

Delegated Report

Lawful Development Certificate (Existing)

Application no:	20230681
Location	Land West Of Oakleigh Farm, Buckland Road, Higham, Kent
Proposal:	Application for a Lawful Development Certificate in respect of the existing area A & B as outlined on the submitted site location plan have been used as a B8 Storage and Distribution Areas.
Applicant:	Oakleigh Farms Ltd
Site Visit	N/A Desktop Assessment

Plans & Documents

Application form
Supporting Planning Statement
Drawing no. 010 rev A (site location plan)
Drawing no 020 rev A (existing block plan)

Property Type

The property comprises a yard area within a complex of buildings known as 'Oakleigh Farm'. The site plan is shown below:



Material Consideration

Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Relevant Planning History

No relevant planning his

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.

The Law

The law relating to Lawful Development Certificates can be found in Sections 191 to 193 of the Town and Country Planning Act 1990 (as amended). For the purposes of this application the relevant section is 191, being a certificate sought for an existing use.

Consultations, Publicity and Representations

There is no statutory requirement to consult third parties. However, as this is an application for an existing use, the application has been advertised by letter to two neighbouring properties. Multiple letters and emails have been received from one objector of which the main concerns are listed below:

- The evidence within the application is insufficient to demonstrate that '*on the balance of probability*' the application has only been used as B8 storage. Area A is repeatedly referred to as a builder's yard and these are considered to be a *Sui generis* use. There are other uses aside from storage ongoing at the site, further demonstrating that the use is actually a *Sui Generis* use.
- The use has intensified to a material extent during the last 10 years. Structures have been positioned at the site in the last 10 years without the benefit of planning permission which implies the nature of the use of the site has changed.
- A request has been received for a redacted copy of all submitted evidence to be provided on a confidential basis. *This has not been provided as it a description of the evidence has been provided and the only other information on the invoices are names, addresses, amounts and bank details which are confidential.*
- Activities that have been witnessed include moving and using plant equipment, repairs and maintenance works and hammering and drilling which all go beyond the remit of the B8 use class.
- Photos of excavator machines in Area A have been submitted together with another photos showing a gas canister and a full skip which 'could' facilitate building operations at the site resulting in noise and disturbance.
- There was an intensification of the site (area A) in 2018 and then again in 2020 which can be seen on aerial photos.
- It would appear the extent of the site is larger than the area identified on the submitted plans.
- There is no mention of the buildings in the application. The use is commercial, not agricultural, and therefore these would have needed planning permission.
- The intensification of the site which has occurred in the last 10 years is a material consideration which changes the character of the site (case law is referred to and supported by annex 8 of circular 10/97).
- The LDC must therefore fail because the applicant has not evidenced that the site has been used consistently in the same manner for at least 10 years.
- Paragraph '010 Reference ID: 17c-010-20140306' from the National Planning Practice Guidance also states that "where a certificate is granted for one use on a "planning unit" which is in mixed or composite use, that situation may need to be carefully reflected in the certificate. Failure to do so may result in a loss of control over any subsequent intensification of the certified use.". A certificate therefore must describe the use accurately.

- Area B is being used for more than just storage of scaffolding. Vehicles are also being stored. Photos of scaffolding lorries are provided.
- It is stated that the supporting evidence says the site is used by both SEAS Scaffolding and Cave Scaffolding and therefore the information is not reliable. *The applicant has stated there were two scaffolding companies using the site at one time. The application relates to the use of the site for scaffolding and therefore is not limited to one company.*
- Photos showing 'Cave Scaffolding' and 'Owen Scaffolding' entering the site have been provided as well as the mention of 'Fleet Scaffolding' using the site. *Whilst they may or may not be listed as renting the yard, they are still both scaffolding companies.*
- The level of intensity should therefore be scrutinised.
- Buildings erected on Area B together with cars that do not carry scaffolding appear to show that a business is operating from the land and the use is not just purely storage and distribution.
- A storage container could be being used as an office.
- Area B has been expanded and intensified since 2012.
- A further email has been received appearing to show the inside of a storage container with fridges and other welfare facilities inside and therefore evidence that the existing uses go beyond a storage use.
- More evidence has been submitted on 29 August 2023 relating to the use, intensity of the use and using land outside of the red line boundary.
- Further emails sent on 30 August 2023, 1 and 4 September 2023 with photos showing loading/unloading outside of the red line. *This is a separate issue which may or may not be enforceable as it related to loading and unloading rather than the use of storing scaffolding.*
- The application form is incorrect because it says the site cannot be seen from a public footpath and it can.
- A further email sent on 9 September 2023 stating there is a 24/7 utilities company operating from Area A who have confirmed the site is used for more than just storage but to also service machinery.
- The above means that the supporting statement is incorrect and that Area A has not been used by a single tenant.
- A further email sent 11 September 2023 points out that the supporting statement states SEAS Scaffolding became a tenant in 2012 but the final sentence says they continued as a tenant since March 2011. Both statements cannot be true. Also Area A was used as agricultural land before 2018. This raises questions regarding the validity of the information being provided under the statutory declaration and other supporting evidence.
- Further emails have been received on an almost daily basis relating to unloading and loading outside of the red line boundary and further intensification of the site.

In addition to the above the following has been received from a separate neighbour objecting on the grounds of heavy goods vehicles using the farm road as it is un-made and in a poor state of repair. They also object on the grounds that the traffic passes along the access road often travelling at relative high speed creating a hazard. The location of the sites is remote from the main road but close to neighbouring property causing concern in relation to crime due to a lack of security.

Dickens Country Protection Society

The Society would wish to object to this application on the grounds that the site is in an area within which Green Belt Policies apply. The use is in breach of Green Belt Policy. The Society notes, it appears that the activity has been taking place unlawfully for sufficient time to make it immune from enforcement action. The Society would question, 'how can this make it lawful'.

The proposed use is likely to impact on the openness of the Green Belt.

The roads in the area are unsuitable for carrying any significant increase in traffic (single track in places).

Officer Assessment

The application seeks to determine that the areas marked A and B on the plans have been used as B8 (Storage and Distribution) and this use is lawful for planning purposes under Section 191 of the Town and Country Planning Act 1990 by virtue of the passage of time. Section 171B (3) 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 application site has been in B8 use for more than 10 consecutive years, i.e. prior to 2013.

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.'

Evidence

Area A

Mr Worley's Statutory Declaration also states that Area A as shown on the plans has been used as a builder's storage and distribution yard for a period in excess of the previous ten years. In April 2011 Mr Worley began renting out Area A to Plan and Build UK (formerly known as SEL building) for the purposes of storing and distributing building materials, equipment and machinery associated with their business which installs and repairs large scale heating systems. In addition to this is a bank statement showing an amount paid to Mr Worley on 14 May 2012 by SEL Building Services.

In addition to this are a package of invoices/receipts for each June in 2013 up until 2023. The company name changes from SEL Building Services to Plant Build UK.

Area B

The evidence that has been submitted in support of this lawful development certificate are invoices/receipts from Oakleigh Farms Ltd to three different scaffolding companies for 'yard rent' in respect of Area B; a statutory declaration from Mr Robert Worley stating that Area B was rented to Tenlar Scaffolding, then in March 2013 it was rented to SEAS Scaffolding alongside Tenlar and they remain to this day. In July 2015 Tenlar Scaffolding ceased as a tenant and were replaced by Cameo Properties who used the site as a storage yard for scaffolding materials until February 2018. SEAS Scaffolding remain as a tenant of Area B.

The invoices/receipts show Tenlar to be paying rent for a yard at Oakleigh Farm from March 2013-July 2015. They show Cameo paying rent for a yard from September 2016 to October 2017. They show SEAS Scaffolding paying rent for a yard from March 2013 until April 2023 (present day) although the name of the company changed from Paul Scaffolding to SEAS Scaffolding from 2014 but the name of the person on the invoice remained the same.

There have therefore been two scaffolding companies on the site from March 2013 until October 2017.

Some of the invoices have been provided twice (Tenlar March 2013, March, 2014, March 2015, Cameo October 2016, October 2017, October 2015, SEAS/Paul Scaffolding March 2013, every January from 2014 until January 2023) but as these are duplicates they have no bearing on the analysis of the application. The invoices for SEAS from October 2020 until April 2023 (present day) have two amounts for yard rent on them.

It is acknowledged that there are no tenancy agreements between the companies and Oakleigh Farms Ltd that have been submitted. The only evidence that the invoices/receipts relate to the land outlined in red is the statutory declaration from the applicant. However, the Council have no evidence that the invoices do not relate to the land shown. In fact a site visit in September 2023 clearly showed the two pieces of land in question to be in the use that is applied for. Aside from a lawful scaffolding company to the east of the site, there were no other scaffolding or building yards being used how these are described in the application.

Timeline

Evidence is required to show that the uses stated have been in these uses for 10 years or more and therefore since September 2013:

Site	July 2013	April 2015	May 2018
			
	April 2020	August 2022	



Area B

It is clear from the photos above that there has been some kind of commercial activity on both sites since at least 2013. The photos appear to show a greater amount of paraphernalia on Area B in 2015 than 2013 however this reduces slightly in 2018 and then stays roughly the same until 2022. This does not necessarily tie into the same dates as two companies using the site.

Area A

Area A also appears to contain more buildings in 2018 but less paraphernalia. One building is then lost in 2022.

Accuracy

The red line plan incorporates all the buildings visible in the 2022 satellite image and therefore states that this entire space has been used for more than 10 years. However, it is clear from the above image that the entire red line site has not been used for 10 years or more. It would appear that the red line has been drawn to conveniently include a building that was not in existence prior to 2020 as can be seen from the overlay below:



On this basis a lawful development certificate cannot be issued for the whole site.

B8 Use

The application refers to the site as a builder's yard but also refers to the use as B8 (Storage and distribution). There is a fine line between the two however this arose in Tewkesbury (APP/G1630/X/12/2182078 – appendix 1). The countryside site in this case was owned by a quarry company and subject of a lawful development certificate issued in 2004 which identified the use of the land and buildings on it as a storage use and not as a "builders yard". The certificate identified the use of the land was for the storage of building materials, timber, builder's plant and equipment and scaffolding in connection with a business of a general builder. There were no office or workshop premises on the site to form a base for a business in the way which would normally be associated with use as a "builders yard". This is quite similar to the case here. Upon visiting the site there was no office or workshop and no address point. There were no personnel on site, just materials and equipment that appeared to be stored. On this basis, the current use of the land would appear to be B8 (Storage and Distribution).

It is acknowledged that the letter of objection received refers to APP/L2630/X/16/3155461 which states a builder's yard is a sui generis use and in that case, where there was a builders yard with a workshop element also on site, it was deemed sui generis. As found above in the Tewkesbury case builders yards can also be deemed B8. In the case of this lawful development application there was no evidence on site that any building work or a workshop was being used and it appeared the site was just for storing materials and equipment which would fall within the B8 use. The aerial photos do not indicate that the use has changed over the previous 10 years and therefore it would appear lawful.

Intensification

An assertion that a material change of use occurs when a builders' or contractors' yard intensifies may also be made, although such an allegation is difficult to sustain. In Braintree an inspector felt that although an established builders yard had been using improved handling techniques, including a fork lift truck, the use still

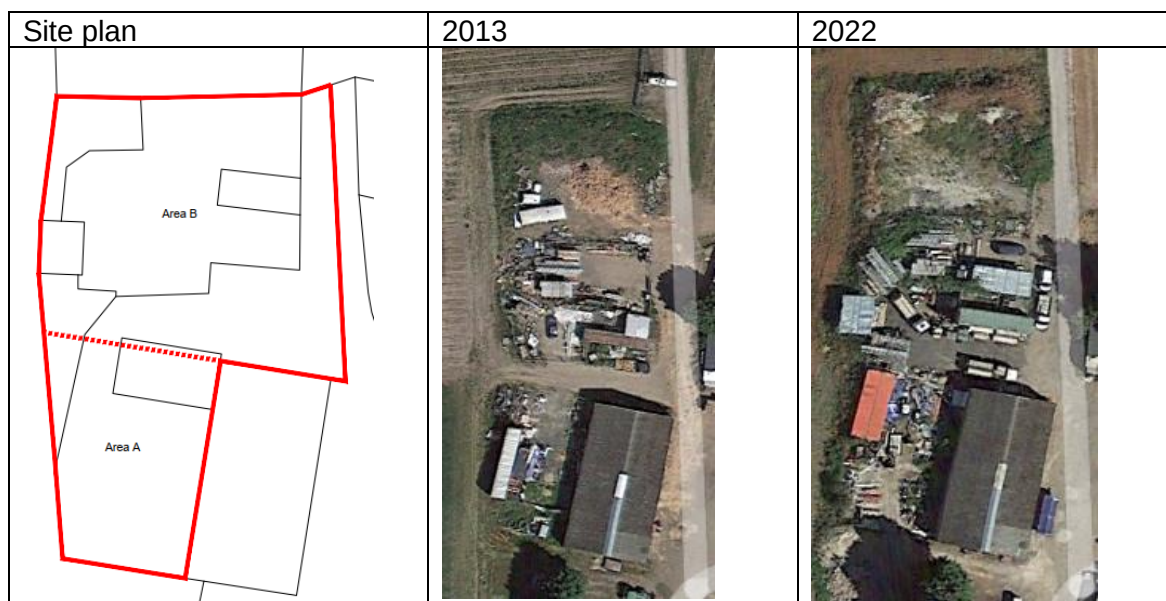
had the character of a small builders' yard (T/APP/C/89/Z1510/000016-17/P6 appendix 3). He used the *Mia Carla* court case to reiterate that an intensification must be a change to something different, not merely a denser composition of the same thing. In other cases an assessment has been made that an agricultural contractors' use would have the same impact in planning terms whether the equipment was used for agricultural contracting or for civil engineering contracting work. In the case of this application the aerial photos above do show a gradual increase in activity on the sites but the nature of the equipment and materials stored remains the same. Therefore any intensification, which in this case is not significant, has not changed the use of the land.

Council's Evidence

There is no evidence on Companies House website that registers any of the companies mentioned in the supporting statement or by neighbour objections to either Area A or Area B. There are also no address points for those two areas on the Post Office website. The Council has no evidence to contradict the information and statements provided by the applicant.

Summary

In conclusion, the Council has no evidence to dispute that there are two areas at Oakleigh Farm which are used as a builders yard (B8) and scaffolders yard (B8) however, the red line has been drawn around a larger area than has been used for 10 years and therefore a certificate cannot be issued for the site as shown.



Recommendation: Refuse Lawful Development Certificate

Case Officer:	Mrs Alison Webster	Team Leader:	Richard Hart
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Signed:		Signed:	<i>R Hart</i>
Dated:	10th October 2023	Dated:	10th September 2023