

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/58/22/CLE**LOCATION:** Lazy W
Yapton Lane
Walberton
BN18 0AS**PROPOSAL:** Lawful development certificate for the existing use of the land for the processing of logs and the erection of 2 No buildings used in connection with that activity.**DESCRIPTION OF APPLICATION**

The application seeks a certificate of lawfulness for the use of the land for the processing of logs and for the two buildings used in connection with that activity that are within the site.

SITE AND SURROUNDINGS

Predominantly flat and occupied by two buildings and areas of open storage associated with the firewood business. Hedges to the south and west boundaries. The main building is a steel portal frame and has a pitched roof. The smaller 2nd building is made from wood with telegraph pole supports.

RELEVANT SITE HISTORY

WA/110/10/	Re-siting of 16 car parking spaces and erection of earth bund.	ApproveConditionally 08-02-11
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Plans submitted in December 2010 with WA/110/10/PL for a site to the east showed the application site as paddocks (part of a larger area of land) and no buildings were indicated as being present. The applicant states the firewood use commenced in 2010 however he does not say when in 2010 and it is unclear when the drawings were prepared for WA/110/10/PL. The council's aerial photography from 2004, 2007 & 2010 shows the land as being occupied by shipping containers and not part of an otherwise open land area. In any case the relevant 10-year period commenced 18 May 2012 and so this conflict is not material.

REPRESENTATIONS**Representations Received:**

None formally received however Walberton Parish Council's website confirms that the application was heard at their 28 June Meeting where it was resolved to advise no objection.

CONSULTATIONS

Consultations Responses Received:

ADC Revenues and Benefits were informally consulted and replied on the 30th of May 2022 to state that no Business Rates liability exists for the firewood business.

LEGISLATIVE BACKGROUND

Section 171B of the Town and Country Planning Act 1990 states:

(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."

The relevant time periods are 18 May 2012 to 18 May 2022 (10 years to the date of the application) for the use and 18 May 2018 to 18 May 2022 (4 years) for the two buildings.

Section 191 of the Act states:

(2) For the purposes of this Act uses and operations are lawful at any time-

(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.

Section 192(2) of the Town and Country Planning Act 1990 states that:

"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."

Section 191 to 195 Town & Country Planning Act 1990 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.

Paragraph 006 (Reference ID: 17c-006-20140306) of the 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 counterevidence.

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."

Paragraph 009 (Reference ID: 17c-009-20140306) of the PPG then states:

"A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

In determining an application for a prospective development under section 192 a local planning authority needs to ask, "if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"

A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is, however, advisable to seek the applicant's agreement to any amendment before issuing the certificate. A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented."

CONCLUSION

The evidence submitted in support of the application consists solely of a signed Statutory Declaration by the business owner. This sets out that the use began sometime in 2010 and the wooden building was erected at the same time. The steel frame building was added in 2016. The applicant confirms that the wooden buildings is shown on Google Aerial Photography (06 June 2013 and 06 August 2018) whilst the metal building is shown on the later photo. Undated photos of the business in action are provided and these are taken from the business website.

The Council's revenues team holds no records of the business, and it has not been possible to look up the business on the Companies House website due to there being hundreds of similarly named companies. However, it is material that the site and the wooden building are shown on the Council's own aerial photography from 2012 and 2015. It is relevant that no contrary evidence has been provided by any local residents or consultees.

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 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, the land had been occupied by a firewood business (for the processing of logs) for a continuous period of 10 years and that the two associated buildings had each been in situ for 4 years within that same period.

FIRST SCHEDULE

Use of the site and two existing buildings as a firewood business for the processing of logs.

SECOND SCHEDULE

Land at the rear of the Lazy W, Yapton Lane, Walberton, BN18 0AS.

WA/58/22/CLE - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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