

Application for Certificate of Lawful Use

The Office and Compound Land at Duck End, Birchanger



Planning Statement

Office and Compound, Duck End



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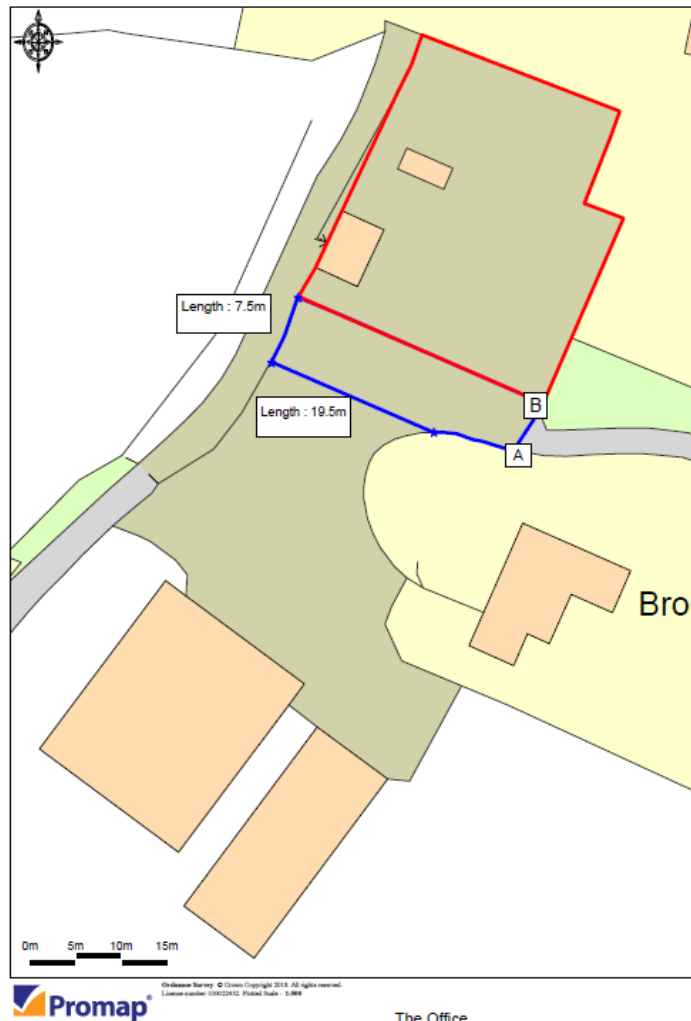


1. Introduction

- 1.1. This Planning Statement has been prepared by Savills (UK) Ltd as part of an application pursuant to S.191 of the Town and Country Planning Act 1990 to seek a **Certificate of Lawfulness of Existing Use or Development** in relation to The Office and Compound, Duck End, Birchanger.
- 1.2. The statement is to demonstrate that the development listed below at the site is lawful under Section 191 of Town and Country Planning Act 1990 (as amended), as the use of office and compound for a car and van hire company has existed continuously for more than 10 years and during the period of 10 years there were no planning enforcement actions taken against them.

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- 1.3. The Compound is an enclosed area of open storage as shown edged red on the plan. Within the compound is a brick built building, known as the Office. There is a shipping container (within the compound) at the northern end of the site which is excluded from the application site area, as in accordance with the planning history of the site, a 'Certificate of Lawfulness for stationing of container for General B8 storage use' was granted in 2006.
- 1.4. The site is within the administrative area of Uttlesford District Council ('the Council' / 'UDC').

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The Office

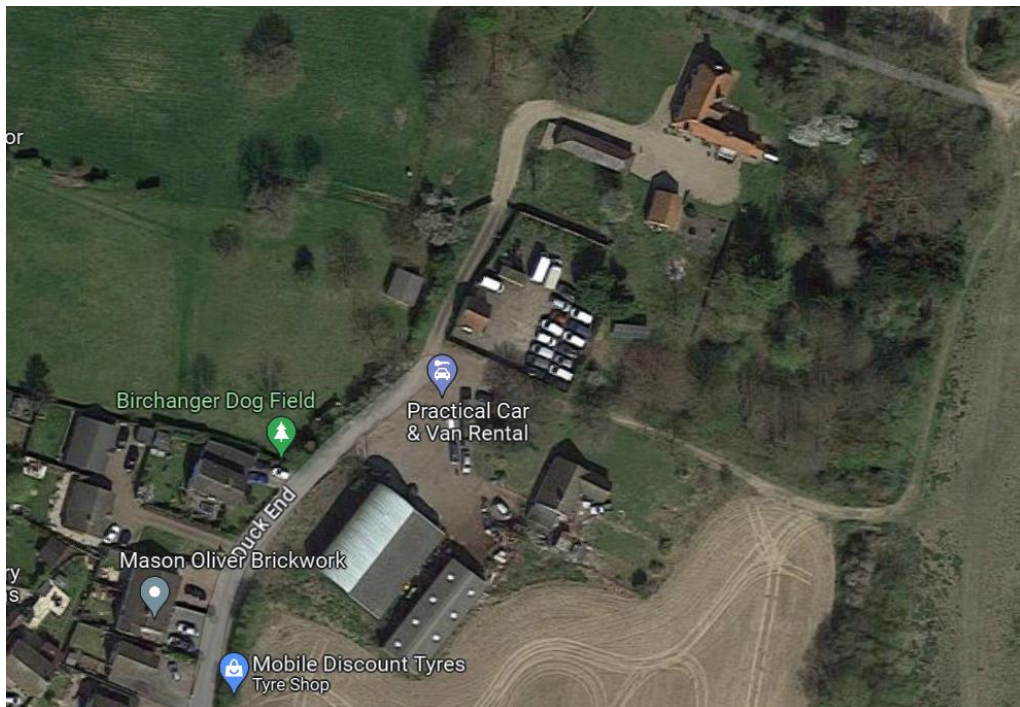


The Compound



2. The Site and Surroundings

- 2.1. The site comprises a fenced compound, within which is a small single-storey building with a tiled pitched roof, and a shipping container (with the latter being excluded from the application site area). The site is located at the northern end of Duck End, Birchanger. The site lies to the east of Duck End which has evolved over the past 50 years from what was the farmyard to 'Duck End Farm'.
- 2.2. The wider site comprises a number of buildings and different uses including a bungalow with garage to the east and to the south are three buildings all of which are steel-framed and clad in green-painted steel.
- 2.3. Duck End is a short stretch of road that connects the site to Birchanger Lane, approximately 75m to the south.



- 2.4. On the west side of Duck End are six houses, all bar one of which are set, slightly elevated, approximately 10-15m back from the road. To the north of the houses, opposite the site, is an access to a field. To the north of the site is a large detached property, known as Duck End Farmhouse, which is a Grade II Listed Building. To the north of the Farmhouse a Bridleway runs east-west, however there is no connection to this from Duck End. To the east and south of the site are agricultural fields, access to which can be taken from a field gate situated between the Compound and the Bungalow.

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- 2.5. Further to the east, approximately 100-125m from the site, is the M11 motorway. Whilst the main carriageway is set in a shallow cutting below the level of the site, parts of the junction with the A120 are elevated above the level of the site.
- 2.6. The Office and Compound is in use by a car and van hire company (24x7 Ltd), including for the 'storage' of vehicles. It has been in the same use since 2011, which is further demonstrated in Section 5 of the statement.

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3. Planning History

3.1. The following applications have been found in relation to the application site. The wider site of Duck End Farm has a relatively complex and lengthy planning history, the listed applications in the below table are only relevant to the application site.

Reference	Building	Description	Decision	Decision	Notes
UTT/1216/86 (Appeal: T/APP /C1570/A/87/66275 /P5)	Most of compound	Erection of 2 houses including change of use from agricultural to residential and construction of a new access	Refused	24/09/86	Appeal dismissed – 04/08/87. Decisions on file.
UTT/1114/01/FUL (Appeal: APP/C1570 /A/02/1093344)	Office in compound and Dutch Barn / Lean-to	Change of use of 2 utilitarian buildings to class B1 light industrial use	Refused	03/01/02	Appeal allowed with conditions – 05/11/02. Documents on file.
UTT/1635/06/CLE	Container in compound	Certificate of Lawfulness for stationing of container for General B8 storage use	Approved	01/12/06	Documents on file.

3.2. From a review of the available planning history of the site, there is no extant planning permission(s) for the use of the compound and the building currently used as an office.

3.3. The above application (UTT/1635/06/CLE) granted certificate of lawfulness for stationing of container as storage use. The container is located north of the application site and not included in the application site.

3.4. An appeal against the refusal of application UTT/1114/01/FUL was allowed for the change of use of the Office to Class B1 (light industrial) use, the permission was not lawfully implemented and has now thus lapsed. Therefore, currently there is no extant planning permission for the Office.

4. Legislative Provisions and Planning Practice Guidance

4.1. Section 191 of the Town and Country Planning Act 1990 as amended (“the Act”) provides that:

(1) If any person wishes to ascertain whether –

(a) any existing use or buildings or other land is lawful;

(b) any operations which have been carried out in, on, over or under land are lawful; or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act, uses and operations are lawful at any time if –

(a) no enforcement action can be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason)

(b) it does not constitute a contravention of any of the requirements of any enforcement notice then in force

(3) For the purposes of this Act, any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if –

(a) the time taken for enforcement action in respect of the failure has expired; and

(b) it does not constitute a contravention of any of the requirements of an enforcement notice or breach of condition notice then in force.

(3A) In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if—

(a) the time for applying for an order under section 171BA(1) (a “planning enforcement order”) in relation to the matter has not expired,

(b) an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or

(c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.

(4) If on an application under this section, the local planning authority are 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, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(5) A certificate under this section shall –

(a) specify the land to which it relates;

(b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified under S55(2)(f) identifying it by reference to that class;

(c) give reasons for determining the use, operations or other matters to be lawful; and

(d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

(7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission—

(a) section 3(3) of the M1 Caravan Sites and Control of Development Act 1960 [F4 or section 7(1) of the Mobile Homes (Wales) Act 2013;]

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*(b)section 5(2) of the M2Control of Pollution Act 1974; and
(c)section 36(2)(a) of the M3Environmental Protection Act 1990.]*

4.2. Section 171B, Town and Country Planning Act provides the statutory time limits for taking enforcement actions. It states:

(1) Where there has been a breach of planning control consisting on the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of **four years** beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of **four years** beginning with the date of the breach.

(2A) There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of **ten years** beginning with the date of the breach.

(4) The preceding subsections do not prevent—

(a)the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

(b)taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

4.3. The National Planning Practice Guidance (NPPG) is an online resource first launched in March 2014, which provides interpretation and additional detail to the policies contained within the National Planning Policy Framework, as well as explanatory guidance on planning processes.

4.4. Paragraph 003 of the NPPG on 'Lawful development certificates' states 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" (Reference ID: 17c-003-20140306).

4.5. In determining a lawful development application, paragraph 006 states that 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. (Reference ID: 17c-006-20140306).

5. Assessment

- 5.1. In order demonstrate the lawfulness of the above developments, the following evidence are submitted to the application:
- Statutory Declaration – 24 x 7 Ltd, dated March 2022
 - Statutory Declaration – Savills Managing Agent dated 6th October 2023
 - A Lease Contract (Stansted Transport Services): 15 May 2008 – 11 May 2011
 - A Lease Contract (24 x 7 Ltd.): 1 February 2013 – 31 January 2018
 - A Lease Contract (24 x 7 Ltd.): 1 February 2018 – 31 January 2021
 - A Lease Contract (24 x 7 Ltd.): 1 February 2021 – 31 January 2024
- 5.2. The submitted Statutory Declaration by the managing director (Andrew Terence Mahoney) of 24 x 7 Ltd demonstrates that the change of use of the Office and Compound to use as a car and van hire company by 24 x 7 Ltd started in 2002.
- 5.3. This Statutory Declaration also demonstrates that the small building was used as its general business administration office and the compound as its van parking area for the duration of its leases at Duck End farm.
- 5.4. The first lease to 24 x 7 Ltd commenced on 1st February 2013 and their occupation has continued without any gaps to the present time. The statement can further be evidenced by the submitted Statutory Declaration by John Wootton (Savills Director as the Managing Agent for the land since 1st October 2011).
- 5.5. From a review of the available planning history of the site, there is no extant planning permission(s) for the use of the Compound and the building currently used as an office, this planning statement demonstrates that the use of the Compound for open storage (Use Class B8) and the use of the Office for office use (Use Class Class E-(g)(i)) are lawful developments in accordance with Section 191 of Town and Country Planning Act 1990 (as amended).
- 5.6. In accordance with the relevant Legislation stated in Section 4, the Certificate of Lawfulness could only be granted for the above developments, if the evidence, on the balance of probability, would satisfy the following conditions:
- 1) *The breach of planning control consisting in the change of use of the Office and Compound to use as open storage and office has been continuous for a period of time of at least 10 years.*
- 5.7. As the site has been used for open storage and office without any interventions for more than 11 years, and the use is still extant at the present time, it satisfies the requirement of a continuous use for at least 10 years. During the period there were no planning enforcement actions taken against the use. As such, the evidence of the use for a continuous period of more than 10 years is precise and unambiguous and justifies the grant of a Certificate of Lawfulness for the use.

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- 5.8. The use of the Office for business/office purpose (Use Class E(g)(i)) and the use of the Compound for open storage purpose (Use Class B8) is lawful under Section 191 of the Town and Country Planning Act 1990, as amended.

6. Conclusion

- 6.1. As set out in Section 5, the submitted evidence demonstrates that the site has been used for open storage and office without any interventions for at least 10 years. During the period there were no planning enforcement actions taken against the use.
- 6.2. As such, the evidence of the use for a continuous period of more than 10 years is precise and unambiguous and justifies the grant of a Certificate of Lawfulness for the use in accordance with Section 191 of the Town and Country Planning Act 1990, as amended.

