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Application for a Certificate of Lawfulness for the use of land as a paintball centre and retention of associated buildings

Broad Oak Farm, Kingsley Moor, Stoke on Trent

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Project	Broad Oak Farm
Client	Andrew Harrison
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Project Team	Jon Imber
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1 Introduction

1.1 JMI Planning is a Midlands based town planning consultancy. Its directors are chartered town planners with over 30 years' combined experience in both the public and private sector.

1.2 The author of this appraisal, Jon Imber, has worked as both a development control and forward planning officer in local government, and more recently as a senior planning consultant in the private sector. He has extensive knowledge of the planning system and experience of the appeals process. He is a member of the Royal Town Planning Institute.

1.3 This statement is submitted as part of an application for a certificate of lawfulness in relation to the continued use of land at Broad Oak Farm as a paintball centre together with the retention of associated buildings.

2 Site and Planning History

2.1 Broad Oak Farm lies in a rural area approximately 5km north-west of Cheadle and 9kn south of Leek. The grounds contain a paintball site and a highly regarded clay pigeon shoot.

2.2 The site is adjoined by Broad Oak Wood, part of a spur of deciduous woodland which links to the Churnet Valley to the east.

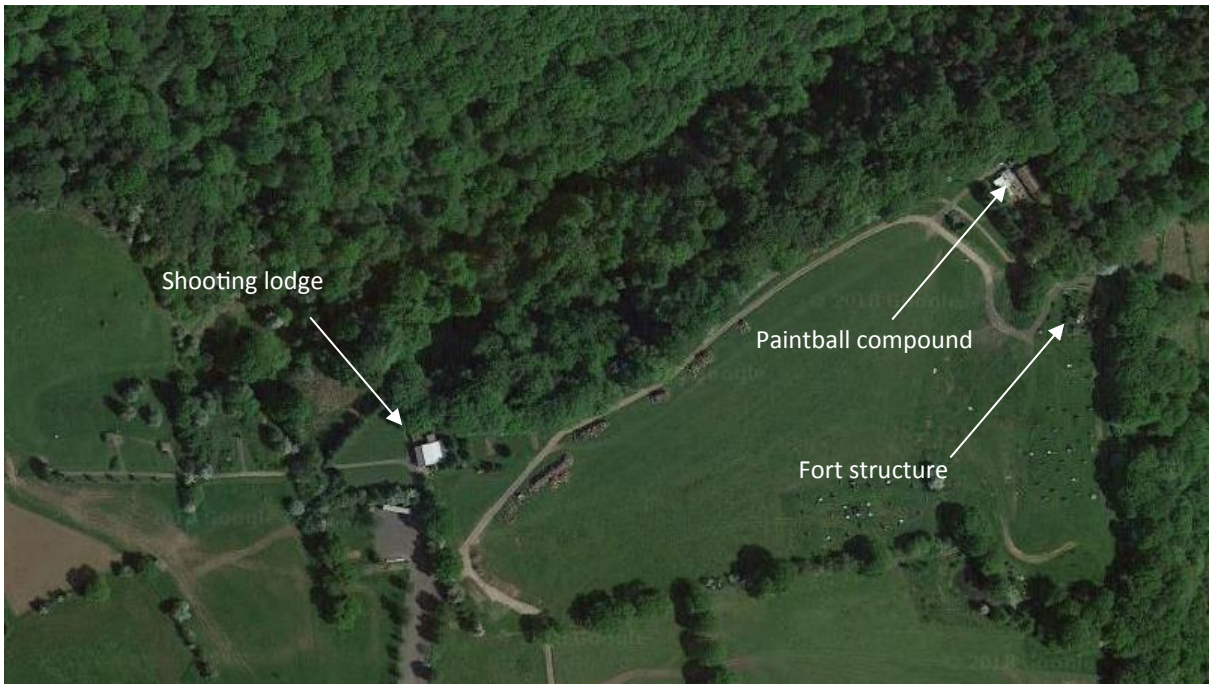
2.3 On the southern edge of the woodland is a paintball centre operated by Quest Paintball Stoke Ltd. Quest Paintball has operated from the site since 1995.

2.4 At the heart of the paintball centre is a purpose-built compound, which comprises

three permanent buildings: a concrete panel shelter and seating area; a shop; and a brick and tile toilet block with washing facilities. The compound also contains two storage containers. To the south of the compound lies the fort, a permanent structure used for paintball games.

2.5 It does not appear that the use of the land as a paintball centre or the permanent structures identified above were formally granted planning permission.

2.6 The site and its surroundings are shown on the following photograph: -



3 Legislative Framework

3.1 Applications for a Certificate of lawfulness are a legal test based on the grounds of probability. The onus is on the applicant to prove the case and if the Local Planning Authority have no evidence of their own, or from others, to contradict or otherwise make an 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'.

3.2 Case law has determined that the applicant's own evidence does not need to be corroborated by 'independent' evidence in order for it to be accepted. It also advises that the Local Planning Authority should proceed on the basis that neither the identity of the applicant nor the planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application.

3.3 Section 191(2) of the Town and Country Planning Act 1990 states that a use or operation will be lawful at any time if no enforcement action may be taken in respect of it, and if the use does not constitute a contravention of any notice then in force.

3.4 Section 171B sets out time limits for enforcement action. It states that for unauthorised operational development no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. For unauthorised changes of use (other than the change of use of a building to a single dwellinghouse) no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

4 The Applicant's Case

4.1 This application seeks confirmation that the use of the site as a paintball centre has been ongoing for over ten years and is therefore lawful.

4.2 It also seeks confirmation that the shop, shelter and seating area, toilet block, storage containers and fort associated with the use were erected over four years ago and are therefore lawful.

Whether enforcement action could be taken against the unauthorised change of use

4.3 The application is accompanied by a sworn statement from Mr Andrew Harrison, who runs Quest Paintball, confirming that it has operated from the site since 1995. In 2001, Quest moved into a new safe area giving more space to accommodate the rising number of players attending the site. This new safe area consists of the shop and shelter. The toilet block was erected in 2005 and the containers sited in autumn 2006.

4.4 The application is also accompanied by accounts demonstrating that Quest paintball has been trading from the site since 2006/07.

4.5 It has therefore been robustly demonstrated that Quest Paintball Stoke has continuously used the site for the past 10 years. As such, the use of the site as a paintball centre is immune from enforcement action and is therefore lawful in accordance with Section 191(2) of the Town and Country Planning Act 1990.

Whether enforcement action could be taken against the unauthorised buildings and containers

4.6 Mr Harrison's sworn statement confirms that he erected the shelter and seating area on the site in when Quest moved to its new safe area in 2001.

4.7 The toilet block was built in 2005 and the containers sited in autumn 2013.

4.8 The above evidence is corroborated by aerial imagery taken from Google Earth. The imagery clearly shows that the shelter/seating area, shop and fort have been permanently present at the site since 2003. The toilet block was not present in 2003

but can be seen on the 2010 image. It is obscured by trees on the 2013 and 2017 images.

4.9 The containers were sited after the 2013 photograph but prior to the 2017 photograph. The trees are in leaf on the 2013 photograph which suggests that it was taken in spring or summer.

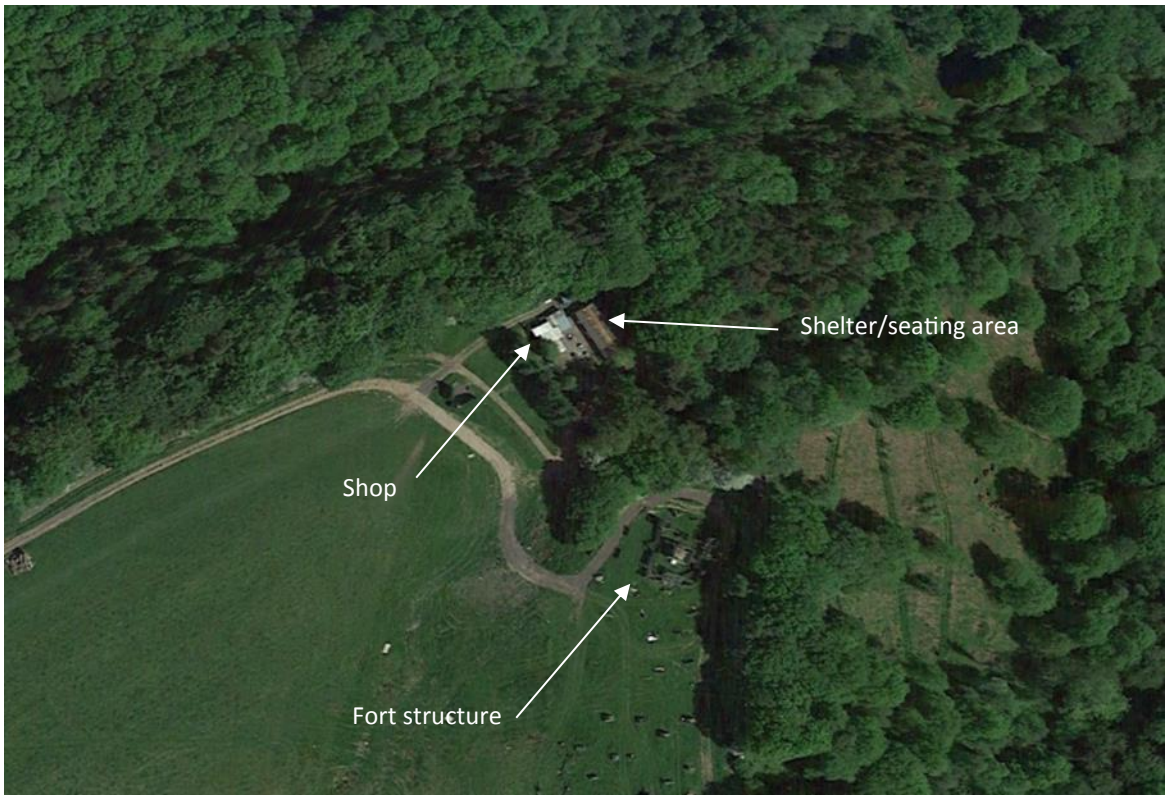


Figure 1 – Aerial view of site (2017) – Google Earth

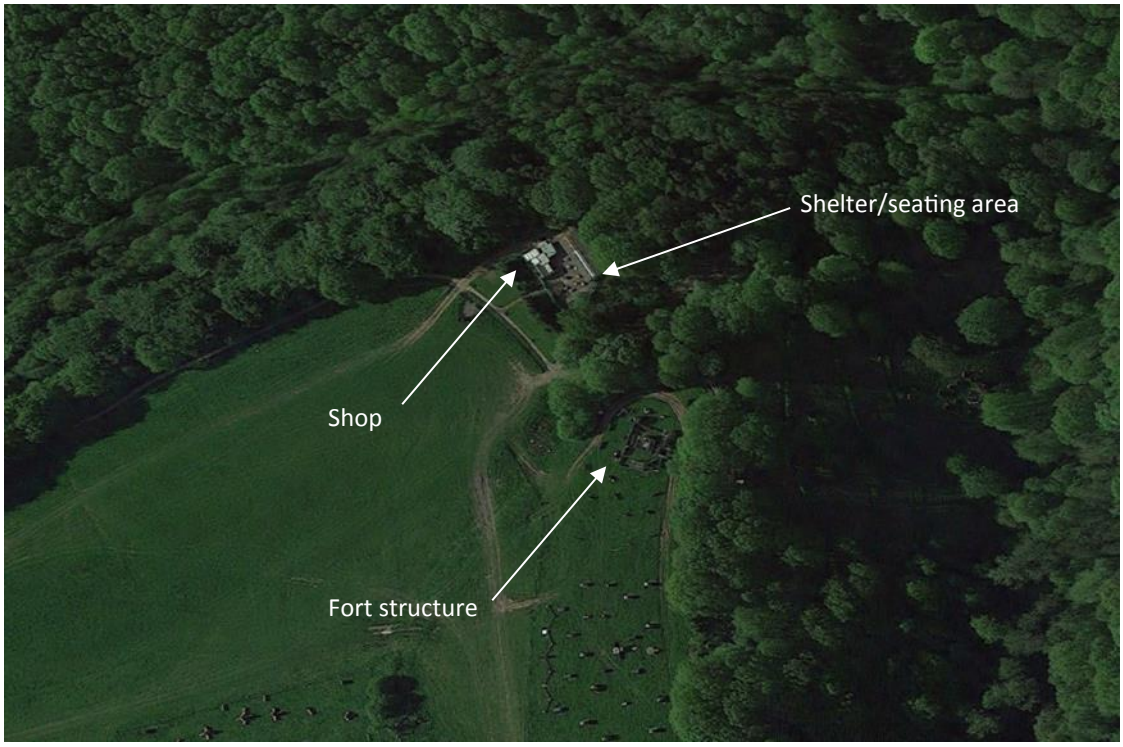


Figure 2 - Aerial View of site (2013) - Google Earth

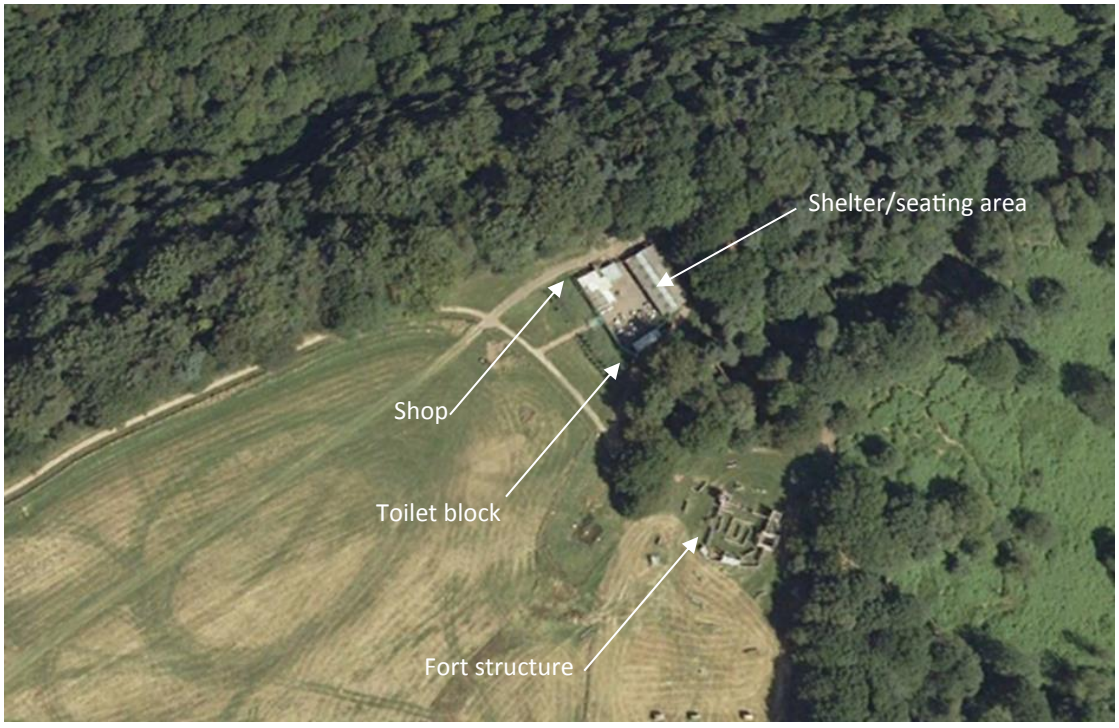


Figure 3 - Aerial view of site (2010) - Google Earth



Figure 4 - Aerial view of site (2003) - Google Earth

4.10 It has therefore been robustly demonstrated that the shelter/seating area, shop, toilet block, storage containers and fort have been present on the site for over 4 years. As such, the buildings are immune from enforcement action and are therefore lawful in accordance with Section 191(2) of the Town and Country Planning Act 1990.

5 Conclusions

5.1 The application demonstrates that, on the balance of probability, the use of the application site as a paintball centre, together with the associated buildings are lawful for the reasons set out in Paragraphs 4.3 to 4.10 of this Statement.

5.2 As such, it is therefore respectfully requested that a Certificate of Lawfulness be issued.