

Recommendation Report for Lawful Development Certificate for a Proposed Use or Development

REF NO: Y/73/18/CLP

LOCATION: Maggies Meadow
Hoe Lane
Flansham

PROPOSAL: Lawful development certificate a proposed timber barn (approved under Y/86/10/).

DESCRIPTION OF APPLICATION

This is an application for a Certificate of Lawfulness to establish that the commencement of the timber barn approved under application ref. Y/86/10 has lawfully taken place, that it is lawful to complete the construction of the timber barn approved under application ref: Y/86/10 and that no subsequent planning application would be required.

DESCRIPTION OF SITE AND SURROUNDINGS

RELEVANT SITE HISTORY

Y/86/10/	Timber barn for secure storage of light goods vehicle, farm machinery & feed (re-submission following Y/43/09/)	ApproveConditionally 09-02-2011
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REPRESENTATIONS

Representations received:

Comments on Representations received:

CONSULTATIONS

Consultations responses received:

Comments on Consultation responses:

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.

CONCLUSIONS

Application ref: Y/86/10 gave permission for the erection of a Timber barn for secure storage of light goods vehicle, farm machinery & feed . This application was granted on the 9th February 2011 with conditions. Condition 1 of application Y/86/10 - Time limit states that:

The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

Therefore any works would have had to have commenced by 9th February 2014. However, officer note that the digging of a hole on or before the 9th February 2014 would not necessarily constitute commencement. Therefore, we need to be clear on what constitutes commencement. Commencing development means undertaking some limited works on site to commence a planning permission and thus keep it alive. In order to lawfully commence development it is necessary to satisfy the legal requirements in section 56(4) of the Town and Country Planning Act 1990. This says that "development is taken to be begun on the earliest date on which a material operation is carried out". A material operation is defined in the Act and can include any works of construction, demolition, digging foundations, laying out or constructing a road and a material change in the use of the land.

Section 56 of the Town and Country Planning Act 1990 states in subsection (4) criterion (b) that:

"material operation" means:

(b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;

Therefore Officers consider the digging of footings and the laying of concrete strip foundations to be sufficient should the applicant actually have carried out these works on site. Therefore, It is crucial to establish whether the digging of footings and the laying of concrete strip foundations has actually commenced within the 3 year period from the grant of application ref: Y/86/10.

to prove that the permission remained extant.

The applicant has submitted the following pieces of evidence:

1. A Statutory Declaration from Paul William Bennett setting out the history of the site and the timing and extent of building works that were undertaken in the implementation of the planning consent.
2. An invoice from the construction company who undertook the groundworks dated the 11th November 2011. The estimate is marked by the applicant as having been paid on the 28th January 2012.
3. A letter from Mark Hackett, the former director of Spire Construction confirming that he undertook construction of the footings for the barn in December 2011.
4. An aerial photograph taken from Google Earth and dated the 6th June 2013 showing the outline of the footings of the barn in situ.
5. An aerial photograph from google Earth dated 2007 which shows the site in its undeveloped state with no evidence of footings.
6. A letter from the Compliance Officer at Arun District Council dated the 1st September 2011

which makes reference to the existence of various builder's materials at the site to be used in construction of the barn.

SUMMARY:

From, an assesment of the submitted evidence Officers consider that, works in order to satisfy Condition 1 (Commencement) of application Y/86/10, as aforementioned, have taken place. Officers have no evidence to the contrary and therefore and on the balance of probability consider that works commenced within 3 years from the date of the decision (approval), before 9th February 2014. Therefore, its is lawful for the applicant to now recommence construction of the timber barn as approved under application ref. Y/86/10.

It should be made clear that should any works carried out that do not resemble the barn as approved, enforcement action could be taken.

Based on the available evidence Officers consider that planning permission is not required.

RECOMMENDATION

PP NOT REQUIRED

The Arun District Council hereby certify that on 31st August 2018 the matter 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 192 of the Town & Country Planning Act 1990 for the following reasons:

Based on an assesment of the submitted evidence Officers consider that, works in order to satisfy Condition 1 of application Y/86/10 have commenced in line with section 56 of the Town and Country Planning Act 1990. Officers have no evidence to the contrary and therefore and on the balance of probability consider that relevant works have commenced within 3 years from the date of the decision (approval), before 9th February 2014.

FIRST SCHEDULE

The proposal is for the lawful continuation of the construction of the barn as granted by previous application Y/86/10 as shown on the following plans, as approved under application Y/86/10:

Edition 1 Sheet 1

Edition 1 Sheet 2

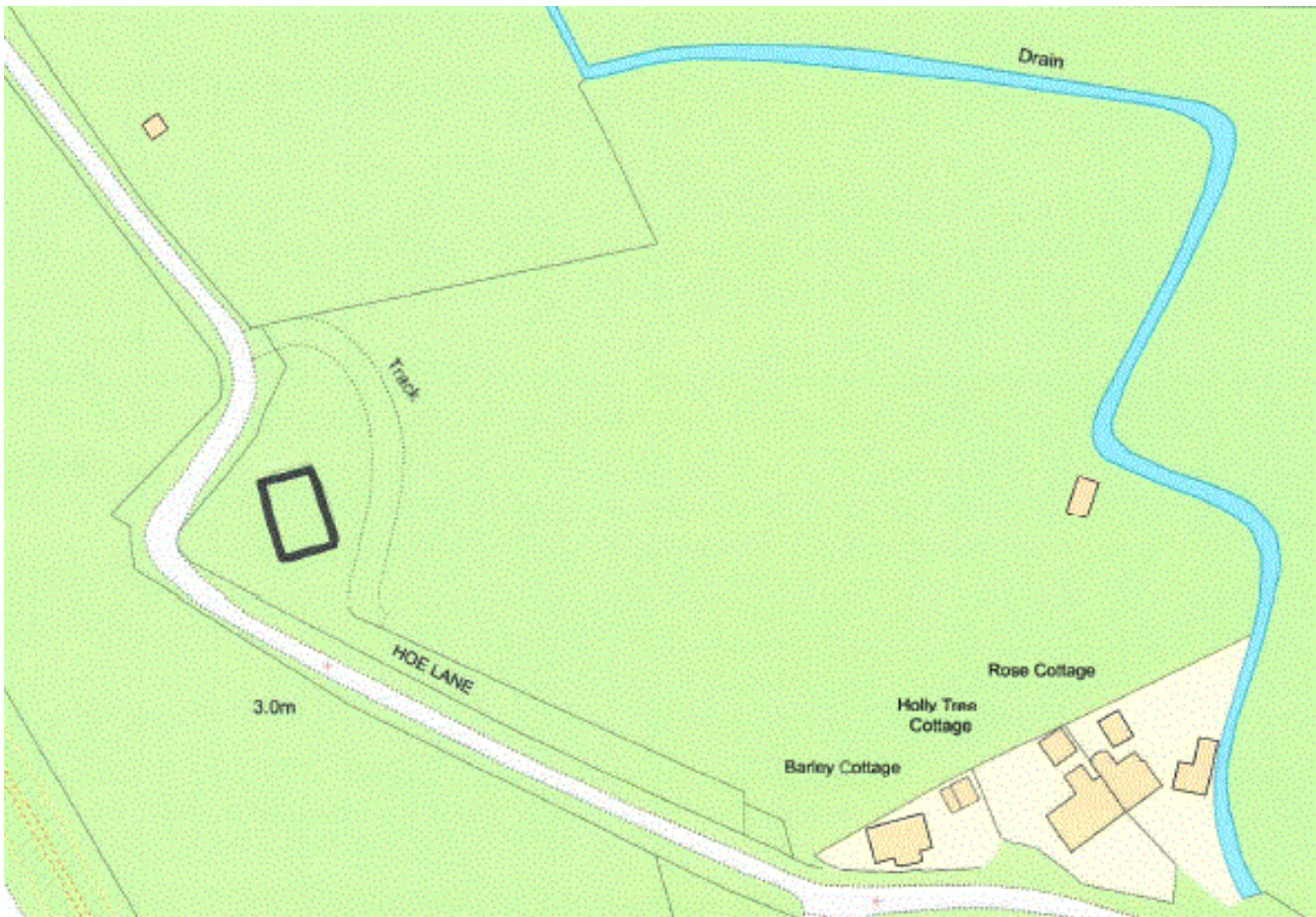
SECOND SCHEDULE

Maggies Meadow, Hoe Lane, Flansham, PO22 8NS

EXTENT OF USE

That sufficient works in order to satisfy condition 1 (commencement) of previously approved application Y/86/10, have taken place and that works can lawfully continue on the barn as granted per application Y/86/10 as edged boldly in black on the attached plan.

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