
Site Address:	Meadow Farm Nursery, Woodgaston Lane, Hayling Island, PO11 0RL		
Proposal:	Application for certificate of lawful existing use relating to use of building as a single dwellinghouse		
Application No:	APP/17/01315	Expiry Date:	05/02/2018
Applicant:	Mrs Newell		
Agent:	Mr Jupp	Case Officer:	Lewis Oliver
	Stephen Jupp MRTPI		
Ward:	Hayling East		

Recommendation: **GRANT A CERTIFICATE OF LAWFUL USE**

1 Site Description

The application site, which forms part of the wider Meadow Farm Nursery, is a single storey building. The application submission indicates that this building was constructed in 1985.

The nursery itself is a horticultural nursery that specialises in bedding plants, fuchsias, geraniums, basket plants, perennial, alpine and heathers, shrubs, climbers and roses. A limited number of other items e.g. pots and compost are also sold. There are outside areas for the display of plants and a number of buildings namely two heated glass houses, two heated polytunnels, one unheated polytunnel, a timber shed for transplanting and a blockwork building housing a range of ancillary uses. To the south of the building subject of this LDE, is a detached dwelling, which is subject to an agricultural tie, which is controlled through both a condition and a legal agreement.

At the site visit made on 15/1/2018, the applicant showed the Planning and Enforcement Officer around internally, at the time of the visit, the building was clearly currently a standard family dwelling.

2 Planning History

APP/15/00427 - Change of use from agricultural building to a flexible commercial use (within class B8, Storage and Distribution) subject to prior approval covering flooding, highways and transport issues, noise impact and contamination risks on the site., WD, 15/05/2015

03/56431/004 - Reserved Matters application for three bedroomed agricultural workers dwelling. Permission 25/9/03

02/56431/003 - Outline Application for 3 bedroom agricultural workers dwelling (resubmission). Permission subject to conditions and legal agreement

02/56431/002 - Outline application for 3 bedroom 'Agricultural' workers dwelling.
- Refused 9 July 2002.

99/56431/001 - Erection of 1 polytunnel - Permission 7/4/00

3 Proposal

The application is submitted as a Section 192 application for a Lawful Development Certificate to establish whether the existing use of the building is lawful. In this instance it is claimed that the building has been occupied as family residential dwelling for over 4 years i.e. as a Class C3 Dwellinghouse.

4 Statutory and Non Statutory Consultations

Legal - no concerns raised

5 Legislation

5.1 Relevant legislation and guidance:

Town and Country Planning Act 1990

Town and Country Planning (Use Classes) Order 1987 (as amended)

Planning Practice Guidance, 2014

6 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 0

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 3

Comment	Officer Comment
We object to this application. We recall that the permission to build the house in the grounds of Northney Farm Nursery was on the basis that a horticultural worker could be housed on-site to deal with seedlings day and night. We were not convinced by the arguments put forward, and do not believe that the dwelling should be separated from the agricultural	

restriction that was placed on the building initially. The traffic levels in Woodgaston Lane remain unacceptably high, considering the size and state of the road. It is not helped by the traffic in and out of the Nursery, and by the commercial vehicles making deliveries, and the scaffolding lorries moving the scaffolding equipment on and off the site. We hope that the planning department will not agree to the removal of the restriction on the house.	
I wish to object to this application. In 2002/3 after a lengthy process (involving appeals being lodged against the Council's decisions) permission was granted (see application 02/56431/003) for the construction on the same site for an agricultural workers dwelling. That permission was on the strict grounds of it being a "necessity" for the business and was conditioned on terms that the owner entered into a legally enforceable agreement that the premises were only ever to be for that purpose. The same owners have improperly changed the use of an agricultural building to a dwelling house while knowing of the previous restricted planning permission. To allow the change of use now completely negates the decision of the Council in 2003 in respect of the same estate, it would create a housing estate and who is to say how many other units on the site are in the process of having their use changed. No reason is given as to need merely an attempt to confess to a breach and "get away with it". This is in an agricultural area not zoned for housing allowing this application would leave open the opportunity across the borough for similar conversions solely for the purposes of profit. It leaves open how the Council has been unable to discover this change of use over the last 4 or more years when, for example, it has visited the premises	

for the purposes of assessing planning application (APP/15/00427) furthermore the adjacent building serves as a restaurant for the public and is subject to inspection as such by Council officials. Did no one notice a house existed next door?

I request that the Committee refuse this application and demonstrate that such actions will neither be encouraged nor permitted. (I would also wish to bring to your attention that ,as neighbours ,we did not receive notification of this application nor at any time was a notice displayed on Woodgaston Lane, leading to question whether this application has been appropriately dealt with)

Comment : Regard cannot be given to any objections to this application made on planning grounds. The determination of this application turns on the facts of the case and their interpretation in the light of relevant planning law and judicial authority.

7 Planning Considerations

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7.1 Section 191(2) of the Town and Country Planning Act 1990 (as amended) allows an applicant to apply to the Local Planning Authority for a determination of whether an existing use of land, some operational development, or some activity being carried out in breach of a planning condition, is lawful.

7.2 If the Council, as the Local Planning Authority, are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matters described in the application, or that description as modified by the Local Planning Authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application. The Council must also be satisfied that the applicant has not deliberately concealed the change of use/development

7.3 Government guidance states that the onus of proof is based firmly on the applicant and a certificate of lawfulness may be refused on the basis that insufficient evidence has been included along with the application. Critically, the relevant test of the evidence is the 'balance of probability' and not the more onerous criminal burden of proof 'beyond reasonable doubt'. If the Council do not have any evidence to contradict the applicant, or make the applicant's version of events less probable, there should be no reason to refuse the application. The applicant's evidence should, however, be sufficiently precise and unambiguous to justify a grant of a certificate of lawfulness.

7.4 The application is submitted with the following evidence:

Statutory Declarations from:

Georgina Newell

Philip Newell

Dan Myatt

Other evidence

GN3 - Letter from Peter Smith - outlining that he undertook general building and decorating work on the dwelling

GN4 - Letter from Don Gray - outlining that he plastered the walls of the building in 2013

GN5 - Receipts for the first elements of the fixings, including the following:

I. CCF receipt dated 25 January 2013 for insulation

II. Hornsey Steel invoice dated 4 February 2017 for roof sheeting

III. Covers receipts 25 January 2013 for sawn timber and chipboard and 11 February 2013 for timber and plasterboard

IV. BES receipt 30 April 2013 for a gas regulator

GN6 - Further Receipts for fittings and fixtures, including the following:

I. PlumbWorld receipt dated 18 March 2013 for bathroom fittings

II. Carpet Superstore receipt dated 28 March 2013 for carpet's used in both bedrooms

III. B&Q receipt dated 29 March 2013 for laminate flooring which is in the kitchen/living area

IV. Ikea receipt dated 28 March 2013 for the kitchen

GN7 - Letter from Kevin Johnson - which outlines that he fitted the carpets in 2013

GN8 - Bill statements from BT outlining the installation of a phone and broadband line from 2013

GN9 - Utility bill from Sky outlining the installation of Sky for residential purposes and subsequent bills

GN10 - Photographs prior to the conversion works in 2013, to show its previous agricultural use

GN11 - Photographs of the building in use for residential purposes from its occupation in 2013.

GN12 - Extract from Health Visitors visit during the birth of Mrs and Mrs Newell's son

GN13 - Layout plan of the dwelling

7.5 Evidence held by the Local Planning Authority

Historic mapping and aerial photography

Council tax records

8 Assessment of evidence

8.1 The LPA must still make a determination of the application as submitted and this must be based on the evidence provided and on the balance of probability. The evidence provided by the applicant is the form of statutory declarations, proof of bills and photographs as outlined above. From the Council's own records there is no record of council tax being paid on this new dwelling. However Council tax records do exist for the agricultural tied dwelling to the south of the application site, which is not relevant to this application.

8.2 As outlined above, this application is based on evidence which is tested on 'balance of probability'. The majority of the representations received objecting to the proposal do not provide evidence to the contrary of the applicant and instead highlight material planning matters, which are not relevant in an LDE application.

8.3 The Council, as the Local Planning Authority, has no evidence to contradict the applicant's version of events and history of the use of the site. Whilst no council tax records exist for the building, which is subject to this application, this does not necessarily mean that the building has not been occupied for residential purposes. The Council tax team have been advised of this application, in order for further investigations to take place. Overall and having considered all matters raised, it is considered that as a matter of fact and degree that the evidence weighs in favour of the applicant using the building as their sole residence. As such the applicant's evidence is sufficiently precise and unambiguous to find, on the balance of probability that the residential use of the building, for residential purposes has subsisted for the requisite four year period.

9 Conclusion

9.1 The applicant has provided continuous evidence of residential use since 2013 and this application has been publicised in accordance with adopted procedures and no evidence to the contrary has been raised.

9.2 In conclusion, having reviewed all the information submitted with the building identified in this application on the balance of probability, it has been satisfactorily demonstrated that the building has been in continuous use, for a period of over four years, as a residential unit. Furthermore the legal department have considered this application and having reviewed the evidence presented confirm that the Certificate of Lawfulness for existing use as a C3 dwellinghouse can be issued. As such, it is recommended that a certificate of lawful use be issued.

9 RECOMMENDATION:

That the Head of Planning be authorised to GRANT A CERTIFICATE OF LAWFUL USE for application APP/17/01315

Havant Borough Council, as Local Planning Authority, certifies that on 09 February 2018 the use described in the First Schedule to this certificate in respect of land described in the Second Schedule and as shown edged red on the plan attached to this certificate was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended) for the following reason:

It appears to the Local Planning Authority on the balance of probability that the uses

described in the First and Second Schedules and plan attached to this Certificate, Use of building as a residential dwelling began, and has been continuous, for more than 4 years before the date of the application.

The Authority has considered evidence and information submitted by the applicant and the planning history of the site.

FIRST SCHEDULE:

This Certificate relates to the following use:

(i) use as a single residential dwellinghouse

In association with (i) above, the use in the area edged red on the submitted Drawing 1, 1:1250 site location plan is considered to have been demonstrated over the relevant 4 year period.

SECOND SCHEDULE:

For the purposes of the first schedule (i) above, this certificate relates to the land edged red on the submitted Drawing 1- 1:1250 site location plan, Drawing 2 - 1:500 Block Plan and floor plan at Meadow Farm Nursery, Woodgaston lane, Hayling Island, PO11 0RL