
WOKINGHAM BOROUGH COUNCIL

Town and Country Planning Act 1990: sections 191 and 192

Town and Country Planning (Development Management
Procedure)(England) Order 2015: article 39

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

Notification of Certificate of Lawful Existing Use

Tony Thorpe
Tony Thorpe Associates
The Studio
1 Durrant Way
Tilehurst
Reading
RG31 6TR

Application Number: 172689

Wokingham Borough Council hereby certifies that on 6th November (being the date of application for this certificate) the application for a Certificate of Lawful Existing Use in respect of the use/operations/matter described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto, and edged red on the attached plan, **was not lawful** within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended) for the following reasons:

Reasons: Insufficient evidence has been submitted by the applicants to determine that the existing use of the site has been for a B1(a) business and ancillary storage to prove that on the 'balance of probability' that the use was commenced and has continued for a minimum of ten years preceding the submission of the application.

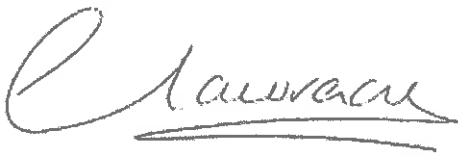
FIRST SCHEDULE

Proposal: Application for a certificate of existing lawful development for the use of site for B1(a) business and ancillary storage uses.

SECOND SCHEDULE

Site Address: Westwood Cottage, Sheerlands Road, Arborfield, Wokingham, RG40 4QX

Signed



Clare Lawrence

Head of Development Management & Regulatory Services

Date:

On behalf of Wokingham Borough Council, Shute End, Wokingham, Berkshire
RG40 1WR

APPENDIX

There is no time limit for the submission of appeals relating to Certificate of Lawful Existing Use applications.

Appeal provisions of Sections 195 and 196 of the Town and Country Planning Act 1990, as amended by paragraphs 32 and 33 of Schedule 7 to the Planning and Compensation Act 1991 and paragraph 4 of Schedule 4 to the Planning (Consequential Provisions) Act 1990.

Appeals against refusal or failure to give decision on application

195 - (1) Where an application is made to a local planning authority for a certificate under Section 191 or 192 and -

- (a) the application is refused or is refused in part, or
- (b) the authority do not give notice to the applicant of their decision on the application within such period as may be prescribed by a development order or within such extended period as may at any time be agreed upon in writing between the applicant and the authority, the applicant may by notice appeal to the Secretary of State.

(2) On any such appeal, if and so far as the Secretary of State is satisfied -

- (a) in the case of an appeal under subsection (1) (a), that the authority's refusal is not well-founded, or
- (b) in the case of an appeal under subsection (1) (b), that if the authority had refused the application their refusal would not have been well-founded,

he shall grant the appellant a certificate under Section 191 or, as the case may be, 192 accordingly or, in the case of a refusal in part, modify the certificate granted by the authority on the application.

(3) If and so far as the Secretary of State is satisfied that the authority's refusal is or, as the case may be, would have been well-founded, he shall dismiss the appeal.

(4) References in this section to a refusal of an application in part include a modification or substitution of the description in the application of the use, operations or other matter in question.

(5) For the purposes of the application of section 288(10) (b) in relation to an appeal in a case within subsection (1) (b) it shall be assumed that the authority decided to refuse the application in question.

(6) Schedule 6 applies to appeals under this section.

Further provisions as to references and appeals to the Secretary of State

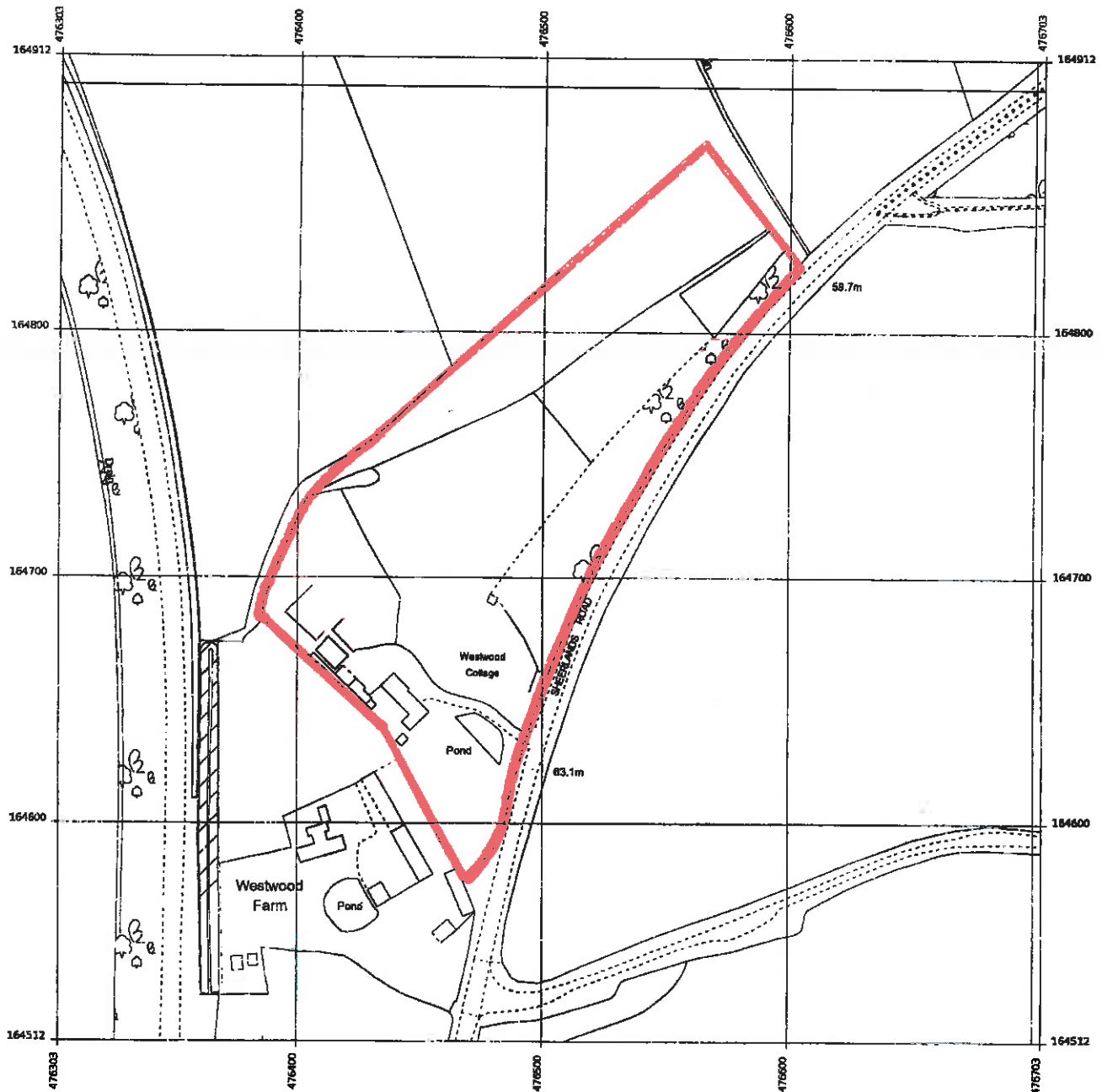
196 - (1) Before determining an appeal to him under Section 195(1), the Secretary of State shall, if either the appellant or the local planning authority so wish, give each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

(2) Where the Secretary of State grants a certificate under Section 191 or 192 on such an appeal, he shall give notice to the local planning authority of that fact.

(3) The decision of the Secretary of State on such an appeal shall be final.

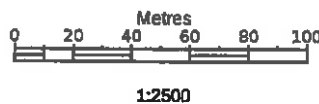
(4) The information which may be prescribed as being required to be contained in a register kept under Section 69 shall include information with respect to certificates under Section 191 or 192 granted by the Secretary of State.

(8) Subsection (5) of Section 250 of the Local Government Act 1972 (which authorises a Minister holding an inquiry under that section to make orders with respect to the costs of the parties) shall apply in relation to any proceedings before the Secretary of State on an appeal under Section 195 as if those proceedings were an inquiry held by the Secretary of State under Section 250.



Produced 28 Jan 2016 from the Ordnance Survey MasterMap (Topography) Database and incorporating surveyed revision available at this date.

The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.



Westwood Cottage, Sheerlands Rd,
Finchampstead, Wokingham
RG40 4QX

Supplied by: Stanfords 28 Jan 2016
Licence: © Crown Copyright and
database rights 2016 OS100035409
Order Licence Reference: OI952880
Centre coordinates: 476503 164712



Application Number: 172689

Site: Westwood Cottage, Sheerlands Road, Arborfield, RG40 4QX

Applicant: [REDACTED]

Application: Application for a certificate of existing lawful development for the use of site for B1(a) business and ancillary storage use.

1. Relevant Site Planning History

None Relevant

2. Site Description

The applicants have stated that the land edged red on the land ownership plan has been owned by the Ray family. The smaller southern part of the land ('B' on Plan 1) within which Westwood Cottage is situated in, has been stated to be owned by the family since 1972. The northern part ('A' on Plan 1) has been occupied by the family since its stated purchase in June 1983. There are separate vehicular access routes from Sheerlands Road, which services both parts of the holding separately (A&B), although there is direct access when walking across the open field between the two land shown land parcels.

The applicants have further stated that the land registry continues to describe the northern part of the land ('A' on Plan 1) as '*Land adjoining Westwood Cottage, Eversley Road, Finchampstead*'. However this evidence has not been submitted within the application.

3. Land/ Property Designations

The site is within an area of designated Countryside and is within 5-7km of the Thames Basin Heaths Special Protection Area.

4. Legislation

Town and Country Planning Act 1990 (as amended) (TCPA)

Section 57 requires that planning permission is needed for development of land. Section 55 provides that development includes any *material change in the use* of land.

Timescale

Section 171B(3) provides that where there has been a breach of planning control consisting of the change of use (excluding to a use as 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.

Under 171B(3) the applicant is required to demonstrate on the balance of probabilities that the use commenced and has been continuous for 10 years prior to the date of application in order for the change to have become lawful (relevant period 26.09.04 to 26.09.14).

Section 191 deals with applications for Certificates of Lawfulness of existing development, and the authority's duty to determine them.

For the purpose of the 1990 Act s.191 defines operations as 'lawful' if:

- (a) *no enforcement action may 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); and*
- (b) *they do not constitute a contravention of any of the requirements of any enforcement notice then in force.*

5. Case Law

The Courts have held in *Gabbittas v Secretary of State for the Environment* [1985] JPL 630 that the relevant test of the evidence on such matters is "the balance of probability". The Courts have also held that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the Local Planning Authority has no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less 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".

In considering applications for a Certificate the guidance given by the High Court in *Panton and Farmer v Secretary of State for the Environment, transport and the Regions and Vale of White Horse D.C.* [1999] JPL 461 is of value.

Three questions need to be answered. Firstly, "When did the material change of use specified in the application occur?" To be lawful, this would need to be before 1 July 1948, by 31 December 1963, or at a date at least 10 years prior to the current application.

Secondly, if the material change took place prior to those dates, has the use specified in the application been lost by operation of law in one of three possible ways, namely by abandonment, the formation of a new planning unit, or by way of a material change of use, be it by way of implementation of a further planning permission or otherwise.

Finally, if the decision maker is not satisfied that the description of the use as specified in the application properly describes the nature of the use, the decision maker must modify/substitute each description so as to properly describe the nature of the material change of use which occurred.

The *Panton* case was considered further by the Courts in *Secretary of State for the Environment, Transport and the Regions v Thurrock BC* [2002] EWCA Civ 226. In this case the Court of Appeal considered that the rationale of immunity from enforcement was that throughout the whole of the ten year period of unlawful use the Local Planning Authority, although having the power to take enforcement action, had failed to do so. So, if at any time during the relevant period the authority would not have been able to take enforcement proceedings in respect of the breach (because for example the unauthorised use had temporarily ceased) then any such period could not count towards the ten year period which gives rise to immunity.

The effect of the decision in *Thurrock* is to require a far more stringent test of immunity than had previously been thought following the decision in *Panton*. In particular, the decision means that if an unlawful use ceases and is then recommenced, the ten-year period required for immunity begins on the act of recommencement. For an unlawful use to obtain immunity from enforcement it has to be exercised continually and without significant interruption for the whole of the ten year period.

The question is therefore whether an interruption of an unlawful use is enough to defeat any claim of immunity from enforcement proceedings. A short period may be regarded as a continuing use; a longer period may not. The Courts have held that this question is a matter of fact and degree for the decision maker in every case.

6. Summary of evidence submitted with the application

The application seeks certification as to whether or not the use of the buildings and land for a B1(a) business with ancillary storage, workshop (sites A and B) has become lawful by reason of the uninterrupted use as such for a period exceeding 10 years.

The application includes the following information:

(1) Existing Lawful Development Certificate Application Form

Sections 7 and 8 describes the existing use of the site having taken place on the site for more than 10 years.

(2) OS Location Plan (Exhibit AJT/01).

(3) HM Land Registry plan showing the extent of the land the subject of the application edged in red

(4) Attached ten separate annual files (EX 2007- EX 2017) containing monthly invoices dating from January 2007 addressed to SG Ray & Co Ltd at Sheerlands House, Sheerlands Road, Finchamstead, RG40 4QX.

5) Statutory Declaration of [REDACTED] (EX5) dated 6th September 2017.
He is a co-director of S G Ray & Co Ltd.

6) Statutory Declaration of [REDACTED] (EX6) dated 6th September 2017.
He is a co-director of S G Ray & Co Ltd.

(7) Aerial Satellite imagery dated 1/1/2005 (EX1), undated google earth photo 2008 (EX2), google earth airphoto dated 1/1/2010 (EX3). Airphoto dated 25/03/2017 (EX4).

7. Site visit observations (05.09.14)

The site marked as B on Plan 1 appears to have pipework and an assortment of associated and non-associated items with the purposes of the use. There is evidence of ancillary vehicles, which are not currently in operation on the curtilage associated with Westwood Cottage.

With regards to the site marked as A on Plan 1, the current use appears quite extensive covering the whole of the marked plan as shown. It includes a permanent portocabin structure with roller shutter doors, the storage of bricks, cargo shipping containers which appear to be stacked on top of each other. There is evidence of the storage of Lorries to the north-east as well as in the south-west parts of the site as well as what appears to be associated staff vehicular parking to the side of the permanent portocabin.

8. Council documentary information evidence

Aerial photographs from 1999, 2003, 2010 and 2013

The Council's aerial photographs indicate that whilst there is an outline of the stated office (marked as 3 in exhibit AJT/01), there is no evidence of any store or workshop associated with office use (marked as 1 on the same plan) in the 1999, 2003 or in the 2010 aerial photographs. There does appear to be however open roofed structure of a lesser scale

and it is unclear within the photographs what is contained within its perimeter associated to the structure. In 2013 there does appear to be a full structure marked as the store and workshop on the plan which is the same as that seen in the recent site visit. There is no evidence in any of the years in the Council's mapping service that the area marked as 5 'open storage' actually contains any storage or equipment associated with the stated business, although it is accepted there are some stationary vehicles parked to the north-west of the site which occupies a much lesser area than shown on the plan. With regards to the structure marked as 2 on AJT/01 'garage', it is unclear if this is a recent addition from the aerial photographs.

In terms of the open storage marked as 6 on the exhibit AJT/01, the applicants have stated this has been in continuous use for the last 10 years. The 1999, 2003 Council photos appear to show this is mostly grassland and the 2010 image is inconclusive. The aerial image of 2013 shows that there has been some physical change in the land, whereby the grassland has been partially gravelled over and that there are some structures which look like small scale cargo shipping containers to the north-east of the site. Notwithstanding this, there is no evidence within the aerial photos in the previous years to demonstrate that the open storage area has been used to the scale and extent in the site visit and aerial photos of 2017 and for a continuous use of 10 years to be granted a lawful development certificate.

9. Consultation responses

Finchampstead Parish Council 4 October 2017 – "Noted."

10. Assessment

The applicant (via the agent) states that the existing use is 'B1(a) business and ancillary B8 storage' but by virtue of the use of the word 'ancillary', this means the uses for all the open storage on both land A and B are to be considered associated with the stated office for the purposes of this lawful development certificate and cannot therefore be considered for a separate B8 use.

Whilst the applicants have submitted ten separate annual files (EX 2007 – EX 2017) containing monthly invoices dating from January 2007 addressed to S G Ray & Co Ltd at Sheerlands House, Sheerlands Road, the evidence is inconclusive in terms of how these refer to the site in terms of stated use's geographical location at Westwood Cottage.

Further the Council's aerial photographs indicate that the evidence submitted by the applicants is unconvincing about the B1(a) business and the associated storage, workshop and garage surrounding the cottage and the ancillary storage in parcel A (Plan 1) in its claim that the use has been continuing in both parts the land shown in exhibit AJT/01 of the site. Of which [REDACTED] refer to within the statutory declaration.

11. Conclusions

In the case the ten year rule, the onus is on the applicant to provide evidence to prove that on the 'balance of probability' that the use was commenced and has continued for a minimum of ten years preceding the submission of the application and therefore insufficient evidence has been presented to justify the granting of an existing lawful development certificate for this application.

A draft certificate has been prepared accordingly and is attached to this report. It is recommended that the application for a Lawful Development Certificate be **refused** and it is recommended that enforcement action be taken.

Draft

WOKINGHAM BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191

**TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)
(ENGLAND) ORDER 2010: ARTICLE 35**

CERTIFICATE OF EXISTING LAWFUL USE

Wokingham Borough Council hereby certifies that on 31st October 2017 (being the date of application for this certificate) the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and identified by a red line on the attached plan, **was not lawful** within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

Reason: Insufficient evidence has been submitted by the applicants to determine that the existing use of the site has been for a B1(a) business and ancillary storage to prove that on the 'balance of probability' that the use was commenced and has continued for a minimum of ten years preceding the submission of the application.

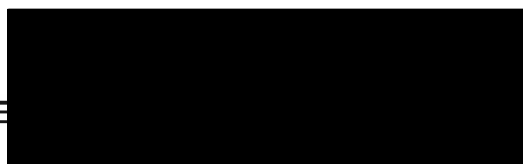
FIRST SCHEDULE

B1(a) business and ancillary storage uses.

SECOND SCHEDULE

Westwood Cottage, Sheerlands Road, Arborfield, Wokingham, RG40 4QX

DRAFT APPROVE



William Richards
Development Management Team Leader

Date:

1/11/2017

Signed: Omar Sharif
Date: 31/10/2017

AFFIDAVIT

In respect of: Buildings and associated open storage areas occupied by S G Ray & Co Ltd for business purposes at Sheerlands House, Sheerlands Road, Finchampstead RG40 4QX.

I, [REDACTED]
MAKE OATH and say as follows:

1. I make this affidavit in support of an application for a Certificate of Lawfulness of Existing Use made to Wokingham Borough Council.
2. I am familiar with the site and its surroundings. I typically visit it daily during the working week.
3. I am co-director of S G Ray & Co Ltd. The other director being my brother [REDACTED]
4. S G Ray & Co Ltd have occupied Sheerlands House for business purposes since the business transferred there from Council owned premises at Unit 12 Hogwood Lane Industrial Estate in 1994.
5. I hereby declare that the land edged blue and green together with the buildings and areas numbered 1-3 and 5-6 shown on attached Exhibit AJT/01 have been continuously occupied by S G Ray & Co Ltd for business purposes since 1994 (blue land) and 1983 (green land).
6. I hereby declare that the accompanying 'Timeline' by Tony Thorpe Associates dated 23/08/2017 is a true record of the history of the site as described by myself and my brother.

SWORN at [REDACTED]

Cliffen Lynda S. Lister

In the County of Berkshire

This 6th day of [REDACTED]

Before me [REDACTED]

CLIFFEN LYNDAS L.L.P.
SOLICITORS
22-24 BROAD STREET
WOKINGHAM
BERKS. RG40 1BA

AFFIDAVIT

In respect of: Buildings and associated open storage areas occupied by S G Ray & Co Ltd for business purposes at Sheerlands House, Sheerlands Road, Finchampstead RG40 4QX.

I, [REDACTED] MAKE OATH
and say as follows:

1. I make this affidavit in support of an application for a Certificate of Lawfulness of Existing Use made to Wokingham Borough Council.
2. I have lived continuously at Westwood Cottage since 1972.
3. I am co-director of S G Ray & Co Ltd. The other director being my brother [REDACTED]
4. S G Ray & Co Ltd have occupied Sheerlands House for business purposes since the business transferred there from Council owned premises at Unit 12 Hogwood Lane Industrial Estate in 1994.
5. I hereby declare that the land edged blue and green together with the buildings and areas numbered 1-3 and 5-6 shown on attached Exhibit AJT/01 have been continuously occupied by S G Ray & Co Ltd for business purposes since 1994 (blue land) and 1983 (green land).
6. I hereby declare that the accompanying 'Timeline' by Tony Thorpe Associates dated 23/08/2017 is a true record of the history of the site as described by myself and my brother.

SWORN at

[REDACTED]
Clifton Ingram Shabon

In the County of Berkshire

T [REDACTED] 7

Before me, [REDACTED]

Clifton Ingram Shabon
CLIFTON INGRAM L.L.P.
SOLICITORS
22-24 BROAD STREET
WOKINGHAM
BERKS. RG40 1BA

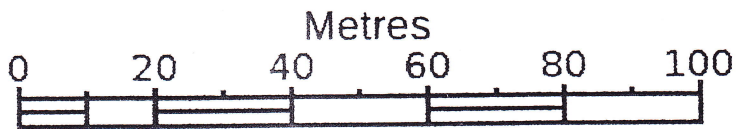
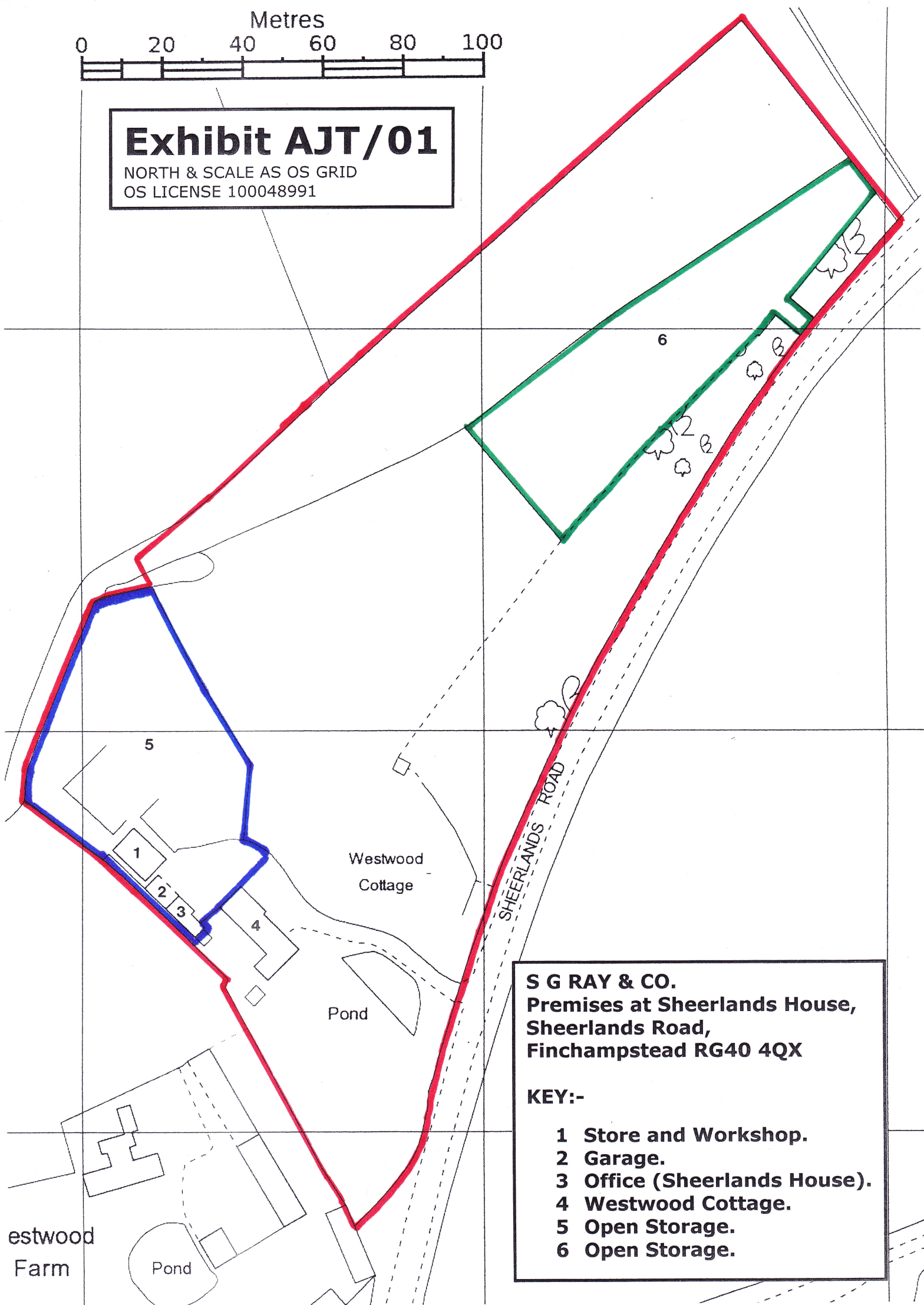


Exhibit AJT/01

NORTH & SCALE AS OS GRID
OS LICENSE 100048991



S G RAY & CO.

Premises at Sheerlands House,
Sheerlands Road,
Finchampstead RG40 4QX

KEY:-

- 1 Store and Workshop.
- 2 Garage.
- 3 Office (Sheerlands House).
- 4 Westwood Cottage.
- 5 Open Storage.
- 6 Open Storage.

S G RAY & Co Ltd - TIMELINE

S G RAY & CO PREMISES AT SHEERLANDS HOUSE, SHEERLANDS ROAD, FINCHAMPSTEAD RG40 4QX.

Applicant – [REDACTED]

Evidence that:-

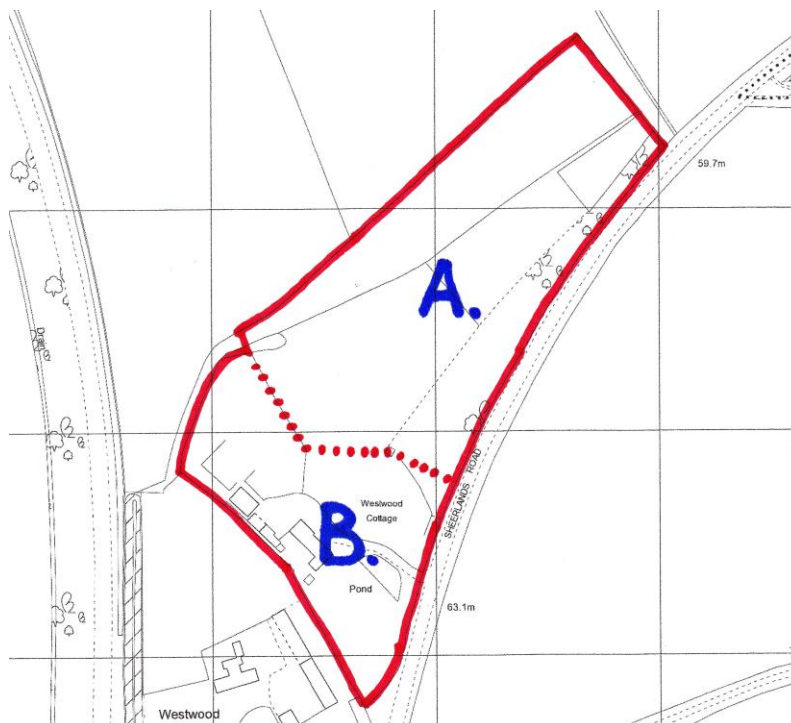
- 1) On attached Exhibit AJT/01 and within the blue boundary, the office building numbered 3. occupied by S G Ray & Co Ltd and known as Sheerlands House, the attached ancillary garage numbered 2., the detached ancillary store & workshop numbered 1., the ancillary parking and ancillary open storage shared with Westwood Cottage numbered 5. together with:
- 2) On attached Exhibit AJT/01 the open storage use on land edged green and numbered 6. ancillary to the principal S G Ray & Co Ltd use on the land edged blue.

Have been continuously occupied since September 2007 for business and ancillary storage purposes uses in connection with the business known as S G Ray & Co Ltd.

Accordingly on the balance of probabilities the business and ancillary storage uses began, and have operated continuously for a period in excess of ten years before the date of this application.

BACKGROUND

As a starting point the whole of the site edged red on Exhibit AJT/01 is owned by the Ray family. The smaller southern part ('B' on Plan 1. below) has been occupied by the family since 1972 and is jointly owned by [REDACTED] and his Mother. The northern part ('A' on Plan 1. below) has been occupied by the family since its purchase in June 1983 and is jointly owned by [REDACTED].



Plan 1. Landownership

The joint ownership of the southern part 'B' began in 1979 following the death of [REDACTED] Father and the property was re-mortgaged in March 2012. The commercial land edged blue on Exhibit AJT/01 was first occupied by S G Ray & Co Ltd in 1994. Prior to this date the company operated from Council owned premises at Unit 12 Hogwood Lane Industrial Estate.

For the avoidance of doubt the land registry continue to describe the northern part 'A' as *'land adjoining Westwood Cottage, Eversley Road, Finchampstead'*. This is despite the Council having subsequently changing the street name from Eversley Road to the existing Sheerlands Road. The original agricultural access from green edged area 6. on to Sheerlands Road was improved in 1985 allowing all-weather access for non-agricultural vehicles.

PLANNING HISTORY.

- June 1983. [REDACTED] purchase the land shown as 'A' on Plan 1. above and S G Ray & Co Ltd commence ancillary storage use of the land edged green on Exhibit AJT/01.
- May 1985. The existing site access from the green land on to Sheerlands Road is improved to allow all-weather access.
- May 1994. The business know as S G Ray & Co Ltd transfers from Hogwood Lane and commercial occupation of the land edged blue on Exhibit AJT/01 begins. The office is named 'Sheerlands House'.
- June 2004. The transverse earth bund is inserted across the southwest boundary of the green land to delineate the site boundary.

EVIDENCE OF CONTINUOUS USE OF THE LAND EDGED BLUE ON EXHIBIT AJT/01 FOR A PERIOD IN EXCESS OF TEN YEARS.

Attached are ten separate annual files (EX 2007 – EX 2017) containing monthly invoices dating from January 2007 addressed to S G Ray & Co Ltd at Sheerlands House, Sheerlands Road, Finchampstead RG40 4QX. These demonstrate conclusively that Sheerlands House has continuously been the headquarter office of S G Ray & Co Ltd for a period in excess of 10 years.

EVIDENCE OF CONTINUOUS USE OF THE LAND EDGED GREEN ON EXHIBIT AJT/01 FOR A PERIOD IN EXCESS OF TEN YEARS.

Our principal evidence is airphoto EX 1. Which is a Google Earth airphoto dated 1/1/2005 that shows the transverse earth bund inserted 2004 to delineate the site and stop straying livestock. A number of works vehicles and stored goods are visible outside the shadow cast by the trees.

Airphoto EX 2. is an undated Google Earth airphoto believed to be taken 2008 showing a number of works vehicles and stored goods.

Airphoto EX 3. Is a Google earth airphoto dated 1/1/2010. It is less clear than EX 1. & 2. However close inspection will reveal stored items in the same position as shown on EX 2.

Airphoto EX 4. Is the most recently available Google Earth airphoto dated 3/25/2017. The storage containers along the south-eastern tree margin are more clearly visible than in earlier airphotos; as are the yellow gas pipes stored at the northern end of the site. The foundation works for the AGLC/Crest SDL residential development to the north-west are visible.

CONCLUSIONS

- 1) On attached Exhibit AJT/01 and within the blue boundary, the office building numbered 3. occupied by S G Ray & Co Ltd and known as Sheerlands House, the attached ancillary garage numbered 2., the detached ancillary store & workshop numbered 1., the ancillary parking and ancillary open storage shared with Westwood Cottage numbered 5. have all been continuously occupied for these purposes for a period in excess of 10 years prior to the date of this application.
- 2) On attached Exhibit AJT/01 the open storage use on land edged green and numbered 6. Which is ancillary to the principal S G Ray & Co Ltd use on the land edged blue has been continuously occupied for a period in excess of 10 years prior to the date of this application.

OTHER EVIDENCE

Accompanying the application and listed under 'List of Exhibits' below are two Affidavits from the company directors corroborating the evidence given above.

CONCLUSIONS

From the evidence submitted it has been demonstrated that on the balance of probability the applicants [REDACTED] trading as S G Ray & Co Ltd have continuously used the buildings and open areas within those sections of the site edged blue and green on Exhibit AJT/01 for a period in excess of ten years from the date of this application. Accordingly the uses are immune from enforcement action and the Council should issue the requested Certificate of Lawfulness.

LIST OF EXHIBITS

Exhibit AJT/01	Plan showing disposition of buildings and land uses.
EX1 2005	A Google airphoto date stamped 1/1/2005.
EX2 2008	A Google airphoto believed to be dated 2008.
EX3 2010	A Google airphoto date stamped 1/1/2010.
EX4 2017	A Google airphoto date stamped 3/25/2017.

EX5 Affidavit of Keith Ray dated 00/00/2017.

EX6 Affidavit of Colin Ray dated 00/00/2017.

ooOoo

Prepared by Tony Thorpe Associates and based on evidence given by [REDACTED].
AJT/SB/SGRAY 23/08/2017