

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/71/19/CLE**

LOCATION: Walberton Nursery
 Yapton Lane
 Walberton
 BN18 0AS

PROPOSAL: Lawful development certificate for the existing 4 No. portable cabins.

DESCRIPTION OF APPLICATION

The application relates to 4 portacabins.

One is used as a toilet block, a second is used as an office and this has an extension to it. The final one is used as a computer server room. Adjacent to this is a further portacabin which is due to be demolished and is outside the terms of this application.

SITE AND SURROUNDINGS

The portacabins were in situ at the time of the inspection. The site is located within the overall complex adjacent to a car park used by staff.

RELEVANT SITE HISTORY

No relevant applications have been identified which relate to the above.

REPRESENTATIONS

Representations Received:

Walberton Parish Council
None

Comments on Representations Received:

None

CONSULTATIONS

Consultations Responses Received:

Parish Council - Support

Comments on Consultation Responses:

Noted.

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.

PRINCIPLE

Section 191 to 195 Town & Country Planning Act 1990 and NPPG guidance on LDC's 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.

CONCLUSION

The evidence provided in the form of aerial photographs shows the structures in situ for in excess of 10 years which is the required period for the use of land. There are also receipts regarding the structures. However the evidence submitted pre-dated the required time periods for immunity and does not demonstrate that there were structures in place throughout the claimed time period. The Council's own aerial photographs have been checked which show the structures on site for the time claimed.

Three of the structures should be regarded as operational development because of the way they are either fixed together and attached to the ground. In which case the relevant time period of any enforcement action (if such was deemed appropriate) would be 4 years.

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 portacabins have been in situ for at least 4 years where operation development is involved and 10 years where a change of use has occurred.

FIRST SCHEDULE

The use of land for the siting of 4 portacabins

SECOND SCHEDULE

Walberton Nursery, Yapton Lane, Walberton

EXTENT OF USE

The use of land for the siting of 4 portacabins

WA/71/19/CLE - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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