

Delegated Report

LDC (Existing) Application

Application No:	20220410
Location:	28 Brookside Road, Istead Rise, Gravesend, Kent, DA13 9JJ
Description:	Application for a Lawful Development Certificate in respect of the use of 2no. buildings comprising the 'small shed' and 'large shed' as B2 workshops for the manufacture of handcrafted Native American style flutes.
Applicant:	Louise Hutton
Site Visit Date:	Desktop assessment

Submitted Documents/Plans

The applicant has submitted the following in support of the application:

Cover letter dated 11 April 2022
Application form
Drawing no. 15986-H-01 (P4) (Site Location Plan)
Drawing no. 15986-H-02 (P4) (Proposed Site Plan)
Drawing no. 15986-H-03 (P2) (B2 Use Workshop (Shed) Elevations)
Drawing no. 15986-H-05 (P3) (Proposed Floor Plan)
Google Earth Images 2012-Present
Appendix 2 – Customer List and 2011 Invoices
Appendix 3 – Red Kite Flutes Accounts 2017-2021
Appendix 4 – Signed Affidavit

Relevant Planning History

<u>Application No.</u>	<u>Description</u>	<u>Status</u>	<u>Decision</u>
20211381	Application for a Lawful Development Certificate in respect of the continued use of the outbuilding in the rear garden for (B2) use workshop for handcrafted Native American style flutes.	Refused	14.02.2022
19790866	Retention of use of part of existing garage as an office	Refused	15.11.1979

Development Plan

As this is an application for a Lawful Development Certificate the matter is dealt with on the basis of an assessment of the available evidence; the issue of whether the use complies or not with the Development Plan does not apply in such circumstances.

Consultations, Publicity and Representations

There is no statutory requirement to consult third parties. However, the application has been advertised by individual neighbour letters to 4 properties. The consultation period expired on 4 May 2022.

Ten letters of representation have been received with the following comments:

- Noise from the use of the shed including the equipment and machinery is intrusive and disturbing in a residential area.
- No consideration of neighbours' amenities and use of gardens.
- Unpleasant smells from the use.
- Adversely affecting neighbours' quality of life.
- Businesses that generate this level of disturbance should be on an industrial estate, and not in a residential area.
- If this business is so successful that expansion is required, it would be sensible to relocate it.
- The use has no consideration of business hours, sometimes starting at 7.30am and over weekends and holidays.
- There are people that work there that do not live in the property.
- A commercial waste collection bin is located at the address that requires regular roadside collection by a large waste collection vehicle, which is not commensurate with the narrow residential road.
- The property has vans coming and going, creating hazards for pedestrians, children and cyclists.
- The granting of a certificate would set a precedent for further commercial manufacturing and other noise polluting businesses in a residential area.
- Affect on property values.

However, as this is a lawful development certificate application, any views expressed by third parties are irrelevant in the determination of the application.

Analysis

The application seeks to determine that the existing B2 (general industrial) workshop use of two buildings (comprising the 'small' and 'large' sheds) in the rear garden of No. 28 Brookside Road for handcrafting Native American style flutes is lawful for planning purposes under Section 191 of the Town and Country Planning Act 1990 by virtue of the passage of time. In relation to time limits, Section 171B of the Town and Country Planning Act 1990 prescribes:

- (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

In order to determine this application for a Lawful Development Certificate and in accordance with S171B of the Town and Country Planning Act 1990 (as amended), it must be established whether or not the buildings have been in B2 use for more than 10 consecutive years, i.e. prior to April 2012.

Para. 6 of the Government Guidance on Lawful Development Certificates states that:

‘In the case of applications for existing use, if a local planning authority has no evidence itself, nor any 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.’

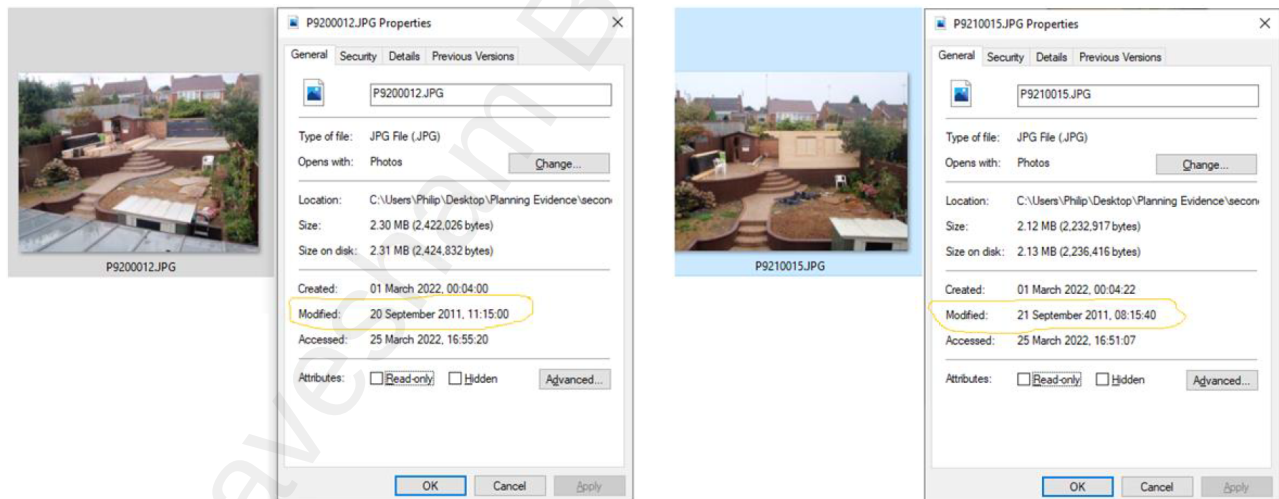
Background

The previous Lawful Development Certificate application 20211381 was refused on the basis that the submitted evidence did not adequately demonstrate that the outbuilding had been in continuous use for 10 years. In particular, this centred around the fact that the size of the outbuilding had changed during the 10 year period and there was not sufficient evidence beyond reasonable doubt that the whole building had been used for B2 use during this time.

The current application seeks to further clarify the use of the outbuilding over time by breaking down the use of the buildings.

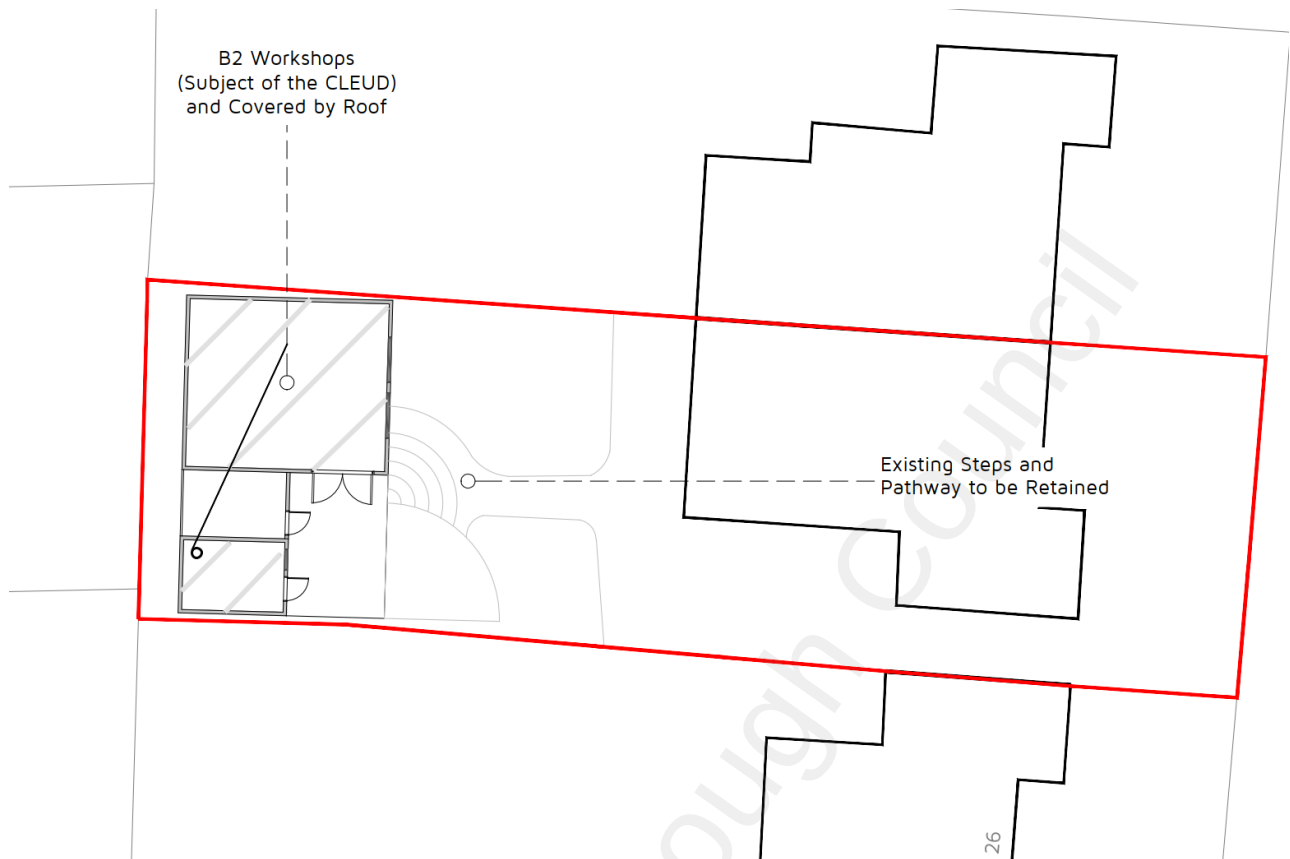
Review of Submitted Evidence

The submitted covering letter includes photographs taken in 2011 that show the position of the two original buildings:

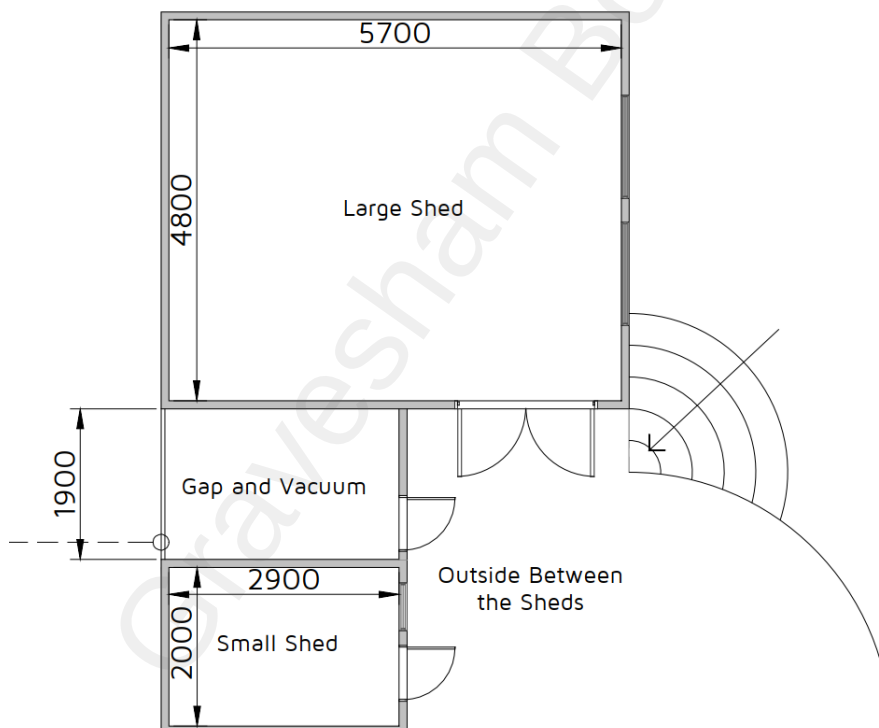


The submitted plans clarify the layout of the outbuildings:

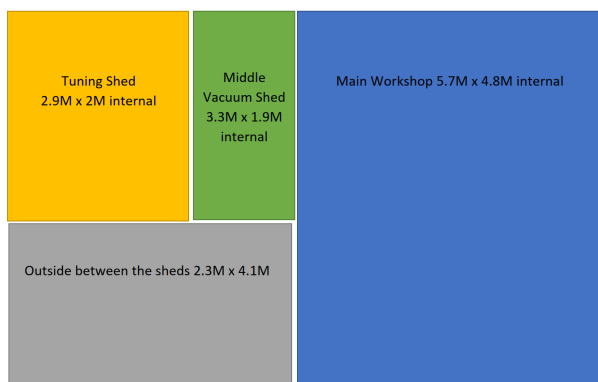
Site Plan:



Floor Plan:



Submitted Layout Plan from 20211381:



The submitted covering letter sets out that the small shed was erected around November 2008 and moved to its current location in August 2011. This was used for flute making until the large shed was erected in August 2011, from when both sheds have been in continuous B2 use for flute making. Google Earth imagery also clearly proves the presence of the buildings from at least July 2012.

A roof was extended over the two buildings in July 2017, and at the same time a 2m high rear fence and wooden wall with a door to enclose the gap between the two buildings were erected. It is submitted that these works did not materially change the existing B2 flute making use or disrupt the continuous use of the buildings under the extended roof as workshops.

Photographs from the previous application 20211381 also show how the extended roof and gap enclosure have been constructed around the existing small and large sheds:

Front elevation of whole building:



Covered area to front of small shed:



Interior of small shed to rear showing original roof pitch:



The previous application considered that the changes to the building overall constituted a material change in the nature of its use; however, the current submissions dispute this and clarify that the B2 use of the two original sheds continued uninterrupted throughout the works. These photographs help demonstrate how this would have been achieved, as the small and large sheds were not altered underneath the extended roof.

With regards to the area between the two sheds for the vacuum system, this constitutes a minor additional working area in relation to the overall size and use of the existing buildings and would not be considered to cause a material change in the use of the existing buildings.

It was recognised under the previous application that the works to the roof would have fallen under the 4 year rule as set out in Section 171B of the Town and Country Planning Act 1990 (as amended) and the time limit for taking enforcement action on this operational development without the benefit of planning permission has now passed.

In terms of the use of the small and large sheds for flute making, the submitted customer lists, invoices, accounts and signed affidavits, together with photographic and aerial images from both the current and previous applications would all appear to demonstrate that the use of the two buildings comprising the 'small shed' and 'large shed' as B2 workshops for the manufacture of handcrafted Native American style flutes have been used as such in excess of 10 years.

Conclusion

By examining all the evidence submitted as part of this application, it is considered that when considered as a whole and on the balance of probability, there is sufficient evidence that the small and large sheds have been in continuous Class B2 general industrial use for handcrafting Native American flutes since April 2012, and as such in excess of 10 years ago, and the proposal is therefore lawful.

Recommendation:

Grant Certificate.

See draft Decision.

Case Officer: Katherine Parkin	Team Leader: Richard Hart
Signed: <i>K. Parkin</i>	Signed: <i>R Hart</i>
Dated: 07/06/2022	Dated: 8 th June 2022