Horsham District Council

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White Planning
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GU10 5EL

TOWN AND COUNTRY PLANNING ACT 1990: S191 (AS AMENDED BY S10 OF THE PLANNING AND COMPENSATION ACT 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT (EXISTING)

Application No: DC/24/0426

Horsham District Council hereby certifies that on the 19th March 2024 the use/operations/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 red on the plan attached to this certificate, was lawful in part and not lawful in part (as outlined below) within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended) and for the reasons(s) below:

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

1 The larger storage container as shaded in red on the attached plan

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

1 The smaller storage container positioned near the entrance of the site

2 The operational development to lay hardstanding

Reason(s) for granting this certificate

The part that is LAWFUL has been permitted for the following reason(s):

1 It has been demonstrated on the balance of probability that the larger storage container as shaded in red on the attached plan has been sited on the land for a period in excess of 10 years of the application date.

The part that is NOT LAWFUL has been refused for the following reason(s):

1 It has not been demonstrated on the balance of probability that the smaller storage container positioned near the entrance of the site has been positioned on site for a period in excess of 10 years from the application date.

2 It has not been demonstrated on the balance of probability that the operational development to lay hardstanding was carried out in excess of 4 years from the application date.

FIRST SCHEDULE

Application to confirm the siting of shipping containers used for B8 Storage and Distribution and Laying of hardstanding for a period in excess of ten years (Lawful Development Certificate - Existing).

SECOND SCHEDULE

Land at 514777 135669, Marches Road, Warnham, West Sussex, , .

Your Right to Appeal

Where your application to the Council has been refused or refused in part you may appeal under s195 of the Act to the Secretary of State for Communities and Local Government. Further details and appeal forms are available at **www.gov.uk/appeal-lawful-development-certificate-decision**.

Additional Notes

1. This certificate is issued solely for the purpose of s191 of the Town and Country Planning Act 1990 (as amended).

2. It certifies that the use/operations specified in the First Schedule taking place on the land described in the Second Schedule was lawful, on the specified date and thus was not liable to enforcement action under Part 7 of the Act on that date.

3. This certificate applies only to the extent of the use/operations described in the First Schedule and to the land described in the Second Schedule and identified on the attached plan. Any use/operations/matter which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.

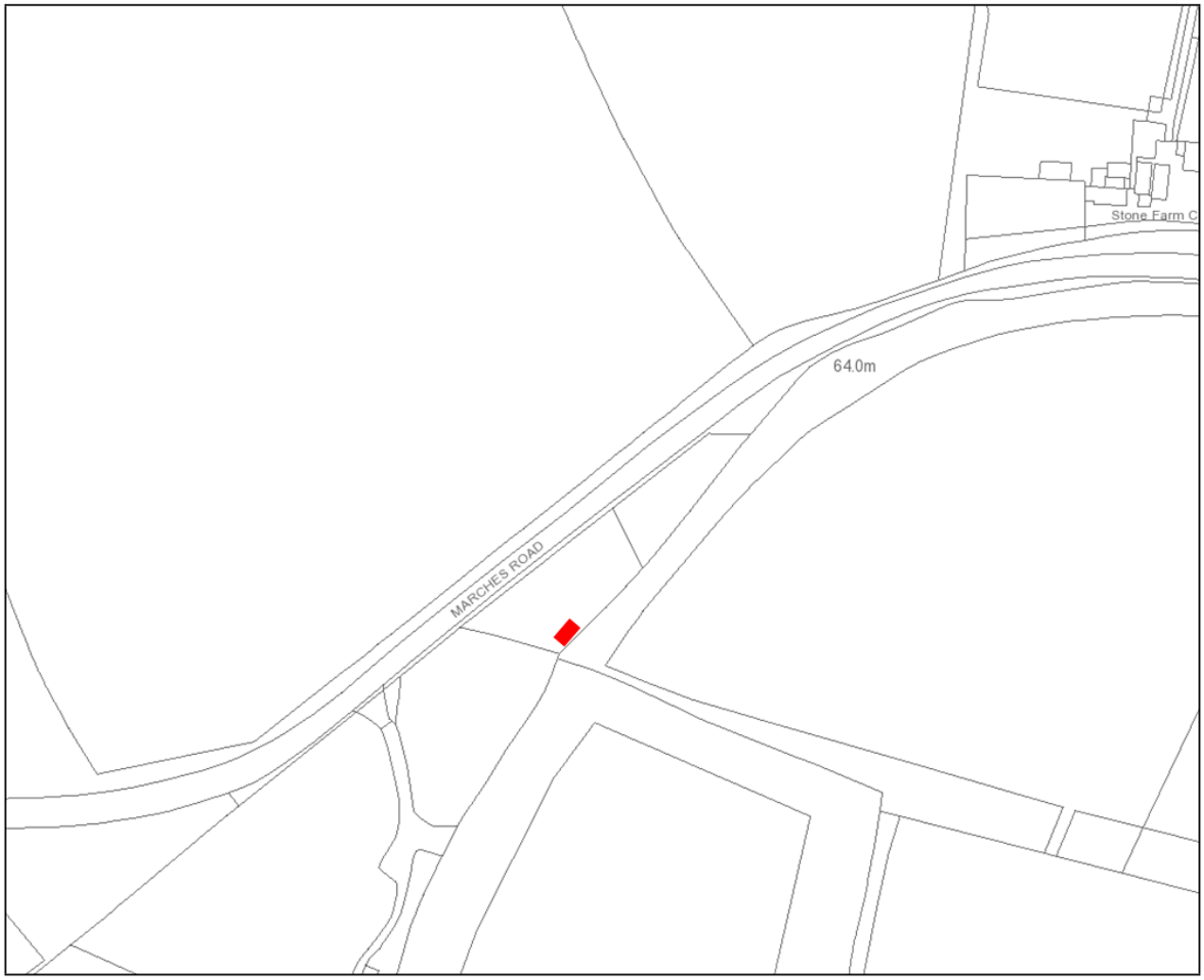
4. The effect of the certificate is also qualified by the proviso in 192(4) of the 1990 Act (as amended) which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operation begun, in any of the matters relevant to the determining of such lawfulness.



Emma Parkes
Head of Development and Building Control

Date: 17/09/2024

Plan



Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:

DC/24/0426
Land at 514777 135669, Marches Road, Warnham, Horsham, West Sussex

DESCRIPTION:

Application to confirm the siting of shipping containers used for B8 Storage and Distribution and Laying of hardstanding for a period in excess of ten years (Lawful Development Certificate - Existing).

RELEVANT PLANNING HISTORY:

None Relevant

PLANNING ASSESSMENT

The Application sees to confirm the siting of shipping containers used for storage purposes and the laying of hardstanding for a period in excess of ten years (Lawful Development Certificate - Existing).

Relevant Legislation and Guidance

Section 191(2) of the Town and Country Planning Act 1990 (TCPA) provides that *'for the purposes of this Act uses and operations are lawful at any time if-*

a.) no enforcement action may 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.'

The land and matters subject of this application are not subject of an extant enforcement notice, as such, there would be no automatic exemption from the grant of a certificate of lawfulness by virtue of the provisions of S.191(2)(b) TCPA 1990.

S.171B of the TCPA states:

'(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.

(2A) There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).]

(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.

(4) The preceding subsections do not prevent—

(a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

(b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.'

S.191(4) of the TCPA states:

> *"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, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application."*

Paragraph 006 of the relevant planning practice guidance (PPG) explains that the applicant is responsible for providing sufficient information to support an application. This paragraph, furthermore, explains that, in the case of applications for an existing use, if the authority holds no evidence itself, nor from any 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 a balance of probability.

The onus is on the applicant to prove on the balance of probabilities, that a certificate ought reasonably to be issued [FW Gabbitas v Secretary of State for the Environment and Newham LBC (1985) JPL 630] Case law, furthermore, confirms that in the determination of an application for a certificate of lawfulness, the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the authority holds no evidence itself, or from others, to contradict or call into question the probability of the applicant's version of events there is no good reason to refuse an application.

The Test

TCPA 1990 s191(1) provides that if any person wishes to ascertain whether:

- *Any existing use of buildings or other land is lawful;*
- *Any operations which have been carried out in, over or under land are lawful; or*
- *Any other matter, constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful;*

he may apply to the local planning authority specifying the land and describing the use, operations or other matter.

If on such an application, the local planning authority is satisfied with the lawfulness of the use, operations, or other matters described in the application, or that description as modified or substituted by them, it shall issue a certificate or refuse the application.

The Act provides that in respect of a failure to comply with any condition or limitation subject to which planning permission has been granted, any matter constituting such a failure is lawful at any time if:

(a) The time for taking enforcement action in respect of the failure has expired; and

(b) It does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

Applicant's Evidence

- Planning Statement (19/03/2024) and Amendment (29/04/2024)
- Location Plan
- Delegated Report for DC/23/2057 (Application to confirm the continuous use of land and buildings for storage purposes for a period in excess of ten years (Lawful Development Certificate - Existing)
- Statutory Declarations: Carole Spencer (19/03/2024); Robert Rickerd (19/03/2024); Joe Maloney (19/03/2024)

Council's Evidence

- DC/23/2057
- 4 Letters of Representation
- Warnham Parish Council - Consultation Response
- Horsham District Council - Compliance Response
- Horsham District Council - Revenues Response
- Application for DC/23/2057 (Application to confirm the continuous use of land and buildings for storage purposes for a period in excess of ten years (Lawful Development Certificate - Existing)
- Google Earth Satellite Imagery: May 2024; July 2022; March 2022; June 2021; April 2020; September 2018; June 2013; September 2012; December 2005
- Google Street View Imagery: June 2023; June 2019; October 2009; August 2009; December 2008
- Statement of Carole Spencer dated 17 May 2024

Planning History

Previously, DC/23/2057 (Application to confirm the continuous use of land and buildings for storage purposes for a period in excess of ten years (Lawful Development Certificate – Existing) was submitted and was refused in March 2024. This application is similar to the previous application made under reference DC/23/2057. However, the applicant has also sought to include in the application a certificate for lawful development in relation to the presence of a hardstanding.

The site has no planning history. The evidence submitted in support of this certificate, including within the Statutory Declarations provided, indicates that the stated Mr. Geoffery Hill lived on site in a camper van for many years before moving into the home of the stated 'Carole Spencer'. The storage units have been declared to be used as storage for materials (unspecified / personal artefacts) since 2010. It would be considered that the storage container/s were used by the stated Mr. Geoffery Hill for storage purposes.

Discussion: Storage Containers

The applicant's evidence is set out in the Statutory Declarations considered under DC/23/2057 by Tina Cook and Robert Rickerd, with a new 'supplementary' declaration by Carole Spencer plus an additional declaration by Joe Maloney. The previous statutory declarations of Tina Cook and Robert Rickerd as well as the supplementary declaration by Carole Spencer and an additional statement from Joe Maloney indicate that two containers have been on site since 2010.

(a) Aerial Photography – Google Earth

Google Earth Satellite Imagery is available for the listed dates ordered recent to oldest: May 2024; July 2022; March 2022; June 2021; April 2020; September 2018; June 2013; September 2012; December 2005. No containers are identifiable on the aerial photography from December 2005 until March 2022. March 2022 shows the larger container to the rear of the site visible as there are no tree leaves present obscuring the view. The smaller container closest to the entrance of the site is not visible in this image. The July 2022 image again has a large amount of canopy cover and both containers are again not visible. The latest imagery being May 2024 shows both containers visible on site. The larger container does not appear to have moved in the period of time elapsing from July 2022 and May 2024.

(b) Google Street View Images

Google Street View imagery is available for the following dates ordered recent to oldest: June 2023; June 2019; October 2009; August 2009; December 2008

Reviewing the Google Street View images, the larger container positioned towards the rear of the site is visible in images dated from December 2008, where it can be viewed from both the site entrance and further along the roadside. The smaller container which would be at the site entrance is not visible, however there looks to be a green car positioned there. An image taken in August 2009 does not confirm the presence of either container when seen from the site entrance or along the road. This is due to vegetation which obscures images from the site entrance and images from the side of the road. This is also the case for images dated October 2009 where neither container can be seen from imagery available.

As with DC/23/2057, it can be seen through available Google Street View imagery dated June 2019, that the access to the site was overgrown with vegetation, with the appearance of being unmanaged for a period of time between 2009 and June 2023.

In a Google Street View image taken in June 2019, the site looks completely overgrown, though the smaller container (positioned near the site entrance) looks to be visible; where a corrugated face of a container appears to be observable in the same location as the green car seen in the image dated from December 2008. The larger container cannot be seen from the site entrance nor from views into the site or from the roadside due to the large amount of vegetation.

The Google Street View images for June 2023 show both the small container at the site entrance and the larger container at the rear of the site. The larger container is visible from the site entrance and from the roadside, much like in images for December 2008. Vegetation has been removed from the site and it has been tidied which aids in observing the containers.

It is noted that from the roadside images, the larger container at the rear of the site does not appear to have been moved between the first visible image of the container (December 2008) and the latest imagery (June 2023). In the absence of any evidence to the contrary, and on the basis of this evidence, it is considered on the balance of probability that the larger container appears to have been sited in this location for at least 10 years as the container does not appear to have moved from images dated from 2008 to 2023.

(c) Statutory Declarations

The Statutory Declaration of Ms Cook only confirms that two storage containers were on the site from May 2022 when the site was purchased from Ms Spencer.

The Statutory Declaration of Ms Spencer indicates that two shipping containers were present on the site from 2010 / 2011. The first large container was reportedly placed on the site in 2008 and Google Street View is able to verify this, with the container being visible in images for that date. The Statutory Declarations of Ms Spencer suggest that a second, smaller container was positioned close to the site entrance between 2010 and 2011.

There is ambiguity in the date the containers were placed on the land, both from information received from the applicant and evidence received by the Council. Containers have been used for storage (household effects and personal artefacts) according to received information, though no images or further information has been received to verify this. Photos submitted with the application are not date stamped, and the evidence provided by Ms Spencer in her statutory declarations is inconsistent with some of the photographic evidence.

Further, the Council received a statement signed by Ms Spencer dated 17 May 2024 seeking to amend her statutory declaration dated 16 October 2023. This statement confirms that her statutory declaration dated 15 March 2024 contains several inconsistencies. Ms Spencer confirms that she does not have a copy of her original statutory declaration, nor did she read it before being asked to sign and that she received no legal representation.

In light of this statement, it is considered that Ms Spencer's previous statutory declarations are inaccurate and unsound, and accordingly, little weight can be attached to that evidence.

Mr Rikerd's statutory declaration confirms that he had lived next door to the site since 1987. He confirms that containers have been located on the site since 2010 and used for storage. However, this is inconsistent with the photographic evidence and other information received by the Council. Mr Rikerd's statutory declaration lacks detail. On balance, it is considered that this evidence does not establish on the balance of probabilities that the containers have been on the site for a continuous period of 10 years prior to the date of the application when considered in light of the photographic and other evidence.

The Council received consultation responses from Warnham Parish as well as 4 representations objecting to the application. Reasons included that the site has not been used as a B8 use, the entrance being sited on a dangerous bend and the loss of general amenity due to the works that have occurred at the site. Additionally, representation also pointed out there was inconclusive evidence within the planning statement. The views of third parties on the planning merits of the case or on whether the applicant has any rights to carry out the operation, use or activity in question are irrelevant when determining the application.

The evidence provided by Mr Malone is ambiguous and imprecise. It is not considered that the evidence establishes on the balance of probabilities that the containers have been on the site for a continuous period of 10 years prior to the date of the application. The evidence is also contradicted in various respects by the statement submitted by Ms Spencer.

Discussion: Hardstanding

Much like the containers, the evidence relied upon by the applicant comes in the form of statutory declarations provided under DC/23/2057 by Tina Cook and Robert Rickerd, with a new, 'supplementary' declaration by Carole Spencer plus an additional declaration by Joe Maloney. A planning statement has also been submitted with evidence for the hardstanding.

Reviewing aerial photography from Google Earth between 2005 and 2024, the area only appears to be hardstanding from satellite images from May 2024. Aerial photography before this date is either obscured by the large tree canopy or appears to be grassland.

Reviewing the Google Street View images, both images for December 2008 and August 2009 appear to show the ground area as grass for the site. Images from June 2019 are heavily obscured by large amounts of vegetation. June 2023 images appear to show some hardstanding at the site entrance and within the site itself. It is not possible to see up close the base layer of the floor in the site, however the base of the floor in images for 2008 and 2009 look to be short, cut grass. This would give weight to the idea that the area was grassland as it appears to be neatly cut. It is not possible to tell the state of the base of the floor for images in 2019. For 2023 images, it appears that the site does have some sort of hardstanding as there is a lack of grass covering the site near the small container.

The evidence for the hardstanding is considered to be imprecise and has not been corroborated by questionnaire responses and correspondences received. Only one statutory declaration (along with the planning statement that also uses this) makes reference to the hardstanding being in place for over 20 years, with other statutory declarations and further received correspondences either not mentioning this or refuting this claim.

Further, the statement of Ms Spencer dated 17 May 2024 refutes the evidence provided in her earlier statutory declarations regarding the hardstanding. For the reasons set out above, the Ms Spencer's evidence is considered unsound.

Conclusion

As previously stated, the aerial photographs are inconclusive in terms of establishing the period of time in which both containers have been sited on the land. As for Google Street View imagery, a large container appears to have been on the site since 2008, with the smaller container only partially visible

since June 2019. It is believed the larger container positioned to the rear of the site has been sited since 2008, where the Google Street View evidence indicates that the container appears to be in the same position in images dated 2008 and 2023. In considering the evidence available, on the balance of probability, it is considered that the larger container has been sited on the land since 2008, for a period in excess of 10 years. However, Google Street View imagery for the smaller container closest to the site entrance, does not confirm that the smaller container for a period in excess of 10 years, with it only appearing visible on Google Street View since June 2019. This Street View image only partially reveals the smaller container being sited in this location with no further evidence provided to demonstrate it has been in this position in excess of this period. The evidence held by the Council, the photographic evidence and the evidence set out in the statutory declarations therefore fails to establish on the balance of probabilities that the smaller container has been in situ for a continuous period of 10 years prior to the date of the application.

In conclusion, though the evidence available does not demonstrate continuous siting of the larger container towards the rear of the site over the relevant period, it is considered that the evidence in totality demonstrates on the balance of probabilities that the container has been positioned in this location in excess of 10 years. This is due to the fact that the container is visible in images from 2008 and 2023 and in the same position on these dates when viewed from the roadside in images from Street View. It is therefore considered that a Certificate of Lawful Development can be issued for this container.

However, the smaller container, located near the site entrance has not been sufficiently demonstrated to be lawful in excess of 10 years, and is not considered to be lawful. The imagery available, the evidence provided by the applicant, and the evidence the Council has reviewed, does not sufficiently paint a cohesive narrative that the smaller container has been in situ for the relevant period; with the evidence ambiguous and imprecise in this regard. This is also the case for the hardstanding, where the evidence does not demonstrate that the building operation was carried out in excess of 4 years from the date of the application.

In conclusion, it is considered that the applicant has failed to establish on the balance of probabilities that smaller shipping container has been located on the site for a continuous period in excess of 10 years from the date of the application due to evidence received and reviewed by the council. In addition, the applicant has not established on the balance of probabilities that the hardstanding was laid in excess of 4 years from the date of the application, and is therefore also not considered to be lawful.

Recommendation: Split Decision

Reason for GRANTING the Certificate:

1. It has been demonstrated on the balance of probability that the larger storage container as shaded in red on the attached plan has been sited on the land for a period in excess of 10 years of the application date.

Reason for NOT GRANTING the Certification:

1. It has not been demonstrated on the balance of probability that the smaller storage container positioned near the entrance of the site has been positioned on site for a period in excess of 10 years from the application date.

2. It has not been demonstrated on the balance of probability that the operation development to lay hardstanding was carried out in excess of 4 years from the application date.

DELEGATED

Case Officer sign/initial Jacques Burrowes Date: 17.09.2024

Authorising Officer sign/initial Tamara Dale Date: 17.09.2024

Plan

