

DATED 18<sup>th</sup> August 2021.

**MARK RICHARD BANHAM**

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**STATUTORY DECLARATION**

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Relating to

**PRIMROSE NURSERIES  
80 FAIRFIELD ROAD  
BOURNHEATH  
BROMSGROVE  
B61 9JJ**

I, Mark Richard Banham, of The Bungalow, Primrose Nurseries, 80 Fairfield Road, Bournheath, Bromsgrove B61 9JJ, DO SOLEMNLY AND SINCERELY DECLARE as follows:

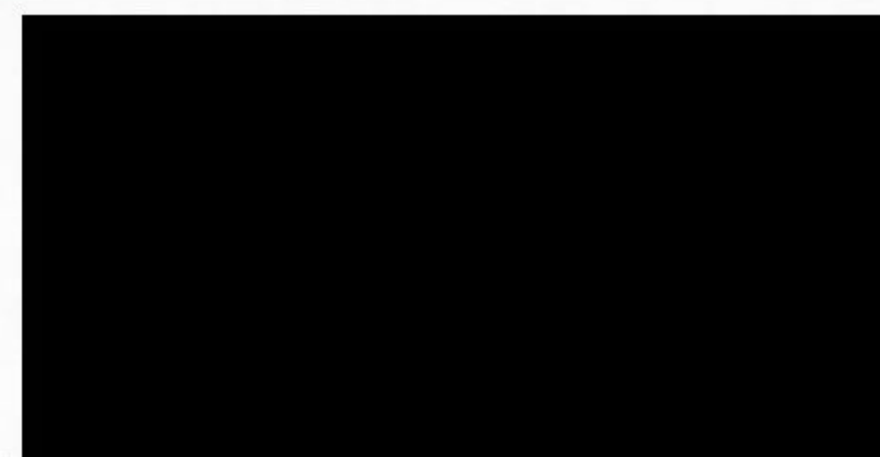
1. I purchased Primrose Nurseries from Mrs Barbara Banner on 01 April 2004, as shown outlined in blue on the Location Plan at Exhibit 1.
2. I purchased the property purely on the basis of its existing B1 commercial use & the Certificate of Lawful use issued on appeal on 08 November 2000. Attached at Exhibit 2 are the Appeal Documents issued by Bromsgrove District Council.
3. Commercial use, including renting of the outbuildings and parking of Heavy Goods Vehicles commenced from 2004/2005 to the present day. Attached at Exhibit 3 is a letter from my accountant, Teresa Ford, Director of Kenneth Morris Chartered Accountants, 1 Aston Court, Bromsgrove Technology Park, Bromsgrove, Worcestershire B60 3AL showing the annual incomes generated for the commercial use on the site.
4. Accordingly I am able to confirm that Primrose Nurseries outlined in blue on the location plan attached at Exhibit 1, has been continuously used commercially since I purchased the property 01 April 2004.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing the same to be true and by virtue of the Statutory Declaration Act 1835.

DECLARED at Thomas Horton LLP.

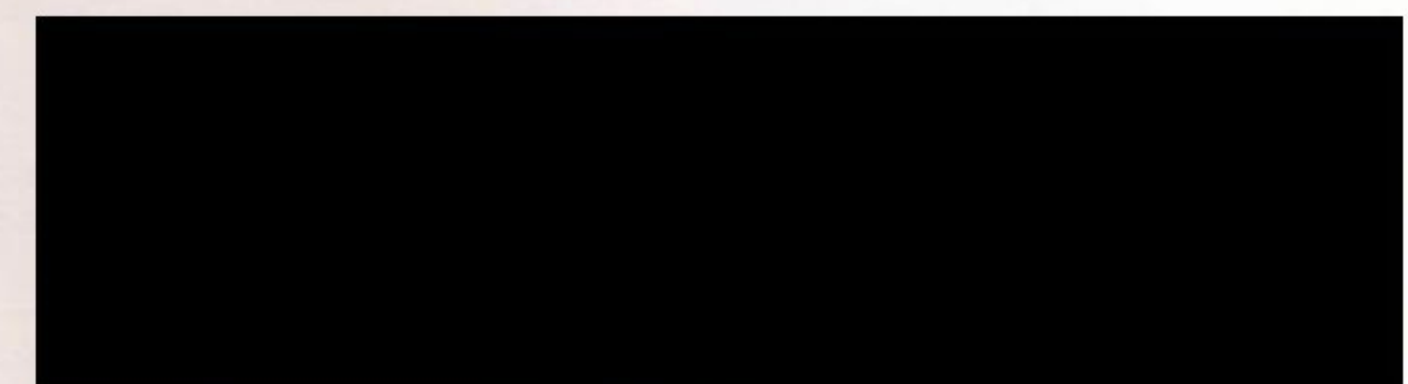
This the 18<sup>th</sup> day of August 2021)

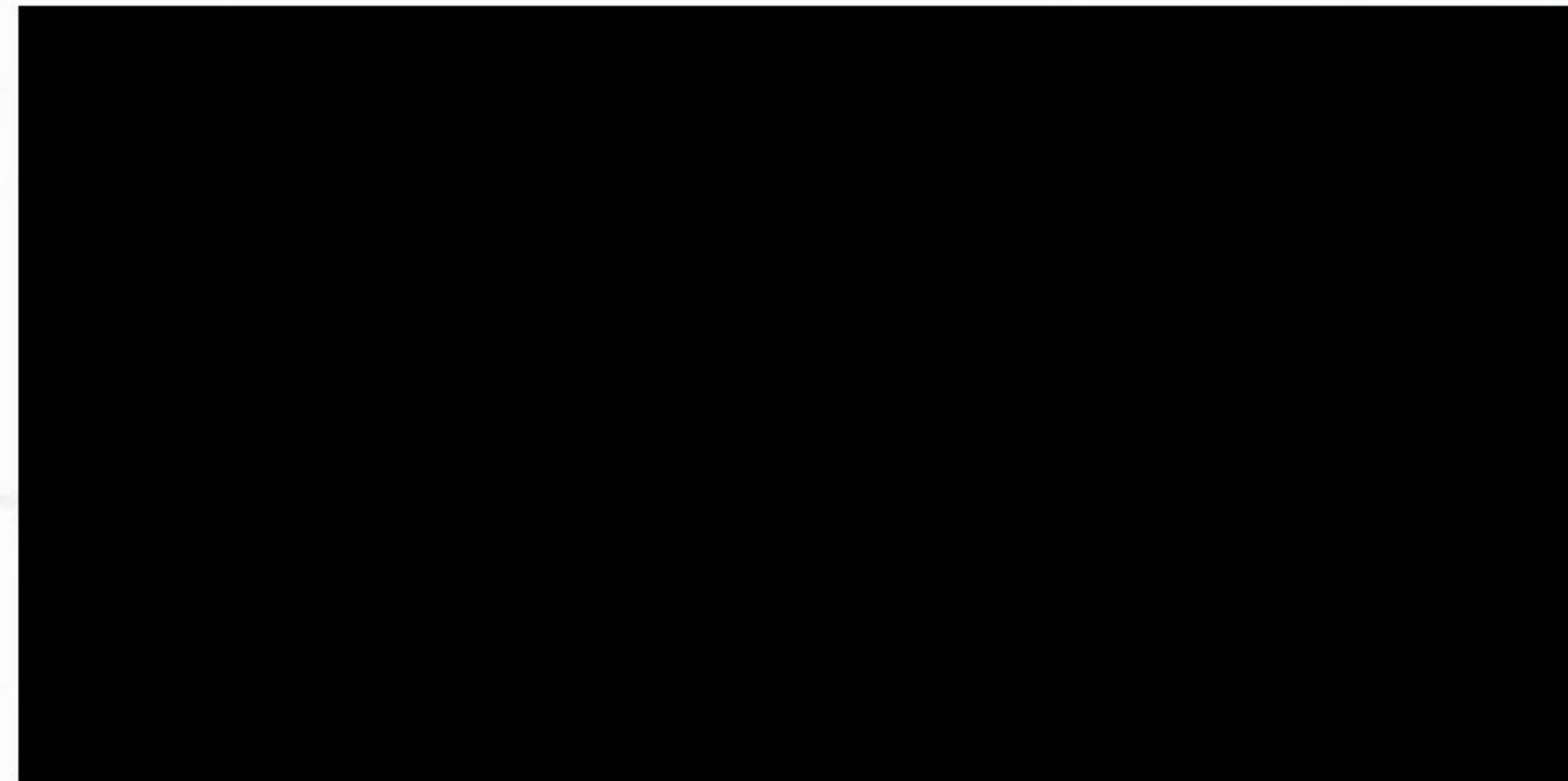
Before me )



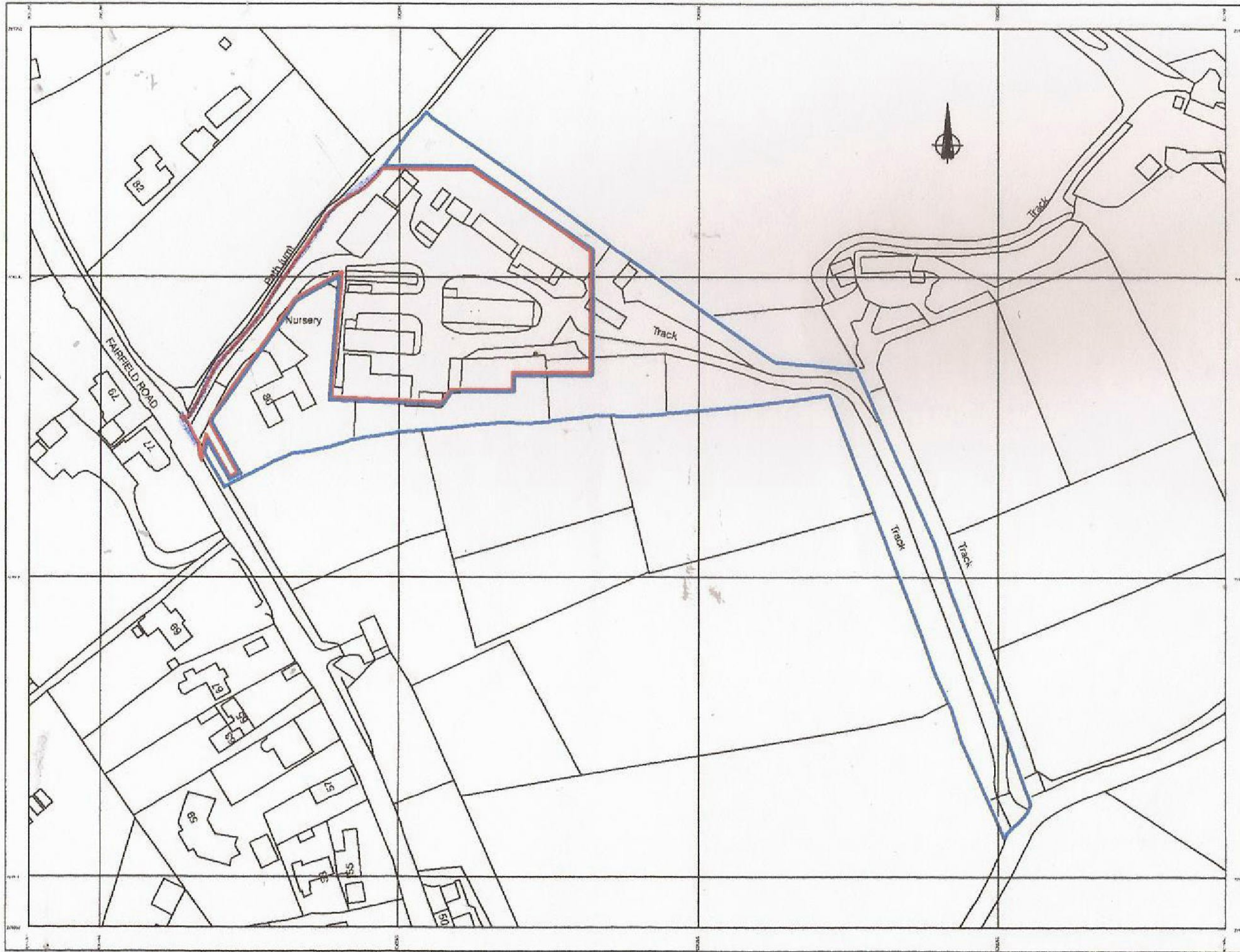
Solicitor/Commissioner for Oaths

Emily Dixon  
Associate & T.E.P Solicitor  
Thomas Horton LLP  
Strand House  
70 The Strand  
Bromsgrove  
Worcs B61 8DQ





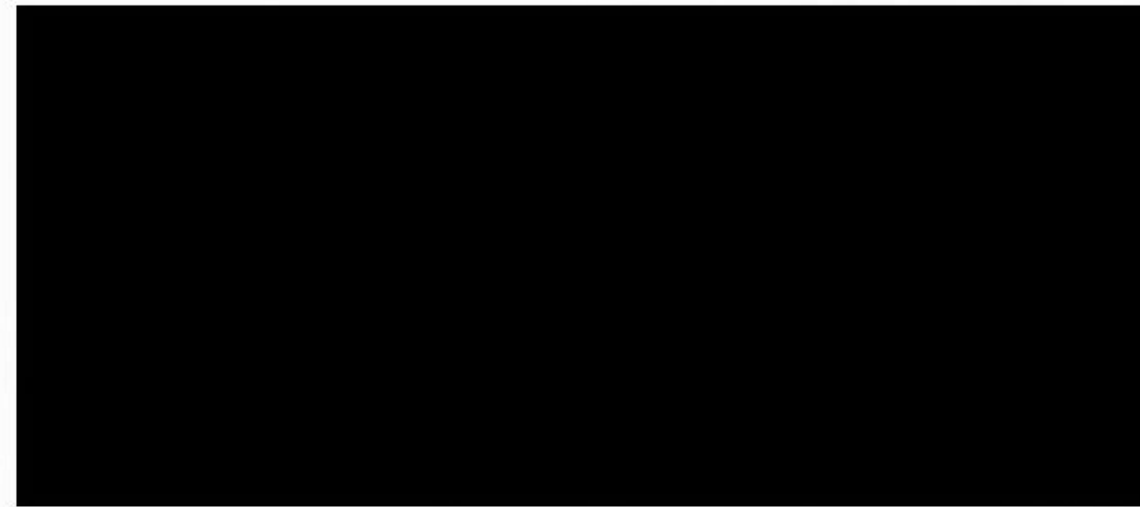
Emily Dixon  
Associate & T.E.P Solicitor  
Thomas Horton LLP  
Strand House  
70 The Strand  
Bromsgrove  
Worcs B61 8DQ



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Map data © Ordnance Survey  
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Location Plan

1:2500 @ A4



Emily Dixon  
Associate & T.E.P Solicitor  
Thomas Horton LLP  
Strand House  
70 The Strand  
Bromsgrove  
Worcs B61 8DQ



# The Planning Inspectorate

Room 1111(2)  
Tollgate House  
Houlton Street  
Bristol BS2 9DJ  
<http://www.planning-inspectorate.gov.uk>

Direct Line 0117-9878034  
Switchboard 0117-9878000  
Fax No 0117-9878782  
GTN 1374-8034

Mr R F Lewis (District Secretary)  
Bromsgrove District Council  
The Council House  
Burcot Lane  
Bromsgrove  
Worcs,  
B60 1AA

Your Ref:  
Our Ref: APP/P1805/X/00/1043877  
APP/P1805/A/00/1043784  
Date: 8 November 2000

Dear Sir

**TOWN & COUNTRY PLANNING ACT 1990  
APPEALS BY MRS B BANER & FLORAGROVE LTD AND MRS B L BANNER  
SITE AT PRIMROSE NURSERY, FAIRFIELD ROAD, BROMSGROVE, WORCESTER**

I enclose a copy of our Inspector's decision on the above appeals.

The attached leaflet explains the right of appeal to the High Court against the decision and how the documents can be inspected.

If you have any queries relating to the decision please send them to:

The Complaints Officer  
The Planning Inspectorate  
Room 14/04  
Tollgate House  
Houlton Street  
Bristol  
BS2 9DJ

Phone No. 0117 987 8927


Fax No. 0117 987 6219

Yours faithfully



P.P. Mr R Thomas

COVERDL1

BROMSGROVE DISTRICT COUNCIL DISTRICT SECRETARY & DEPUTY CHIEF EXECUTIVES DEPT
- 9 NOV 2000
REFERRED TO: 



# Appeal Decision

Inquiry held on 24 October 2000

by **Derek Thew** DipGS ARICS

an Inspector appointed by the Secretary of State for the  
Environment, Transport and the Regions

The Planning Inspectorate  
Room 1404  
Tollgate House  
Houlton Street  
Bristol BS2 8BJ  
Tel: 0117 907 8927

Date: **8 NOV 2000**

## Appeal A: APP/P1805/X/00/1043877

**Primrose Nursery, Fairfield Road, Bournheath, Bromsgrove.**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a lawful development certificate (LDC).
- The appeal is made by Mrs B Banner & Floragrove Ltd. against the decision of Bromsgrove District Council.
- The application (ref:LDC.8/2000), dated 13 December 1999, was refused by the Council by notice dated 7 March 2000.
- The application was made under section 191(1)(a) of the 1990 Act as amended.
- The use for which a certificate of lawfulness is sought is use of the buildings shown edged in red on the plan attached to the application for the production of glass fibre mouldings, finishing and associated use.

**Summary of Decision: The appeal is allowed and a Certificate of Lawfulness is issued, in the terms set out in the Formal Decision below.**

## Appeal B: APP/P1805/A/00/1043784

**Primrose Nursery, Fairfield Road, Bournheath, Bromsgrove.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
- The appeal is made by Mrs B Banner against the decision of Bromsgrove District Council.
- The application (ref:B/1999/1239), dated 13 December 1999 was refused by the Council by notice dated 21 February 2000.
- The application sought the removal of a condition attached to a planning permission (ref:BU522/72), dated 14 March 1973, for the erection of a bungalow.
- The condition in dispute is no.2 which states: *"The occupation of the dwelling shall be limited to a person employed full-time in agriculture as defined in Section 290(1) of the Town & Country Planning Act 1971, or forestry or a dependant of such a person residing with him (but including a widow or widower of such a person)."*
- The reason given for the condition was: *"The Council would not be prepared to permit the erection of a dwelling on this site unconnected with the use of the adjoining land for agricultural or horticultural purposes as the holding is within an area of the Green Belt proposed for confirmation by the Secretary of State for the Environment."*

**Summary of Decision: The appeal is dismissed.**

## **APPEAL A**

### **Procedural Matters**

1. The evidence was taken on ~~oath~~.
2. The application for a certificate of lawfulness submitted to the Council, relates only to the use of three buildings within the nursery, as identified on the plan that accompanied the application. During my site visit I noted that the glass-fibre moulding shop included an additional structure immediately to the north east of the main building. I have had regard to that structure in determining this appeal.
3. In response to question 8 on the application form it was stated that the existing use to which the application relates is within use classes B1 and B6, as defined in the Town & Country (Use Classes) Order 1987. However, at the inquiry, the agent for the appellant stated that he no longer wished to pursue that claim and no evidence was submitted to demonstrate that the existing use comes within either of those classes.

### **The Main Issue**

4. For the appeal to succeed and a certificate of lawfulness to be issued, it needs to be demonstrated, on the balance of probability, that the material change of use of the three buildings for the production of glass fibre mouldings, finishing and associated use, occurred ten years or more prior to the date of the application (13 December 1999). It also needs to be demonstrated that during the intervening years either that the use was not abandoned or that there was no other material change of use of the buildings. The onus of proof rests with the appellant.

### **Reasons**

5. There is no dispute that Primrose Nursery has existed as a commercial nursery since at least 1970. It appears that its main business around this time was the importation and growing-on of plants for supply to other nurseries. There are several glass-houses on the land that were used for these purposes. As the business developed it started supplying plants in containers for offices, shopping malls, etc. This necessitated the purchase of containers and pots to hold the plants. From this side of the business a decision was made in 1982 to start making glass-reinforced plastic (GRP) containers on site and it appears that around this time a separate company called Dekra Craft Ltd was established. Evidence of the existence of the company around this time is demonstrated by, amongst other things, a Dekra Craft price list dated June 1983. This printed list bears the address Primrose Nursery, Bournheath and demonstrates that at that time some 33 different pots and troughs were available for purchase. The existence of this list also in my view is indicative that around this time GRP products were being made for sale on their own and that their production was not just to meet the requirement for containers to hold plants supplied from the site.
6. The evidence for the appellant was that the manufacture of GRP containers developed very quickly so that by 1984 this side of the business was the principal activity on the site. A letter from Derek Young & Co, Chartered Accountants, dated 4 October 2000 states as follows:

*"by 1984 the turnover was 50/50 between GRP and plant sales and maintenance."*

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*"By 1985 the split was 75-80%GRP with a total workforce of 14 people - 8 employed directly.... in GRP section....."*

*"In 1988 in particular, GRP turnover was at a high level due to a large contract with Britoil which lasted for eight or nine months. GRP Production peaked in this year to around 85% of turnover with 9 out of 15 people employed directly in GRP."*

Further evidence as to the growth in this side of the business was provided by Mr Banner. He estimated that in 1982 there were 6 or 7 people employed on the site, of whom 2 worked on the production of GRP containers. He recalled that by 1988 there were 15 employees on the site and, in his view, about 12 of these worked on the production and sale of GRP containers. However by 1992 he estimated that the number of employees on the site had reduced to about 11, of whom about 7 were employed on the production and sale of GRP containers; and currently the production and sale of GRP containers employs 6 people out of a total workforce of 10.

7. From this evidence it is clear that from 1984 onwards the manufacture of GRP containers has been one of the principal business activities on the land. Furthermore, whilst it may have started as an activity ancillary to the growing-on and supplying of plants, the available evidence suggests that the business quickly developed beyond this ancillary status. I have already observed that by 1983 there is clear evidence to demonstrate that GRP container production was not just to meet the requirement for containers to hold plants supplied from the site. There is documentary evidence to show that in the mid-1980s the containers were being advertised for sale through trade journals, and there are also several letters from companies who placed orders for the containers around this time. The evidence of Mr Banner was that by 1985 the wholesale of GRP containers accounted for 50% of his total business turnover, and that by 1988 it had increased to between 80 and 85% of total business turnover. All of this evidence leads me to the view that by 1984 there had been a material change of use of at least part of the site from use as a nursery to use for the production of GRP containers.
  8. In arriving at this view I am mindful that officers of the Council visited the site in 1984 and 1985 and observed the manufacture of pots taking place there. In paragraph 5 of a memorandum dated 9 January 1984, and sent by the Planning Officer to the District Secretary, the view was expressed that there had been a material change of use of two buildings to a manufacturing use. However, in a further memorandum dated 14 November 1995, from the Planning Officer to the Chief Technical Officer, it was stated *"there is no evidence to date that these planters are sold separately, it has been deemed that the manufacture is incidental to the main nursery business and that there had been no material change of use."* None of the officers who visited the site around this time were present at the inquiry, and it is not clear to what extent the sale of containers unrelated to the nursery business was fully investigated during the visits made in 1984 and 1985. The above correspondence suggest that there was some uncertainty in the mind of the officers concerned; and I do not find the available Council records from that period to be persuasive evidence that no material change of use had occurred by 1984.
  9. The application relates only to three buildings on the site (including the small structure immediately to the north east of the glass-fibre moulding shop). One of these buildings has been used principally for the manufacture of GRP containers; another has been used principally as a finishing shop, but also for the preparation of moulds; and the third has been
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used as an equipment store and for the production of moulds. The verbal evidence of Mr Banner was that each of these buildings has been used primarily for purposes associated with the manufacture of GRP containers since the early 1980s, and I see no substantial reason to doubt that evidence. From what I heard it appears that the use may have occasionally spread to other buildings but there is no evidence to indicate this happened to a material degree. Furthermore, in view of the strong odours associated with the manufacture and finishing of the GRP containers, I consider it probable the activities associated with the use would have been kept reasonably separate from nursery activities on the land. A letter from R L Smith Designs to the Council, dated 28 December 1990, states:

*"The site is an Agricultural Holding, being a nursery for the raising of a wide variety of plants....."*

*"The buildings/structures on the site comprise of numerous glasshouses, stores, workshop and offices. As the business has grown, additional glasshouses have been erected, and plans are for another large glasshouse in the near future."*

This letter leads me to the view that in 1990 most buildings on the site were still being used for nursery purposes and this equates with the observations of Mr Gurney who visited the site for the Council on 10 October 1990. Accordingly, I consider that the use of manufacturing GRP containers that has existed on this site for more than ten years prior to the date of the application, was restricted to the three buildings referred to in the application (including the small structure immediately to the north east of the glass-fibre moulding shop).

10. The case for the appellant is that the use of those three buildings for various aspects associated with the manufacturing of GRP containers has subsisted from the early 1980s to the present day. I found in paragraph 7 above that the material change of use had occurred by 1984. There is no substantial evidence before me to indicate that since then either the use has been abandoned or there has been any other material change of use of the buildings. I therefore intend to allow this appeal.

### **Conclusions**

11. For the reasons given above and having regard to all other matters raised, I am satisfied, on the evidence now available, that the Council's refusal to grant a lawful development certificate in respect of the use of three buildings at Primrose Nursery, for the production of glass fibre mouldings, finishing and associated use, was not well-founded and that the appeal should succeed. I shall exercise the powers transferred to me in section 195(2) of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991.
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### **APPEAL B**

#### **Planning Policy**

12. The appeal site is located within the approved West Midlands Region Green Belt. The development plan for the area comprises the Hereford & Worcester County Structure Plan and the Bromsgrove District Local Plan. Both documents contain a policy which seeks to
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ensure that permission for the construction of buildings within the Green Belt will not be given except in very special circumstances. Policy C24 of the Local Plan relates specifically to the removal of occupancy conditions and states:

*"The District Council will not remove an agricultural occupancy condition unless it is satisfied that the property is no longer required for the holding and for the wider agricultural needs of the area."*

In addition the Council have produced a policy guidance note (no.6) entitled 'Agricultural Dwellings and Occupancy Conditions' which, amongst other things, sets out the Council's approach to the removal of agricultural occupancy conditions. I intend to give weight to that guidance note in my determination of this appeal. I have also had regard to the advice in Annex I of PPG7.

### **Main Issues**

13. The main issue in this case is whether the condition in dispute is still reasonably necessary so as to keep the bungalow available to meet the long-term agricultural needs of either the holding on which it is situated or the locality.

### **Reasons**

14. There is no dispute that the permission for the erection of this bungalow in 1973 was only granted because of the agricultural need for a dwelling on the land at that time, and there is no evidence to suggest that the condition in dispute was not correctly imposed in the first instance. Since that time there has been a material change of circumstances on the holding and it was accepted by the Council *"that there now seems to be no need for a 24 hour supervisory function at the site."* On the evidence now before me it appears unlikely that situation will change in the long-term. However the bungalow is within the countryside, outside the village envelope for Bournheath, and, as such, it is appropriate to consider whether it might meet a need for an agricultural workers dwelling in the wider locality.
  15. Paragraph 3.2 of the Council's policy guidance note (no.6), referring to proposals to remove agricultural occupancy conditions, states that the Council *"will always give consideration to the general need for agricultural dwellings in the District"*. It is apparent that applications for new agricultural workers dwellings continue to be made in the District, although I heard no detailed evidence to enable me to assess whether those applications demonstrated a continuing need from genuine agricultural workers. The guidance then goes on to require that *"all applicants will need to provide evidence of unsuccessful attempts to sell the property in question with the encumbrance and prove that marketing has been correctly targeted, financially realistic and sustained for at least twelve months."* I will consider each of these three requirements in respect of the marketing in turn. As for the targeting of the marketing, I note that the bungalow has been offered for sale with only one estate agent. In addition it appears to have been offered for sale only on the general housing market, with no apparent attempt to market it specifically within the agricultural community. The absence of any specific targeting to the marketing is further demonstrated by the fact that the sale particulars make no mention of the agricultural occupancy condition. With regard to the marketing being financially realistic, the failure of the particulars to make any reference to the occupancy condition suggests to me that the bungalow has not been marketed in a manner that reflects the financial implications of the occupancy restriction. In addition the property has not been offered to rent and, as a result, no assessment has been made of the likely demand for such a dwelling within that sector of the agricultural community that
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either could not afford to, or alternatively chooses not to, purchase a dwelling. In making this observation I am mindful that paragraph 3.2 of the Council's policy guidance note (no.6) makes no mention of renting. However I raised this matter at the inquiry, having previously provided for the main parties a report of the judgement in Thomas v National Assembly for Wales [1999] OBD Unreported. Lastly, looking at the period over which the bungalow has been offered for sale; the marketing started in early July 2000, which is only four months prior to the date of the inquiry. Such a period falls well short of the 12 months required in the Council's policy guidance note (no.6), and in my view is an insufficient period within which to assess the marketability of the property. In the light of each of the above factors, I am satisfied that the marketing of the bungalow so far undertaken, falls well short of substantial evidence that there is no agricultural requirement for the dwelling in the locality.

16. Under such circumstances I am not persuaded that the condition in dispute has outlived its usefulness. There has not been a realistic assessment of the continuing need for the condition and, in such circumstances, I consider it reasonable that it be retained, so as to keep the bungalow available to meet the long-term agricultural needs of the locality. To do otherwise would undermine established Green Belt policies for the area.

#### **Conclusions**

17. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.
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#### **FORMAL DECISIONS**

##### **Appeal A:**

18. In exercise of the powers transferred to me, I allow the appeal and I attach to this decision a certificate of lawfulness describing the existing use which I consider to be lawful.

##### **Appeal B:**

19. In exercise of the powers transferred to me, I dismiss the appeal.

##### **Information**

20. Particulars of the right of appeal against these decisions to the High Court are enclosed for those concerned.

  
Inspector

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## APPEARANCES

### FOR THE APPELLANT:

Mr R Smith	91 Crabtree Lane, Bromsgrove
He called	
Mr A Banner	Primrose Nursery, Fairfield Road, Bournheath
Mr D Young	Derek Young & Co. Chartered Accountants, Redditch

### FOR THE LOCAL PLANNING AUTHORITY:

Mr A Burton	Solicitor with the Council
He called	
Mr R Gurney	Planning Officer with the Council

### INTERESTED PERSONS:

Mr B Lodge	11 Parish Hill, Bournheath
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## DOCUMENTS

Document	1	List of persons present at the Inquiry.
Document	2	Letter of notification and list of persons notified
Document	3	Appellant's bundle of documents submitted with appeal
Document	4	Appellant's documents appended to statement and response
Document	5	Council's documents re Lawful Development Certificate appeal
Document	6	Council's documents re Removal of Agricultural Occupancy condition
Document	7	Thomas v National Assembly for Wales [1999] - Planning & Environment Law Case Reports
Document	8	Judith Hitchin Estate Agent - sales particulars for the bungalow

## PLANS

Plan	A	Lawful Development Certificate application plan
Plan	B	Planning Application plan
Plan	C	Village envelope Bournheath
Plan	D	Bournheath & the appeal site

**THE PLANNING INSPECTORATE**

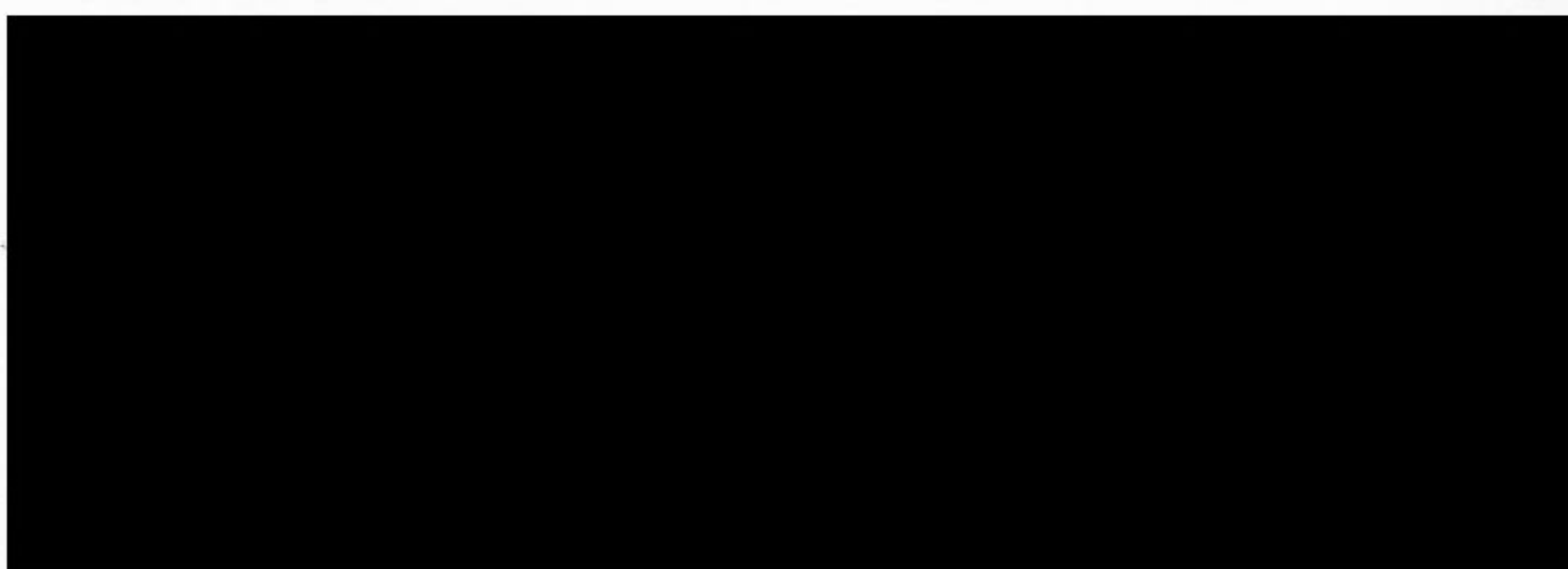
**TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191**  
(as amended by section 10 of the Planning and Compensation Act 1991)

**TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE)**  
**ORDER 1995: ARTICLE 24**

**CERTIFICATE OF LAWFUL USE OR DEVELOPMENT**

**IT IS HEREBY CERTIFIED** that on 13 December 1999 the use described in the First Schedule hereto in respect of the buildings specified in the Second Schedule hereto and marked A, B and C on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The material change of use of the buildings from agriculture to use for the production of glass-fibre mouldings, finishing and associated use, occurred more than ten years before the date of the application for the certificate.



**DEREK THEW**  
Inspector

Date .....

Reference: T/APP/P1805/X/00/1043877

***First Schedule***

Use for the production of glass-fibre mouldings, finishing and associated use.

***Second Schedule***

Buildings A, B, and C at Primrose Nursery, Fairfield Road, Bournheath, Bromsgrove

**IMPORTANT NOTES - SEE OVER**

## **NOTES**

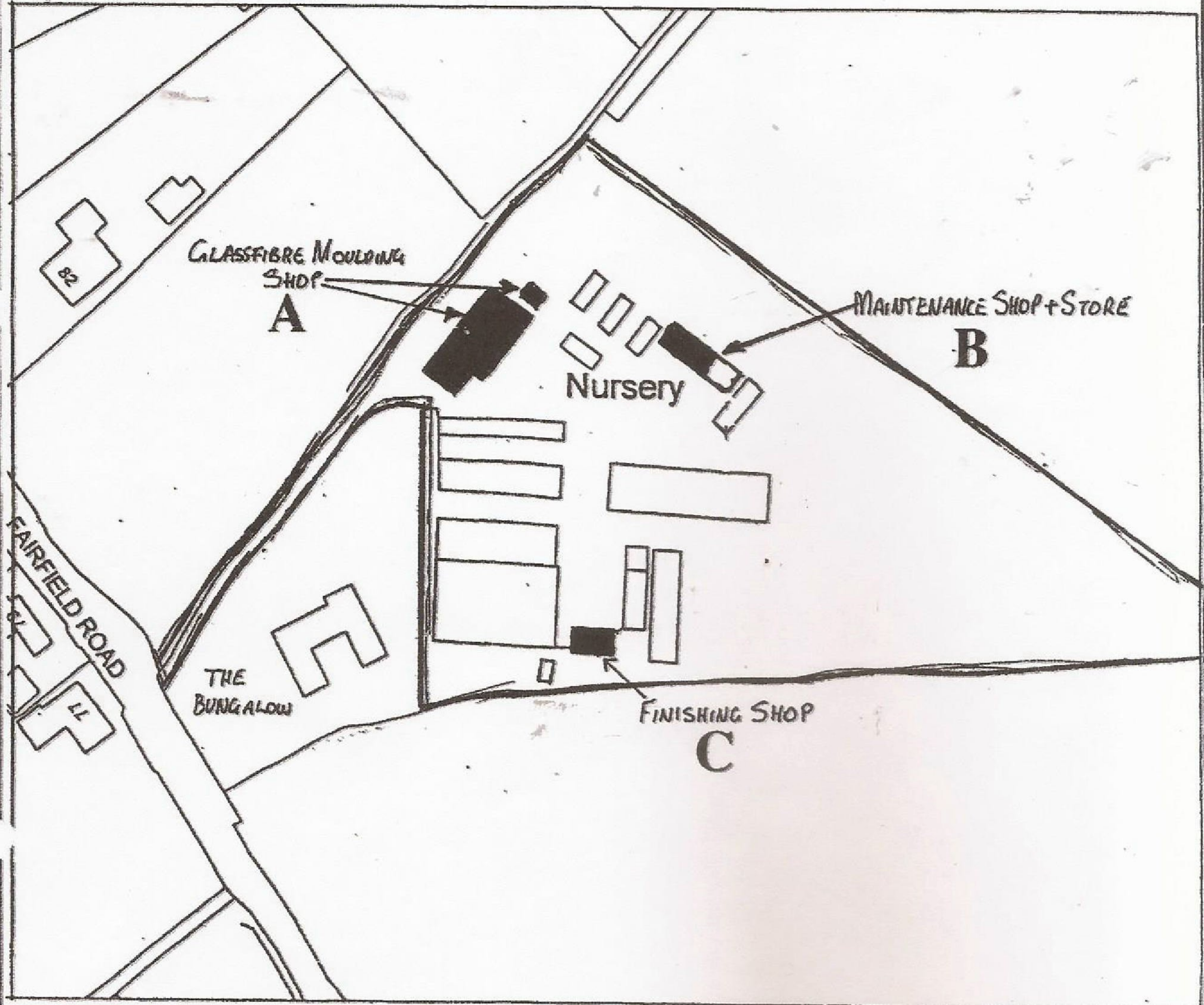
1. This certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

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# The Planning Inspectorate

An Executive Agency in the Department of the Environment, Transport and the Regions, and in the Welsh Office

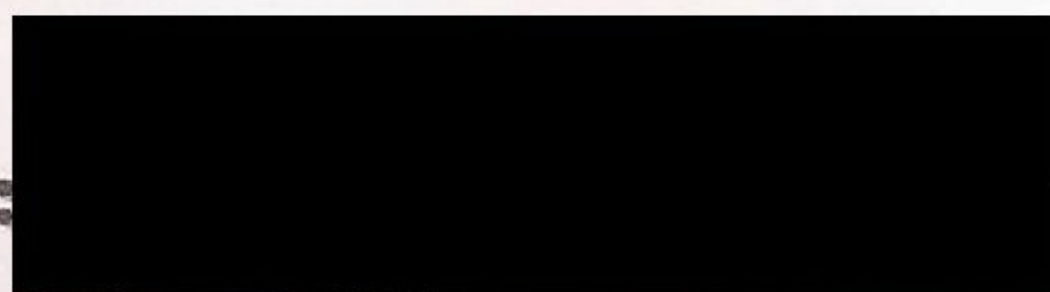


Land at:  
Primrose Nursery, Fairfield Road, Bournheath,  
Bromsgrove

This is the plan referred to in the certificate of  
lawfulness  
dated: -8 NOV 2000

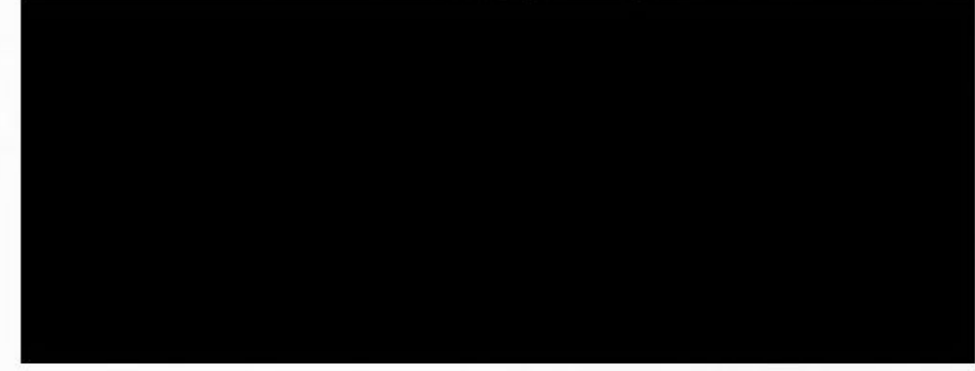
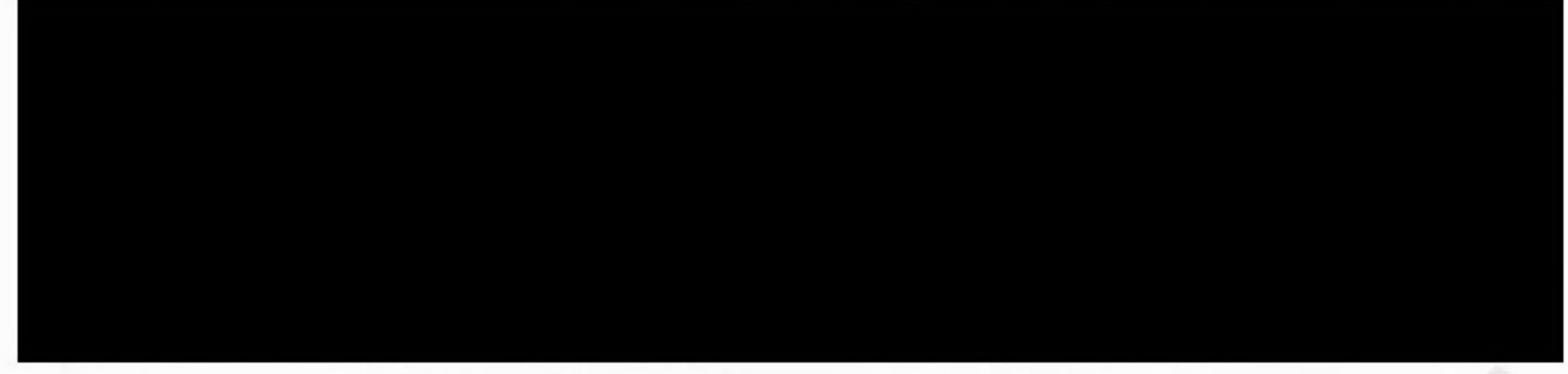
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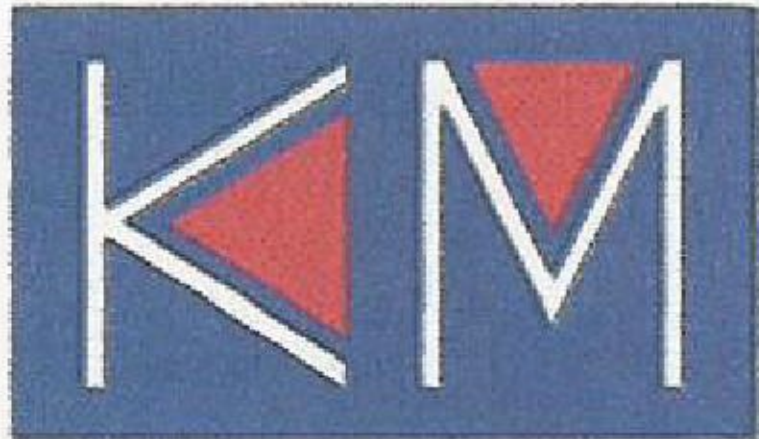
Inspector: 

Appeal Reference: T/APP/P1805/X/00/1043877





Emily Dixon  
Associate & T.E.P Solicitor  
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Worcs B61 8DQ



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F 01527 579235  
E mail@kennethmorris.co.uk

Chartered Accountants ▶ Taxation Consultants ▶ Business Advisers

[www.kennethmorris.co.uk](http://www.kennethmorris.co.uk)

Our ref: [REDACTED]

Mr M Banham  
The Bungalow  
Primrose Nurseries  
Fairfield Road, Bournheath  
Bromsgrove, WORCS  
B61 9JJ

12 August 2021

Dear Mark

**Commercial Rent History – Primrose Nurseries**

As requested please find detailed below the annual commercial rents recorded in your personal tax records for the Primrose Nurseries site since it was purchased in 2005.

<u>Year</u>	<u>Income £</u>
31/03/2005	16,277
31/03/2006	23,165
31/03/2007	30,260
31/03/2008	30,543
31/03/2009	36,433
31/03/2010	29,461
31/03/2011	29,473
31/03/2012	20,398
31/03/2013	16,500
31/03/2014	25,229
31/03/2015	13,237
31/03/2016	14,415
31/03/2017	16,304
31/03/2018	16,798
31/03/2019	14,255
31/03/2020	15,974

I trust this is the information you require

Yours Sincerely

[REDACTED]

Teresa Ford - Director

KM is the trading name of Kenneth Morris Ltd. Registered Office as above.  
Registered in England No 6054146. Registered to carry on audit work in the UK and regulated for a range of investment business activities by the Institute of Chartered Accountants in England and Wales.  
Directors: Richard Waller BSc.(Hons), FCA, CertPFS, Teresa Ford FCCA, FMAAT  
A member of the ICAEW Practice Assurance Scheme

Proactive