

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AC	11 <sup>th</sup> Dec 2020
Planning Development Manager authorisation:	AN	15/12/2020
Admin checks / despatch completed	CC	15.12.2020
Technician Final Checks/ Scanned / LC Notified / UU Emails:	DB	15.12.2020

**Application:** 20/01407/LUEX **Town / Parish:** Lawford Parish Council

**Applicant:** Mrs H Elkin

**Address:** Valley Garden Supplies Wignall Street Lawford

**Development:** Lawful development certificate for existing and continued use for the manufacture of fine concrete and timber garden products (use class B2).

### 1. Town / Parish Council

Mrs Peachey Lawford  
Parish Council

Council has no objection to this application

### 2. Consultation Responses

No comments received

### 3. Planning History

00/01340/TCA	Fell Willow tree adjacent to the workmans house and replant; or reduce willow by 50%	Refused	05.09.2000
01/01242/TCA	Pollard 1 Willow Tree overhanging house chimney looking from the left hand side of the house	Approved	16.08.2001
91/01472/FUL	Renewal of TEN/1616/86 - Poly Tunnels	Approved	19.02.1992
92/00286/FUL	Removal of two willow trees and construction of agricultural store	Approved	12.05.1992
93/00071/FUL	Construction of an agricultural store (variation to siting as approved under planning permission TEN/92/0286)	Approved	25.02.1993
95/00853/FUL	Additional use of agricultural storage building to enable retail sales of animal foods and sundries (in variation of permission TEN/92/0286)	Refused	10.10.1995
97/00168/OUT	Construction of two bedroom	Withdrawn	18.05.1999

	cottage adjacent to agricultural barn		
97/01005/FUL	2 bedroom cottage	Approved	14.04.1998
03/00784/TCA	Re-Pollard one willow	Approved	16.05.2003
04/01528/TCA	Fell Willow and replace with new tree.	Approved	31.08.2004
05/00126/TCA	Fell one Willow tree to ground level	Approved	25.02.2005
11/00324/TCA	1 No. Oak - remove 3 lower branches and raise crown. 1 No. Holly - fell	Approved	14.04.2011
12/00133/FUL	Change of use from storage barn to residential annexe and insertion of 2 no. windows.	Approved	23.04.2012
13/00670/DISCON	Discharge of condition 03 (materials) of planning permission 12/00133/FUL (materials previously discharged on 2 November 2012) - FOR INFORMATION ONLY.	Approved	20.06.2013
20/01407/LUEX	Lawful development certificate for existing and continued use for the manufacture of fine concrete and timber garden products (use class B1(c)).	Current	

#### **4. Relevant Legislation**

Town and Country Planning Act 1990; Section 191 (1) (a)

#### **5. Officer Appraisal**

The Planning and Compensation Act 1991 introduced rolling time limits within which local planning authorities can take planning enforcement action against breaches of planning control.

The time limits are:

- four years for building, engineering, mining or other operations in, on, over or under land, without planning permission. This development becomes immune from enforcement action four years after the operations are substantially completed
- four years for the change of use of a building, or part of a building, to use as a single dwelling house. Enforcement action can no longer be taken once the unauthorised use has continued for four years without any enforcement action being taken
- 10 years for all other development. The 10 year period runs from the date the breach of planning control was committed

Once these time limits have passed, the development becomes lawful, in terms of planning.

Subsection (1) of section 191 provides for an application to determine whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land, is lawful for planning purposes

Applications for Lawful Development Certificates should include the following information:

- whether the application relates to:
  - a use
  - a building operation
  - a condition not complied with
- the date that the use started
- any use class the applicant considers to be applicable
- the reasons the applicant thinks he is entitled to a Lawful Development Certificate
- any other relevant information
- a plan identifying the land
- a certificate as to the applicant's interest (ownership, tenancy etc) in the land and any interest of any other person

Question 4 of the application form submitted on 7<sup>th</sup> October 2020 confirms that the application relates to a use.

Question 7 of the application form submitted on 7<sup>th</sup> October 2020 confirms that the use began in March 1982.

Question 4 of the application form submitted on 7<sup>th</sup> October 2020 confirms that the application relates to an existing class B1(c)). However, the Local Planning Authority assert that, as there are residential properties on the boundaries of the site and manufacturing sheds (and possibly concrete mixing) has the potential to result in a degree of noise pollution. On 1<sup>st</sup> December 2020 the applicant agreed that Class B2 was a more appropriate class to reflect the activities occurring at the site.

Question 6 of the application form submitted on 7<sup>th</sup> October 2020 confirms that the grounds for the Lawful Development Certificate are that the use began more than 10 years before the date of the application.

Un-numbered Site Plan, received 7<sup>th</sup> October 2020, identifies the land to which the application relates.

Question 10 of the application form submitted on 7<sup>th</sup> October 2020 confirms that the applicant's interest in the land is as the owner

It is up to the person applying for a Lawful Development Certificate for an existing use to show the proper evidence. This could include:

- proof that any use has been carried on continuously for a period of 10 years

The following evidence has been submitted in support of the LDC:-

Person	Type of Evidence	Date
Owner of Valley Garden Supplies	Statement of Truth	Various 1979 to 2020
	Extract from Companies House	4 <sup>th</sup> June 2004 to 3 <sup>rd</sup> Nov 2004
Valley Garden Supplies	Company brochure	January 2013
Google	Aerial Photography	June 2006 to April 2020
Google	Street View	March 2010
Emmerson Accountants	Signed letter	June 2004 to July 2020
MDM Timber Ltd	Invoice	20 <sup>th</sup> May 2010
Suffolk Steel Stockholders Ltd	Invoice	22 <sup>nd</sup> April 2010
Galino Ltd	Invoice	21 <sup>st</sup> Jan 2010
Galino Ltd	Invoice	23 <sup>rd</sup> Aug 2012
Holt Trading	Invoice	14 <sup>th</sup> Aug 2012
J.P.R. Paints Ltd	Invoice	11 <sup>th</sup> Nov 2013

Suffolk Steel Stockholders Ltd	Invoice	11 <sup>th</sup> Sept 2013
Hexstone Ltd	Despatch Note	20 <sup>th</sup> Aug 2013
Prisma Products	Invoice	31 <sup>st</sup> May 2013
Silverton Aggregates	Invoice	30 <sup>th</sup> May 2013
ALM Glassworks	Invoice	15 <sup>th</sup> April 2013
Oaktree Garage	Invoice	19 <sup>th</sup> Feb 2013
MDM Timber Ltd	Invoice	6 <sup>th</sup> Jan 2014
NWT Distribution Ltd	Delivery Note	8 <sup>th</sup> Dec 2015
Clarkes of Walsham Ltd	Invoice	11 <sup>th</sup> Sept 2015
Jewson	Invoice	19 <sup>th</sup> March 2015
Jewson	Invoice	21 <sup>st</sup> Nov 2016
Huntsman	Invoice	19 <sup>th</sup> July 2016
Armcon	Invoice	8 <sup>th</sup> Nov 2017
Permagard	Invoice	27 <sup>th</sup> Oct 2017
Ridgeons	Invoice	13 <sup>th</sup> June 2017
Ridgeons	Invoice	23 <sup>rd</sup> Oct 2018
Permagard	Invoice	12 <sup>th</sup> Oct 2018
SRC Aggregates	Invoice	28 <sup>th</sup> Sept 2018
Suffolk Steel Stockholders Ltd	Invoice	16 <sup>th</sup> Aug 2018
Clarkes of Walsham Ltd	Invoice	13 <sup>th</sup> July 2018
Clarkes of Walsham Ltd	Invoice	13 <sup>th</sup> July 2018
Prisma Products	Invoice	10 <sup>th</sup> July 2018
Concorde Glass Ltd	Despatch Note	25 <sup>th</sup> June 2018
Holt Trading	Invoice	4 <sup>th</sup> June 2018
Numold (UK) Ltd	Invoice	28 <sup>th</sup> April 2018
Prisma Products	Remittance Advice	30 <sup>th</sup> May 2019
NWT Distribution Ltd	Invoice	25 <sup>th</sup> April 2019
Ridgeons	Statement	31 <sup>st</sup> March 2019

Section 191 of the Town and Country Planning Act 1990 is the relevant section when dealing with issues of Certificates of Lawful Use or Development. Section 191 (1) (a) states that the use will be lawful if no enforcement action or Breach of Condition Notice could be served and, that the use or development does not constitute a contravention of any of the requirements of any Enforcement Notice then extant. In this case there is no record of an Enforcement Notice in respect of this property.

Circular 10/97 'Enforcing Planning Control - legislative provisions and procedural requirements' states that if a certificate is for a use of land - unless the use falls within one of the "use classes" specified in the Use Classes Order (UCO) current at the time, or the certificate is granted on the basis that a specific grant of planning permission confers, lawfulness on the use it is important for it to state the limits of the use at a particular date. These details will not be legally equivalent to a planning condition or limitation. They will be a point of reference, specifying what was lawful at a particular date, against which any subsequent change may be assessed. If the use subsequently intensifies, or changes in some way to the point where a "material" change of use takes place, the LPA may then take enforcement action against that subsequent breach of planning control (which a less precise certificate might well preclude). A LDC must therefore be precisely drafted in all respects.

By virtue of section 191(5)(b), a LDC must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a "use class" of the UCO. But where within a "use class", a LDC must also specify the relevant "class". In all cases the description must be more than simply a title or label, if future interpretational problems are to be avoided. The LDC should therefore state the characteristics of the matter so as to define it unambiguously.

The Local Planning Authority assert that, as there are residential properties on the boundaries of the site and manufacturing sheds (and possibly concrete mixing) has the potential to result in a degree of noise pollution. On 1<sup>st</sup> December 2020 the applicant agreed that Class B2 was a more

appropriate class to reflect the activities occurring at the site. The LPA are satisfied that the application has correctly been described as Use Class B2.

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 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 that Valley Garden Supplies, Wignall Street, Lawford, CO11 2JL has been used as a manufacture of fine concrete and timber garden products (use class B2 (General Industrial) for a period of 10 years, that this use has not been supervised by another material change of use and nor has it been abandoned.

**6. Recommendation**

Lawful Use Certificate Granted

**7. Reasons**

The 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 that Valley Garden Supplies, Wignall Street, Lawford, CO11 2JL has been used as a manufacture of fine concrete and timber garden products (use class B2 (General Industrial) for a period of 10 years, that this use has not been supervised by another material change of use and nor has it been abandoned.

**8. Informatives**

<b>Are there any letters to be sent to applicant / agent with the decision?</b>		<b>NO</b>
<b>Are there any third parties to be informed of the decision?</b>		<b>NO</b>