



IN ASSOCIATION WITH



SUPPORTING PLANNING STATEMENT

Oakleigh Farm, Buckland Road, Highham, Kent, ME3 7HY

June 2023

SUPPORTING PLANNING STATEMENT

In support of an application for a Certificate of Lawfulness of Existing Use or Development (CLEUD) under the provisions of Section 191 of the Town and Country Planning Act (1990) (as amended)

for the use of land labelled Area A & B as a Storage and Distribution Yard (within Use Class B8 of The Town and Country Planning (Use Classes) Order 1987 (as amended))

at

Oakleigh Farm, Buckland Road, Higham, Kent, ME3 7HY

On behalf of

Oakleigh Farms Ltd

ISSUE DATE / REVISION	COPY REVIEWED BY	DATE COPY HAS BEEN REVIEWED
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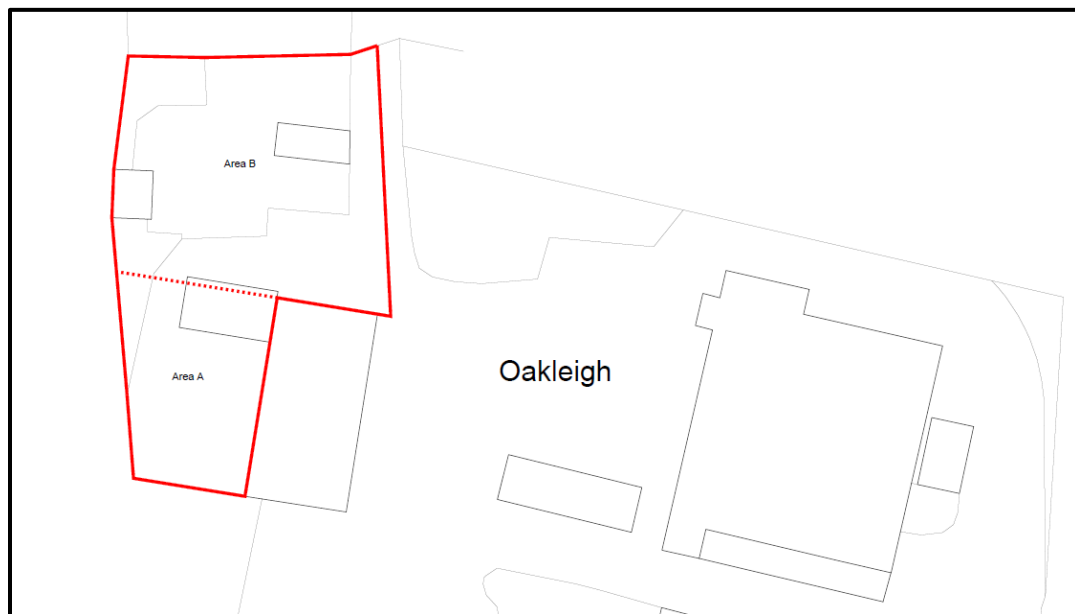
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1. Introduction

- 1.1. This statement has been prepared on behalf of Oakleigh Farms Ltd in support of a Certificate of Lawfulness of Existing Use or Development application for the use of land labelled as 'Area A' and 'Area B' as storage and distribution yards at Oakleigh Farm, Buckland Road, Higham, Kent, ME3 7HY.
- 1.2. This application is being submitted to provide the applicant with security that the use of the areas A & B as storage and distribution yards is now lawful. Area A relates to a builder's storage site and Area B used as a scaffolding yard. Both areas have been in use for over ten years and fall and are considered to fall within use class B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended). The land labelled as 'Area A' & 'Area B' is shown on the accompanying site location plan, drawing number 3035-020.A an extract of which is shown below.



Extract of Site Location Plan, showing storage & distribution areas

- 1.3. This application seeks to confirm that the continued use of the land identified as Areas A & B are now lawful due to the passage of time, as per Section 171B (3) of the Town and Country Planning Act 1990 (as amended).

Supporting documents

- P.3035.010.A Site Location Plan
- P.3035.020.A Existing Block Plan
- James Worley Statutory Declaration

2. Site Context

- 2.1. As defined on the Gravesham Borough Council Local Plan Policy Map this site is within the open countryside and outside any defined settlement boundaries. The application site is within the Green Belt and located approximately 0.5 miles to the east of Higham Church Street and 0.6 miles to north west of Cliffe Woods.
- 2.2. The application site is situated within the wider Oakleigh Farm holding. The wider holding is largely agricultural in nature with the farm primarily associated with the production of a variety of vegetables, hay and the growing of trees for timber products. The holding also includes a mix of other uses, including a stable building and an existing scaffolders yard to the east which was granted a Certificate of Lawfulness under reference 20080983.
- 2.3. The areas subject to this application are identified as Areas A & B as shown on the accompanying site location plan.

Area A

Area A as shown outlined in red on the Site Location Plan has been used by a single tenant known as Plant & Build (formerly known as SEL Building) as a storage and distribution yard for building materials, equipment and machinery associated with their business which installs and repairs large scale heating systems since May 2012.

Area B

- 2.4. Area B as outlined in red on the Site Location Plan has been used as a scaffolders yard since March 2011. Since this time the site has been occupied by three separate tenants including Cameo Properties, Tenlar Scaffolding and SEAS Scaffolding. who is the current tenant on the site.

- 2.5. The site was first occupied in March 2011 by Tenlar Scaffolding. Seas Scaffolding also became a tenant of Area B shortly thereafter in 2012. Tenlar Scaffolding ceased as a tenant in July 2015 and were replaced by Cameo the same month who were tenants up until October 2017. Seas Scaffolding has continued as a tenant since March 2011 up until the present day.
- 2.6. Each tenant utilised the site for the storage and distribution of scaffolding materials. The yard includes various scaffolding materials, a storage container and an area of hardstanding used by vehicles which transport scaffolding materials to and from building sites.

3. Relevant Planning History

Following a review of the planning history of the site, it is noted that there have been various planning applications within the land subject to this application; the most relevant of which are detailed below.

Lawful Development Certificate application reference 20080983

- 3.1. A Lawful Development Certificate (LDC) application was granted in December 2009 under reference 20080983 for an existing fenced storage compound with secure bins for the storage of construction equipment. This demonstrated that the use of the land under a Storage and Distribution use was lawful. The approved site's location in proximity to the current application areas is shown below.



Extract from Google Earth showing approved site in relation to application site.

- 3.2. The application included letters from Oakleigh Farms Ltd confirming the occupation of the areas by the tenant along with farm accounts ledgers showing rental income from 1996, 12 years prior to the submission of the application. Aerial photography of the site was also provided.

- 3.3. This application is considered relevant to the current proposal and helps to establish the ongoing presence of commercial operations within the holding. The evidence used to demonstrate the lawfulness of the storage compound is also considered relevant and was considered sufficient to approve the LDC application by Gravesham Borough Council.

Other applications on the site

Planning Applications (14)

- Demolition of existing extensions on the east elevation and erection of two storey replacement extensions to form playroom and dining room at ground floor level with bedroom, dressing room, two ensuite bathroom/wc's, shower room/wc and store at first floor level.
Ref. No: 20080354 | Status: Application Refused
- Retention of two buildings each providing 4 stables with five ancillary buildings comprising tackroom, tea room, two haystores and storage building; continued use of building as stables, together with ancillary buildings and continued use of horse exercise area and non-agricultural area as sandschools.
Ref. No: 20080366 | Status: Application Permitted
- Application for Lawful Development Certificate for the existing use of mobile home and lean-to attachment as a permanent residential dwelling.
Ref. No: 20080373 | Status: Certificate Granted
- Continued use of the land for a parking area for a caravan, motor home and horse boxes for a temporary period.
Ref. No: 20080858 | Status: Application Permitted
- Retention of the replacement building providing four stables with ancillary temporary storage and mobile tearoom.
Ref. No: 20080859 | Status: Application Permitted
- Application for Lawful Development Certificate for the existing fenced storage compound with secure storage bins for the storage of construction equipment.
Ref. No: 20080983 | Status: Certificate Granted
- Continued stationing of eight seasonal workers' caravans on a permanent basis.
Ref. No: 20081028 | Status: Application Permitted
- Erection of two stable buildings comprising a total of nine loose boxes.
Ref. No: 20090529 | Status: Application Permitted
- Application for approval of conditions 4 and 5 of planning permission reference number 20090529 relating to the external facing materials and hardstanding and the storage and disposal of stable waste.
Ref. No: 20090865 | Status: Approval of details
- Application for the approval of the siting, design and external appearance of extension on the west elevation of barn 'B'.
Ref. No: 20020533 | Status: Application Permitted
- Erection of an extensions on east and west elevations of barn 'A' to store hay & straw.
Ref. No: 20020532 | Status: Application Permitted
- Application for determination as to whether prior approval is required for the erection of extensions to the east and west elevations of an existing agricultural building in the 'end of the road field' and an extension to the west elevation of barn in the 'stable field' to provide additional storage accommodation for hay.
Ref. No: 20020219 | Status: Agricul - Prior Approval is required
- Outline application for erection of farm manager's dwelling with farm office and detached garage.
Ref. No: 19990847 | Status: Application Refused
- Erection of 4 no. multi span polytunnels.
Ref. No: 19980583 | Status: Application Permitted

Extract of application submitted at Oakleigh Farms

4. Planning Legislation

4.1. Section 171B of The Town and Country Planning Act (as amended) defines the various time limits where breaches of planning control are immune from planning enforcement. In this instance Section 171B (3) is relevant in respect of the change of use of the land and advises that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

4.2. Section 191 (1) of The Town and Country Planning Act (as amended) defines Certificate of lawfulness of existing use or development and the qualifying criteria. Section 191 states:

“If any person wishes to ascertain whether

(a) any existing use of buildings or other land is lawful or

(b) any operations which have been carried out in, on, over or under land are lawful,

(c) 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 make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.”

4.3. Further Section 191 (2) of The Town and Country Planning Act states *“For the purposes of this Act uses and operations are lawful at any time if –*

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).”

4.4. Similarly, it is advised in Section 191 (4) of the Act that if the Local Planning Authority is provided with enough information to satisfy them that of the lawfulness at the time of the application of the use, operation or other matter is lawful, they shall issue a certificate to that effect.

- 4.5. Annex 8 of Circular 10/97 previously provided guidance in relation to the issue of lawfulness and Lawful Development Certificates (LDC). Paragraph 8.15 related to the relevant tests for the submitted evidence. It advised that, whilst the burden of proof is on the applicant, the relevant test is *'the balance of probability'*. As such, a Local Planning Authority should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely 'beyond reasonable doubt'.
- 4.6. Circular 10/97 was superseded by the National Planning Policy Guidance in March 2014. Paragraph 005 of the 'Lawful Development Certificate' section of this new guidance reaffirms that sufficient factual information/evidence for a Local Planning Authority to decide the application should be included.
- 4.7. Government guidance on the issuing of Certificates of Lawfulness is set out in the National Planning Practice Guidance (NPPG).
- 4.8. Paragraph 005 of the 'Lawful Development Certificate' section of National Planning Practice Guidance, reference ID: 17c-005-20140306, affirms that sufficient factual information/evidence should be included within an application for a Lawful Development Certificate application for a Local Planning Authority to decide the application.
- 4.9. Paragraph 006 notes further that

*"The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence. **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**"* Paragraph: 006 Reference ID: 17c-006-20140306.

- 4.10. Within the determination of a Certificate of Lawfulness application, the burden of proof in planning law is *‘on the balance of probabilities’*. This balance only requires *‘a more probable than not’* conclusion, rather than criminal law which requires *‘beyond reasonable doubt’*.
- 4.11. Paragraph 008, reference ID: 17c-008-20140306 refers to consultations on an application for a Lawful Development Certificate and states that:

“There is no statutory requirement to consult third parties including parish councils or neighbours. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application”.

Paragraph 9, Reference ID: 17C-009-20140306 adds further that *“A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.”*

5. Evidence

- 5.1. As previously detailed, whilst the burden of proof in respect of a Certificate of Lawfulness application is on the applicant, the relevant test is '*the balance of probability*'. As such, a Local Planning Authority should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "*beyond reasonable doubt*".
- 5.2. In this case it is considered that the use of Areas A & B is clear as, as set out in the accompanying evidence, detailed below:

Statutory Declaration by Robert Worley

- 5.3. A personal Statutory Declaration with Exhibits has been provided by Robert Worley who is the lessee of Oakleigh Farm. The Statutory Declaration confirms the use of the land within Area A as a builder's yard pre-existing May 2012 and Area B as a scaffolders Yard since March 2011.
- 5.4. This is considered to confirm that Areas A & B shown on the submitted plan have been in use continuously under a B8 storage and distribution yards for a period in excess of the previous ten years.
- 5.5. The Exhibits produced within Robert Worley's Statutory Declaration include the site plan which identifies the extent of the site and various rental incomes document and verify the continuous uninterrupted use of the areas in excess of the previous ten years.

Invoices

- 5.6. Numerous invoices for each tenant within Areas A & B covering a continuous period from 2013 – 2023 confirm the areas have been continuously leased to tenants for a period in excess of the previous ten years. Mr Robert Worley's Statutory Declaration further confirm the invoices relate to the areas identified.
- 5.7. As seen in the accompanying evidence labelled Appendix A, a bank statement shows a payment from SEL building in relation to the use of Area A. Further invoices dating from 2012 up until the present day further evidence the continued occupation of the area by the tenant.

- 5.8. As seen within the accompanying evidence labelled Appendix B, Area B was first occupied in March 2011 by Tenlar Scaffolding with Seas Scaffolding becoming a tenant of Area B shortly thereafter. As seen from the accompanying evidence invoices for the tenants are available from the 1st March 2013. Prior to this date electronic invoices were not issued as confirmed within Robert Worley's Statutory Declaration. Tenlar Scaffolding ceased as a tenant in July 2015 as outlined in the accompanying evidence under Appendix A and were replaced by Cameo who were tenants until October 2017. SEAS Scaffolding has continued on as a tenant for the site up until the present day.
- 5.9. The invoices under Appendix A corroborate this timeline and demonstrate Area B has been used continuously in excess of the previous ten years by the tenants, all of which used the site for the storage and distribution of scaffolding materials.

Aerial Photographs

- 5.10. The Google Earth images outlined below in Figures 1 - 5 demonstrate the areas continual use for a period in excess of the previous ten years.



Figure 1 Aerial image of site dated July 2013, Courtesy of Google Earth



Figure 2 - Aerial image of site dated April 2015, Courtesy of Google Earth



Figure 3 – Aerial image of site in May 2018, Courtesy of Google Earth



Figure 4 - Aerial image of the site in April 2020, Courtesy of Google Earth



Figure 5 - Aerial image of site in August 2022, Courtesy of Google Earth

- 5.11. The Google earth imagery of Areas A & B demonstrates a continuous use from 2013 – 2022 given the visibility of Scaffolding, building materials and containers associated with the uses. While aerial photograph is not available for the current year (2023) the site continues to be in use as confirmed in Mr Worley’s Statutory Declaration. As a result, the evidence substantiates that both Areas A & B have been in use for a period in excess of the previous ten years.

6. Analysis

- 6.1. As previously considered Certificate of Lawfulness for an Existing Use or Development (CLUED) should be granted if the time limits for taking enforcement action have expired (Section 191 of the Town and Country Planning Act (as amended by the Planning and Compensation Act), whilst time limits are set out at Section 171B).
- 6.2. Section 171(B) (3) of the Town and Country Planning Act 1990 (as amended) says where there has been a breach of planning control that is not covered by Section 171(B) (1) and (2), then no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
- 6.3. As laid out within the evidence submitted, Area A has been operated as a builders yard under a B8 Storage and Distribution use for a period in excess of the previous ten years and Area B has been operated as a scaffolders yard under a B8 Storage and Distribution use for a period in excess of the previous ten years.
- 6.4. In this case there is clear evidence of tenants and their use of the land within Areas A & B being present at the site for more than the previous ten years. It is put forward that the evidence provided by the submitted Statutory Declaration, invoices and aerial imagery is clear and precise, and so should be considered sufficient to demonstrate that both areas has been in operation for a continuous and uninterrupted period of time in excess of the previous ten years.
- 6.5. There is not known to be any other material factors which might otherwise have affected the relevant time limits (as laid out at Section 171(B) (3) of the Town and Country Planning Act 1990 (as amended) for the lawfulness of the use of these areas.
- 6.6. Section 191 (2) of the Town and Country Planning Act (1990) (as amended) clarifies that uses and operations are lawful at any time if 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). It is therefore submitted that the existing use of the land within Areas A & B is entirely lawful.

National Planning Guidance

- 6.7. The guidance from Annex 8 Circular 10/97 *“Enforcing Planning Control: Legislative Provisions and Procedural Requirements”* has now been replaced by National Planning Practice Guidance (NPPG), from which the following references are relevant:
- 6.8. Paragraph 005 of the ‘Lawful Development Certificate’ section of this new guidance, with reference ID: 17c-005-20140306 affirms that sufficient factual information/evidence for a Local Planning Authority to decide the application should be included with an application for a Lawful Development Certificate.
- 6.9. Paragraph: 006 Reference ID: 17c-006-20140306 considers ‘Who is responsible for providing sufficient information to support an application?’ and states *“The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence. 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.”*
- 6.10. Within (NPPG) Paragraph: 008 Reference ID: 17c-008-20140306 asks ‘Does a local planning authority need to consult on an application for a lawful development certificate? This states that *“There is no statutory requirement to consult third parties including parish councils or neighbours. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.”*

- 6.11. Paragraph 006 of the Guidance (see above) states that a Certificate should be granted unless contrary evidence makes the applicant's assertions "*less than probable*". This is in line with historic court decisions, as referred to in paragraph 8.15 of the aforementioned circular 10/97.
- 6.12. Moreover, the above accords with the Court's historic view in *F W Gabbittas v SSE* 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 have no evidence of their 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 that the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of the certificate. The burden of proof in planning law is '*on the balance of probabilities*'.
- 6.13. 'On the balance of probabilities' only requires a 'more probable than not' conclusion. The evidence provided only needs to be probable without contradiction as per *Re H (Minors)* [1996] AC 563 at 586: "*The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not*". Consequently, it is considered that the evidence set out before the Local Planning Authority, demonstrates that it is more probable than not that the builders and scaffolders yard has been operating for a continuous and uninterrupted period of time in excess of the previous tenyears.
- 6.14. In light of this, the applicant's evidence is not required to be corroborated by any additional independent evidence and, if the Local Planning Authority has no evidence of its own (or from others) which makes the applicant's evidence less than probable, then it would not be appropriate to refuse to issue the Certification of Lawfulness, provided the applicant's evidence alone is precise and unambiguous.
- 6.15. It is put forward that the evidence provided should be considered sufficient to demonstrate that the use of the land as a scaffolders yard and builders yard is considered to be lawful.
- 6.16. It is therefore considered that the use of the land identified as Areas A & B as a builders yard and scaffolds yard under a storage and distribution yard is immune from any enforcement action and lawful, in accordance with Sections 171 B (3) and 191 (2) of The Town and Country Planning Act 1990.

- 6.17. It is understood that there has not been any attempt to disguise the use of the land or deceive the Local Planning Authority in any way. It is therefore submitted that there has not been any deliberate deception, which might otherwise have prevented immunity from enforcement being claimed (with reference to the decision of the Supreme Court in *Welwyn Hatfield v. SSCLG*).

7. Conclusion

- 7.1. It is concluded that the evidence submitted is sufficiently precise and unambiguous to demonstrate that on the balance of probability the areas identified as Area A and Area B to which this application relates has been used continuously for a period in excess of the previous ten years as storage and distribution yards in association with the ongoing storage and distribution of building and scaffolding materials.
- 7.2. The change of use of the land to B8 storage and distribution use constitutes a material change of use as per Section 55 of the Town and Country Planning Act. The land under Area A been used continuously as a builders yard and Area B as a scaffolders yard, both under a B8 Storage and Distribution use in excess of the previous ten years.
- 7.3. The evidence provided by the applicant is sufficiently precise and unambiguous to establish that the use of the land satisfies the requirement of the test of '*more probable than not*'.
- 7.4. Analysis of case law *F W Gabbitts v SSE and Newham LBC* [1985] JPL 630, which highlights that the applicant's evidence does not need to be corroborated by separate independent evidence in order to be accepted, supports this case.
- 7.5. All of the above factors combined, together with the information provided within the sections above demonstrate the continuous use of the land in excess of 10 years.
- 7.6. It is therefore submitted that the use of the land is entirely lawful and it is respectfully requested that a Certificate should be granted to that effect in accordance with Section 191(4) of The Town and Country Planning Act 1990 (as amended).