

TO: PLANNING & REGULATORY COMMITTEE –
BY DELEGATION

DATE: March 2008

BY: PLANNING MANAGER

DISTRICT(S) TANDRIDGE DISTRICT COUNCIL

ELECTORAL DIVISION(S):
Lingfield

Mr Rimington

PURPOSE: FOR INFORMATION

GRID REF: 534930 144084

TITLE: MINERALS AND WASTE APPLICATION TA07/1554

APPLICATION DETAILS

Land adjoining Willetts Cottage, Croydon Barn Lane, South Godstone, RH9 8JP

Application for a Certificate of Lawfulness of an Existing Use or Development for the importation of mixed waste materials (including concrete, bricks, tiles, stone, rubble, paving slabs, tarmacadam, overburden and soils, green waste), involving the sorting, recovery/recycling, for reuse or export from the site.

Applicant

R Exall and Sons

Date application valid

18 September 2007

Period for Determination

18 December 2007

Amending Documents

None

BACKGROUND

Site Description and Planning History

- 1 The site on land adjoining Willetts Cottage lies on the south side of Croydon Barn Lane, off Brickhouse Lane, between the villages of Blindley Heath and Smallfield. The A22 Eastbourne Road lies some 1.7km to the east and M23 motorway 4km to the west. The area is predominantly agricultural land within the Metropolitan Green Belt, with Gatwick Airport some 7km to the southwest.
- 2 Access to the site is off Croydon Barn Lane via a narrow lane, which also serves Eulyn Farm to the south. The site area, which lies within an area known as the 'Orchard'

consists of a rectangular area of land approximately 66m x 26m in size (approx. 1716m²) to the west of Willetts Cottage, bounded by Eulyn Farm buildings to the south. Public footpath (FP362) runs along the access lane off Croydon Barn Lane, past Eulyn Farm and then across fields to Branford Farm to the southeast. Horne Park Golf Course/Academy lies to the west of the access lane and footpath.

- 3 The area to the east of the site, is divided between a grass area to the north (continuation of the 'Orchard') and a yard area to the south, which leads up to the property known as Willetts Cottage. Access to the site can also be made via the house entrance off Croydon Barn Lane and via the yard area. The yard area contains various buildings and is used for machinery and equipment storage.
 - 4 In 1962 an enforcement notice was served against the use of the land for the stationing of residential caravans. An appeal against the notice was subsequently dismissed and the caravans were removed, however Tandridge District Council has informed the County that the notice would still appear to be valid.
 - 5 In 1975 an application (ref. TA/75/793) for the erection of a bungalow and a garage on the site was refused.
 - 6 In 1985 an application for an Established Use Certificate was submitted, claiming that part of the garden had been used as a landscape gardeners yard (85/1019). This was refused on the basis that the activity did not extend to all of the land that had been sought under that Certificate. There is no record of any enforcement action taken at that time.
 - 7 In 2000 Tandridge District Council granted planning permission for the erection of 2 stables and tack/feed store on land at Willetts Cottage
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THE CLAIMED USES

- 8 The application is for a Certificate of Lawfulness of Existing Use or Development (CLEUD) for an area of land adjacent to Willetts Cottage for the importation of mixed waste materials (including concrete, bricks, tiles, stone, rubble, paving slabs, tarmac, overburden and soils, green waste), involving the sorting, recovery/recycling, for reuse or export from the site. The area of land is relatively small (66m x 26m), being either side of a trackway through an area known as 'The Orchard'. The extent of 'The Orchard' used for the business is shown edged red on the plan marked K.E.1 annexed to Keith Exalls statutory declaration.
- 9 It is claimed that this waste use is part of the family landscaping business, which has operated from this site since 1951. The waste arises from the landscaping business, which imports the waste in the company vehicles. The above mixed waste is sorted and recycled, with some crushing involving the use of a mini concrete crusher since 1992. In 2001, the applicant purchased a mini crusher for use on site. It is also claimed that green waste and pallets are burnt on site, however this activity is an illegal disposal of a controlled waste and is an offence under the Environmental Protection Act.
- 10 The volume of waste recycled on site is estimated at approximately 1200 tonnes per year, with the height of stockpiles not exceeding 3 metres, and consists of:
 - 30 tonnes of green waste - burnt
 - 800 tonnes of hardcore – stored and processed
 - 370 tonnes of soils
 - small quantity of metal waste – separated and retained in a skip to be collected by scrap dealer

11 In support of the application, the applicant has submitted 3 statutory declarations signed by;

- a) Keith Exall
- b) Peter Exall including six letters (exhibits PHE1-6)
- c) A P & E C Constable

In addition, a letter from 1987 and invoices outlining materials supplied and landscaping work carried out, from 1980 and 1984 have been submitted as supporting evidence.

CONSULTATIONS AND PUBLICITY

District Council

12 Tandridge District Council has confirmed the above planning history for the site and made the following comments;

- a) The Case Officers' report in the 1975 planning application referred to a 'long established landscape gardening business' at the site and that '...the yard is only used for the storage of machinery etc'.
- b) The application for the Established Use Certificate in 1985 was refused on the basis that the activity did not extend to all the land that had been sought under that Certificate, although it appears from the file that there was again an informal acceptance that a landscape gardening business of some description had been operating from the site for some time, particularly as there is no record of any enforcement action being taken against the activity at the time.
- c) Aside from a planning application in 2000 for stables on the site, which briefly mentions a 'landscape firm' on the notes of the Case Officer, the Council has no more recent records of the site.

Consultees (Statutory and Non Statutory)

13 Environment Agency – commented that they have no records on this site.

14 County Highway Authority – Transportation Development Control, commented that P H Exall trading as R Exall & Son have an HGV Operator's Licence ('O' licence) for one goods vehicle, with Willetts Cottage listed as the authorised operating centre. TDC Officers consider that Willetts cottage has been an operating centre for 11 to 12 years, in respect of one HGV.

Parish/Town Council & Amenity Groups

15 Horne Parish Council responded with no comments or objection.

Summary of publicity undertaken and key issues raised by the public

- 16 The application has been publicised by posting of two site notices and by direct notification of 4 local properties (houses and businesses). No letters of representation have been received.

CONSIDERATION OF EVIDENCE

INTRODUCTION

- 17 For a Certificate of Lawfulness of Existing Use or Development (CLEUD) to be issued, the applicant must produce relevant evidence, which satisfies the County Planning Authority that the use is lawful. 'By virtue of section 191(2) uses and operations are 'lawful' if no enforcement action may be taken against them and they are not in contravention of any enforcement notice which is in force'.
- 18 To be granted a CLEUD the applicant has to show that the use commenced more than ten years prior to the submission of the application. Evidence has to be provided to support the history and nature of the use for which the Certificate has been applied for and the onus of proof rests firmly on the applicant.
- 19 The issue of a CLEUD is a matter of fact and is not concerned with the planning merits of the proposal. An application for a certificate can only be refused if the County Planning Authority considers insufficient evidence has been submitted to satisfy it on the balance of probability that the activity commenced more than ten years before the application, or if there has been a material change of use, or the use has been abandoned within the 10-year period. Decisions on CLEUDs are taken under delegated powers with reports fully agreed with Legal Services.
- 20 The decision on a CLEUD is ultimately related to the claimed use on the land the subject of the application. Nevertheless, the history of the uses claimed, how they started and evolved, sets the relevant 10-year period in context. In this particular case, the applicant has stated that this claimed use is part of a long established family landscaping business, which has operated from this property since 1951. The key issue is whether the claimed area has been used for the importation, storage, sorting, recovery/recycling of waste materials over the relevant period of ten years. The application was valid on 18 September 2007, which means the ten-year period would have to extend to September 1997.

Statutory Declarations and Supporting Information

- 21 Peter Exall's declaration included 6 exhibits marked PHE1-6. Peter Exall states in his declaration that his father Robert Exall started the landscaping gardening business in or about 1950, with the land and property known as Willetts Farm being transferred to him in 1990. Letters from their accountants, R. Glendinning (dated 7 September 1990) and solicitor, Mahany & Co (dated 19 September 1990) marked exhibit 'PHE 1' support this transfer of ownership. The accountants' letter states that Robert Exall was a proprietor of a small landscape gardening business located at Willetts Cottage, with quite a large proportion of the grounds given over to the business. Peter Exall states that 'The Orchard', the subject area for the claimed use, has always been used for the burning of green waste and the storage and processing of imported materials, for the past 20 years. The number and extent of stockpiles has varied upon the type of work the business has been engaged in at the time and the level of activity of the firm.
- 22 Exhibit 'PHE2' is a letter from a neighbour (Mrs Susan Burton), which states that 'The Orchard', Willetts Cottage has been known to her since 1965, with the premises '*used to store topsoil, hardcore, etc., which is recycled in conjunction with the landscape business*'. Exhibit 'PHE3' is an aerial photograph (oblique view), and based on the

vehicles in the yard Peter Exall has estimated this was taken about 10 years ago (1997). The photograph is very clear and shows materials in part of the claimed CLEUD area, known as 'The Orchard'.

- 23 Exhibit 'PHE4' is a letter from Hobbs Partnership, outlining details of a concrete crusher, which was lent to the Exalls in Spring 1995, and was delivered to the yard at Willetts Cottage. The letter confirms that Hobbs have known the Exalls for over 20 years, and states that '*they have worked for us throughout this period on and off and confirm that they have always had hardcore and spoils kept at their yard, which they recycle and re-use in their business capacity as Landscape Contractors*'. The letter only mentions the use of the yard, with no mention of the use of the area known as 'The Orchard'.
- 24 Exhibit 'PHE5' contained two letters, one from local builders' merchants (Fairalls) and the other from the neighbouring farm. The Fairalls' letter confirms the nature of the Exalls business, and mentions waste materials such as soil, paving stone cleared from sites and the use of the yard at Willetts Cottage for the business. The owner of the neighbouring Eulyn Farm, which is adjacent to the yard and orchard area, has confirmed more precisely the presence of the landscaping business on the claimed CLEUD area, known as 'The Orchard'. The owner has stated that '*the top end of the Orchard was full of spoils from this business, there were also concrete bases*' and Exalls' had '*removed the concrete bases and stored the hardcore by the side of my garage building and on the opposite side had various gardening spoils, with the help of mechanisation these spoils have been recycled*'.
- 25 Exhibit 'PHE6' is claimed to be a copy of a waste licence issued to Peter Exall by Surrey County Council in 1992. The dates indicate a licence was issued in 1992 and expired in 1998. This supports some waste use on land at Willetts Cottage during this period of time.
- 26 Keith Exall's declaration, states that he is the son of Peter Exall and partner in the business of R Exall and Sons. Keith Exall resides at Willetts Cottage with his family and started work for the family business some 9 years ago, but has been familiar with the business for the past 20 years. Keith Exall states that the land either side of the track through the area known as 'The Orchard' has been used for '*the burning of green waste, storing of imported materials which were recovered from sites upon which 'Exalls' had been working...the material sorted and where appropriate broken up by hand though occasionally crushed using mechanical crusher*'. The extent of 'The Orchard' used for the business is shown edged red on the plan marked K.E.1 annexed to this declaration. After sorting and crushing Keith Exall states that most of the stored materials are reused as hardcore in other landscaping projects.
- 27 A statutory declaration was also submitted by A P & E C Constable, who were former owners of Long Meadow Farm, which is the neighbouring farm to the north of Croydon Barn Lane. The farm boundary is shown on the plan 'APC1' attached to the declaration. The Constables resided at Long Meadow farm for 18 years, from 1983 until 2001, which covers part of the period of the claimed use. The declaration states that Mr Exall ran a landscape gardening business from his property and continued through the entire time the Constables resided at Long Meadow Farm. The Constables state that the '*yard and adjoining orchard which are edged green on the attached plan*' (APC1) '*were used for storage of waste items relating to the landscaping business*'. The yard area is not included in this CLEUD application.
- 28 The applicant has also submitted a supporting letter dated 4 July 2007, which states that the family business operates its own vehicles and lorry, which they use to transport materials from sites to the claimed CLEUD area. Attached to the letter were invoices showing details of the type of landscaping works undertaken by the applicant, with a business operating from Willetts Cottage.

County Council Records including aerial photographs

- 29 The site first came to the attention of County Council Planning Enforcement Officers in May 2006. Site meetings took place in June 2006 with County Council Officers, who informed Mr Exall that he would need to submit evidence in support of his claimed waste use of the site over the last ten years. The County Council have aerial photographs dated 1998/99, which represent one point in time, but show that areas of 'The Orchard' were being used for the storage of material. In addition, the County Highway Authority has confirmed that R Exall & Son have been using the land at Willetts cottage as an operating centre for 11 to 12 years, in respect of one HGV. This supports the applicants' claim of the use of their own lorry in connection with transporting waste to and from the site. The County Council has no other records.

Waste Management Licence Records

- 30 The applicant submitted documentation from an old waste licence, with details of the applicant and waste licence number granted in 1992 by Surrey County Council, who were the Waste Regulation Authority at the time. The Environment Agency commented that they have no records on the site.

HUMAN RIGHTS IMPLICATIONS

- 31 The determination of this application concerns matters of fact and not questions of amenity or planning merits. The activity at the application site may result in an impact on amenity from noise and traffic but cannot be conditioned. In the case of a CLEUD the action of the County Planning Authority is prescribed by law, in that the Town and Country Planning Act 1990 (as amended) requires that a Certificate be granted where sufficient evidence is provided showing the use over the prescribed period without taking account of any amenity or human rights issues.

CONCLUSION

- 32 This CLEUD application relates to the establishment of a use, the importation, storage, sorting, recovery/recycling of waste materials, in connection with a long established landscaping business. The onus of establishing that a continuous use has taken place is firmly on the applicant to prove on the 'balance of probabilities'. A CLEUD is a matter to be determined solely on evidence. No evidence is held by the County Council or has been provided by consultees or third parties, to contradict much of the evidence contained in the application.
- 33 Circular 10/97 confirms that if authorities have no evidence of their own or from third parties, to contradict or undermine the applicant's version of events there is no good reason to refuse the Certificate provided the evidence is sufficiently precise and unambiguous. Circular 10/97 emphasises the need for a CLEUD to be as precise as possible both in terms of the uses described and the area they cover. The details in the Certificate should serve as a 'point of reference ... against which any subsequent change in use may be assessed'.
- 34 Under s193(4) of the Town and Country Planning Act 1990 the Authority has the power to issue a Certificate, which identifies a specific use or uses within identified areas. The Circular advises caution in respect of granting a Certificate where there is mixed or composite use. Therefore, where possible, a Certificate should be limited to those uses or areas that are distinct from any permitted use. However, it would be unreasonable to

refuse the Certificate in respect of a use or area where the Authority has no evidence to the contrary.

- 35 The applicant has provided information in the form of statutory declarations, aerial photographs, invoices and supporting documentation, which proves that a landscaping business has been operating from the land at Willetts Cottage. The neighbour's evidence, from A P & E C Constable and the owner of the Eulyn Farm do specifically mention the use of the area known as 'The Orchard' for the storage and processing of waste spoils. Tandridge District Council has commented that they were aware of the landscaping business, with a CLEUD being refused in 1985, however no enforcement action was taken against this activity at the time.
- 36 There is no evidence to contradict the applicant's claim for a CLEUD in respect of the importation of mixed waste materials (including concrete, bricks, tiles, stone, rubble, paving slabs, tarmacadam, overburden and soils, green waste), involving the sorting, recovery/recycling for the area in question. Therefore, it is considered that the applicant has demonstrated on the balance of probability that the nature of the use for which the Certificate has been applied for has been in existence for a sufficient period (10 years) so as to render such a use as lawful. It is considered appropriate therefore to issue a certificate for this relatively small-scale waste storage and recycling activity in accordance with the terms of the recommendation set out below.

RECOMMENDATION

That in respect of Application No. TA07/1553, a Certificate of Lawfulness of Existing Use or Development (CLEUD) is GRANTED in respect of the use of approximately 0.2 ha of land at Willetts Cottage, Croydon Barn Lane, as hatched black on the attached plan 'KE 1', for the importation of mixed waste materials (including concrete, bricks, tiles, stone, rubble, paving slabs, tarmacadam, overburden and soils, green waste), involving the storage, sorting, recovery / recycling, for reuse or export from the site and to the following scale;

- a) Approximately 1200 tonnes of waste imported and processed on site per annum,
- b) Waste stockpiles up to a height of 3 metres,
- c) Waste types and approximate tonnage per annum:
 - Green waste (30 tonnes)
 - Hardcore (800 tonnes)
 - Soils (370 tonnes)
 - Small quantity of metal waste – separated and retained in a skip to be collected by scrap dealer

as the applicant has demonstrated, on the balance of probability, that on 18 September 2007 the uses of the land described above have been carried out for in excess of ten years.

CONTACT

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BACKGROUND PAPERS

The deposited CLEUD application documents and plans, responses to consultations, notifications and representations received, as referred to in the report and included in the planning application file, The Planning and Compensation Act 1991 and Government Circular 10/97 – Enforcing Planning Control: Legislative Provisions and Procedural Requirements.
