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/99/16/CLE**

LOCATION: Cherry Tree Nursery
Eastergate Lane
Walberton

PROPOSAL: Application for a Lawful Development Certificate for an Existing use of land for the storage of boats & cars (Use Class B8).

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:

Walberton Parish Council

Walberton Parish Council:
Our objection are on the same grounds as for our comments on application WA/98/16/CLE (same applicant). There is no evidence of previous storage of boats and cars.

Comments on Representations received:

Comments noted. Aerial imagery for the site over the previous 10 years has been examined. During this time cars have been stored continuously in the area marked B on the submitted plan. In terms of boat storage at the site 1 no. boat has been stored continuously for a period of 10 years in the area marked A and a significant number of sworn statements have been provided to support the certificate of lawfulness. It is possible that the boats were removed from the site and in use elsewhere at the time these aerial images were taken - therefore, it is considered that the Council do not possess sufficient evidence to counter the evidence provided in support of the application.

CONSULTATIONS

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

Consultations responses received:

Engineers (Drainage):
No surface water drainage comments

Environmental Health:
EH have no comments on this application.

Planning Solicitor:
Full comments available on the Arun District Council website.

Summary of advice:
1. Grant.
2. Describe use as B8 UCO storage of cars and boats.
3. Identify precise land boundaries on plan for extent of use.
4. Use scaled plan - area A boats, area B cars.
5. Gives estimates of numbers of cars and numbers of boats - I see up to 150 cars are referred to in collection notices in the evidence.
6. Define any access routes and hard standing.

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

Given the evidence submitted as part of this certificate of lawfulness application it is considered that the B8 use of the areas specified on 'Plan 2' has been on-going for more than 10 years and thus would be immune from enforcement action by virtue of the expiry of time.

Examination of the aerial photographs over the previous 10 years has revealed limited number of boats stored in the area marked A on 'Plan 2'. However, it is clear that a boat has been stored continuously over this 10 year period. It is considered that the boats stored at the site would be removed for use and as such it is possible that the boats could have been absent from the site during the time the aerial photographs were taken. Therefore, given the evidence submitted and the absence of conclusive proof that boats have not been stored continuously at the site over a 10 year period it is considered that a lawful development certificate for the B8 use of 'Area A' as specified on 'Plan 2' for the storage of no more than 5 boats (in accordance with the email from the agent dated 11.07.2017).

The aerial photographs clearly show that the area marked as B on the submitted plan has been used for the previous 10 years for the storage of cars. Therefore, it is considered that the B8 use of 'Area B' as specified on 'Plan 2' for the storage of no more than 20 cars is considered to be lawful by virtue of the expiration of time. This number is in line with the statements and has been identified as reasonable by the agent in his email of the 11th July 2017.

Therefore, it is recommended that a certificate of lawfulness is granted for the existing use of the site.

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 use for the storage of up to 5 boats and 20 cars for a continuous period of 10 years.

FIRST SCHEDULE

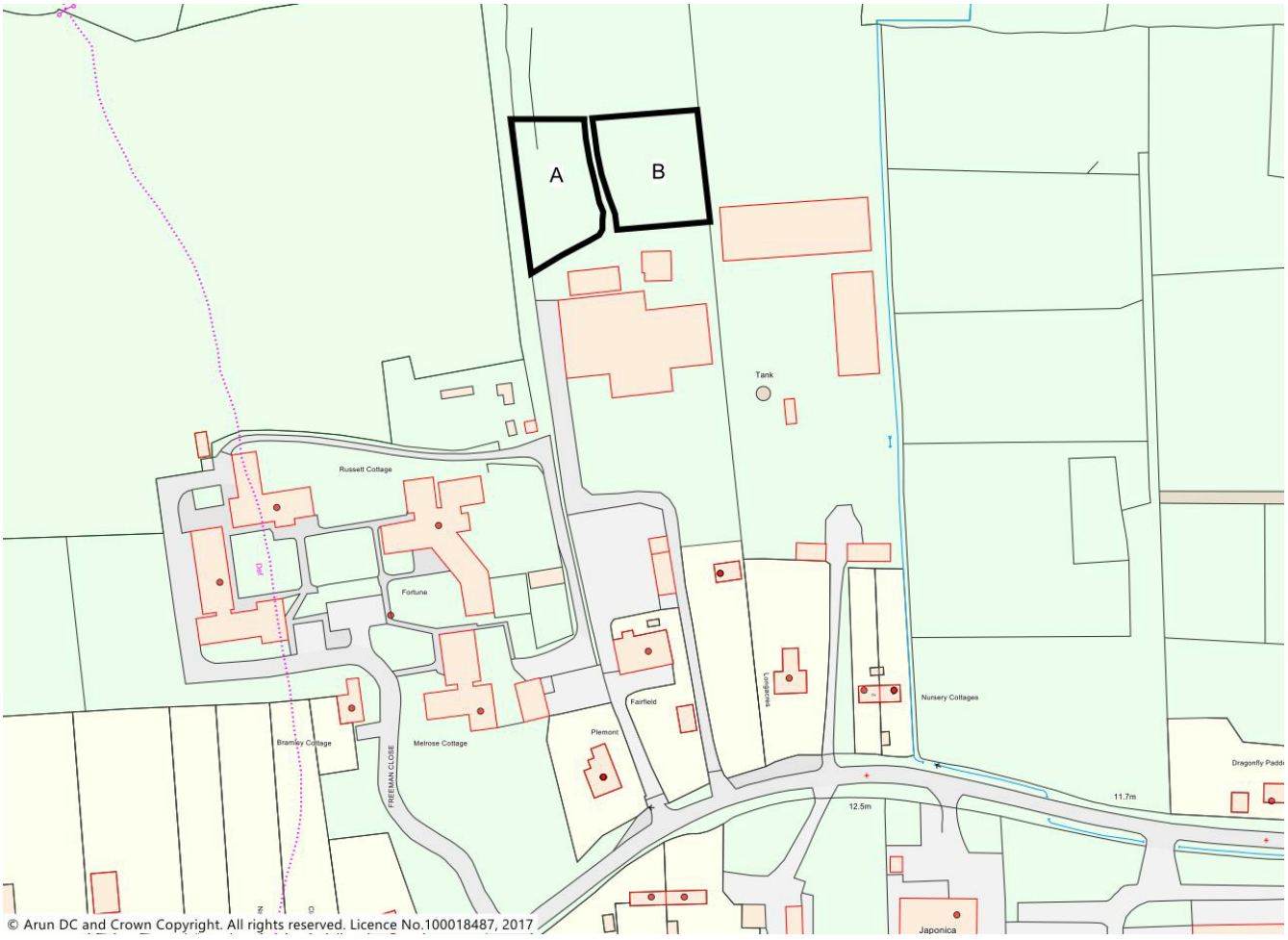
· Use of the area marked as 'A' of the site as specified on the attached plan for the storage

of no more than 5 boats falling within Use Class B8.
· Use of the area marked as 'B' of the site as specified on the attached plan for the storage of no more than 20 cars falling within Use Class B8.

SECOND SCHEDULE

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

EXTENT OF USE
Use of the land for B8 (open storage) of no more than 5 boats and 20 cars as specified in the First Schedule of this certificate.



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