

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/98/16/CLE

LOCATION: Cherry Tree Nursery
Eastergate Lane
Walberton

PROPOSAL: Application for a Lawful Development Certificate for an existing use of land for siting of 1No residential mobile home.

DESCRIPTION OF APPLICATION

The application seeks a lawful development certificate for the continued use of the land for the outdoor storage of car and boats (Use Class B8).

DESCRIPTION OF SITE AND SURROUNDINGS

The site is a former nursery featuring dilapidated green houses. Neighbouring uses are predominantly agricultural with some residential development to the south.

RELEVANT SITE HISTORY

None.

REPRESENTATIONS

Representations received:

We wish to lodge an objection based on the fact that, when our Neighbourhood Plan Steering Group visited the site, the static caravan was not in situ as Mr Boucher was claiming.

Comments on Representations received:

Comments noted. The certificate of lawfulness has been amended with the application now relating to land further to the south of the site to the north of the existing greenhouses. Aerial imagery for the site reveals that a mobile home has been sited in this location since 2007.

CONSULTATIONS

Environmental Health
Environment Agency
Engineering Services Manager
Engineers (Drainage)
Planning Solicitor

Consultations responses received:

Engineers (Drainage):

The mobile home appears to have some kind of foul drainage system within the ditch, causing an obstruction. The boundary fence has extended across the ditch and is also obstructing it.

The resident has been written to as the riparian responsibilities of living adjacent to a

watercourse are being ignored. Environmental health have been informed.

Apply ENGD6A as the free flow of water within the ditch is being compromised as a direct result of the siting of the mobile home at this site.

Planning Solicitor:

Comments received 1st February 2017

1. grant
2. describe use as siting residential mobile home - used as residence
3. identify precise land boundaries on plan for extent of use
4. use scaled plan -for area and dimensions of mobile home
5. describe structure and its hardstanding and other plot boundaries on land ---use photos to supplement descriptions
6. define any access routes and hardstandings

Comments received 6th March 2017

1. Aerial photos dated 2001,2007,2015 indicating no caravan[s] on plot 8 as claimed -this is contradictory evidence of the claim
2. No HB receipts for Mr Ling
3. No rent books, accounts, rent receipts , from any of the 3 tenants
4. No statements from any tenants
5. No EH records or licences or site visit notes

Comments on Consultation responses:

Comments noted.

LEGISLATIVE BACKGROUND

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."

PRINCIPLE

Section 191 to 195 Town & Country Planning Act 1990 and NPPG guidance on LDCs 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.

Part VII, Section 171B of the Town and Country Planning Act 1990 (as amended) states that:-

Time limits.

(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.

CONCLUSIONS

The scheme has been amended and the agent for the application has agreed to the amendment of the red edge. The proposal now seeks a certificate of lawfulness for the stationing of 1 no, caravan immediately to the north of the existing greenhouses (as specified on the attached plan). The aerial photographs of the site show that this mobile home has been in situ on the site for a period exceeding 4 years and as such is immune from enforcement action. Therefore, it is recommended that a certificate of lawfulness is granted for the existing mobile home.

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 property had been in use as a private dwelling and not a mobile home for a continuous period of 4 years.

FIRST SCHEDULE

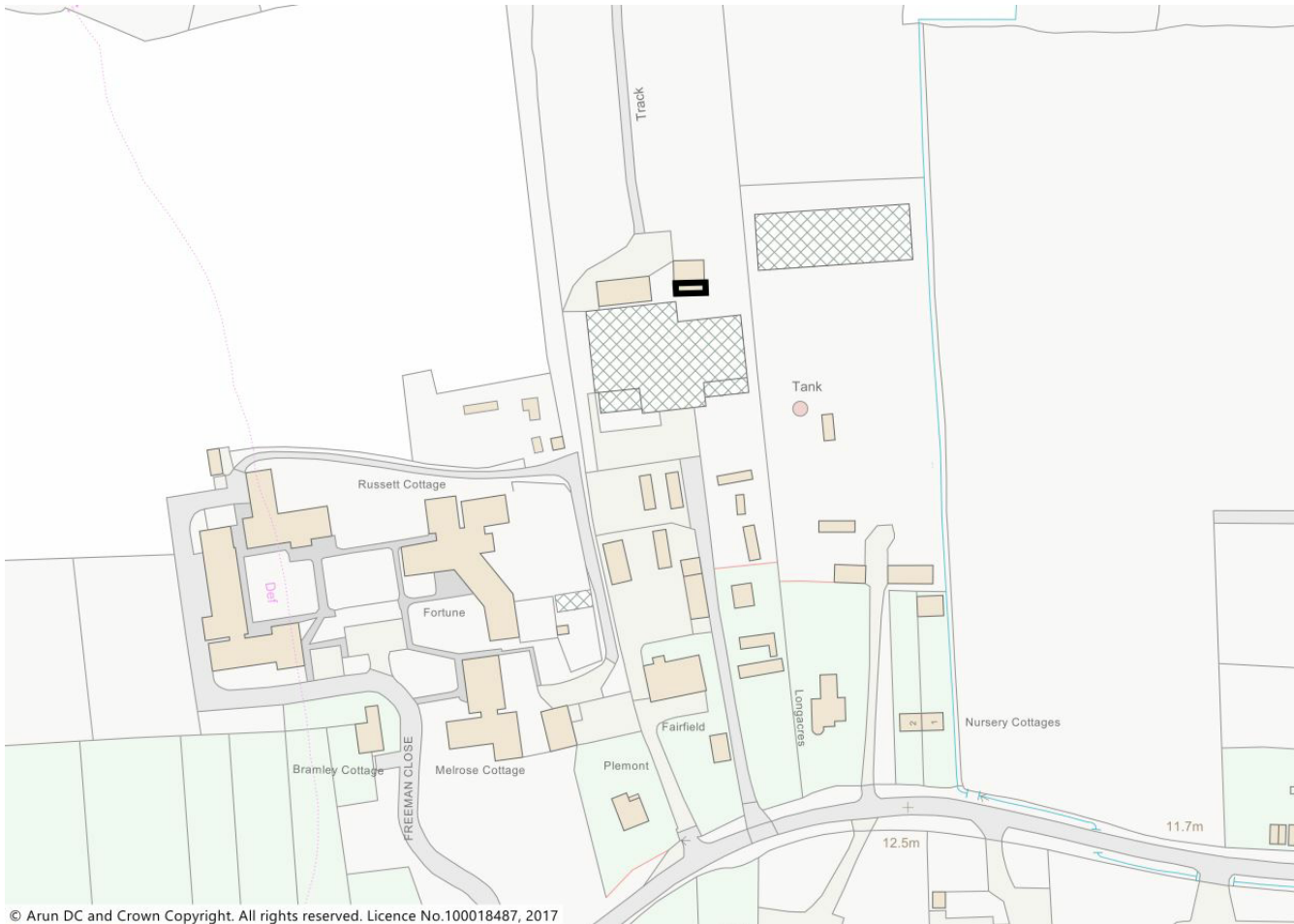
The land marked in black on the attached plan shall be used for the stationing of 1 no. mobile home as permanent residential accommodation.

SECOND SCHEDULE

Cherry Tree Nursery, Eastergate Lane, Walberton, BN18 0BA

EXTENT OF USE

Use of the land specified in the attached plan for the stationing of 1 no. mobile home as permanent residential accommodation.



© Arun DC and Crown Copyright. All rights reserved. Licence No.100018487, 2017

Based on the Ordnance Survey mapping with permission of the Controller of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Arun District Council 100018487.