximately 2 - 3m high. Earth has also been deposited in small quantities at various other areas within the site..

SITE AND SURROUNDINGS

The site is located in a rural area and the wider application site contains a series of buildings, namely the Grade II Listed Clymping Mill House and smaller ancillary buildings, Mill Cottage and Thatch Cottage. There are additional non-Listed ancillary buildings that resemble portacabin type structures.

RELEVANT SITE HISTORY

CM/20/18/PL	Erection of security fencing. This application may affect the setting of a listed building.	ApproveConditionally 18-09-18
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There is no planning history specifically related to the area of the Vineyard which is material to the determination of this application

REPRESENTATIONS

Representations Received:

Climping Parish Council

No Objection

Comments on Representations Received:

None

CONSULTATIONS

Engineering Services Manager

Engineers (Drainage)

Consultations Responses Received:

None

Comments on Consultation Responses:

None

LEGISLATIVE BACKGROUND

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.

In this instance the proposed works will be assessed against the definition of development, the relevant time limit for the operation is 4 years and against the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

- Class E, which pertains to buildings incidental to the enjoyment of a dwellinghouse.

Provided the proposed works either do not constitute development or satisfy the relevant criteria, and that no restrictive conditions to development have been imposed on the site, the proposed works will constitute Permitted Development and would not require planning permission. If the works fail to accord with the criteria then planning permission will be required for them to take place.

CONCLUSION

Section 55 of the Town and Country Planning Act 1990 defines the meaning of "development" as the

carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Engineering operations include ground works. The PPG Paragraph: 001 Reference ID: 13-001-2014030 specifically refers to 'engineering operations (eg groundworks)' as constituting development.

Section 57 of the Town and Country Planning Act 1990 directs that all operations or work falling within the statutory definition of 'development' require planning permission. The digging of a hole and dumping of spoil to create flood barriers by a Non Statutory Undertaker do not fall within any Class of the Town and Country Planning (General Permitted Development) Order 2015 .

The application submitted does not explain why it is considered that the works undertaken do not require the submission of an application for planning permission or which Class within the (General Permitted Development) Order 2015 (as amended) it is considered the works fall within.

Government Guidance within the PPG at Paragraph: 116 Reference ID: 13-116-20180615 refers to the requirement for submission of an application if the site were located on farm land and the works are for flood protection or alleviation works on smaller agricultural units (i.e. of less than 5 hectares) where these constitute development, such as excavations or engineering works.

The creation of a pond by machinery is considered an engineering operation under the Town and Country Planning Act 1990 (as amended). The Local Planning Authority has photographic evidence that the hole was created using diggers. There is no doubt that the size of the hole (26m wide and 4m deep) is significant and such an operation would require the submission of an application for planning permission.

Further the dumping of the spoil to create randomly sited bunds which were 3-4m in height, but have now settled at a lower height of approximately 2-3m would also constitute an engineering operation requiring the submission of an application for planning permission.

In order for a CLE to be approved for the excavation and creation of bunds it must be shown that the works which constitute development fall within a Part of the Town and Country Planning General Permitted (General Permitted Development) Order 2015 (as amended). The only possible Class would be Class E, which relates to creation of a swimming or other pool incidental to the enjoyment of the dwelling house, but the works are not entirely within the curtilage of the property and the applicant's have not suggested that the hole constitutes a pool. The red edge of the application site extends beyond that established under CM/23/15/CLE which established Use of 'The Mill', 'The Thatch' and 'Mill Cottage' as 3 No. dwellinghouses with associated curtilage falling within use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended). The proposal cannot therefore be considered to fall within Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

From the evidence available and photographs and visits by officers undertaken at the time when the works were taking place it is concluded that planning permission was required for the excavation works including the creation of the pond and spoil heaps/flood defences. It has not been satisfactorily demonstrated that the works did not constitute development or that they comprised permitted development.

The works at the site did not take place in excess of least 4 years ago (indeed they were undertaken in July 2018) and a Certificate cannot therefore be issued on this basis either.

RECOMMENDATION

REFUSE

The use described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged in black on the plan attached to this certificate, was not lawful within the meaning of section 192 of the Town & Country Planning Act 1990 by reason that the Council is not satisfied that the evidence submitted when considered with other information the Council has collated, demonstrates that the works undertaken, namely the creation of a pond and associated spoil heaps do not constitute development, that they have existed for the relevant time period, or that they constitute permitted development under the Town and Country Planning (Use Classes) Order 1987 (as amended) as required to satisfy the issue of Certificate of Lawfulness under Section 171B (3) of the Town and Country Planning Act 1990.

FIRST SCHEDULE

The excavation of soil and creation of spoil heaps and a hole as detailed on the submitted drawings:

Location Plan IDL-NA-00-DR-A-01000 (3-00)

Existing Earthworks Site Plan& Section IDL-EW-00-DR-A-11000(3-00)

Based upon the information submitted the works which constitute development have not been present for a continuous period of 4 years; do not benefit from planning permission; and do not accord with the limitations of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

SECOND SCHEDULE

Climping Mill, Climping Street , Climping, BN17 5RN

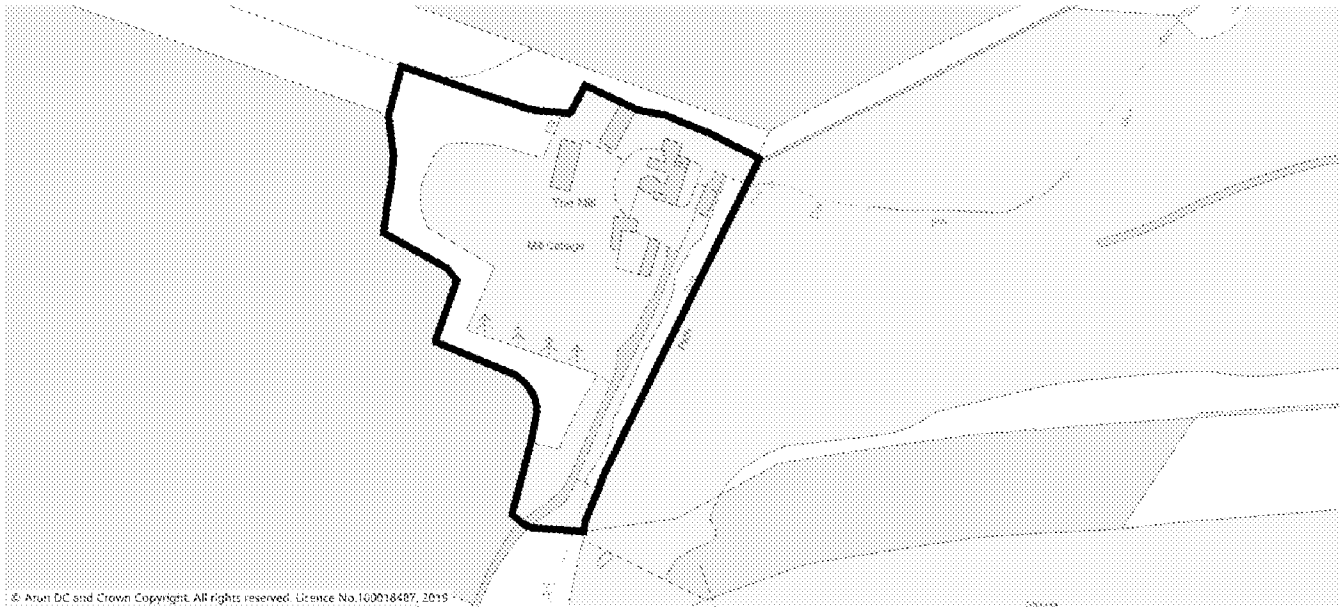
EXTENT OF USE

Retention of earthworks carried out in July 2018 within the site at Clymping Mill. The earthworks include excavation of a pond (approx. 26m wide and 4m deep) and depositing of the spoil at various locations on the site.

REASONS FOR REFUSAL OR INFORMATIVE(S)

- 1 The Council is not satisfied that the evidence submitted when considered with other information the Council has collated, demonstrates that the works undertaken namely the creation of a pond and associated spoil heaps do not constitute development or that they constitute permitted development under the Town and Country Planning (Use Classes) Order 1987 (as amended) as required to satisfy the issue of Certificate of Lawfulness under Section 171B (3) of the Town and Country Planning Act 1990.

CM/60/19/CLE - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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