

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

REF NO: P/139/17/CLE

LOCATION: Land At Windmill Barn
Pagham Road
Pagham

PROPOSAL: Lawful development certificate for an existing use - mixed use for the storage & repair of boats & classic cars & agriculture.

DESCRIPTION OF APPLICATION

To establish the use of land for mixed use for the storage & repair of boats & classic cars & agriculture.

DESCRIPTION OF SITE AND SURROUNDINGS

A home paddock field within an enclave of agricultural buildings and farmhouse where a number of the agricultural barns have been converted to residential use. Part of the field has been used for boat repair and classic car restoration. A polytunnel was erected on the land and a container stored on the land from 2012.

RELEVANT SITE HISTORY

P/111/97	Change of use of outbuildings for the making of curtains & soft furnishings (Resubmission following P/67/97)	ApproveConditionally 11-03-1998
P/47/99/	Erection of open fronted tractor housing & hay loft	ApproveConditionally 28-06-1999
P/12/01/	Erection of indoor swimming pool	ApproveConditionally 03-04-2001
P/113/01/	Change of use of garage to office (barn unit 1 - G1) for the purpose of running business	ApproveConditionally 30-11-2001
P/1/02/	Hardstand for livestock	ApproveConditionally 27-02-2002
P/140/07/	Change of ancillary residential space to permanent residential space for dependant relative - to remain ancillary accommodation for Commonmead Barn as a single residential unit.	Return App - not req 29-10-2007

P/83/12/

New Dwelling - This is a Departure from the
Development Plan

Refused

13-12-2012

**Appeal: Dismissed
27 06 2013**

A hardstanding to be used solely for the agricultural use on the application site was granted in 2002.
A number of Planning enforcement cases regarding the use of the land have been pursued over the years resulting in this Certificate of Lawful Use application.

REPRESENTATIONS

Representations received:

Pagham Parish Council

Objection letters

Land is green belt land with planning permission to graze sheep on.
Owner increased the use of the land over the years now it is like a brown field site.
Numerous complaints made over the years.
Use has significantly increased over the past 18 months.
Development on the land is not as described by the applicant.
Not been in existence as a boat building/repair yard for the last 10 years at the site.
Not been a constant structure on the site for the past 4 years.
There has not been agricultural use on the site for the past 10 years.
Residential application on the site refused by Arun District Council and at Appeal.
At the middle/end of 2013 all of the boatbuilding materials/boats/fibreglass moulds were moved from the hardstanding behind Windmill Barn onto the paddock including 2 large containers and 2 large portacabins.
Site not always used for storage of boats and cars. Formerly a paddock.
Use has intensified following construction of a 6 ft lap panel fence on northern boundary.
Site now looks like a scrap yard and out of character in the local area.
Barge formerly worked on a site to the south of Windmill Barn nearby.
The field was always used as a paddock until recently it has become a storage depot.

Comments on Representations received:

The representations have been considered alongside the evidence presented by the applicant and is considered in the Conclusion section of this report below.

CONSULTATIONS

Consultations responses received:

ADC LEGAL;

1. The Application, dated 14th December, 2017, claims that the activity was begun on 15th December, 1993 and seeks a Lawful Development Certificate for "Mixed use for the storage and the repair of boats and classic cars and agriculture"

2. The supporting evidence / comments are set out in:

- a. Covering letter, dated 5th December, 2017, from Acorus, Rural Property Services;
- b. Witness statement of Mr. Howard Phillips, dated 6th December, 2017;
- c. 14 letters of support.

3. The evidence from the above letters is summarized as follows:

- a. Used since 1993 for mixed use of agriculture (sheep grazing), boat and car storage; boat and car repair. 1993 Polytunnel on site for at least 4 years 2013 to 2017
- b. Purchased 1993
 - Hobby repairing boats & classic cars 1993 to 2017
 - Repair barge 2002 to 2003
 - Polytunnel erected 2011
 - Dell Quay Ranger delivered 2012
 - Sold windmill Barn 2013
 - Moved polytunnel 2013
- c. ASC repaired (at site) 1995
- d. Two Bosun dinghies repaired 1997
- e. Bought Windmill Barn 2013
 - Polytunnel 2013 to 2017
 - Several containers and boats 2013 to 2017
- f. Worked on a 6 meter launch and stored it on site (11 years) 2006-2017
 - 5 containers / cabins on and about site used for storage and workshops for restoration of classic cars and boats No dates
- g. Stored moulds for 20 foot Solent launch on site 2006?
 - Bought Dell Quay Ranger from Mr. Phillips 2012
 - Restored on site under 30 foot temporary roof 2012
 - 17 foot classic sports boat stored in contained on site 2013 - 2017
- h. Kept 16 foot fishing launch at the site 1997 - 2017
- i. Worked on boats on site. Not caused a nuisance to neighbours No dates
- j. Sold an Austin Seven to Mr. Phillips 1988
 - Seen him work on it on site as well as two other cars (Hudson and Porsche 928)
 - Stored boat moulds on site and launch in polytunnel or container 1995 - 2017
- k. Mr. Phillips has used site for hobby of boat repair and restoration . Sometimes in open, other times in containers or polytunnel. 1993 - 2017
- l. Grazed sheep on site 1997 - 2017
 - Father sold Hudson car to Mr. Phillips to restore No date
- m. Sheep have been grazed on the site 1998 - 2017
 - Boats and boat moulds stored on site 1998 - 2017
 - Container on site for storage of hay, feed and electric fence 1998 - 2017
 - Kept a little roundaround speed boat and outboard motor on site 2012 - 2017
- n. Visited the site regularly and Mr. Phillips has always used it for his boats and to renovate classic cars and motor cycles. 1993 - 2017
 - Has a container for security and a polytunnel on site No dates
- o. Visited the site and seen Mr. Phillips working on boats, an Austin Seven and a 1938 Hudson. He has carried out work in a contained No dates
- p. Carried out work on a barge on site. Then sailed it on French waterways for 10 years.
 - No dates
 - Seen vehicles and small boats stored in containers on the site No dates

4. Other evidence / comments that need to be considered are:

- a. Pagham Parish Council
 - i. There are concerns that the activities undertaken at the site are causing a nuisance to neighbouring properties, in particular noise and pollution from liquids on the site. It was noted that there was a history of complaints regarding the use of the site.

ii. The amount of time the site has been used for the purposes outlined in the application is dispute. Anecdotal evidence and photographs from Google Earth were presented to the meeting which showed that a site proximate to the application site had been used for the activities outlined in the application prior to 2013. There are concerns that the activities only commenced on the application site after this time. Officers are urged to check Google Earth photographs to verify this point.

iii. The application includes permission for "agriculture". No evidence has been provided to indicate any current agricultural use. Previous planning permissions for the site specify the current use of the site should be agricultural."

b. Aerial Photographs from Google Earth. I have considered photographs on Google Earth(copies attached) purporting to be from:

i. 31st December 2001;

ii. 1st January 2005;

iii. 15th April 2007;

iv. 1st June 2012; and

v. 6th June 2013

5. The photographs appear to show:

31/12/01 Site mainly laid to field and clear (Agricultural use), with a small area is south-west corner having items on it Exactly what the items are is impossible to tell.

01/01/05 Site mainly laid to field and clear (Agricultural use), with a small area is south-west corner having items on it. Exactly what the items are is impossible to tell.

15/04/07 Site is still laid to field for half to two-thirds of its length (Agricultural use). Remainder has various items scattered around, which could boats, boat moulds etc.

01/06/12 Site is still laid to field for half of its length (Agricultural use). Remainder has various items scattered around, which could boats, boat moulds, containers etc.

06/06/13 More than half of the site is laid to field (Agricultural use). There are now two areas with items on them. There is a smaller area in the south west corner (3 items) and half -way up the site, abutting the western boarder there are a boat, 4 containers (grey), a polytunnel and a container(white)

6. There has clearly been an intensification of use for non-agricultural uses in the period after 2007 and between.

7. When looking at the photographs and the letters from those supporting the application I am of the opinion that this intensification probably took place in around 2012 when the Dell Quay Ranger was brought onto the site.

8. It appears that in respect of the south west corner of the site a material change of use occurred sometime between 1993 and 2005 in that the number of boats etc that were stored and subject to repair, renovation or maintenance was sufficient to have a material impact.

9. The aerial photograph of 15/04/2007 shows a further expansion of the use and, I am of the opinion that at that time there was evidence of a material change of use over a larger area of

the site.

10. The aerial photograph of 01/06/2012 shows evidence of that change of use continuing on the larger area of the site.

11. The aerial photograph of 06/06/2013 shows a different picture, in that the area into which the change of use had expanded between 2005 to 2012 (a period of seven years) had been returned to agricultural use and an alternative area of the site had been put into use for the storing of boats, boat building materials, classic cars and materials as well as for the maintenance, repair and renovation of boats and classic cars. This had also, it appears, led to an intensification of the usage which hassled to a change in the character of the use of the land.

Conclusion:

12.

a. There is evidence to show, on the balance of probabilities, that there has been a material change of use of an area of the site, in its south west corner, to the storing of boats, boat building materials, classic cars and materials as well as for the maintenance, repair and renovation of boats and classic cars for a period of more than 10 years;

b. that the use is not ancillary to or in any way connected with the use of the remainder of the site as agricultural land and can be seen as physically and functionally separate from the use of the remainder of the site as agricultural;

c. that the normal position where a planning unit has two uses is that cover different parts of the planning unit is to treat them as separate planning units;

d. that in this case it is appropriate to treat the site as now existing of two separate planning units and grant a Certificate of Lawful Use or Development (CLEUD) in respect of the planning unit created by the change of use;

e. in relation to the remainder of the site the evidence does not, on the balance of probabilities, prove that there has been a material change of use from agriculture to "Mixed use for the storage and the repair of boats and classic cars and agriculture" (see paragraph 27)

f. ALTERNATIVELY, if my instructing officer does not agree that it is appropriate to separate the planning unit in to two separate planning units, then the CLEUD should be worded in precise terms to reflect only that change of use that can be proved to have occurred in 2007 and has continued since that date. (See paragraph 28)

13. In my opinion, if the Council accepts that there are now two separate planning units, the CLEUD should be in the terms that the Planning Unit, as shown on the attached plan may be used for the storage of boats, boat building materials, classic cars and materials as well as for the maintenance, repair and renovation of boats and classic cars".

14. ALTERNATIVELY, if the Council does not accept that there are now two separate planning units, the CLEUD should be in the following precise terms:

"Mixed use for agriculture on the whole site and the storage and repair of not more than 4 boats and 1 classic car (at any one time), in the open air, without storage facilities, workshops or other items, such as containers or sheds. Such use to be limited to the south west corner of the site as shown in pink on the attached plan, and agriculture.

04/05/2014 Plan received showing the area in red to be approved under this CLE application and aerial photographs used by legal team as evidence.

Comments on Consultation responses:

Comments taken into account in Conclusions section below.

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.

PRINCIPLE

Section 191 to 195 Town & Country Planning Act 1990 and NPPG guidance on LDC's 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; and
- (iii) The LPA may have on its files relevant evidence either supporting or contradicting that of the applicant.

Section S171(1)-(3) and S191 TCPA 1990. The time period for a change of use of land to the mixed use for the storage & repair of boats & classic cars & agriculture to be exempt from planning control is 10 years.

CONCLUSIONS

Given the evidence provided by the applicant it is considered that the use of part of the land for mixed use of storage and the repair of boats and classic cars has been subsisting for more than 10 years on the hatched area of the plan within the site applied for, thus no enforcement action can lawfully be taken against the use of the hatched area of the site. Therefore, via the passage of time the hatched area of the site only is considered to have a lawful use as storage of boats and cars and restoration/repairs of boats and cars. The remainder of the site is considered to have lawful use for agriculture.

RECOMMENDATION

APPROVE

The use described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and hatched area on the plan attached to this certificate, was lawful within the meaning of section 191 of the Town & Country Planning Act 1990 by reason that at the date specified above, the area of land hatched only had been is use for the storage of boats and cars and restoration/repair of boats and cars for a continuous period of 10 years and the remainder of the land has been in use for agriculture for a continuous period of 10 years.

FIRST SCHEDULE

Use of the south western part of the land in the hatched area for use for storage of boats and cars and restoration/repairs of boats and cars and the rest of the land predominantly to the north of the site for use as agricultural land.

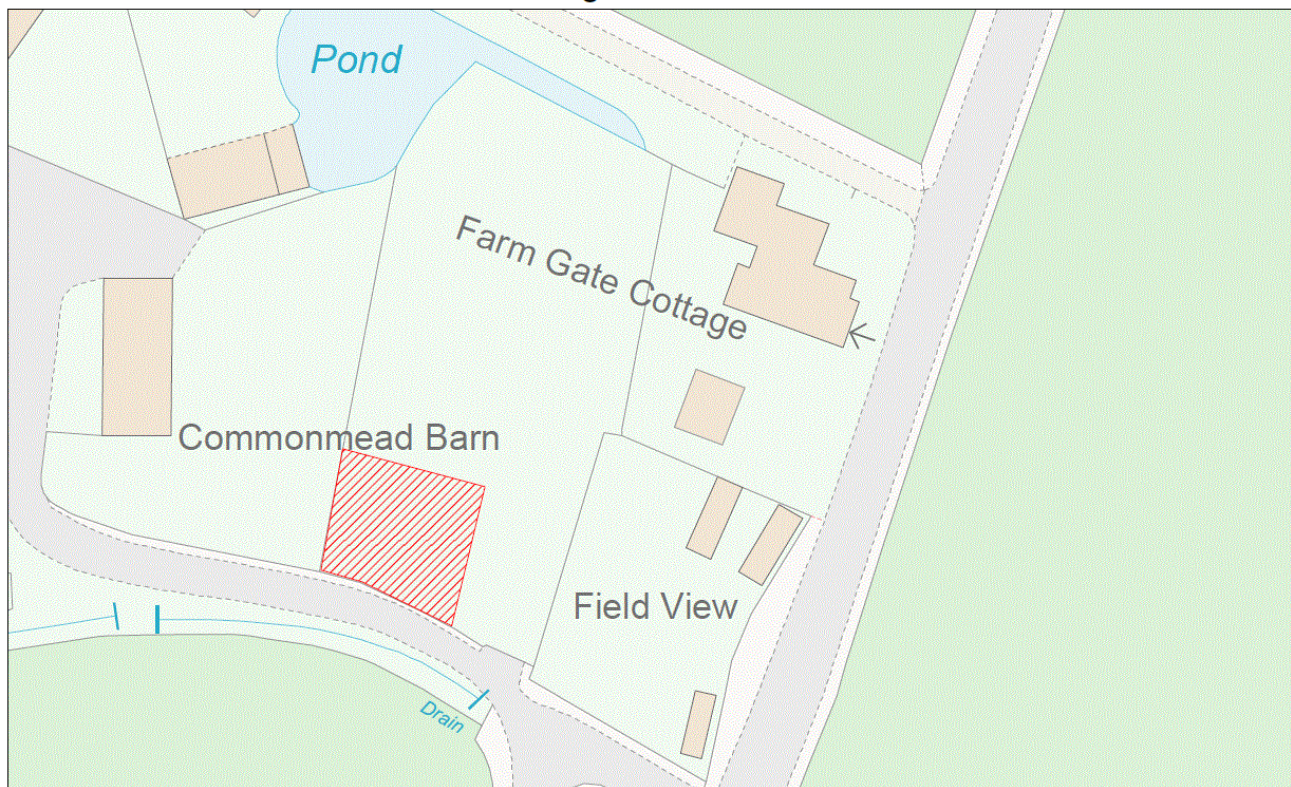
SECOND SCHEDULE

Land at Windmill Farm, Pagham Road, Pagham, PO21 3PY

EXTENT OF USE

Southwestern part of the land in the hatched area for use for storage of boats and cars and restoration/repairs of boats and cars.

P/139/17/CLE - Land at Windmill Farm, Pagham - Scale 1:500



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