

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
Planning Officer recommendation:	MP	29/01/24
Team Leader authorisation / sign off:	ML	29/01/2024
Assistant Planner final checks and despatch:	ER	02/02

Application: 23/01713/LUEX **Town / Parish:** Great Bromley Parish Council

Applicant: Neil Naphthine and Nico Miller - Larchcroft Trading Co. Ltd.

Address: Land adjacent Oak House Farm Harwich Road Great Bromley

Development: Application for a certificate of existing use or development for occupation of Building B as a community shop (use Class E(a)) and Building D for storage for the shop (use Class E(a)) for a period of 10 years or more.

1. Town / Parish Council

Great Bromley Parish Council Great Bromley Parish Council objected to the application for the following reasons:

- The village already has a community shop within half a mile;
- There is no pedestrian or footpath access;
- The site is adjacent to a Grade II listed building with Historic England, and is directly on the Listed Building curtilage.
- The site is on a 40mph bend where several road traffic incidents, including a fatality, have occurred.

2. Consultation Responses

N/A

3. Planning History

00/01747/FUL	Formation of additional kindergarten class room in first floor of existing building and new external fire escape staircase	Approved	08.03.2001
01/00736/FUL	Change of use of part of garage block to office and accommodation	Refused	18.10.2001
01/01982/FUL	Change of use of part of garage block to provide overnight staff accommodation in connection with childrens accommodation	Refused	20.12.2001
91/01407/FUL	Increased use of day nursery from 20 to 36 children (variation of condition 3 of permission TEN/91/170)	Withdrawn	04.02.1992
92/01027/FUL	Extension to form play area, kitchen and staff room and increase capacity from 20 to 40 children	Approved	15.12.1992
93/00951/FUL	Play area, kitchen and lobby (revision to application TEN/92/1027)	Approved	30.09.1993
94/00322/FUL	(Land at the front of Oak House Farm, Old Harwich Road, Great Bromley) Change of use - Highway land to be brought within curtilage of dwelling as garden land	Approved	17.05.1994

96/00689/LBC	(Oak House Farm School, Harwich Road, Gt Bromley) Construction of replacement garages to store cars and agricultural machinery	Approved	26.07.1996
96/00690/FUL	Construction of replacement garages to store cars and agricultural machinery	Approved	26.07.1996
96/00691/LBC	Change of use of existing garage block to educational and construction of two extensions for educational use	Approved	29.08.1996
96/00692/FUL	Change of use of existing garage block to educational and construction of two extensions for educational use. Also variation to condition 2 of planning permission TEN/93/0951 to allow in excess of 40 children	Approved	29.08.1996
97/00929/FUL	Variation to design approved under TEN/96/0692 - minor elevational changes, connecting lobby to existing building, increase in area	Approved	05.09.1997
04/02059/FUL	Change of use to casino club	Refused	09.12.2004
91/00170/FUL	Continued use of premises as a day nursery (on a permanent basis) and related use of swimming pool in variation of condition 5 of permission TEN/450/90 and LB/TEN/22/90, renewal of permissions TEN/63/89 and TEN/1051/89.	Approved	30.04.1991
09/01000/FUL	Alteration of existing vehicular access and vehicular crossing of the highway verge.	Approved	20.11.2009
10/00920/LBC	The alteration of existing vehicular access and vehicular crossing of the highway verge and associated works, and the erection of boundary fencing to demarcate garden curtilage of Oak House Farm in accordance with previous change of use of highway land to curtilage.	Approved	08.10.2010
10/00921/FUL	The alteration of existing vehicular access and vehicular crossing of the highway verge and associated works, and the erection of boundary fencing to demarcate garden curtilage of Oak House Farm in accordance with previous change of use of highway land to curtilage.	Approved	08.10.2010

4. Status of the Local Plan

Planning law requires that decisions on applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the National Planning Policy Framework (the

Framework). The 'development plan' for Tendring comprises, in part, Sections 1 and 2 of the Tendring District Council 2013-33 and Beyond Local Plan (adopted January 2021 and January 2022, respectively), supported by our suite of evidence base core documents (<https://www.tendringdc.uk/content/evidence-base>) together with any neighbourhood plans that have been brought into force.

5. Neighbourhood Plans

A neighbourhood plan introduced by the Localism Act that can be prepared by the local community and gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan to promote development and uphold the strategic policies as part of the Development Plan alongside the Local Plan. Relevant policies are considered in the assessment. Further information on our Neighbourhood Plans and their progress can be found via our website <https://www.tendringdc.uk/content/neighbourhood-plans>

6. Relevant Policies / Government Guidance

N/A

7. Officer Appraisal

Site Description

The application site relates to land and buildings sited to the rear of Oak Farm House, which is a Grade II Listed Building along the southern section of Harwich Road, within the parish of Great Bromley.

The site falls outside of a recognised Settlement Development Boundary within the adopted Local Plan 2013-2033. The site includes various sized outbuildings, including a black timber boarded barn, garage / stable building, as well as a triple garage block and L-shaped outbuilding which are both the subject of this current application.

The character of the surrounding area is largely rural in nature, with the nearest built form being some 500 metres to the east.

Description of Proposal

This application seeks the granting of a Lawful Development Certificate to confirm the occupation of two buildings for Class E(a) for a period of 10 years or more, and therefore being immune from enforcement action.

The details of the two buildings are as follows:

Building B - this is the L-Shaped outbuilding sited immediately to the south of Oak Farmhouse that it is claimed has been operated as a community shop.

Building D - this is a triple garage block located to the south of Building B that it is claimed has been operated as an ancillary storage area in connection with the community shop.

Time period

In this instance the claimed use for which a Certificate is sought should be in existence as at the date of the application i.e. 8 December 2023 when the application became valid. The claimed use should have been taking place continuously for at least ten years prior to that date.

Main Issues

The Planning Practice Guidance explains that the statutory framework covering "lawfulness" for lawful development certificates is set out in section 191(2) of the Town and Country Planning Act

1990, and that lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

The Planning and Compensation Act 1991 (section 171B) sets out the time limits within which local planning authorities can take planning enforcement action against breaches of planning control. In most cases, development becomes immune from enforcement action if no action is taken:

1. within 4 years of substantial completion for a breach of planning control consisting of operational development;
2. within 4 years for an unauthorised change of use to a single dwellinghouse;
3. within 10 years for any other breach of planning control (essentially other changes of use and applicable to this application).

In certain circumstances, the above time-limits do not prevent enforcement action after the relevant dates:

- i) where earlier enforcement action has been taken within the relevant time limit (section 171B(4)(b) of the Town and Country Planning Act 1990);
- ii) where there has been a deliberate concealment of a breach of planning control, local planning authorities can seek a 'planning enforcement order' to allow them to take action after the time limits in section 171B have expired;
- iii) where a person has deliberately concealed a breach of planning control the courts have found that the time limits in section 171B are not engaged until the breach has been discovered.

Sections 191 and 192 of the Town and Country Planning Act 1990 provides for anyone (not just a person with a legal interest in the land) to apply to the local planning authority for a lawful development certificate. A certificate is a statutory document certifying:

- in the case of an application under section 191, the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition; or
- in the case of an application under section 192, the lawfulness of proposed operations on, or use of land.

Applications for Lawful Development Certificates should include the following information:

- a) whether the application relates to:
 - i. a use
 - ii. a building operation
 - iii. a condition not complied with
- b) the date that the use (or breach of condition) started, or the date on which the building was substantially complete.
- c) any use class the applicant considers to be applicable;
- d) the reasons the applicant thinks they are entitled to a Lawful Development Certificate
- e) any other relevant information.
- f) a plan identifying the land, and.
- g) a certificate as to the applicant's interest (ownership, tenancy etc) in the land and any interest of any other person.

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

- i. proof that any building was 'substantially complete' more than four years before the date of the application; and/or
- ii. proof that any use (or breach of condition) has been carried out continuously for a period of 10 years (four years in the case of a dwelling)

The Submission

The case being made is that Buildings 'B' and 'D' have been used within Class E(a) (Shop) use for a period of ten years or more. The supporting Statement asserts that the community shop was set up in 2013 by the founders of Larchcroft Trading Co Ltd (LTC) to serve the community of the Plymouth Brethren Christian Church. The shop is not open to the general public.

The submission is accompanied by a series of documents to demonstrate, on the balance of probabilities, that the buildings have operated within this use on a continuous basis for in excess of ten years. They are as follows:

- Minutes from Larchcroft Education Trust meeting dated 13th June 2007 where it was agreed to set up the company known as Larchcroft Trading Co Ltd;
- Evidence of Larchcroft Trading Co Ltd being set up on Companies House, dated 10th August 2007;
- Internal works to Building B, dated 2008;
- Photographs of Building D in October 2012 being used for a community event and to purchase goods;
- Undated photographs of Building B in 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022 and 2023 being used for the sale of goods;
- Undated photographs of Building D being used for the storage of goods;
- Invoice dated June 2013;
- Invoices and bank statements dated throughout 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021 and 2022.
- Email correspondence dated July 2015 regarding the sale of Oak House Farm;
- Copy of lease between Larchcroft Trading Company and Colchester Gospel Hall Trust confirming the shop for retail sale;
- Copy of temporary alcohol license being granted in December 2017;
- Confirmation of alcohol license being granted in July 2020;
- Food Hygiene rating for Larchcroft Trading Co Ltd dated November 2021; and
- 3 x declarations confirming use of the buildings for Class E(a) use since 2012/13.

In addition to the above, the agent for the application has confirmed that renovation works to Building B took place between April and May 2017 for a period of six weeks, however while the community shop was temporarily relocated to Building A, the retail trading continued throughout this period.

Officers, in noting this information, consider that little evidence had been provided to demonstrate that Building D had been operating within Class E(a) use for ten years or more. In response to these concerns, the agent for the application has provided a series of dated photographs between April 2011 and December 2023.

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.

The relevant test is the 'balance of probability', and authorities are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events, there is no good reason to refuse the application provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate.

On this occasion, the Council has no conflicting information to disprove the contents of the statements, however, has been informed via its Business Rates department that they have no records of a retail store. That said, given the Council has no other evidence disputing the use of the site for Class E(a) purposes, on the balance of probabilities, it is believed that the properties have been used in Class E(a) purposes continuously for ten years.

Representations

Paragraph: 008 Reference ID: 17c-008-20140306 of the Planning Practice Guidance states that there is no statutory requirement to consult third parties, including parish councils or neighbours. Nevertheless, it goes on to say that it may be reasonable for a Local Planning Authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. Importantly, views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.

The local planning authority notified Great Bromley Parish Council, who have objected to application on the grounds that the village already has a community shop, there is no pedestrian/footpath access, the site is adjacent to a Grade II Listed Building, and impacts to highway safety.

In response to this, while these comments are noted they each relate to the planning merits of a community shop in this location, however this application is instead applying to provide sufficient evidence that the store has been in situ for at least ten years, so these points are not matters that can be taken into account in the determination of this application.

Conclusion

In order for the lawful development certificate to succeed, it needs to be proven to the Local Planning Authority that, on the balance of probabilities, the existing use for a continuous period of ten years prior to the submission of this application.

Planning merits and material considerations are not relevant to the case. The issuing of a certificate depends entirely on the factual evidence relating to the history and planning status of the land and buildings, and the interpretation of the relevant planning law.

Subsection (4) of Section 191 of the Town and Country Planning Act 1990 (as amended) indicates that if the Local Planning Authority is provided with information satisfying them of the lawfulness, at the time of the application, of the use, operations or other matter described in the application they shall issue a certificate to that effect. In any other case the Local Planning Authority shall refuse the application.

In the case of applications for an 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.

On this occasion, Officers are content that a significant level of information has been provided that demonstrates Buildings 'B' and 'D' have operated within Class E(a) use for a period of at least ten years prior to the submission of this application. Given this, and that the Council has only limited counter evidence that disproves this, based upon the above advice a lawful development certificate can be granted.

8. Recommendation

Lawful Use Certificate Granted.

9. Condition

- 1 Sufficient evidence has been submitted with the application, which is sufficiently clear and unambiguous to demonstrate that, on the balance of probabilities, Buildings 'B' and 'D' at Land adjacent Oak House Farm, Harwich Road, Great Bromley, CO7 7JG have been used as within Class E(a) for a period in excess of 10 years and enforcement action can no longer be taken.

10. Informatives

N/A

11. Equality Impact Assessment

In making this recommendation/decision regard must be had to the public sector equality duty (PSED) under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions that in summary include A) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act; B. Advance equality of opportunity between people who share a protected characteristic* (See Table) and those who do not; C. Foster good relations between people who share a protected characteristic* and those who do not, including tackling prejudice and promoting understanding.

It is vital to note that the PSED and associated legislation are a significant consideration and material planning consideration in the decision-making process. This is applicable to all planning decisions including prior approvals, outline, full, adverts, listed buildings etc. It does not impose an obligation to achieve the outcomes outlined in Section 149. Section 149 represents just one of several factors to be weighed against other pertinent considerations.

In the present context, it has been carefully evaluated that the recommendation articulated in this report and the consequent decision are not expected to disproportionately affect any protected characteristic* adversely. The PSED has been duly considered and given the necessary regard, as expounded below.

Protected Characteristics *	Analysis	Impact
Age	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Disability	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Gender Reassignment	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Marriage or Civil Partnership	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Pregnancy and Maternity	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Race (Including colour, nationality and ethnic or national origin)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sexual Orientation	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sex (gender)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Religion or Belief	The proposal put forward will not likely have direct equality impacts on this target group.	Positive / Negative / Neutral