

Orchard Place  
Lawful Development  
Certificate

**Supporting Statement**

JANUARY 29<sup>TH</sup> 2023

# Supporting Statement

In the matter of an application under Section 191 of the Town and Country Planning Act 1990 (as amended) for a Certificate of Lawful Existing Use or Development

At

**Orchard Place, Heniker Lane, Sutton Valance, Maidstone, ME17 3EE**

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# Executive Summary

The siting and agricultural use of two caravans, two polytunnels, and a Portakabin located at Orchard Place, Heniker Lane, Sutton Valance, Maidstone, ME17 3ED, have been in a continuous and uninterrupted use for a period greater than ten years.

Under the rights granted by Sections 171B and 191 of the Town and Country Planning Act 1990 (as amended), an application is being made for a Certificate of Lawful Existing Use or Development to determine, on the balance of probability, whether these permanent structures are immune to enforcement action due to the time located on the site.

# Introduction

This statement has been prepared by Saunders Rural Solutions in support of an application for a Certificate of Lawful Existing Use or Development (CLEUD) for a breach of planning control relating to the siting and agricultural use of a number of permanent structures at Orchard Place, Heniker Lane, Sutton Valence, Maidstone, Kent, ME17 3ED.

The subject property and extent of land to which this application relates and herein called "the site", can be seen outlined in red on the Site Location Plan accompanying this application (Appendix 1).

In support of this application, we also enclose a Statutory Declarations and Exhibit from the applicant (Appendix 3). The exhibits show the site location plan, as shown in Appendix 1.

On the basis of **Section 191** of the Town and Country Planning Act 1990 (as amended) (TCPA), a CLEUD is required at this time to provide the necessary assurance to the applicant that the continued siting and agricultural use of the two caravans, two polytunnels, and one Portakabin to support the agricultural enterprise of the applicant have made them immune from any enforcement action and therefore deemed lawful following a period in excess of ten years.<sup>1</sup>

## Background Information

The holding known as 'Orchard Place' is a mixed-use site consisting of agricultural and commercial operations that support each other. The site lies to the South of Sutton Valence and the East of a development known as The Harbour, approximately 4 km (2.5 mi) away from the southern edge of the county town of Maidstone.

**Figure 1** shows an extract from Google Earth for context relative to the postcode marker of 'ME17 3ED.' Figure 1 should be read in conjunction with the submitted plans so that the site may be considered in context.

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<sup>1</sup> The wording of the TCPA currently available online does not include the latest changes regarding time limits. However, this statement has been prepared based on the most recent legislation.



Figure 1 - Extract from Google Earth showing an overview of the site and postcode marker of 'ME17 3ED.'

A more detailed aerial view of the site, together with annotation regarding the structures included in this document, is shown in **Figure 2**.



Figure 2 - Extract from Google Earth showing an aerial view of the site. Imagery date: 5<sup>th</sup> August 2022 (latest available on Google Earth.) Historic satellite imagery is provided in Appendix 2.

The applicants have had the following structures permanently on site for a period in excess of least ten years:

- 2 caravans (Caravan A and Caravan B)
- 1 Portakabin office (to support the applicants' agricultural business by providing accommodation and welfare units)
- 2 polytunnels (labelled above as P1 and P2)

These structures are outlined in the Site Location Plan.

## Site Context

An overview of the site can be seen in the Google Earth extract shown in Figures 1 and 2 above. The site, situated on Heniker Lane, is not subject to any restricted areas that pertain to this application.

## Policy & Legal Background

A Lawful Development Certificate (LDC) should be granted if the time limits for taking enforcement action have expired (Section 191 of the TCPA, while time limits are set out in Section 171B).

The time limits set out in **Section 171B** (as amended) for the breach of planning control "*consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land*" would apply to all the structures listed in the previous paragraphs and equal to ten years.

**Part VII, Section 191(2)(a)** of the TCPA states that "*for the purposes of this Act uses and operations are lawful at any time if no enforcement action may then 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).*"

As mentioned earlier in the document, the agricultural structures have been on site for at least ten years. Satellite imagery has been provided in Appendix 2 as proof of the length of time.

### National Planning Practice Guidance

Government Advice on the issuing of LDCs located in the National Planning Practice Guidance (NPPG) of the same name, from which the policy references in the next paragraphs are relevant.

**Paragraph 005** (reference ID: 17c-005-20140306) states that sufficient factual information/evidence for a Local Planning Authority (LPA) to decide the application should be included with an application for an LDC.

**Paragraph 006** (reference ID: 17c-006-20140306) considers "*Who is responsible for providing sufficient information to support an application?*" and states that:

*"The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counterevidence. 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."*

Paragraph 006 also states that a LDC should be granted unless contrary evidence makes the applicants' assertions "*less than probable*". This is in line with historical court decisions, as referred to in paragraph 8.15 of Annex 8 Circular 10/97 - "*Enforcing Planning Control: Legislative Provisions and Procedural Requirements*" which contained the Government advice for LDCs before the publication of the NPPG.

Given that this guidance accords with the Court's historic view in *F W Gabbitts v SSE*, it is considered that the applicants' evidence does not need to be corroborated by "*independent*" evidence in order to be accepted.

If the LPA has no evidence of its own, or from others, to contradict or otherwise make the applicants' version of events less than probable; there is no good reason to refuse the application provided that the applicants' evidence alone is sufficiently precise and unambiguous to justify the grant of the certificate.

The burden of proof in planning law is on "*the balance of probabilities*." This statement of "*on the balance of probabilities*" only requires a "*more probable than not*" conclusion. The evidence provided only needs to be probable without contradiction as per *Re H (Minors) [1996] AC 563* at 586: "*The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not.*"

Within **Paragraph 008** (reference ID: 17c-008-20140306), regarding "*Does a local planning authority need to consult on an application for a lawful development certificate?*" the paragraph states that:

*"There is no statutory requirement to consult third parties including parish councils or neighbours. It may, however, 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. 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."*

Consequently, it is considered that the accompanying Statutory Declaration with associated Exhibits, signed by the owners of the site and those with knowledge of the applicants' on-site



operations, confirm that it is more probable than not that all the aforementioned structures have been in situ and in continuous and uninterrupted agricultural use for a period in excess of ten years.

These submissions are considered to be precise and unambiguous in their declarations.

Considering the above, as the applicants' evidence is not required to be corroborated by any additional independent evidence and, if the LPA has no evidence of its own which makes the applicants' evidence less than probable; then it would not be appropriate to refuse the application.

As such, it is considered that, in relation to these structures, this breach of planning control to be immune from enforcement action, and therefore entirely lawful.

## Evidence in support of the application

Annexe 8 of Circular 10/97 previously provided guidance in relation to the issue of lawfulness and LDCs. Paragraph 8.15, with regard to the relevant tests for submitted evidence, advised that while the burden of proof is on the applicant, the relevant test is "*the balance of probability*." As such, an LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "*beyond reasonable doubt*."

Circular 10/97 was superseded by the NPPG in March 2014. **Paragraph 005** of the "*Lawful Development Certificate*" section of this new guidance (reference ID: 17c-005-20140306), reaffirms that sufficient factual information/evidence for an LPA to decide the application should be included with an application for an LDC.

In this regard the applicant has submitted a Statutory Declaration from themselves as freeholder of the site.

Within the Statutory Declaration by the applicants, they state that they have been the legal owners of the property since 1987, and that the structures have been on site and in a continuous and uninterrupted use for a period of greater than 10 years.

## Analysis

As per the requirements of Section 194(1) of the TCPA, it is considered that the Statutory Declarations conclude that at no point has the application:

Knowingly or recklessly made a statement which is false or misleading in a material particular; or

Had the intent to deceive, used any document which is false or misleading in a material particular,

Or

Had the intent to deceive, withheld any material information.

As such it is considered that the Statutory Declarations are made fully and truthfully as an expression of the best understanding and knowledge of the applicant.

From the Statutory Declarations and attached historic satellite imagery it is also considered that the evidence provided demonstrates that, on the balance of probability, there has been a continuous breach of planning control relating to the siting of the agricultural structures for a period in excess of ten years.

Finally, there has not been any attempt to disguise the presence of the structures to deceive the local planning authority in any way. Prior visits by representatives of Maidstone Borough Council have not raised any concerns over the structures and their use. There has also been no known enforcement action undertaken by Maidstone Borough Council in regard to this breach of planning control.

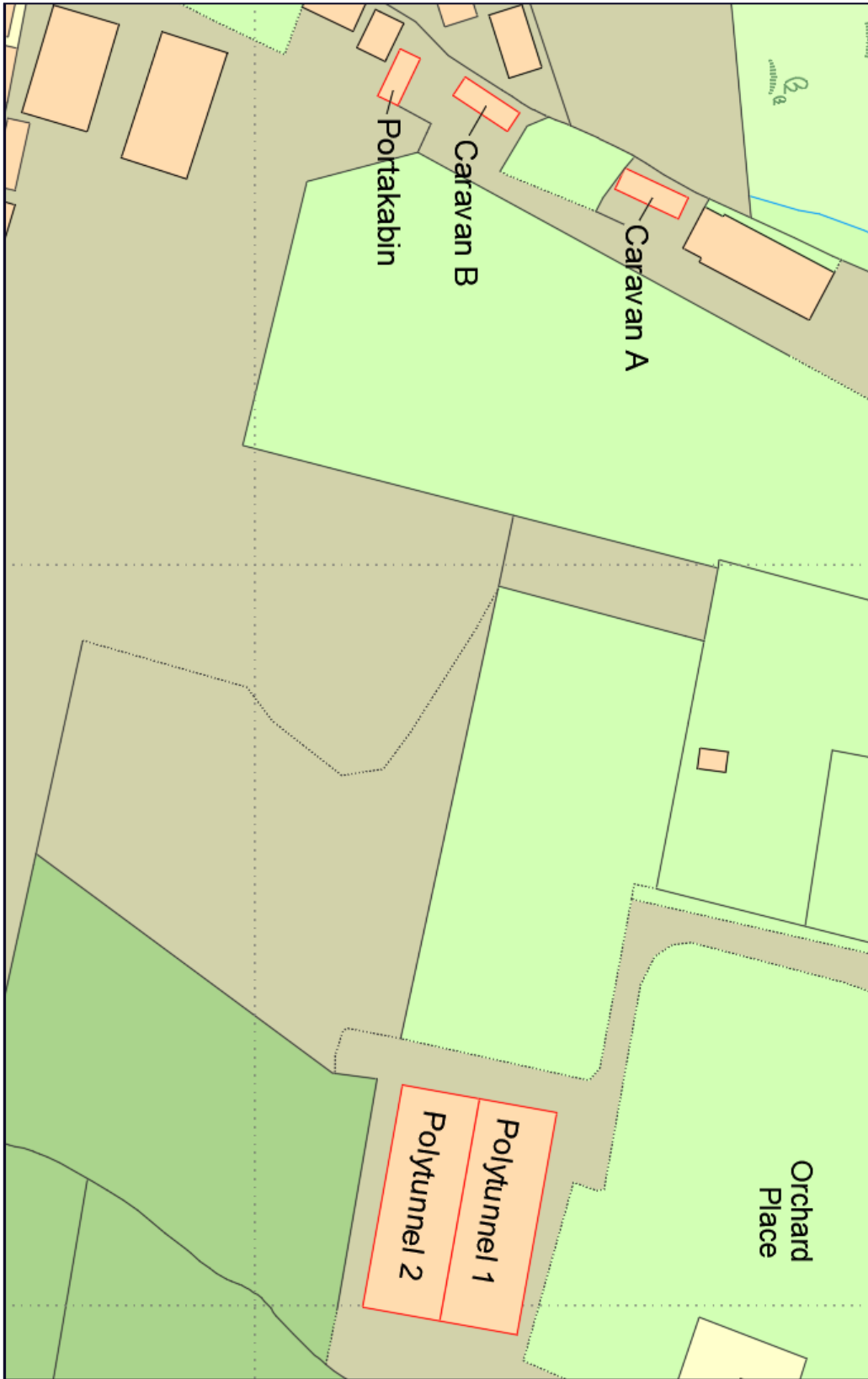
## Conclusion

This statement has been prepared in support of an application for a Certificate of Lawful Existing Use or Development for a breach of planning control relating to the siting and agricultural use of permanent structures at Orchard Place, Heniker Lane, Sutton Valence, Maidstone, Kent, ME17 3ED.

All the structures (two caravans, two polytunnels and a Portakabin used as an office) shown on the site plan have been in situ and in continuous and uninterrupted agricultural use for a period in excess of ten years. As such it is considered that this breach is immune from enforcement action as permitted by Section 171B of the Town and Country Planning Act 1990 (as amended) on the basis of satisfying the requirement of "*on the balance of probabilities*" via the accompanying Statutory Declarations.

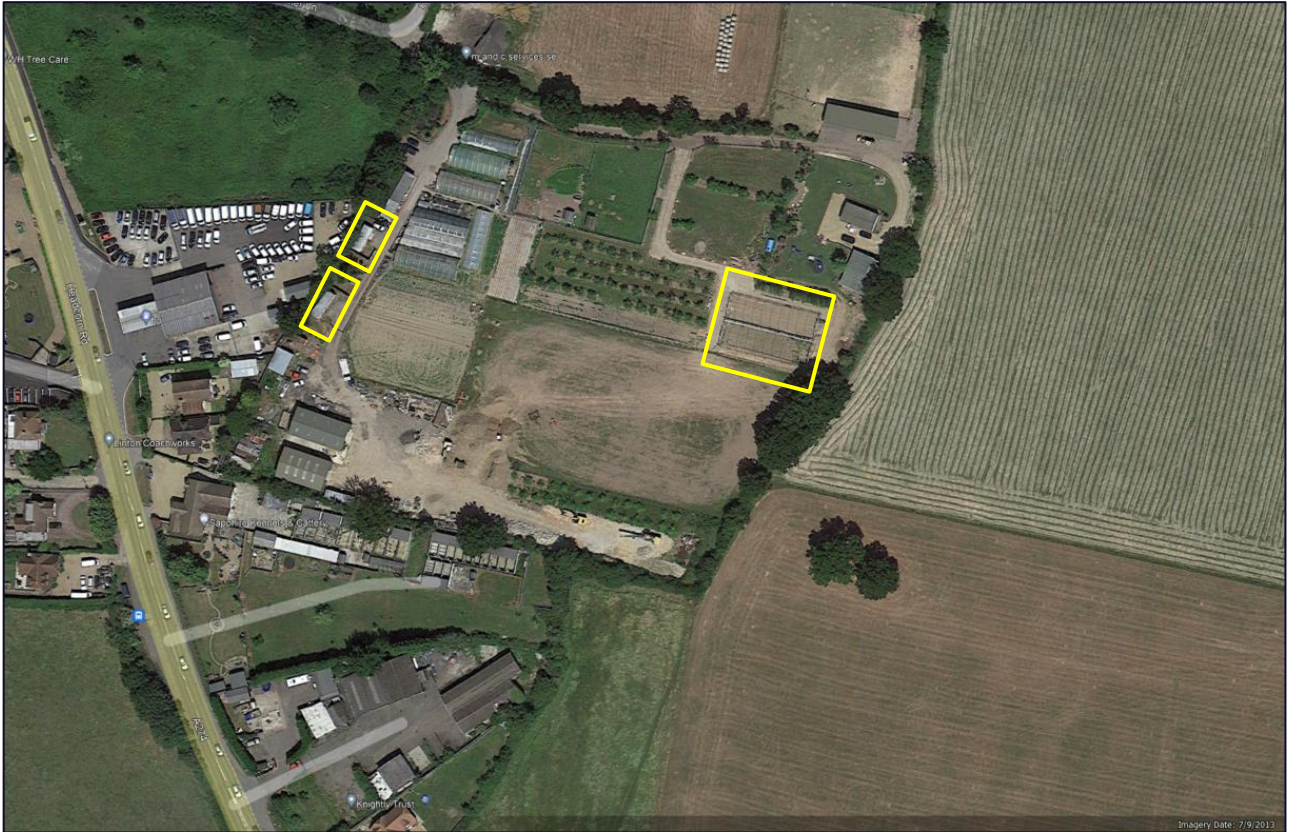
As such, it is respectfully requested that the LPA grants the Certificate of Lawfulness for an Existing Use or Development (CLEUD).

# Appendix 1 - Site Location Plan Extract



(Not to scale).

## Appendix 2 – Historic satellite imagery



**Image B**, dated 9<sup>th</sup> July 2013. Courtesy of Google Earth. This image shows Caravan A, Caravan B, and Polytunnels 1 and 2 already on site.



**Image C**, dated circa 2008. Courtesy of Google Earth. This image shows the current Portakabin office on site.

Between 2014 and 2015, the Portakabin was reclad in timber with a white weatherproof sheeting covering the roof (as can be seen in the photo below).



Portakabin, photo taken August 2023.



Polytunnels, photo taken August 2023.

## Appendix 3 – Statutory Declaration of Mr. Michael Head