

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AC	4 <sup>th</sup> March 2021
Planning Development Manager authorisation:	SCE	05.03.2021
Admin checks / despatch completed	CC	09.03.2021
Technician Final Checks/ Scanned / LC Notified / UU Emails:	DB	09.03.2021

**Application:** 21/00034/LUEX **Town / Parish:** St Osyth Parish Council

**Applicant:** Sarah Rouse

**Address:** Unit 4A Norwood Lodge Bentley Road

**Development:** Continued use of unit for Class B2 purposes to include vehicle repair workshop and ancillary MOT testing.

### 1. Town / Parish Council

No comments received

### 2. Consultation Responses

No comments received

### 3. Planning History

00/01080/FUL	Woodstore in existing building in redundant grain store (Variation of Condition 01 and 02 of planning permission TEN/98/0037)	Approved	20.09.2000
TRE/11/84	Fell flowering Cherry	Current	25.01.1985
TRE/12/89	Works to 5 Oaks	Current	23.05.1989
TRE/29/89	Fell one dead Oak	Current	21.11.1989
TRE/1/91	Fell Oak	Current	12.04.1991
02/01100/TPO	Fell dead Oak tree to the front left of the property	Approved	19.06.2002
94/00412/LUEX	(Land adjoining Norwood Lodge, Bentley Road, Weeley Heath) Use of land for the landing and taking off of light aircraft and the storage of light aircraft		27.09.1994
95/01479/FUL	Wood store in existing building in redundant grain store	Approved	30.01.1996
98/00037/FUL	Woodstore in existing building in redundant grain store (Renewal of planning permission TEN/95/1479)	Approved	28.04.1998

04/01639/FUL	Change of use to storage and ancillary office accommodation.	Approved	24.11.2004
91/00079/FUL	Change of use of dwelling into hotel.	Approved	30.04.1991
91/00088/FUL	Change of use of dwelling to Residential Home for the elderly.	Approved	30.04.1991
18/00354/AGRIC	Proposed new agricultural storage barn.	Determination	22.03.2018
20/01094/COUNOT	Change of use of barn to D2 Assembly and Leisure - with the intention of use as a Martial Arts gym.	Determination	05.10.2020
20/01121/AGRIC	Erection of new grain store.	Determination	09.09.2020
04/01639/FUL	Change of use to storage and ancillary office accommodation.	Approved	24.11.2004
20/00743/FUL	Continued use of unit for Class B2 purposes to include vehicle repair workshop and MOT testing bay.	Refused	20.11.2020
20/01770/FUL	Proposed MOT testing.	Approved	
21/00034/LUEX	Continued use of unit for Class B2 purposes to include vehicle repair workshop and ancillary MOT testing.	Current	

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

The Town & Country Planning Act 1990

#### **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:

- o 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
- o 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
- o 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:

- o whether the application relates to:
  - o a use
  - o a building operation
  - o a condition not complied with
- o the date that the use started
- o any use class the applicant considers to be applicable
- o the reasons the applicant thinks he is entitled to a Lawful Development Certificate
- o any other relevant information
- o a plan identifying the land
- o 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 23<sup>rd</sup> December 2020 confirms that the application relates to a use.

Question 7 of the application form submitted on 23<sup>rd</sup> December 2020 confirms that the use begun in October 2003.

Question 4 of the application form submitted on 23<sup>rd</sup> December 2020 confirms that the application relates to an existing class B2 (General Industrial).

Question 6 of the application form submitted on 23<sup>rd</sup> December 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 AND the use began within the last 10 years, as a result of a change of use not requiring planning permission, and there has not been a change of use requiring planning permission in the last 10 years

Question 5 of the application form submitted on 23<sup>rd</sup> December 2020 offers relevant information stating that the existing use a garage which has been in operation since 2003 and we are looking for ancillary to the property by including MOT being done to form part of a service to the local community. There is parking for 8 vehicles at the rear and 2 vehicles at the front which we currently have now. I do not need further vehicles to be parked at the property. I am a sale trader and therefore will not incur any further traffic. The use of the property is for repairing vehicles and their services. There is clear unobstructed access to the garage. There structure is the same - the Ministry will be putting equipment inside the property and one car will be MOT at one time.

Un-numbered Site Plan, received 22<sup>nd</sup> January 2021, identifies the land to which the application relates.

Question 10 of the application form submitted on 23<sup>rd</sup> December 2020 confirms that the applicant's interest in the land is as a Lessee, notice has been served on the land 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:

- o 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:-

Martin & Julie Young	Letter	Confirms they have been customers for 10 years
J B Fairley & Son (Solicitors)	Letter	Confirms trading for 10 years
Exhausts Limited	Invoice	January 2010
Exhausts Limited	Invoice	January 2010
Exhausts Limited	Invoice	April 2010
Exhausts Limited	Invoice	April 2010
National Non-Domestic Rates	Invoice	April 2011
Customer	Invoice	February 2012

Customer	Invoice	March 2015
Exhausts Limited	Invoice	March 2015
National Non-Domestic Rates	Invoice	April 2019
National Non-Domestic Rates	Invoice	April 2019
Customer	Invoice	October 2020
Jayar Car Parts	Invoice	December 2020

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 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 Unit 4A, Norwood Lodge, Bentley Road, Weeley, CO16 9BX has been used as for Class B2 purposes to include vehicle repair workshop and ancillary MOT testing (use class B2 (General Industrial) for a period of 10 years, that this use has not been superseded 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 Unit 4A, Norwood Lodge, Bentley Road, Weeley, CO16 9BX has been used as for Class B2 purposes to include vehicle repair

workshop and ancillary MOT testing (use class B2 (General Industrial) for a period of 10 years, that this use has not been supervened 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>		NO
<b>Are there any third parties to be informed of the decision?</b>		NO