

Solicitor - Legal Services
Resources

Internet Ref: ECH942
Our Ref: WA/62/12/CLE
Case Officer:
Mrs A Gardner

11th December 2012

Town & Country Planning Act 1990 (as amended)
Town & Country Planning (Development Management Procedure) (England) Order 2010
(as amended) - Article 35

Application for a Lawful Development for an existing aggregate business
Ashogle & Brookview Nursery Eastergate Lane Walberton

The following reply to a consultation has be received via Ocella's E Consultation Hub on 7th December 2012:

FROM:

Delwyn Jones
Planning Solicitor
Resources Department
Tel Ext 737737
Dated 7/12/12

TO:

P Cleveland Planning Officer

REF:WA/62/12CLE CONSULTATION

**ADDRESS : ASHOGLE AND BROOKVIEW NURSERY EASTERGATE LANE
WALBERTON**

NATURE OF USE :AGGREGATE BUSINESS

1.ACKNOWLEDGEMENT AND TERMS OF ADVICE

Thanks for your recent consultation memo now returned together with your file on which alone plus the authorities cited this is based.

2.GENERAL RECOMMENDATION

I recommend you grant for reasons that follow subject to your finding any contradictory evidence.

I rely on you to tell me of any evidence indicating otherwise.

3.DETAILS AND TESTS UNDER SS 191 TCPA 1990 AND CIRCULAR 10/97 ANNEX 8

(1) Time: SS171 (1)-(3) and S191 TCPA 1990

The application is for material change of use so the time limit is 10 years under the above .

The time period is 14 November 2002 to 14 November 2012 ie 10 years to date of the application.

The evidence satisfies this test.

I have at this date seen no contradictory evidence of this position . I explain why below .

(2) Sufficiency of Evidence: para 8.12-8.22

The evidence judged on a balance of probability and the above criteria is sufficient and is precise and unambiguous.

Para 8.15 and the case of Gabbittass v SSE and Newham LBC 1985 JPL 630 referred to there establishes that corroboration is not needed unless to resolve any ambiguity. S194 TCPA 1990 states that it is a criminal offence to supply false or misleading information. So

the applicants own uncorroborated evidence and unsworn evidence via letters is sufficient for these purposes.

I have proceeded on the basis that Brookview Nurseries etc and H&D Aggregates are both "landscape and aggregates contractors /suppliers". The tenor of the evidence suggests this, but if you have or find any evidence suggesting otherwise let me know. Advice in Circular 10/97 is that one builders yard [to which this is comparable] is a sui generis use and may be substantially different from another builders yard.

No	Item of Evidence	Assessment and comments
1	Planning History unsigned	Lack of a signature is no problem because the application is signed Of probative value Messrs Sowden started landscaping and aggregates business in 1987 and traded on site since From 2010 with H&D Aggregates operating on site too Identifies site sections thus :- Aggregates section Derelict plant store Covered polytunnel ?
2	Memo of Assoc of Brookview Nurseries Landscape Contractors Limited undated	Of no great probative value
3	Cert of Incorporation of Brookview Nursery Landscape Contractors Limited dated 23 February 1006	Of probative value ---it shows that the company was formed over 10 years ago in 1996
4	Statements x4 Avisford Golf Club SMH Design and Build Paul Raikes Builder Kennett Construction Ltd	Of some probative value --these confirm respectively they have been customers and bought aggregates since 6 years ago, Since 1997 Since 15 years Since 15 years ago So that it helps to establish the business has sold aggregates since circa 1997 – but doesn't give any information about the site
5	Photos	Shows aggregates and equipment on site and buildings --looks like builders yard
6	Parish Council objection	This is of no probative value because it refers to planning merits not CLEUD relevant matters

I have resolved the addition or introduction of the business of H&D Aggregates in circa 2009 ["2 and a half years ago"] as a continuation of the same or same type of business though you may want to make further checks about this, in view of the advice at 10/97 Annex 8 para 8.21. You can do this via a suite visit ,PCN and research of planning history.

I suggest you have these additional checks to make :-

- 1.NNDR Business Rates to see if the business is registered and if so since when
2. Planning history for any Enforcement or appeals and site visits especially in view of the Parish Council comments
- 3.Enquiries about the nature of the business operated by H&D Aggregates and Brookview Nursery Landscape Contractors Limited
- 4.I don't think ,because I've seen no evidence to this effect, that the introduction of H&D Aggregates on site amounts to a change of use by "intesification" due to the absence of any "definable change in the character of the use" [Herts County Council v DCLG and Metal and Waste RecyclingLtd 2012 EWHC 277 (Admin).
- 5.is there a site plan of uses as laid out on site

4.FURTHER EVIDENCE

I rely on you to show me any fresh evidence which may alter the tenor of this advice .

5.TERMS

1. grant
 2. identify precise land boundaries on plan for extent of use.[see site visit and site plan]
 3. describe layout etc
 4. limit persons in occupation /at work circa maximum of 20 employees
 5. limit hours -- Monday Friday 730 am to 1600 hrs pm and no work or opening on Saturday and Sunday
 6. Equipment used and stored on site ?
 7. Show layout of uses on site
- ref/lgdr/lprec/pl/cleudetcmodelmem

