

Planning Department
Arun District Council
Maltravers Road
Littlehampton
West Sussex
BN17 5LF

17 April 2018
Ref: KT/Let/P1472

To whom it may concern,

Certificate of Lawfulness of Existing Use and Development at Land East of Kingston House, Kingston Lane, Kingston.

On behalf of our client, Mr T Maio, we hereby submit a Certificate of Lawfulness Application for an existing use or development. We wish to obtain a Certificate confirming the retention of 2no. 'domestic sheds', 1no. wooden building together with concrete hardstanding measuring 11m x 4.6m, which have been used in connect with the grazing of the land by horses, pursuant to Section 191 of Town and Country Planning Act 1990 (as amended).

The application comprises the following:

- **Application Forms;**
- **Location and Block Plan;**
- **Existing Elevations and Floorplans;**
- **Aerial Photographs**
- **Site Photographs**
- **Signed Affidavits**

The Site

The site is situated to the east of a small cluster of dwellings comprising: Kingston House, Kingston Barn and Newcote Farm. The site is a grass field accessed at the end of the private drive to these aforementioned dwellings.

The field is broadly triangular in shape, with the narrowest point located in the west at the entrance to the site, and widening up to the east. The eastern boundary is defined by a land drain. To the north is a continuation of the field but within separate ownership.

Directors

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Figure 1 The Site (image courtesy of Google)

The application field together with the field to the north are both used for the incidental grazing of horses.

There are a number of structures on the site, which have been erected over the years. A wooden building is located at the entrance to the site together with two small 'domestic' sheds to the east. An area of concrete hardstanding is located further into the site which previously accommodated a wooden structure, which has since been removed. The area of hardstanding was retained on site but has become overgrown.

Deeper into the site are a number of further field shelters associated with the incidental grazing of horses and these are subject to a parallel planning application.

The Development

This Certificate of Lawfulness application seeks to confirm that the buildings have been on site for a period exceeding 4 years and connected with the use of the land for the grazing horses.

Each of the developments are clearly highlighted in red on the accompanying plan and which are reproduced in Figure 2 below.

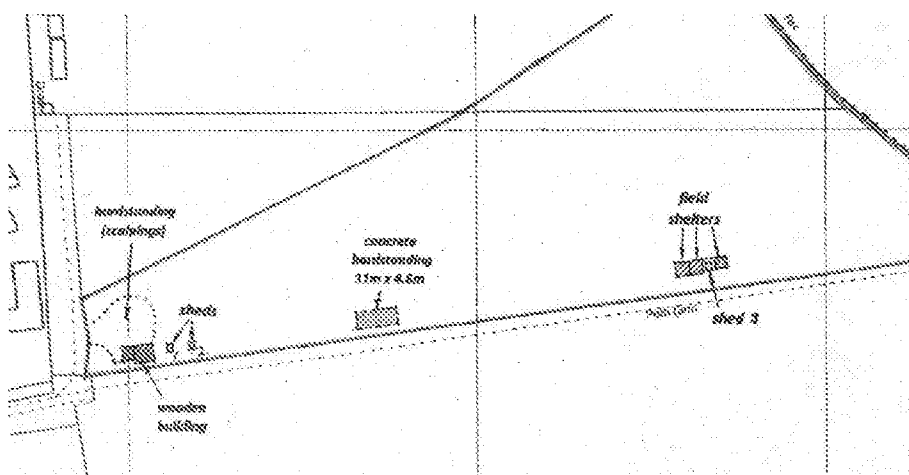


Figure 2 Existing buildings to be retained

The wooden building highlighted in red and line-hatched comprises an enclosed building with lean-to. This building measures 8.6m in length, 4.5m in depth and has an overall height of 3.07metres.

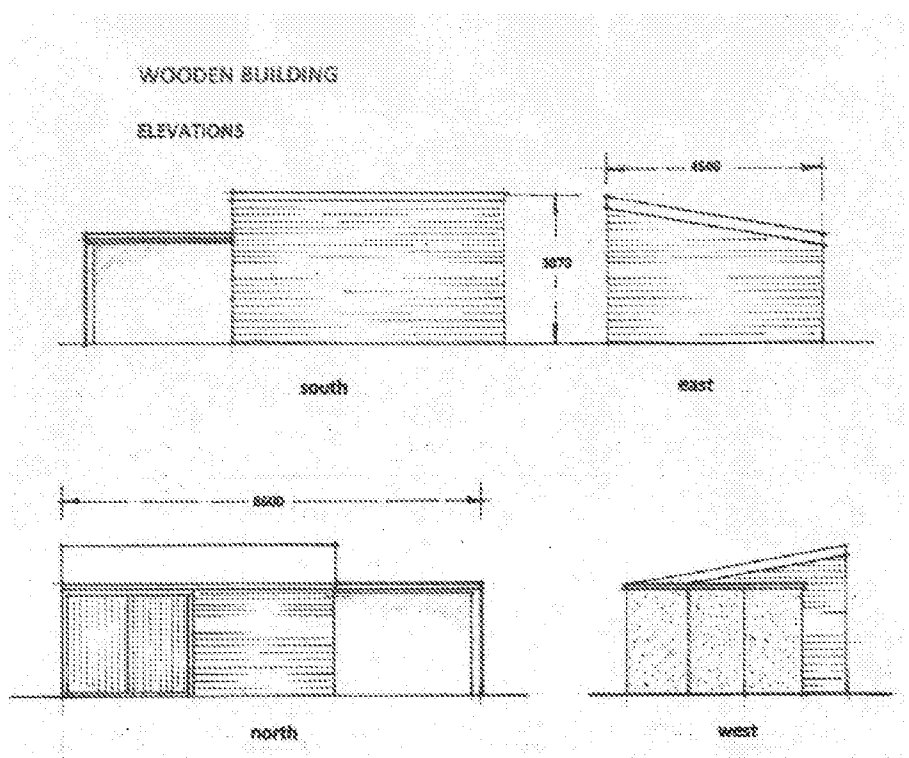


Figure 3 Existing wooden building

The 'domestic' sheds vary in size. The larger of the two sheds measures 1.8m in width, 2.3m in depth and 2m in overall height. The smaller of the sheds measures 1.2m in width, 1.8m in depth and an overall height of 2m.

The location of these sheds is clearly annotated on the Location Plan.

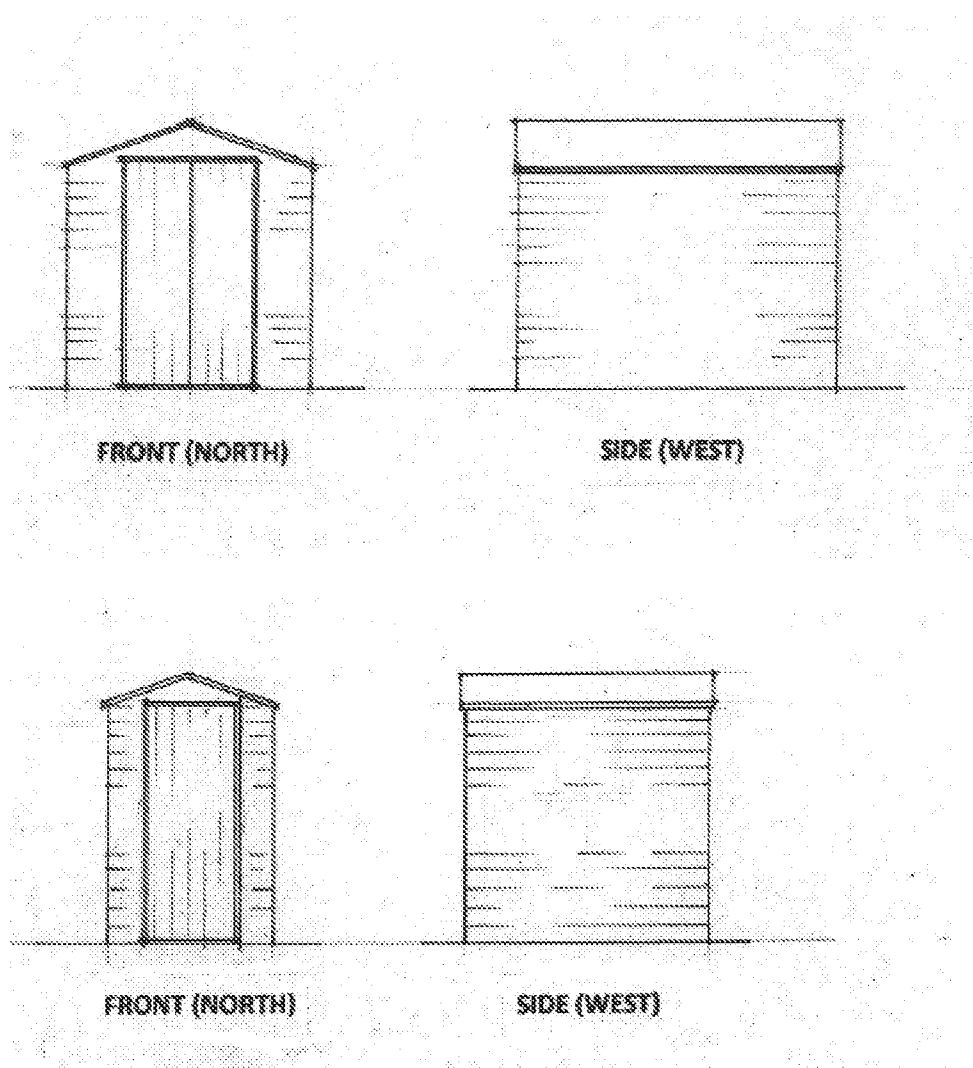


Figure 4 Existing 'domestic' sheds

The area of hardstanding is shown coloured red and annotated on the Location Plan. This area of hardstanding is situated further into site and measures 11m by 4.6m.

Planning History

The Council's online planning register has been reviewed, and there is no relevant planning history pertaining to the application site.

Lawful Operations

Lawful development is defined at Section 191 of the Town and Country Planning Act 1990 (as amended) as development against which no enforcement action may be taken, whether because they did not involve development, require planning permission, or because the time for enforcement action had expired.

Under Section 171B of the Act 1990, it confirms that where structures have been in-situ for a period exceeding 4 years, no enforcement action may be taken, and in the case of a change of use of the land (not a residential dwelling), no enforcement action may be taken if a period of 10 years has expired.

Existing Use of the Land

This application is supported by a series of aerial photographs which clearly show the site over the period of almost 11 years. Additionally, the application is supported by signed and witnessed Statutory Declarations from the current and previous landowners.

The grazing of horses on land is incidental and therefore does not constitute a change of use of the land. However, for the avoidance of doubt this use has been clarified within the accompanying Declarations which unambiguously states that horses have been grazed on this land since 2008 when Lina Santangelo owned the land, and prior to that from at least 1984 when Lina's father was in ownership of the land.

In terms of the area of concrete hardstanding, which could be considered to constitute a material change of use of the land, the Declarations further confirm that this area measuring approximately 11m x 4.6m has been on site since at least 2007.

The presence of this area of concrete hardstanding is also clearly evidenced in the aerial photographs which accompany this application.

Those photographs date from 2007 and clearly show a field shelter previously atop this hardsurface, and which has since been removed from site but the concrete base has been retained, as illustrated in the aerial photograph dated 1 January 2010. That image clearly evidences the wooden structure and concrete base. In respect of the latter, it is obvious from the photograph that the field shelter had been removed but the concrete base left in situ. In the most recent image dated 31 August 2012, the concrete base is again shown, and it is obvious that some degree of natural growth has taken place over the concrete.

The Statutory Declarations and aerial photographs clearly show on the balance of probability that the use of the land has been for the incidental grazing of horses, and the concrete hardsurface measuring 11m x 4.6m has been in-situ for a period exceeding 10 years.

Existing Structures

The supporting series of aerial photographs clearly show the site over the period of almost 11 years and from those images it is clear that there have been a number of structures on site, some of which remain on site.

These images show that on 15 April 2007 the wooden building close to the entrance of the site was already in situ. In the most recent image submitted, dated 31 August 2012, the wooden structure is again clearly shown.

These aerial photographs demonstrate that the structure has been in its current location for a period exceeding 10 years.

In respect of the two 'domestic sheds' these are too small to be appreciable within the aerial photographs. However, as can be clearly seen from the photographs which also accompany this application, these structures are not recent. It is equally questionable whether they constitute development, as they are easily removable and not physically affixed to the ground.

Notwithstanding whether these small structures require planning permission, this application is supported by two signed Declarations from the current owner and previous owner. Both clearly and unambiguously state that these structures have been in-situ for a period exceeding 4 years.

Lawful Development Compliance

As noted earlier, Section 171B of the 1990 Act specifies time limits where the local planning authority may take enforcement action against unregulated development. If action is not taken within those prescribed time limits the breach of planning control becomes "immune" from planning enforcement action.

The onus is on the Applicant to demonstrate that the use of the land and erection of buildings have been on site for a continuous period in excess of 10 years and 4 years respectively.

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 that the Applicant's own evidence does not need to be corroborated by other evidence in order to be accepted.

Therefore, in the case of an application for an Existing Certificate of Lawful Use and Development, if a local planning authority does not hold any evidence itself, contradictory to the application or indeed make the applicant's version of events less than probable, then guidance and the Courts state that there is no 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.

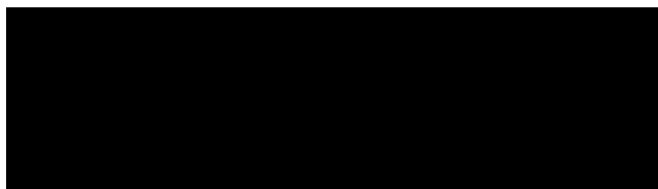
In this regard, it is asserted that the signed Statutory Declarations together with the aerial photographs are sufficiently precise to demonstrate that the 2no. 'domestic sheds', and 1no. 'wooden building' have been on site for a period exceeding 4 years, and in respect of the 'wooden building' this has clearly been on site for a period exceeding 10 years. Furthermore, the concrete hardstanding measuring 11m x 4.6m has been on site for a period exceeding 10 years. Each of these elements are connected with the incidental use of the land for horse grazing, which has also been operational for a period exceeding 10 years.

It is asserted that the test of "balance of probability" has clearly been satisfied and therefore a Certificate of Lawfulness should be granted.

ECE Planning

If you have any further queries or require further information please contact me on 01903 248777.

Yours sincerely
ECE Planning



Karen Hipper MPT
Associate Planner