



FAO. Faye Hobbs
Gravesham Borough Council
Civic Centre
Windmill Street
Gravesend
DA12 1AU.

Our ref: JAC/DRB/15986.

11th April 2022.

Dear Sir/Madam,

RE: RE-APPLICATION OF APPLICATION REFERENCE 20211381 FOR A LAWFUL DEVELOPMENT CERTIFICATE FOR B2 USE OF 2NO. 'TIMBER BUILDINGS' HEREIN REFERRED TO AS THE 'SMALL SHED' AND 'LARGE SHED' AT 28 BROOKSIDE ROAD, ISTEAD RISE, GRAVESEND, DA13 9JJ.

I refer to the above and hereby make application for a Certificate of Lawfulness in respect of the use as described above. This comprises;

- Use of 2no. buildings comprising the 'small shed' and 'large shed' as B2 workshops for the manufacture of handcrafted Native American style flutes.

The following documentation supports this application:

Reference	Information Provided
	Reports (DHA Planning)
JAC/DRB/15986	This Covering Letter
	Plans (DHA Urban Design)
15986-H-01 (P4)	Site Location Plan
15986-H-02 (P4)	Proposed Site Plan
15986-H-03 (P2)	B2 Use Workshop (Shed) Elevations
15986-H-05 (P3)	Proposed Floor Plan
	Other (Gravesham BC)
20211381	Delegated Report
20211381	Decision

planning transport design environment infrastructure

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I note that there is no Enforcement Notice in place for the site at present. I also note that my client has historically and to date been very open about the use of the workshops for the manufacture of flutes.

In this respect, we can confirm that from our clients' own record (images cited below with modified dates) and Google Earth imagery that it is the case that the buildings in question have been sited for over 10 years, with the business actively operating at the site as a bona fide business since at least 2009.

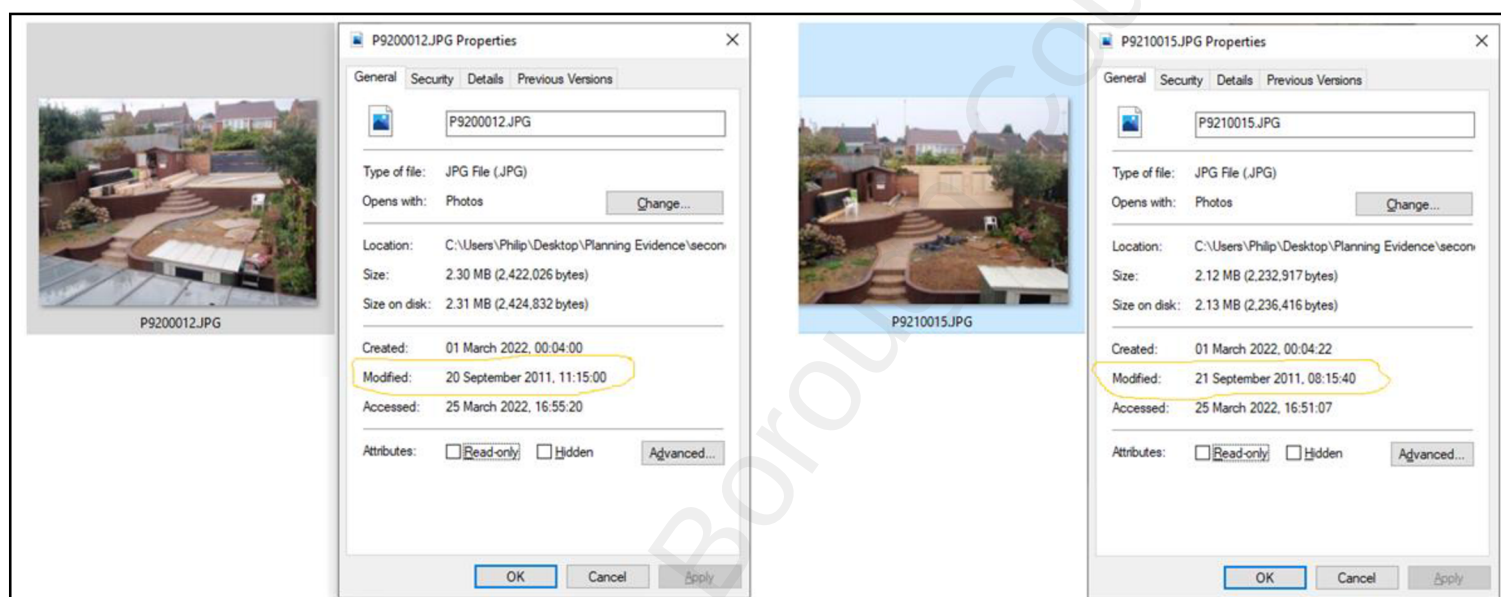


Figure 1: Images depicting 'small shed' and 'large shed' (Courtesy of the Applicants).

We acknowledge that the roof that covers the buildings was installed less than 10 years ago, but that does not alter the fact that both of the operational buildings were being used for B2 workshop purposes together since August 2011 at the latest. Indeed, the smaller shed had been in use for a significant period before this date.

For clarity, the 'small shed', as identified below within the Proposed Floor Plan, was erected around November 2008 (moved to its current position in August 2011) and was used for flute making up until the 'large shed' was erected in August 2011. At which point, the 'small shed' and 'large shed' have both been used for making flutes. As such, the use of **both** buildings has been continuous since August 2011. It should be noted that no additional buildings were constructed in 2013 or 2015 as per the Delegated Report, just amendments to the existing structures to provide a roof over the 'gap' and over the 'small shed', as well as the placement of a 2m high close board fence to the rear of the gap and vacuum and wooded wall with door to the front of the gap and vacuum. The fence and wall were erected to enclose the gap and vacuum and to prevent noise pollution. The use however continued on the same basis and has clearly been uninterrupted.

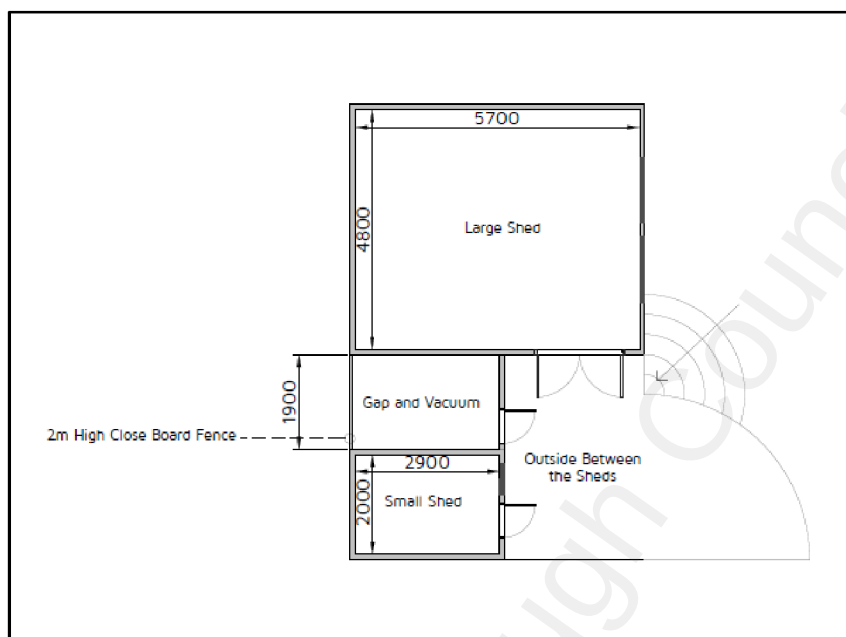


Figure 2: Proposed Floor Plan (Courtesy of DHA Urban Design).

The roof was placed over the 2no. buildings in July 2017. At the same time, the applicant erected the 2m high close board fence and wooded wall with door to enclose the gap and vacuum. It is important to note that these works did not materially change the B2 use, nor has it disrupted the continuous use of the 2no. buildings under the roof as workshops.

To evidence the above, we attach Google Earth imagery as **Appendix 1** which demonstrates that the 'large shed' was erected in August 2011 and the 'small shed' was moved to its current position in August 2011. It should once again be noted that the roof consolidated the 2no. structures in July 2017 but did not materially change the B2 use of the 'small shed' or 'large shed' as workshops. The same applies for the 2m high close board fence and wooded wall with door.

On this matter, the Officers Delegated Report appears to assert that the addition of the roof over the 'small shed' and 'gap' somehow constituted a material change of use. We strongly disagree with this assertion and submit that the use of the 'small shed' and 'large shed' as B2 workshops continued unaltered. The amount of production has remained consistent over the entire period but in any event, as the use falls within the B2 class and as the use has been uninterrupted, there cannot have been a material change of use. That would perhaps not be the case if the use was 'sui-generis' but that is not the case as it is clear that the primary use and indeed the sole use of the buildings is for flute making.

Furthermore, as the roof covering is clearly over an area immediately between the two 'workshops', such that it was clearly part of the working area of the B2 use, there has been no material change of use of the area where the vacuum system is now installed. As a consequence, only a 4 year rule would apply to the roof covering as well as the works completed to enclose the gap and vacuum.

In line with the Delegated Report of application reference 20211381, it is agreed that the material previously provided and attached to this application as **Appendix 2** (2010 Invoice, 2011 Invoice, 2012 Invoice, 2013 Invoice, 2015 Detailed Invoice/ Invoice, Sales, Main Flute Ledger and Customer List) confirms that:

'all services would be accommodated by the B2 workshop use.'

To further demonstrate the continuous B2 use in line with the Council's request, the following information has been attached as **Appendix 3**:

- Accounts (incl. 03rd February 2017, 05th April 2017, 2018, 2019 and 31st March 2020, 31st March 2021); and
- Bank statement that demonstrates incoming and outgoing payments for the business between May 2017 and February 2022.

It is important to note that due to the scale of Red Kite Flutes Ltd, the business is not required to pay business rates.

In addition, we attach the following affidavits as **Appendix 4**:

- Sworn Declaration of [REDACTED] who has known the site and the history of occupancy for a period of in excess of 10 years.
- Sworn Declaration of [REDACTED] who has known the site and the history of occupancy for a period of in excess of 10 years.
- Sworn Declaration of Louise Hutton who has known the site and the history of occupancy for a period of in excess of 10 years.
- Sworn Declaration of [REDACTED] who has known the site and the history of occupancy for a period of in excess of 10 years.
- Sworn Declaration of [REDACTED] who has known the site and the history of occupancy for a period of in excess of 10 years.

I note that under the Planning and Compensation Act 1991, the Government introduced rolling time limits within which local planning authorities can take planning enforcement action against breaches of planning control.

As the Council are aware, for uses to become lawful, the time limits are:

- four years for building, engineering, mining or other operations in, on, or over or under land, without planning permission. This development becomes immune from enforcement action four years after operations are substantially completed;
- four years for the change of use of a building, or part of a building, to use as a single dwelling house. Enforcement action can no longer be taken once the unauthorised use has continued for four years without any enforcement action being taken; and



- ten years for all other development. The ten year period runs from the date of the breach of planning control was committed.

Once these time limits have passed, the development becomes lawful, in terms of planning.

Conclusion

In the above circumstances and in view of the evidence presented, we conclude that the development as described above is now Lawful such that it has become immune from enforcement action.

We trust this information is sufficient but should the Council require additional information, this can be provided on request. Notably, the Applicants have provided us with a bag full of paper invoices for the period between 2010-2016 and the Applicant's also have over 100no. photographs (incl. modified dates) illustrating the site before ground works on 04th February 2011 to completion in September 2011, should further evidence be required.

If you have any queries on the above matters, we ask that you make contact asap.

Yours Sincerely,

A handwritten signature in black ink, which appears to read 'John Collins', is positioned below the 'Yours Sincerely,' text.

John Collins -
Planning Director

john.collins@dhaplanning.co.uk

Encl.