

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

REF NO: WA/112/18/CLE

LOCATION: Star Plants
Lake Lane
Barnham

PROPOSAL: Lawful development certificate for the existing use of the land & associated structures. This application also lies within the parish of Yapton.

DESCRIPTION OF APPLICATION

Lawful Development Certificate for the existing use of the land & associated structures.

DESCRIPTION OF SITE AND SURROUNDINGS

A 8.6 hectare horticultural site off Lake Lane in Walberton and Yapton Parishes.

RELEVANT SITE HISTORY

PE/Y/60/97/AG		No Further Actn 18-11-1997
Y/10/17/AG	Prior notification under Part 6 for proposed temporary polythene tunnels to replace existing low tunnels on container plant production beds.	No Objection 14-03-2017

A number of previous prior notification applications are relevant to the application.

REPRESENTATIONS

Representations received:

Walberton Parish Council
Yapton Parish Council have not responded.

Walberton Parish Council supported the application.

Comments on Representations received:

Noted.

CONSULTATIONS

Consultations responses received:

ADC Legal Advice - On the basis of additional information the legal advice was to approve the Certificate of Lawful Development which was confirmed via email on the 15th March 2019.

The original advice received was as follows:

I have reviewed the supporting evidence for the application for existing lawful use and existing buildings.

The evidence, on the balance of probabilities, is good for the buildings set out in the Applicant's Statement - Development History Table, with two exceptions: the reservoir and Haygrove 2 Polytunnels.

The Reservoir: It is not clear from the evidence provided of the aerial photos if the Reservoir remains in situ, as shown on the OS Map 1989 and 1992. It is clear from the aerial photos that there is a shape where the reservoir is purported to be, however the area appears on a number of photos to be trees/green landscape. In consideration of this, we met on 8.2.19 and looked together at ADC GIS historic maps and we were both satisfied that there is a reservoir in place as shown on the plan, looking at maps in 2010 and 2018. I would suggest you add that evidence to your file records, as the applicant's evidence is not sufficiently precise and unambiguous to justify the grant of the certificate for the reservoir, however the evidence on the historic maps is sufficiently precise and unambiguous.

Haygrove 2 Polytunnels: Y/10/17/AG Prior notification under Part 6 for three temporary polythene tunnels. Granted prior approval - decision notice 14.3.2017. Structures must be erected in accordance with the approved details (length, width, height to the eaves and height to the ridge measurements as set out in the decision notice). Evidence: Plan shows 3 tunnels of different lengths and Google earth aerial photo shows tunnels in the position as shown on the plan. It is not clear from the evidence if the tunnels have been erected in accordance with the approved details? You will be able to check the length and width against the scaled plan, however not the height dimensions. You need evidence of this before you can grant the certificate, and when you are satisfied on the balance of probabilities, I would then advise that your certificate incorporates wording as to the details of the tunnels and condition A.2(5) under Part 6 (see informative of Decision Notice). This would apply the principles set out in PPG Paragraph: 011 Reference ID: 17c-011-20140306 "Conditions, appeals, revocation and status of pre-1992 certificates:

How does a lawful development certificate relate to conditions on an existing planning permission?

A lawful development certificate may be granted on the basis that there is an extant planning permission for the development; however, that development still needs to comply with any conditions or limitations imposed on the development by that grant of permission, except to the extent specifically described in the lawful development certificate.

Revision date: 06 03 2014"

NOTE: If you don't include the detail regards condition A.2(5) in the certificate, then the applicant won't need to comply with it.

NOTE: Roads/Farm Tracks: The plan does not identify where the roads are on site. The certificate should be clear where the roads are.

Use - Agriculture - Horticultural Use

I note the application is for the lawful use of the site for Agriculture (Horticulture).

Section 55(2)(e) TCPA 1990 provides that a change of use of land or buildings to a use for the purposes of agriculture does not require planning permission, whether or not the land upon which it is situated is used for agricultural purposes.

"Section 55 (2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land(e) the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used;"

Agriculture has a very broad definition defined in s 336(1) TCPA 1990 : "agriculture" includes 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, and "agricultural" shall be construed accordingly;

Evidence - 1984 Letter refers to growing shrubs, trees and nursery stock; 1993 letter refers to Start Nurseries and a new glasshouse - indicative of horticultural use; 1997 letter to Star Plants, Star Nurseries Ltd - name indicative of horticulture business; 2017 letter to Star Plants Nursery; OS Map refers to a Nursery; Google Maps do not contradict the use. I am not clear on the evidence for the field opposite beds 1-18. This appears as a field on all google aerial maps so on the balance of probability you may consider this agriculture, in any event, given Section 55(2)(e), its use for agriculture does not require permission.

The use is lawful.

Conclusion

On the balance of probabilities, this is lawful existing development, subject to you checking the Haygrove 2 polytunnels points flagged up above, and identifying the existing farm tracks/roads on the certificate/ plan.

Attach the plan to the certificate, and cross reference in your wording on the certificate the attached plan that shows the lawful structures, reservoir etc as set out in the table under the Development History part of the applicant's supporting statement.

If you are issuing for the Haygrove 2 polytunnels, then ensure the wording of the certificate reflects condition A.2(5) as set out in decision notice Y/10/17/AG.

For certificate form see Schedule 8, Town and Country Planning (Development Management Procedure) (England) Order 2015, and ensure the certificate sets out the information in S191(5) TCPA.

"Section 191(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."

In addition - Enforcement issue - unlawful structures?

The field opposite beds 1-18 contains a number of structures and I am not clear that these are lawful. No application is submitted in respect of those structures. 2012 aerial photo shows structures in the bottom left/bottom half of the field only and this continues to be reflected in the other maps leading up to 2018. No evidence has been provided of those structures, they are not referred to on the site plan that accompanies this application.

On the balance of probabilities and the information before me, these structures have not been

present for 10 years and therefore the certificate cannot be issued in respect of these, though I note this has not been requested, so when issuing the certificate it is very important to reference the plan, so other structures do not become lawful.

I would suggest clarification is sought about these structures and the requirement for permission if necessary.

In addition, see Google map 2018, the top right corner appears to reflect further structures? Are there structures?

Do these need permission?

Comments on Consultation responses:

On the basis of further information the Council's legal advisor agreed that the Lawful Development Certificate should be granted.

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.

Definitions

Horticulture is defined within the Town and Country Planning Act 1990 as amended as agriculture in s336 (1)- Interpretation as follows:

(1) In this Act, except in so far as the context otherwise requires and subject to the following provisions of this section and to any transitional provision made by the Planning (Consequential Provisions) Act 1990:

"agriculture" includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, 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, and "agricultural" shall be construed accordingly'

As such the horticultural use in this application shall be considered as agriculture referenced within legislation below.

Assessment

In this instance the proposed works will be assessed against the following:

i) s55(2)(e), (2A) & (2B) of the Town and Country Planning Act (as amended) which states:

(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land:

(e) the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used;

(2A) The Secretary of State may in a development order specify any circumstances or description of circumstances in which subsection (2) does not apply to operations mentioned in paragraph (a) of that subsection which have the effect of increasing the gross floor space of the building by such amount or percentage amount as is so specified.

(2B) The development order may make different provision for different purposes.]

ii) The relevant development order referred to above at 2A and 2B of s55 relating to agricultural land is

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Class A - agricultural development on units of 5 hectares or more.

iii) Any remaining development not within the Act and Development Order above fall to be assessed against the Town and Country Planning Act 1990 (as amended) c. 8 Part VII Introductory Section 171B:-

Time limits.

(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.

CONCLUSIONS

The evidence provided is sufficient to demonstrate that:

i) the existing use of the land for horticultural purposes is not development requiring planning permission in accordance with the Town and Country Planning Act 1990 as amended.

ii) The Haygrove 2 polytunnels, the Cambridge Glasshouse, the toilet block & the walkways between planted beds are considered to be permitted development in accordance with the Part 6, Class A of the Town and Country Planning (General Development) Order 2015 as amended.

iii) The following structures:

Venlo Glasshouse and Liner Glasshouse
Roads and Outdoor Beds
Polytunnels , PH-14, Potting Shed
Reservoir
Polytunnels PH, A,B,C,
Outdoor Beds & ST1-9
Dispatch Shed
Haygrove 1 Polytunnels
Office Welfare and Canteen
Outdoor Beds 19-27

have been in place for more than four years thus the development is immune from enforcement action in line with the Town and Country Planning Act 1990 (as amended) c. 8 Part VII Introductory Section 171B (1).

The certificate of lawful development is therefore recommended for approval.

RECOMMENDATION

PP NOT REQUIRED

The use and development 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 lawful within the meaning of section 191 of the Town & Country Planning Act 1990 by reason that at the date specified above:

(i) the use as a horticultural unit does not require planning permission because is not considered to be development under s55(2)(e) of the Town and Country Planning Act 1990.

(ii) The following structures:

- a) Cambridge Glasshouse - PE/Y/4/93/AG
- b) Toilet Block - PE/Y/60/97-AG
- c) Haygrove 2 Polytunnels: Y/10/17/AG

are considered to benefit from prior notification application applied and approved in accordance with permitted development rights under and subject to Part 6 , Class A and A.2 (conditions) of the Town and Country Planning (General Permitted Development) Order 1995 as amended.

The applicant is reminded that under Part 6, A.2 paragraph (5) where (a) the use of the building for the purposes of agriculture within the unit permanently ceases within 10 years from the date on which the development was substantially completed; and (b) planning permission has not been granted on an application, or has not been deemed to be granted under Part 3 of the Act, for development for purposes other than agriculture, within 3 years from the date on which the use of the building for the purposes of agriculture within the unit permanently ceased, then, unless the Local planning Authority have otherwise agreed

in writing, the building shall be removed from the land and the land shall be restored to its former condition.

The walkways between the planted beds are considered to engineering operations 'reasonably necessary for the purposes of agriculture within that unit' and are permitted development in accordance with Part 6 , Class A (b) of the Town and Country Planning (General Permitted Development) Order 1995 as amended.

iii) The following structures:

Venlo Glasshouse and Liner Glasshouse

Roads and Outdoor Beds

Polytunnels , PH-14, Potting Shed

Reservoir

Polytunnels PH, A,B,C,

Outdoor Beds & ST1-9

Dispatch Shed

Haygrove 1 Polytunnels

Office Welfare and Canteen

Outdoor Beds 19-27

had been in use continuously for a period in excess of 4 years thus the development is immune from enforcement action in line with the Town and Country Planning Act 1990 (as amended) c. 8 Part VII Introductory Section 171B (1).

FIRST SCHEDULE

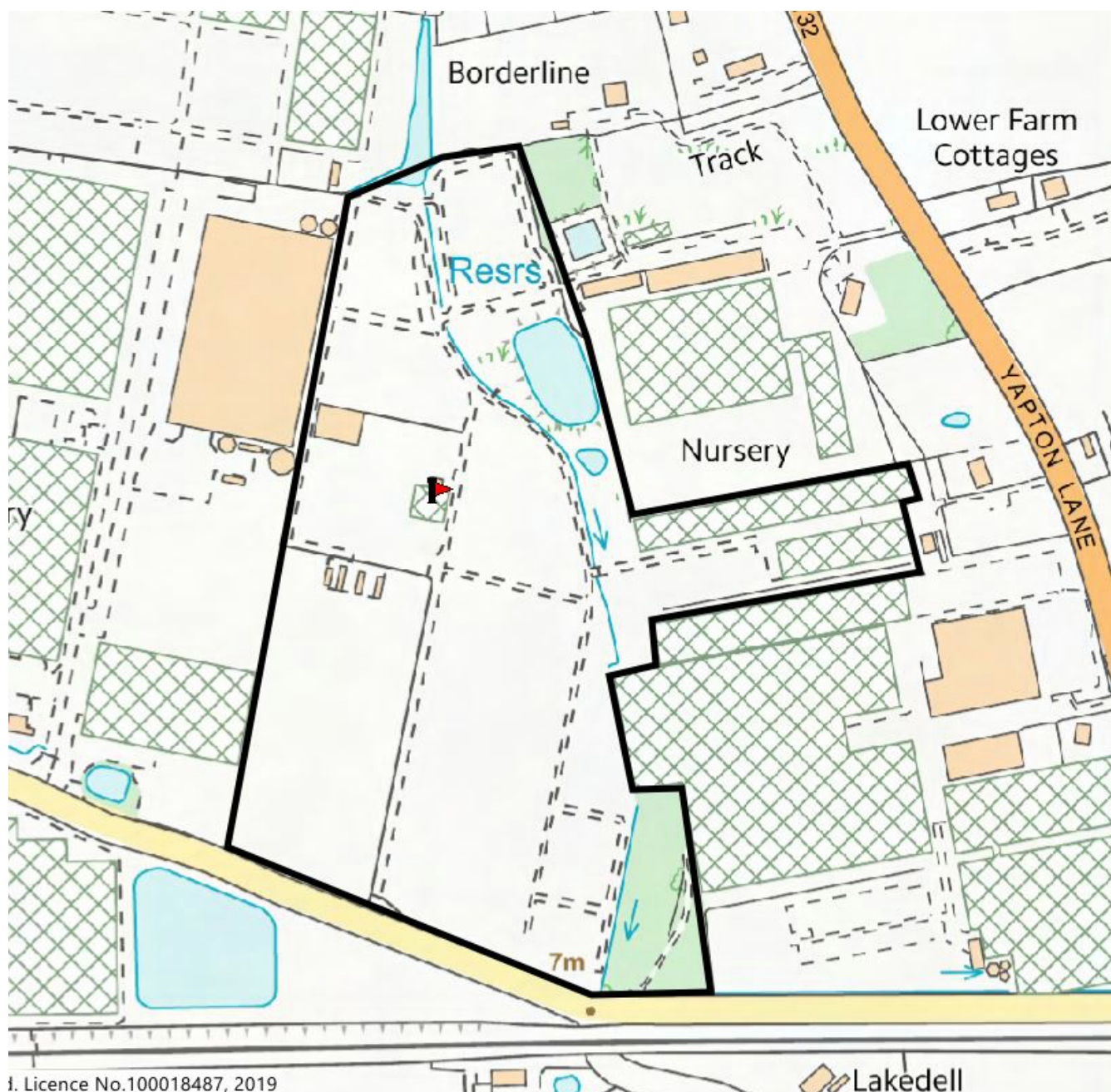
Lawful development certificate for the existing use of the Star Plants Nursery for horticultural use and associated structures.

SECOND SCHEDULE

Star Plant Nurseries, Lake Lane, Barnham, West Sussex, PO22 0AL

EXTENT OF USE

Use of the premises as a horticultural unit and the associated structures as set out in the existing site layout plan dwg.no. 6018-001B dated December 2018, Supporting statement for Star Plants Nursery ref.no. 6018 dated December 2018 and the information within the emails received from Douglas Briggs Partnership dated 15th March 2019 and 7th March 2019.



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