Rob Duncan
Planning
Consultancy

PLANNING STATEMENT

GRAVEL BANK NURSERIES
CAVERSWALL COMMON

MARCH 2020

Site Address:
Gravel Bank Nurseries, Caverswall Common Lane, Caverswall, ST11 9EU

Applicant:
Mr. J. Bettaney

Proposal:
Lawful Development Certificate for Existing Use:
Use of Garden Centre For Retail Use (A1)

Planning Statement:
Date Issued: 19th March 2020
Job Reference: RDP/2020/038

Report Prepared By:
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1. Introduction

1.1 Rob Duncan Planning Consultancy Ltd. has been instructed by Mr. J. Bettaney to lodge an application under s191 of the Town and Country Planning Act 1990 (As Amended) to seek confirmation that the use of existing greenhouses and associated land at Gravel Bank Nurseries, Caverswall Common Road, Caverswall is that of retail (Use Class A1), and that the use has occurred for a period in excess of 10 years and is therefore now lawful.

1.2 The application is accompanied by the following suite of evidence:

- Statutory Declaration of Mr. J. Bettaney (Applicant), including copies of business accounts and photographs of the site (Appendix A)

- Copies of invoices relating to purchases of stock made by the business (Appendices B – K inclusive)

1.3 The application seeks to demonstrate a precise and unambiguous case to support the contention that the site has a lawful retail use, and that said use is now immune from enforcement action by the Local Authority.

2 The Site

2.1 The application site comprises an irregular shaped parcel of land that is occupied by two large glasshouse structures which along with the land immediately around them, are the subject of this application. To the southeast of the site lies the applicant's existing dwellinghouse, with a portal framed, steel clad building located to the east. Vehicular access to the site is taken from the south off Caverswall Common Road, and serves a wide parking and manouvering area in front of the buildings.

3 The Proposal

3.1 This Lawful Development Certificate seeks confirmation that:

1) The existing greenhouses and associated land at Gravel Bank Nurseries have been used for retail purposes for a period in excess of 10 years and that consequently said use is now immune from action by the Local Authority.

4 Statement of Case

4.1 Paragraph 006 of the Planning Practice Guidance relates to Lawful Development Certificates and confirms that an applicant is responsible for providing sufficient information to support an application. It goes on to state that if a local planning authority has no evidence itself or 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.

4.2 During the determination of application SMD/2018/0003 on this site, the Local Authority commented that there was no evidence that retail use was the primary use of the property, noting that there was evidence of significant numbers of plants growing in the glass houses which suggested that the current use of the site continued to be horticultural. The Local Authority did not dispute that some sales to the public may have taken place, but were not persuaded that retail was the primary use of the site on account of the lack of evidence submitted with the application.

4.3 Section 171B of the Town and Country Planning Act 1990 (As Amended) confirms that where there has been a breach of planning control consisting of the change of use of land, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. In this case it is contended that a breach of planning control commenced in 1995 when the applicant started buying in plants, flowers, fertilizers, compost, ornaments etc. from other suppliers for onward sale to the general public.

4.4 The application is accompanied by a Statutory Declaration prepared by the applicant (Mr. J. Bettaney) in which he confirms that he is the owner of the site, having first purchased it in 1971. In the years that followed he started up a garden centre business with his son Shaun, which entailed selling plants that had been bought in, as well as growing their own plants for sale. In 1989 he erected a four-bay greenhouse, along with additional greenhouses between 1990 and 1994, as shown hatched blue and purple on the plan enclosed as Appendix B to the Statutory Declaration.

4.5 The Statutory Declaration goes on to confirm that in 1996 Mr. Bettaney retired from his groundwork contracting job in order to work full time on the site, confirming that by this time the use of the greenhouses was very much retail in nature. The Statutory Declaration furthermore confirms that by 1996 the business model consisted predominantly of buying in produce to sell on, or to process and sort, to then sell on to the general public and to a lesser extent, other retailers. The retail enterprise continued until 2007 when the company ceased trading. Commercial rates were furthermore paid on the premises between 1992 and 2007.

4.6 The Statutory Declaration furthermore provides a series of photographs taken on the site, which clearly show retail activities on the site, with the site very much having the appearance of a retail garden centre. The Local

Authority had previously been critical that there was no evidence that these photographs had been taken inside the buildings on the site. The Statutory Declaration provides this clarity.

4.7 In addition, attention is drawn to the extensive range of invoices enclosed as Appendices B – K inclusive. These invoices cover the period 1995 – 2004 and demonstrate that the business used a wide range of suppliers for both plants, shrubs, compost/fertilizer and ornaments (amongst other products), and provide a wealth of evidence that there was indeed a retail use taking place on the site between 1995 – 2004 inclusive. The companies supplying plants, shrubs, compost, ornaments etc. includes (amongst others):

- Ro-Pax Ltd.
- Garden Land Horticultural Supplies
- Cranage Nurseries
- Twin Acre Nurseries
- AP Matthrews Nurseries Ltd.
- Henry Alty Ltd.
- Four Oaks Nurseries
- J & J Tod Ltd.
- Border Stone
- J P Stonecroft
- Holland Garden Plants
- K. G. Loach
- J F Hutchins & Company / JFH
- Gujs van der Leij
- Impluse Plants
- Ball Colgrave
- Stately Stone

4.8 The copies of the business accounts for the period 1991 - 2005 incorporated within the applicant's Statutory Declaration provide further evidence of the retail use of the site, with a clear and obvious increase in expenditure observable on plants, fertilizers, pots and compost from 1995 onwards. Prior to that expenditure on such goods had been more limited. By 1995 the expenditure on external goods was nearly double that of 1991, and this continued to increase as the business grew.

4.9 For the retail use to be considered ancillary to a horticultural use it must be *functionally dependent* upon it. The retail activities on the site may have originally started out as being ancillary to the former horticultural use of the site, but by 1995 it had become the significant element in the use of the planning unit as a whole, with the business no longer carrying out the growing of its own plants. As a consequence the functional relationship between the retail use and the original horticultural use was severed at that time. By the time the applicant started working on the site in 1996 it was already the established practice and business model to buy plants in for sale to the public, rather than the plants being grown on site. This represented a clear and distinct change in the use of the site from horticultural with ancillary retail use, to retail being the primary use. That retail use then continued until the company ceased trading in 2007.

5 Conclusion

5.1 Having regard to the Statutory Declaration prepared by the applicant, along with the wealth of additional evidence provided in the form of photographs, copies of invoices, and copies of the financial accounts, it is submitted that a clear and unambiguous case has been presented to demonstrate beyond the balance of probability that the site has been used for retail purposes for a period in excess of 10 years. Whilst the business ceased trading in 2007 the buildings have been retained in situ on the site, and have not been put to any form of alternative use, as confirmed within the Statutory Declaration. The lawful use of the site is therefore considered to be retail, and the Local Authority is respectfully requested to issue a Lawful Development Certificate to confirm this.