Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:
DC/24/1194
Spring Gardens Nursery , Spring Gardens, Washington, West Sussex, RH20 3BS

DESCRIPTION:
Application to confirm the continuous use of existing building used as agricultural storage, car repair, mechanics, agricultural maintenance garage and general B8 storage purposes for a period in excess of ten years. An extension to the building was completed more than 4 years prior to the date of the application (Lawful Development Certificate - Existing).

RELEVANT PLANNING HISTORY:

AS/31/01	Erection of industrial building and potato store	Application Permitted on 24/09/2001
AS/18/96	Erection of industrial buildings, dwelling and agricultural building (amended plans with alternative access to spring gdns nurseries site)	Application Permitted on 22.02.2000

REPRESENTATIONS AND CONSULTATIONS RESPONSES
Where consultation responses have been summarised, it should be noted that Officers have had consideration of the full comments received, which are available to view on the public file at www.horsham.gov.uk

Parish Comments:
Washington Parish council have no objection to this application.

Representations:
Two (2) Lawful Development Questionnaires have been submitted. They raise the following:

- The use of the site for 10 years or more.
- No impact in relation to noise or traffic.

Member Comments:
None received

HUMAN RIGHTS AND EQUALITY:
The application has been considered having regard to Article 1 of the First Protocol of the Human Rights Act 1998, which sets out a person's rights to the peaceful enjoyment of property and Article 8 of the same Act, which sets out their rights in respect to private and family life and for the home. Officers consider that the proposal would not be contrary to the provisions of the above Articles.

The application has also been considered in accordance with Horsham District Council's public sector equality duty, which seeks to prevent unlawful discrimination, to promote equality of opportunity and to foster good relations between people in a diverse community, in accordance with Section 149 of the

Equality Act 2010. In this case, the proposal is not anticipated to have any potential impact from an equality perspective.

PLANNING ASSESSMENT

Article (2) of Section 191 of the Town and Country Planning Act 1990 states:

"For the purposes of this Act uses and operations are lawful at any time if –

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force."

Applicant's Evidence

- Photos.
- Statutory Declaration.
- Location Plan.
- Floor Plan.
- Elevation Plan.
- Statutory Declaration of Andrew William Allen (signed by a solicitor/commissioner of oaths). In their statement Andrew Allen states that the extension to the building was completed in November/December 2013. They also confirm that since the November/December 2013 the building has been split into three sections and used as agricultural storage, car repairs / mechanics / agricultural maintenance garage and B8 storage.

Aerial and Council's Evidence

Permission was granted in 2000 and the again in 2001 for the erection of part of the existing building and its use as a potato store.

Aerial photos show the extension was not in place in June 2013. They show the extension has been erected by April 2015. Two neighbours have provided responses to the questionnaire and have confirmed the use of the site for 10 years or more. HDC Revenues have also provided information.

Assessment

Section 191(4) 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 of the lawfulness at the time of the application of the use, operations or other matter described in the application…they shall issue a certificate to that effect; and in any other case they shall refuse the application*."

F W Gabbitas v SSE and Newham LBC [1985] JPL 630 held that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the Local Planning Authority has no evidence of its own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application; provided the Applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the "balance of probability".

The building has clearly been extended to the south since the original granting of planning permission and the subsequent construction. The available aerial photography indicates that the extension was built between 2013 and 2015, and this is consistent with the information accompanying the application. It has therefore been demonstrated that the extension was substantially completed at least 9-years prior to the submission of this application, with the extension therefore lawful.

The application also seeks to establish use as '*agricultural storage, car repair / mechanics / agricultural maintenance garage and general B8 storage*'. On the basis of the submitted information, the layout of

the building and the uses therein, the building is considered to comprise three individual planning units, with the later extension the third southern unit. The certificate seeks to establish agricultural storage in the northern unit, a car repair / mechanics / agricultural maintenance garage in the central unit, and a Class B8 storage unit in the southern unit.

Northern Unit

The building was originally approved for potato storage, with the certificate seeking to establish agricultural storage in the northernmost unit. The Council holds no evidence to suggest any alternative use in this part of the building other than that for which it was originally approved. It is understood that the wider holding continues to grow potatoes and these wider activities would support the presence of agricultural storage in the northern unit.

Central Unit

The tenant of the central unit has advised they have operated since 2002, with the nature of the works undertaken consistent with the planning statement and a vehicle repair / maintenance garage. The current occupant has been registered for Business Rates since at least 2017 and there is no evidence to suggest any alternative use of the unit since 2002. It is noted that a third-party representation has been submitted which anecdotally supports the use of this central unit for around 10 years.

It is acknowledged that tenancy agreements / invoices for this central unit would have been beneficial in establishing the use over the required time period. It is though the case that on the balance of probability and based on the information available there is sufficient certainty, i.e., at least 51%, that the central unit has been occupied as stated for a period in excess of 10-years.

Southern Unit

The southern unit is set out as forming Class B8 storage and distribution. The applicant has advised this use was operated by the occupant of the central unit, for the storage of machinery which is then repaired and distributed for sale. It has further been advised that the southern unit has also been used by the wider holding for the storage and distribution of produce, and for the storage of materials by builders merchants.

It has not been demonstrated whether when occupied in association with the central unit where it formed part of a single planning unit, and what the dominant use of this would have been. In addition, it is not clear whether the storage of produce would have been agricultural in nature, similar to that within the northern unit. Finally, while occupation by builders merchants has been suggested, there are no details of business / occupant names or the duration over which such a use took place.

It has not therefore been demonstrated, on the balance of probability, that the southern unit has been used for storage and distribution purposes for the required period of time.

Recommendation: Split Decision

The use/operation/matter is LAWFUL for the part that relates to:

1. The southern extension

2. Use of the northernmost unit for agricultural storage

3. Use of the central unit as vehicle repair / mechanics / agricultural maintenance garage

For the following reason(s):

1. It has been demonstrated on the balance of probability that the southern extension, identified in

yellow on the attached plan, was substantially completed more than 4 years prior to this application (and was completed before 25th April 2024).

2. It has been demonstrated on the balance of probability that the northern unit, identified in blue on the attached plan, has been used for agricultural storage, and that the central unit, identified in green on the attached plan, has been used as vehicle repair / mechanics / agricultural maintenance garage for a period in excess of 10 continuous years prior to this application.

The use/operation/matter is NOT LAWFUL for the part that relates to:

1. The use of the southernmost unit for Class B8 storage and distribution use

For the following reason:

1. It has not been demonstrated on the balance of probability that the southernmost unit has been used for Class B8 storage and distribution purposes for a period in excess of 10 continuous years.

Plans list for: DC/24/1194
(The approved plans will form Condition 1 on the Decision Notice of all Permitted applications)

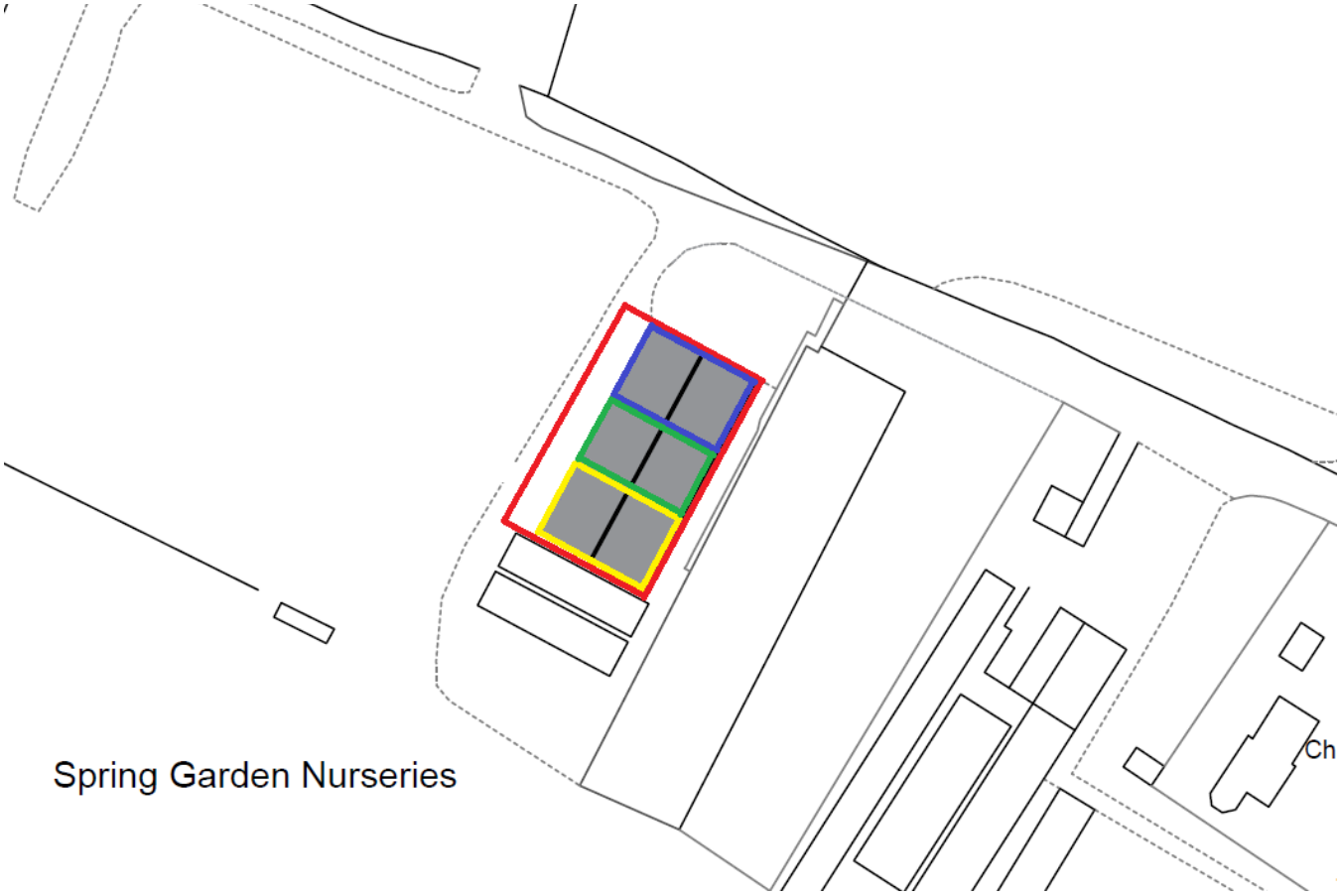
Schedule of plans/documents **approved**:

Plan Type	Description	Drawing Number	Received Date
Supporting Statement	Planning	NONE	07.08.2024
Location plan		2024.422.01	07.08.2024
Elevation & Floor plan	Existing roof	2024.422.02	07.08.2024
Photos		NONE	07.08.2024

DELEGATED

Case Officer sign/initial Alice Johnson Date: 06/02/2025

Authorising Officer sign/initial Guy Everest Date: 06.02.2025


Spring Garden Nurseries
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