

---

|                 |                                                                                                                                                    |               |                |
|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------|---------------|----------------|
| Site Address:   | 21 New Cut, Hayling Island, PO11 0NB                                                                                                               |               |                |
| Proposal:       | Application for Lawfulness Development Certificate relating to operation of an existing business (Carbon fibre tubes) from a residential property. |               |                |
| Application No: | APP/15/00140                                                                                                                                       | Expiry Date:  | 22/04/2015     |
| Applicant:      | Mr K Brackwell                                                                                                                                     | Team:         | Team 1         |
| Agent:          |                                                                                                                                                    | Case Officer: | Heather Lealan |
| Ward:           | Hayling West                                                                                                                                       |               |                |

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

---

## **1 Site Description**

- 1.1 The application site is within a predominantly residential area of Hayling Island. The site comprises of a double garage and stable buildings and is located behind the dwelling houses that front the road.

## **2 Planning History**

None relevant.

## **3 Proposal**

- 3.1 The current application seeks a Lawful Development Certificate for the existing B1(c) use relating to the operation of an existing business (carbon fibre tubes) from a residential property.
- 3.2 Supporting letters submitted by the applicant state that the nature of the business is the delivery of carbon fibre tubes to the site and the repackaging and redistribution of the carbon fibre tubes. The letter states that there are 2 courier deliveries, on average, a week and 15 collections, on average, a week. The applicant confirmed when interviewed on site by the case officer, Heather Lealan, and enforcement officer, Harriet Pitney, as the owner of the business, along with one family member were the only employees.

## **4 Statutory and Non Statutory Consultations**

### Legal

The considerations within the officer report based on the evidence available are appropriate.

## **5 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: 12

Number of site notices: 1

Statutory advertisement: Not applicable.

Number of representations received: 2

**Summary:**

(a) I have been aware that a business has been operating from the above address for quite a few years. Observed a visit most days by a "Transit" type van. Very occasionally (4/5 times a year) a larger 7 tonne van also stops at the property. The only other vehicle that visits the property is a large articulated unit. This is also about 4 times a year.

There are other rare occurrences when articulated lorries stop there for what seems to be rest breaks or to verify their route onto the island.

I do not think the way the business operates has changed from commencement until today.

(b) Has been operating for some time but has increased from 1 or 2 small vehicles a day to a much larger number including very large juggernauts from Europe

## **6 Planning Considerations**

The outcome of the application hinges not on matters of planning policy but on the quality of evidence available as to the current use of the site and its longevity.

### **6.1 Submitted Evidence**

The following evidence has been submitted in support of the application:

Certificate of incorporation dated 29/08/2003

Supplier invoice dated 22/09/2003

HMRC VAT Certificate dated 11/11/2003

Incoming courier invoice dated 11/12/2003

Outgoing courier invoice dated 30/01/2004

February 2004 stationary supplier invoice

August 2004 Customs & Excise VAT certificate

February 2005 Outbound courier statement

August 2005 Outbound courier statement

February 2006 Supplier invoice

August 2006 Customs & Excise VAT certificate

February 2007 Inbound courier statement

August 2007 Professional fees invoice

February 2008 Outbound courier statement

August 2008 Customs & Excise VAT certificate

February 2009 Outbound courier statement

August 2009 Inbound courier statement

February 2010 Outbound courier statement

August 2010 Customs & Excise VAT certificate

February 2011 Profession fees statement

August 2011 Outbound courier statement

February 2012 Profession fees statement

August 2012 Outbound courier invoice

February 2013 Packaging supplier invoice  
August 2013 Stationery supplier invoice  
February 2014 Outbound courier statement  
August 2014 Outbound courier statement  
February 2015 Outbound courier statement

Applicant letter submitted in regard to officer request for further information dated 10 April 2015  
Applicant letter submitted in regard to officer request for further information dated 18 May 2015  
On site interview with Mr Kenneth Brackwell and Mr Simon Brackwell by Heather Lealan and Harriet Pitney on the 22 April 2015

## 6.2 Appraisal of Evidence

The evidence submitted with this application is limited. The case officer requested a number of times for the applicant to submit more information to evidence the scale and nature of the business operation. To this regard further pieces of documentation were submitted for every 6 month period from Feb 2004 to Feb 2015, along with two further supporting letters.

Following a request for additional evidence that would demonstrate the precise **nature and scale** of business activity over the period, the case officer was invited to come and view the company's full records on site. However, such investigation is not expedient or appropriate to be undertaken by the LPA. The onus is on the applicant to provide the evidence and demonstrate the use.

However, 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 factual evidence does appear to demonstrate that a business has been operating continuously for 10 years. Within the subsequent letters of the 10 April 2015 & 18 May 2015 and the on site interview, (22 April 2015), the applicant described the nature of the business as involving the delivery of carbon fibre tubes to the site and then the repackaging and redistribution to trade customers only. The letter states that there are 2 courier deliveries, on average, a week and 15 collections, on average, a week. A letter from a local resident raising concerns that the business has grown would appear to corroborate this to some degree; as the resident states that the business has been operating for some years with 1 or 2 small vehicles a day. The residents concerns were that the size and number of the delivery vehicles had changed. However, the size could be due to the delivery companies business operation and not a reflection of the growth of the business. It is considered that no evidence that materially contradicts that as submitted has come to light during interrogation of the planning history of the site or as a result of the consultation process. The business may have grown slightly from 1 to 2 vehicles a day to 3 to 4 but, in terms of the nature and scale of the operation, it is not considered that this would be a significant change when considering if a use has been established.

A further resident letter considered that the nature of the business has not changed.

## 7 Conclusion

The applicant has provided evidence of a continuous B1 business use of the site, specifically involving the, repackaging and redistribution of carbon filter tubes for trade,

for a period in excess of 10 years. This application has been publicised in accordance with adopted procedures and no sufficient evidence to the contrary has been raised.

In conclusion, having reviewed all the information submitted with the application and on the balance of probability, it has been satisfactorily demonstrated that the site has been in continuous use, for a period of at least ten years for the repackaging and redistribution, to trade only, of carbon fibre tubes. However, the parameters that have been provided within the applicant's supporting letters and on site interview must be set out in any lawful development certificate. As the submitted letter uses averages, it seems acceptable to take these figures as a maximum as there is no available evidence that they have been exceeded in number. It is also considered reasonable as no evidence has been submitted to the contrary that the business activities are taking place within the normal working week. The Lawful Development Certificate should therefore be issued on this basis.

---

## 8 RECOMMENDATION:

That the Executive Head of Planning and Built Environment be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/15/00140 for the following reason:

Havant Borough Council, as Local Planning Authority, certifies that on 4 February 2015 the use described in the First Schedule to this Certificate in respect of land described in the Second Schedule, as shown edged in red on the location plan received 25 February 2015, was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended) for the following reason:

Use of the land at 21 New Cut, as shown edged in red on the submitted Location Plan, as a mixed use comprising ancillary residential use associated with 21 New Cut and a B1(c) operation began, and has been continuous, for more than 10 years before the date of the application.

### **FIRST SCHEDULE:**

This Certificate relates to the following uses:

**(i) Ancillary residential use associated with 21 New Cut; and**

**(ii) B1(c) use for the repackaging and redistribution of carbon fibre tubes**

In association with the uses above, the use in the area edged red on the submitted location plan is considered to have been demonstrated over the relevant 10 year period.

**With regard to the B1(c) use the following matters have been demonstrated:**

(a) The use demonstrated is limited to daylight hours and between Monday to Friday.

(b) The use demonstrated is limited to inbound courier deliveries of no more than 2 consignments per week.

(c) The use demonstrated is limited to outbound courier collections of no more than 15 collections per week to be averaged out over the working week.

(d) The use demonstrated is limited to outbound courier collections to trade customers only and does not include direct deliveries to general public.

(e) The use demonstrated is limited to the business owner Mr Kenneth Brackwell and one employee.

**SECOND SCHEDULE:**

For the purposes of the first schedule above, this relates to the land edged red on the submitted OS plan Licence No 100019980 received 25 February 2015 and relates to 21 New Cut, Hayling Island, PO11 0NB.

**Definitions:**

The following definitions are applicable to the decision:

**Daylight** The natural light of the day