

7. In the case of both applications the applicant states that an engineering company operated a steel fabrication workshop from the main building on the site between 1996 to 2000. During 1996 to 2002 another company operated numerous wagons from the site. Between 1996 to 2008 that some of the greenhouses were used for storage of materials and mechanical equipment. From 1999 onwards that the applicant rented a section of one of the buildings for storage, fabrication and repair of plant and materials.

Comments Received

8. A number of letters have been received in relation to the applications including a letter from the Parish Council which object to the applications on the following grounds: These are not applications for planning permission and any comments received would only be relevant if they have relevance to the lawfulness of the use. The planning merits of the applications do not fall to be considered therefore many of the comments received have no bearing on the applications and cannot be taken into account. However, some information has been submitted concerning the previous use of the site. This relates to statements from a previous occupier who used the site for growing plants and from a company who had been interested in purchasing the site for the same purpose. They give an account of the activities taking place in connection with the growing of plants and on visits made to the site. This evidence contradicts the applicant's evidence.

Assessment

9. The applicant has submitted evidence to support the claim that the use commenced more than 10 years ago and has continued until the present day. The issue to be determined is whether on the balance of probability the evidence put forward is sufficient to enable a Certificate to be issued.
10. The application sites according to the Council's records were last used as a commercial nursery. According to the information submitted by the applicant the various uses have taken place for differing periods of time ranging from 1996 to 2008 but none is sufficient to demonstrate a continuance period of 10 years apart from the statement made that the applicant had occupied the site from 1999 onwards.
11. The application site defined by the applicant was originally an area covered by glasshouse used by the nursery. The applicant demolished the glasshouses and proceeded to form an unauthorised hardstanding which was then subject to enforcement action for its removal. Based on that evidence alone the use cannot be lawful because at the time of the issue of the enforcement notice any previous use of the land that may have existed had been replaced by the unauthorised development and now no longer exists.
12. In 2003 the County Council's land agent carried out an inspection of the site in connection with a planning application regarding the erection of a poly tunnel and storage of a seasonal workers caravan. The report describes the uses taking place at the site at the time of the visit. There is nothing in the report that indicates that any of the uses described by the applicant were taking place at the time of that visit.
13. In 1995 planning permission was granted for an extension to an existing building on the site for the processing of vegetables which is one of the buildings referred to by the applicant in the submission. This development was subject to a planning condition restriction its use to vegetable processing only and for no other purpose within use classes B1, B2 and B8 of the Town and Country Use Classes Order. The use of the building by the applicant would therefore be in breach of that condition unless it could be demonstrated that the condition had been breached for more than ten years.
14. This together with the evidence from a previous occupier of the site who used the land for its permitted use as a nursery does not indicate that any of the uses described by the applicant would appear to have been taking place. On that basis it would appear that the uses applied for cannot be lawful.

15. In addition the application sites are subject to Enforcement Notices issued by the Council earlier this year which were appealed and those appeals were dismissed. Some of the uses for which certificates are sought contravene the requirements of the enforcement notices and a certificate cannot be issued in those circumstances. However the appeal decision was successfully challenged and the appeals will have to be reheard, but I have seen nothing in the submitted evidence which has changed my initial view that a breach of planning control has occurred.
16. Taking all the evidence into account it would appear that the claims made by the applicant have not been proven and is contradicted by other evidence. Furthermore no evidence has been submitted to show that the planning condition restricting the use on site has been breached for more than 10 years. The applications have remained undetermined pending the outcome of enforcement related appeals which will be heard at a Public Inquiry, however the applicant has now appealed against non determination of the applications therefore the recommendation is now one of minded to refuse.

Recommendation: Refuse

Reasons: 10/00796

1. **The Council considers that on the balance of probability the evidence submitted does not demonstrate the lawfulness of the development.**
2. **The development would be contrary to and in breach of condition 6 of planning permission 94/00622.**
3. **A certificate cannot be issued because the development is in contravention of Enforcement Notice EN 628.**

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