

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/59/22/CLE

LOCATION: Lazy W
Yapton Lane
Walberton
BN18 0AS

PROPOSAL: Lawful development certificate for the existing change of use of land and siting of a porta building all in connection with activities associated with Yapton Free Church.

DESCRIPTION OF APPLICATION

The application seeks a certificate of lawfulness for the use of the land and the associated portacabin building for the purposes of various Christian activities associated with Yapton Free Church.

SITE AND SURROUNDINGS

A large flat grassed area of land occupied by an existing porta building structure located to the north, northwest and west of the dwelling known as the Lazy W. It is surrounded by trees & hedging and the land is partially split by a row of trees running north/south with the portacabin on the eastern side of this but the bulk of the land to the western side. Allotments to the north, another dwelling to the east, agricultural land to the west and industrial buildings to the south. There is also a shipping container present in the area behind the adjoining dwelling.

RELEVANT SITE HISTORY

None relevant.

REPRESENTATIONS

Representations Received:

Walberton Parish Council

Walberton Parish Council state objection but have concerns about potential noise.

Comments on Representations Received:

It is not appropriate to assess a Certificate of Lawfulness application with regard to its planning merits.

CONSULTATIONS

Consultations Responses Received:

ADC Licensing were informally consulted and replied on the 30th of May 2022 to state that they have no records of the site being licensed for events. However, this does not mean that it would be necessary to hold a license.

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 19 May 2012 to 19 May 2022 (10 years to the date of the application) for the use of the land and 19 May 2018 to 19 May 2022 (4 years) for the portacabin itself.

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 National Planning Practice Guidance (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 NPPG 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."

The porta building is considered for the purposes of this application to be a building due to it having been constructed on site, it being a permanent structure and also its physical attachment to the land.

CONCLUSION

The evidence submitted consists solely of a signed Statutory Declaration by the landowner who, along with his wife, are leaders of the Yapton Free Church. This sets out that the use began sometime in 2010 and that the porta building was erected in 2011 to provide indoor facilities. The porta building has since been used for various Christian meetings and as a collection centre for donations to Ukraine. The surrounding land is stated to have been used for various Christian activities including camps, summer schools, baptisms, other meetings, and weddings.

The applicant provided a Google Earth aerial photo from 06 August 2018 which shows the presence of 2 marquees on the western side of the north/south dividing run of trees and then 7 tents to the southwest

of the marquees in a small area of the field. This photo shows the portacabin on the eastern side of these trees. An additional Google Earth aerial photo from 6 January 2012 also shows the porta building. Beyond these, the statutory declaration includes a series of photos showing activities that have taken place including:

- A Cosham Baptist Church Summer School (stated to be in 2009).
- A Church meeting in the portacabin (stated to be in 2013).
- A Youth Meeting (stated to be in 2014).
- A Cosham Baptist Church Summer School (stated to be in 2017).
- Church Meetings within a marquee (stated to be in 2021); and
- A Christian Wedding (stated to be in 2021).

None of these photos are date stamped.

The council's own aerial photography corroborates the presence of the porta building showing it present in both 2012 and 2015 but there is no evidence on these or on any earlier photos of any events. A search of the internet confirms the association of The Lazy W with the Yapton Free Church but suggests the presence of an association with another church ("The River of Living Waters Church" - see <https://opengovuk.com/company/06260008>). It is material though that no contrary evidence has been raised by any local residents or consultees.

The porta building is considered to be a building and it is plain beyond peradventure that it has been present on the site for at least the last 4 years. It is clear that activities have taken place on some of the surrounding land, the subject of the application.

The only evidence relating to the use of the porta building is the statutory declaration and one photo showing a meeting held within a building (which is likely to be the porta building but there is no certainty of this, and it is material that the Yapton Free Church also has a church building in the village of Yapton). This evidence is insufficient to demonstrate that the portacabin is being used continually and regularly for church meetings.

The evidence to support the use of the wider land area is very limited with no indication of the duration of events, when in the year they took place or how much of the land was taken up during such events. It could be the case for example that the use of the land only occurs during the summer months and for a weekend at a time and is restricted to a small area of the land. The use could be partially or fully covered by permitted development rights. Without precise evidence, it is impossible to justify granting a lawful development certificate for the whole extent of land applied for or the use of the porta building.

The NPPG states (Para 009 Reference ID_ 17c-009-20140306) that a lawful development certificate can be issued for a different description from that applied for (as an alternative to refusing a certificate altogether). Therefore, as it is clear that the portacabin has been in situ for at least 4 years, it is proposed to issue a certification solely to confirm that this structure is lawful but not to confirm its use.

RECOMMENDATION

APPROVE

The 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, the portacabin style modular building constructed from 3 parts had been sited on the land for a continuous period of at least 4 years.

FIRST SCHEDULE

Use of the land area for the siting of a portacabin style modular building constructed from 3 parts.

SECOND SCHEDULE

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

EXTENT OF USE

The building is shown in black lining on both the submitted location & block plans and is further defined by the submitted floor and elevations plans which show a portacabin building comprising of a single room.

WA/59/22/CLE - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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