

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/62/12/CLE

LOCATION: Ashogle & Brookview Nursery
Eastergate Lane
Walberton

PROPOSAL: Application for a Lawful Development for an existing aggregate business

DESCRIPTION OF APPLICATION

This application is for a Certificate of Lawfulness for the existing use of the land for an aggregate business. The application site includes the access, parking area, bays for aggregate storage, container storage and office buildings. The derelict former plant store area is excluded from the application.

DESCRIPTION OF SITE AND SURROUNDINGS

Site is located in a rural location and comprises a former nursery.

Most of the site is gravel surfaced. The parking area is adjacent to the entrance driveway. Storage bays constructed of timber sleepers for sand/gravel appear to have existed for some time. Single storey office building on boundary with Ashogle and Brookfield.

Character of Locality
Predominantly rural. Residential properties front Eastergate Lane.

RELEVANT SITE HISTORY

WA/116/88	Erection of glasshouse	Approve Conditionally 27-02-1989
WA/77/99/	New access to the site	Approve Conditionally 08-11-1999
WA/25/69	Half acre of low profile glasshouse and packing shed	Approve Conditionally 18-06-1969

REPRESENTATIONS

Representations received:

Walberton Parish Council

Objection. Application to change the use of a landscaping and horticultural site to that of a storage and distribution depot for aggregates is not in keeping with the surrounding area.

19 Letters of Support

The business has been running for many years and does not adversely affect access or egress or day to day living. This long established business provides a valuable service to the local community and helps to maintain the vitality of a rural area. No adverse visual aspects. Entrance is safe. The proposal is not for a change of use, there have always been aggregates here. This local business has been in operation for 25 years. As a builder I have purchased aggregates from here for the last 15 years. The site has been used for over 20 years operating on weekdays.

Comments on Representations received:

The Local Planning Authority cannot consider the appropriateness of the use since this application is for a Certificate of Established Use not Planning Permission. The decision is based on the balance of probability based on evidence submitted not on planning merit.

Letters of support endorse claims that the business has operated from the site for in excess of 10 years.

CONSULTATIONS

Southern Water Planning
Solicitor - Legal Services
Council Tax

Consultations responses received:

Planning Solicitor
Details and Tests under sections 191 Town and Country Planning Act 1990 and Circular 10/97 Annex 8

(1) Time Sections 171 (1)-(3) and section 191 TCPA 1990:

The application is for a material change of use so the time limit is 10 years under the above. The time periods are 14th November 2002 to date of application 14th November 2012.

The evidence does satisfy this test. No contradictory evidence.

(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 their 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.

The evidence consists of a Certificate of Incorporation of a Private Limited Company relating to Brookview Nursery Landscape Contractors dated February 1996, accounts for year 2002, accounts for February 1999, Financial Statements for 1997, invoices for in excess of 10 years. Invoices for deliveries including paving from 2004, 2005. H&D Aggregates in circa 2009 represented the addition or introduction of the business which was a continuation of the same or same type of business.

Business rates and planning history should be checked. The introduction of H&D Aggregates on site does not amount to a change of use by intensification due to the absence of any definable change in the character of the use.

Recommend Certificate is granted.

Southern Water
No objection

Council Tax

The business property at Brookview Nursery was set up for business rates purposes with effect from 28-02-2010 and has been rated from that date.

Comments on Consultation responses:

The planning history confirms the site previously had a horticultural nursery use.

Substitute plans have been submitted to reduce the red edge to relate to the aggregate use only and clearly identify specific uses in the area.

Letters of representaion support the claim of a 10 year use. Business rates could well have been applied years after the establishment of the use and the date coincides with use by H&D Aggregates.

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 other case shall refuse the application.

Section 191 to 195 Town & Country Planning Act 1990 and DOE Circular 10/97 Annex 8 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.

(iii)The LPA may have on its files relevant evidence either supporting or contradicting that of the applicant.

CONCLUSIONS

The application does contain sufficient information to demonstrate that an aggregate business has been in use continuously on the site for the last 10 years. The applicant and his brother operated the business from 1987 as a nursery/landscaping business which stored soil and aggregate on site as well as compost. From 2010 the way the business operated changed with some of the yard, offices and containers being let out to H&D Aggregates.

The evidence consists of planning history indicating a horticultural use and landscaping and aggregate business started in 1987 and has traded on site since. The Certificate of Incorporation of Brookview Nursery Landscape Contractors Limited dated 23 February 1996 shows the company was formed more than 10 years ago. Statements from customers indicate selling of aggregates since 1997. Photos indicate aggregates and equipment on site working like a builders yard.

Supporters comments confirm existence of business for a number of years, one refers to the business operating for 25 years.

It is therefore recommended that the certificate is granted in accordance with the following terms.

RECOMMENDATION

APPROVE

The Arun District Council hereby certify that on the 14-11-2012 the use hereby described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged boldly on the plan attached to this certificate was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

Evidence produced by the applicant and the Council's records show that the use has operated for a period of more than 10 years and letters received as part of the application support these allegations. The period in which enforcement can be taken, as set out in section 171B of the Town & Country Planning Act 1990 (as amended) has therefore expired.

FIRST SCHEDULE

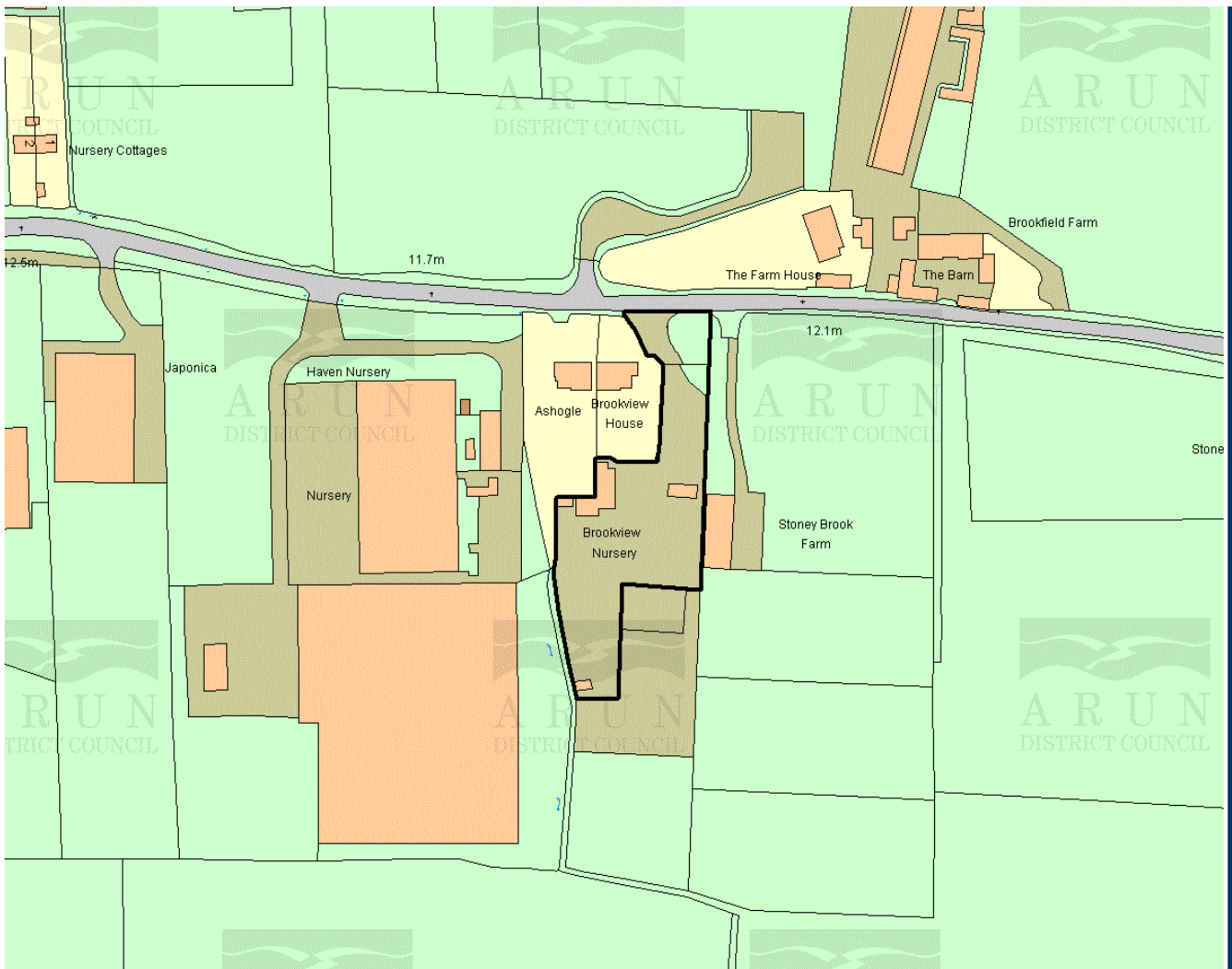
Use of land at Ashogle and Brookview Nursery as an aggregate business.

SECOND SCHEDULE

Land at Ashogle and Brookview Nursery shown on the plan attached to this certificate, within the area edged boldly in black.

EXTENT OF USE

The extent of use is that defined on the submitted application plan and relates to the use of the land for selling aggregates. This does not include the part of the site used exclusively for horticultural and soft landscaping purposes. The number of people employed is a maximum of 20. The use operates between 07.30 and 1600 hours with no work or opening on Saturday or Sunday. Deliveries do not exceed 3 in number per week and collections do not exceed 3 per day. The equipment relates to one tractor with a bucket on the front.



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