

Supporting Statement

Certificate of Lawful Existing Use – Units 1 and 2, Grangewood Farm, Netherseal, Swadlincote, Derbyshire, DE12 8BG.

1.0 Introduction

This supporting statement is in relation to the application for a certificate of lawful existing use for Units 1 and 2, Grangewood Farm, Netherseal, Swadlincote, Derbyshire, DE12 8BG.

The applicant is Mrs. Jane Kirkland, who is the owner and landlord of the site.

On the attached Site Layout Plan (and matching Statutory Declaration Plans) the area in red has been used continuously and to date from 2001 as B8 and B2 use. From 1999-2014 the units were occupied by Grangewood Fencing Supplies, who as well as selling fencing supplies also manufactured fencing, pergolas, trellis and gates on site.

2.0 Legislation

Section 171B(3) of the Town and Country Planning Act 1990 states “*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.*”. Therefore, if 10 years of continuous use has occurred from the start of any breach at any point the new use is then immune from enforcement. The section does not state the need for the continuation of use. *Panton and Farmer v. Secretary of State for the Environment, Transport and the Regions* [1999] JPL 46, established that a use can be ‘dormant’ or ‘inactive’, provided the use had not been abandoned.

In *Panton* the gap in the active use following becoming lawful (without applying for a Lawful Development Certificate at the time) was 10 years. A Lawful Development Certificate is not required for the use to become lawful.

Section 191(2) of the Town and Country Planning Act 1990 states:

(2) For the purposes of this Act uses and operations are lawful at any time if—
(a) 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); and
(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Therefore, the issue of a Lawful Development Certificate is not required for a breach of planning to become lawful, just the use has to be existing in order for a LDC to be issued under section 191(1)(a).

The Secretary of State for the Environment, Transport and the Regions v Thurrock Borough Council [2002] EWCA Civ 226, the other major defining case in relation to the subject, reiterated that following lawfulness having been achieved by continuous use, then subsequent interruptions of the use, that do not amount to abandonment, has no legal effect in terms of lawfulness.

The initial tenant (Grangewood Fencing) ended up diversifying into manufacturing fencing panels, pergolas, gates and trellis, therefore operating outside the remit of the B8 use, consequently using the units for mixed B8 and B2 use. The tenant did not change until 2014 when the current tenant took on the units. As the 10 years required for a change of use to be unenforceable is from the initial breach

of planning (Section 191(2) of The Town and Country Planning Act 1990 below), and that tenant was in the building for the following 15 years, then we believe that use would now be lawful. The use could not be considered abandoned as there was no intervening use and the applicant actively sought a new tenant, which they were successful at. The current tenant has been in situ since 2015 and is Martin Heaton of Heaton Manufacturing and the buildings are used for mixed B2 and B8 use, as is evident on a site visit.

2.1 Government Guidance

Government Guidance in the form of Planning Practice Guidance provides at Paragraph at 005 Reference ID: 17c-005-20140306;

An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate.

The onus of proving the lawfulness of an existing use lies entirely with the applicant pursuant to Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).

The determination of such applications by the Local Planning Authority states at Paragraph 009 Reference ID: 17c-009-20140306;

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.

Sufficiency of evidence is set out at Paragraph 006 Reference ID: 17c-006-20140306 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.

3.0 Supporting Evidence

3.1 Statutory Declarations

Statutory declarations have been provided outlining the area edge red of the Statutory Declaration Plans by Mrs Jane Kirkland, the applicant and landowner, and by Mr. Denis Baskerville (Director) and Mr. David Perry (Finance Director) of Grangewood Fencing Supplies Ltd, the former tenants.

3.2 Business Rates

Please see below extract from the valuation office agency website, noting the description as "Workshop and Premises" as opposed to 'Warehousing and Premises'.

Grangewood Fencing Supplies, Lullington Road, Netherseal, Swadlincote,
Derbyshire, DE12 8BG

1 April 2010 - 31 March 2017

Your rateable value was £11,750.00



This is not the amount you will have paid.

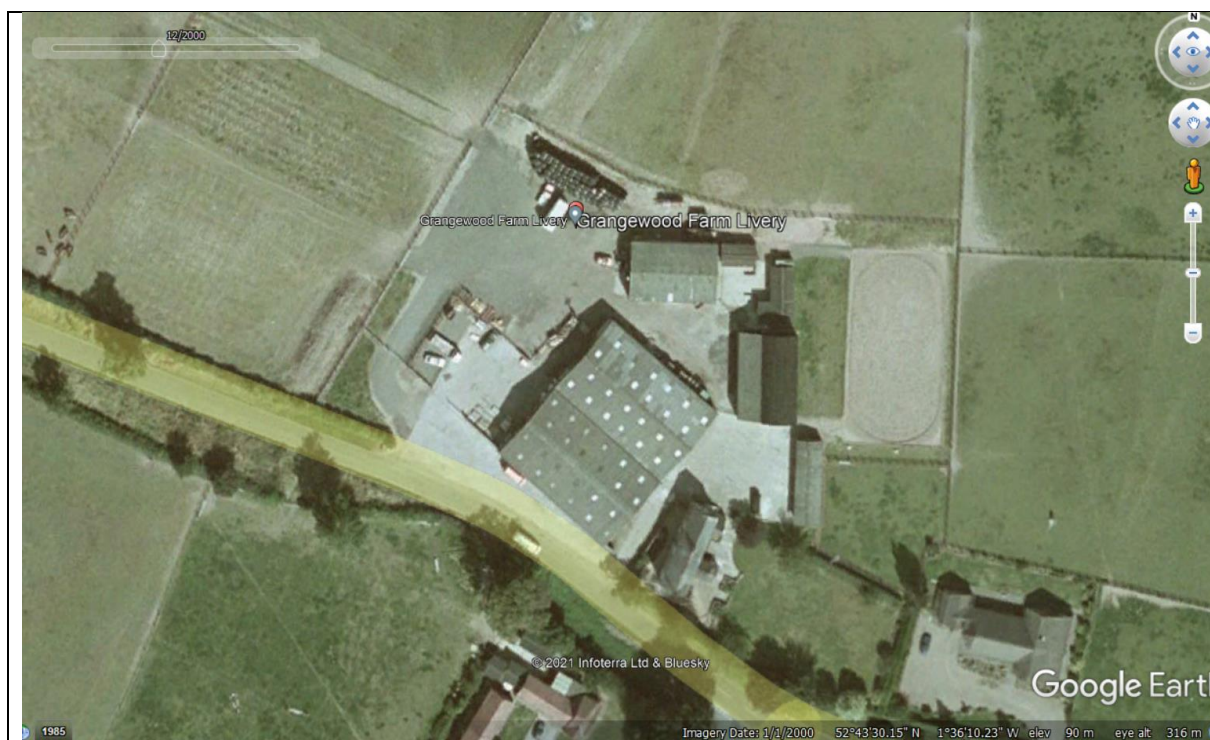
[Open all](#)

Valuation information

Description	Workshop and premises
Local authority	South derbyshire
Local authority reference	10320639126
Base rate	£15.00
Basis of measurement	GIA
Transitional relief certificate issued	No
Valuation scheme reference	96555
Special category code	096G

3.3 Aerial Imagery

Please see aerial imagery below delineating the historic yard area.





1st January 2010



6th April 2013