

- 1.5 However the horticultural use of the site ceased when Meadow Farm Nursery closed in March 2020 due to lockdown. The young plants ready for sale when lockdown started were sold off via a new online company Meadow Farm Plants Direct but this firm itself only ran for 14 months. The site currently appears vacant and un-used.
- 1.6 The site lies outside of the defined built up area and therefore within the non-urban area of Hayling Island where more restrictive rural policies apply in terms of housing. There are some protected trees on the sites boundaries, and the fields immediately to the east are designated 'secondary support' areas and 'low use' land for the Solent Waders and Brent Goose Strategy.

2 Planning History

02/56431/003 - Outline Application for 3 bedroom agricultural workers dwelling (resubmission)., S106,03/02/2003
02/56431/002 - Outline application for 3 bedroom 'Agricultural' workers dwelling. Refused 9 July 2002., REF,09/07/2002
99/56431/001 - Erection of 1no. Polytunnel, PERM,07/04/2000
95/56431/000 - Erection of 1 polytunnel., PERM,09/08/1995
03/56431/004 - Reserved Matters application for three bedroomed agricultural workers dwelling., PERM,25/09/2003
APP/17/01315 - Application for certificate of lawful existing use relating to use of building as a single dwellinghouse, PERM,05/04/2018
APP/19/00320 - Raise ridge height of roof to incorporate living accommodation at first floor level to include 3No. dormers., PERM,22/05/2019
APP/23/00324 - Prior Approval for Change of use from agricultural building to 1No. dwellinghouse., PAY,20/06/2023

3 Proposal

- 3.1 Certificate of lawfulness/Continuous occupation of dwelling by persons not employed in agriculture.
- 3.2 This application is made under Section 191 (1) (c) of the Town and Country Planning Act 1990 seeking a Certificate of Lawfulness for failure to comply with a condition, and seeks to demonstrate that, on the balance of probabilities, the non-compliance with condition 4 of 02/56431/003 has occurred continuously for 10 years preceding the submission of this application. This application was made on 23 June 2023 and therefore the breach has to have been continuous since 23 June 2013.

4 Policy Considerations

Not relevant to the determination of applications made under Section 191 of the Town and Country Planning Act 1990

Listed Building Grade: Not applicable.
Conservation Area: Not applicable.

5 Legislation

Relevant legislation and guidance:
Town and Country Planning Act 1990
Planning Practice Guidance, Lawful development certificates, 2014

6 **Statutory and Non Statutory Consultations**

None - not relevant to the determination of applications made under Section 191 of the Town and Country Planning Act 1990

7 **Community Involvement**

Neighbour notification was carried out in this case, however, it is noted that this goes beyond the requirements for publicity associated with an application under Section 191:

Number of neighbour notification letters sent: 0

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 1

Comment	Officer Comment
There is a permissive riding track, omitted in all planning applications submitted to date, that runs right along the boundary between Saltings Cottage and the fields that run behind it. They have been in constant use by myself for over 20 years and at no time have I ever seen anyone other than the Newells in Saltings Cottage or another person in "The Barn".	According to Councils GIS layers there is no formal footpath or right of way adjacent the site
This planning issue was brought to your attention in 2018 by another resident in Woodgaston Lane, at the time the Newells declared they had been living in the converted shed for 4 years and you chose to ignore it.	Observation noted - but see Statutory Declarations below
One would have to ask the question as to why was this not looked at in 2018?	Noted - and regrettable that breach was not investigated by Enforcement Team in 2018

8 **Legal considerations**

The application is made under Section 191 of the Town & Country Planning Act 1990 as amended and relates to the lawfulness of a continuous breach of an agricultural occupancy condition. The planning merits of the use, and policies, are not relevant to the determination of this application.

If the application is granted, planning conditions cannot be imposed. However, in accordance with the advice in the Government's Planning Practice Guidance (PPG), the certificate should be precise and unambiguous.

The PPG advises that the applicant is responsible for providing sufficient information to support an application and the relevant test for determining applications is on the balance of probability. The PPG states:

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.

The planning application form indicates that the grounds for making this application are that the use or activity in breach of condition began more than 10 years before the date of this application. It is stated on the planning application form that condition has been continuously breached since 30-04-2013.

The evidence submitted in support of the Certificate is as follows:

Evidence and documents submitted:

- Drawing 1- 1:2500 Site Location Plan
- Drawing 2 - 1:500 Block Plan
- Covering Letter by Stephen Jupp dated 23 June 2023
- Statutory Declaration #1 - Georgina Newell dated 22 June 2023 with exhibits "GN1 - GN6" - lived at Saltings Cottage from 05/04/05 until 01/05/13 when was employed part time in agriculture on the site; established own bookkeeping business on 01/05/2018 from which point no longer employed in agriculture; moved back into Saltings Cottage on 01/05/18 with husband who has never been employed in agriculture.
- Statutory Declaration #2 - Emma Louise Miller dated 21 June 2018 - lived at Saltings Cottage between 30/4/13 and 25/3/15 and not employed in agriculture (project manager for large company)
- Statutory Declaration #3 - Helen Elizabeth Wherrett dated 20 June 2023 - lived at Saltings Cottage between 01/01/14 and 01/08/17 and again from 01/01/18 to 16/10/20 and not employed in agriculture (export manager for large company) with copies of lodger agreements
- Statutory Declaration #4 - Tina Coppen dated 4th July 2018 2 - lived at Saltings Cottage between 25/05/16 and 25/02/18 and not employed in agriculture (apprenticeship coach for retail company)

and during the course of determining this application an additional document submitted:

- Statutory Declaration - Georgina Newell dated 31 August 2023 with further information about her business and employment

Council's own Evidence:

The Council has some information and evidence about the site:

Subject to GDPR legislation, it has been established with the Election Team and Council Tax Team that the property has had people registered to vote and Council Tax has been paid continuously for the last 10 years, with no gaps in the timeline.

When APP/17/01315 was determined (another CLU for use of a different building on the site as a dwelling), another Statutory Declaration was submitted at the time by Georgina Newell stating that she lived in this other building on site from 1st May 2013. The dates provided in that 2017 application concur with the dates provided in this current application.

Assessment of the Evidence

The application was made on 23 June 2023 and therefore it needs to be proved that the dwelling has been continuously occupied by someone not solely or mainly or last employed in agriculture, nor a dependent or widow or widower of such a person since 23 June 2013. For this purpose "agriculture" is as the defined by Section 336(1) of the Town and Country Planning Act 1990:

"agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly.

The covering letter indicates that Georgina Newell lived in Saltings Cottage from when it was first built in 2005, with her first husband. He left in 2009 and so for company and extra income Georgina started to rent out rooms as a house share from April 2011. At this stage Georgina was employed at Meadow Farm Nursery on a part time basis and hence complied with condition 4 and the S106 agreement. She lived in Saltings Cottage until 1st May 2013 when she moved into the other dwelling created on the site (see APP/17/01315).

There has been a succession of lodgers renting rooms within the dwelling and the statutory declarations submitted provide a timeline with Emma Miller (now Martin) living there from before the critical date in June 2013, overlapped by Helen Wherrett, who overlapped with Tina Coppen, and then Helen Wherrett returned, again overlapping with Tina Coppen, such that, according to the statutory declarations, there were continuous lodgers sharing the house from April 2013 until 16 October 2020. Georgina and her second husband Mr Newell, together with their son, moved back into Saltings Cottage on 1st May 2018 and remain there to the present day.

The statutory declarations confirm that none of the lodgers were ever employed in agriculture. So it is clear that the breach in occupancy commenced when Georgina (as the person who did work in agriculture) moved out of Saltings Cottage on 1st May 2013, leaving lodgers unrelated to agriculture in Saltings Cottage.

Georgina and Philip Newell moved back into Saltings Cottage on 1st May 2018. But by this time Georgina was no longer employed in agriculture - her first statutory declaration states that her last day of being employed and on the payroll of Meadow Farm Nursery was 30th April 2018. She has since provided a second statutory declaration which explains better her subsequent employment - she set up her own payroll management and account management business as a sole trader on 1st May 2018 (evidence of this has been provided), and whilst she still did the books for Meadow Farm Nursery, she had other clients such that she only spent about 15% of her time on Meadow Farm Nursery work.

The definition of agriculture is key to this determination of this application and it is noted that to be engaged in agriculture work then the persons activity should be directly related to *horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock.....the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land*. However Georgina was providing a bookkeeping service to Meadow Farm Nursery which, rather than being agricultural work, is a service for the agricultural industry. As a background service rather than being directly involved in the growing and caring of the plants at the nursery, then her employment cannot be considered to constitute agriculture.

Phillip Newell, who has also lived in Saltings Cottage since 1st May 2018, has worked as a scaffolder from November 2012 until August 2021 and then in haulage services until now. Therefore he has not been employed in agriculture whilst living at Saltings Cottage.

Therefore it is considered that the breach in occupancy of condition 4 of 02/56431/003 has occurred continuously since 1st May 2013 when Georgina moved out, and lodgers not employed in agriculture then occupied Saltings Cottage, and by the time Georgina moved back in she was no longer employed in agriculture; and her husband has never been employed in agriculture. Therefore, without any evidence to the contrary, on the balance of probability, no-one solely or mainly or last employed in the locality in agriculture as defined under Section 336(1) has occupied the property for 10 years and the Lawful Development Certificate can be issued.

The Council's Solicitor agrees with this conclusion.

9 Conclusion

It is considered that, on the balance of probability, there is sufficient evidence to prove that Saltings Cottage, Woodgaston Lane, Hayling Island, outlined in red on the 1:1250 Location Plan and 1:500 block plan has been continuously occupied by persons unrelated to agriculture in breach of condition 4 of 02/56431/003 for 10 years since 23 June 2013. In the absence of any evidence to the contrary it considered the Lawful Development Certificate can be issued.

It must also be noted that in light of this recommendation, the Section 106 Agreement on the site will no longer be relevant and an application to discharge the 106 Planning Obligation should be made.

9 RECOMMENDATION:

That the Head of Place be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/23/00532 :

Havant Borough Council, as Local Planning Authority, certifies that on 23 June 2023 the development described in the First Schedule to this certificate in respect of land described in the Second Schedule and edged in red on the submitted Location Plan is lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended):

FIRST SCHEDULE:

This certificate relates to the following development:

Certificate of lawfulness/Continuous occupation of dwelling by persons not employed in agriculture. as described in the written particulars, plans and other documents submitted with your application received on 23 June 2023.

SECOND SCHEDULE:

This certificate relates to land at Saltings Cottage and, Meadow Farm Nursery, Woodgaston Lane, Hayling Island as shown edged red on the submitted Location Plan received 23 June 2023.

OTHER IMPORTANT INFORMATION:

- (1) This Certificate is issued solely for the purpose of Sections 192 of the Town and Country Planning Act 1990 (as amended). It does not relate to any other application that may be required under any other part of the Town and Country Planning Act, the Building Regulations or under any other Act, Regulation, Byelaw or Order where the Council's approval may be needed. For further guidance as to the need for consent under the Building Regulations please phone 023 9244 6571.
- (2) It certifies that the development specified in the First Schedule taking place on land described in the Second Schedule would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) on the specified date and thus would not have been liable to enforcement action under part 7 of the 1990 Act on that date.
- (3) The certificate only applies to the extent of the development specified in the First Schedule taking place on land described in the Second Schedule and identified on the attached plan. Any development which is materially different from that described or which relates to other land may render the owner/occupier liable to enforcement action under section 172 of the 1990 Act.
- (4) The effect of the certificate is also qualified by the provision in section 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 operations begun, in any of the matter relevant to determining such lawfulness.
- (5) Your attention is drawn to the attached information regarding your right to appeal to the Department for Transport Local Government and the Regions, if you are aggrieved by the Council's decision.