

Officer Report

Reference No: P/CLE/2024/01226
Proposal: Certificate of Lawfulness: Retention of greenhouse
Address: White Barn Batchelors Lane Holt BH21 7DS
Recommendation: Refuse
Case Officer: Kelly Allingham
Ward Members: Cllr Cook (at the time of consultation, pre-election). Now Cllr Chakawhata

Fee Paid:	£258.00		
Decision due date:	12 June 2024	Ext(s) of time:	12 June 2024
No. of Site Notices:	X1		
SN displayed reasoning:	To allow third-parties an opportunity to comment to the evidence		

Have Ward Members been notified as required by the constitution?	Yes- Cllr Cook
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Legislation

Pursuant to a determination, regard is made to the following sections of the Town & Country Planning Act 1990 (as amended)

S191- Certificate of lawfulness of existing use of development.

(1) If any person wishes to ascertain whether—
(a) any existing use of buildings or other land is lawful;
(b) any operations which have been carried out in, on, over or under land are lawful;
or
(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,
he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if—
(a) 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); and
(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

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(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

(a) the time for taking enforcement action in respect of the failure has then expired; and

(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force....”

S193- Certificates under sections 191 and 192: supplementary provisions.

(1) An application for a certificate under section 191 or 192 shall be made in such manner as may be prescribed by a development order and shall include such particulars, and be verified by such evidence, as may be required by such an order or by any directions given under such an order or by the local planning authority.

(2) Provision may be made by a development order for regulating the manner in which applications for certificates under those sections are to be dealt with by local planning authorities.

(3) In particular, such an order may provide for requiring the authority—

(a) to give to any applicant within such time as may be prescribed by the order such notice as may be so prescribed as to the manner in which his application has been dealt with; and

(b) to give to the Secretary of State and to such other persons as may be prescribed by or under the order, such information as may be so prescribed with respect to such applications made to the authority, including information as to the manner in which any application has been dealt with.

(4) A certificate under either of those sections may be issued—

(a) for the whole or part of the land specified in the application; and

(b) where the application specifies two or more uses, operations or other matters, for all of them or some one or more of them;

and shall be in such form as may be prescribed by a development order.

(5) A certificate under section 191 or 192 shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted unless that matter is described in the certificate.

(6) In section 69 references to applications for planning permission shall include references to applications for certificates under section 191 or 192.

(7) A local planning authority may revoke a certificate under either of those sections if, on the application for the certificate—

(a) a statement was made or document used which was false in a material particular; or

(b) any material information was withheld.

(8) Provision may be made by a development order for regulating the manner in which certificates may be revoked and the notice to be given of such revocation

S171B- Time limits.

(1) Where there has been a 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, no enforcement action may be taken after the end of the

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period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(2A) There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach....”

Whilst the above legislation has been updated by s115 of the Levelling-up and Regeneration Act 2023, Planning Practice Guidance confirms that such amendments only apply where the change of use took place after 25 April 2024.

Planning Practice Guidance (PPG)

The PPG provides the latest advice on planning practice. Some relevance to these applications appears to be from the following –

Lawful Development Certificates <https://www.gov.uk/guidance/lawful-development-certificates>

Enforcement and post-permission matters –<https://www.gov.uk/guidance/ensuring-effective-enforcement>

Site Description

The site lies within the Bournemouth Green Belt and is approximately 4.5km north of the main urban area of Wimborne, and approximately 4.9km west of the main urban area of Verwood.

It comprises a large bungalow dwelling (Anchor Paddock), various outbuildings, swimming pool and grounds of approximately 2.5 acres. The bungalow site is now offered as holiday accommodation for rental for up to 16 persons. A barn conversion (White Barn) (currently occupied by the owner and family) within the grounds has now been separated off from the original bungalow and an additional holiday accommodation also divided off from the main house, called ‘Tree House’ has been developed.

Proposal

The application under consideration seeks confirmation as to whether the detached Greenhouse ‘use’ was substantially begun more than 10 years before the date of this application.

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The application was received complete on 26/03/2024 and this is the date of the application for the purposes of applying the 10-year period. Therefore, the relevant period to consider is between 26/03/2014 and 26/03/2024.

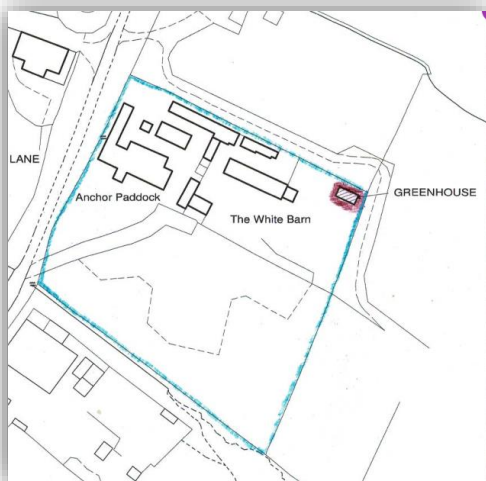
Evidence for the applicant

The following documents are received –

- Application form (description contained)
- Location Plan
- Elevations of greenhouse as existing and as built.
- Floor Plans of greenhouse as existing and as built.
- Greenhouse Aerial Photos
- Statutory Declaration, by Mr Stuart James Coles – dated 28th March 2024

A summary of the points raised is as follows:

- Application form
- The greenhouse marked in red on the submitted location plan has been in situ since at least February 2014.
- Location Plan



- Historical Greenhouse Aerial photos from Google Earth

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Greenhouse Aerial Photographs



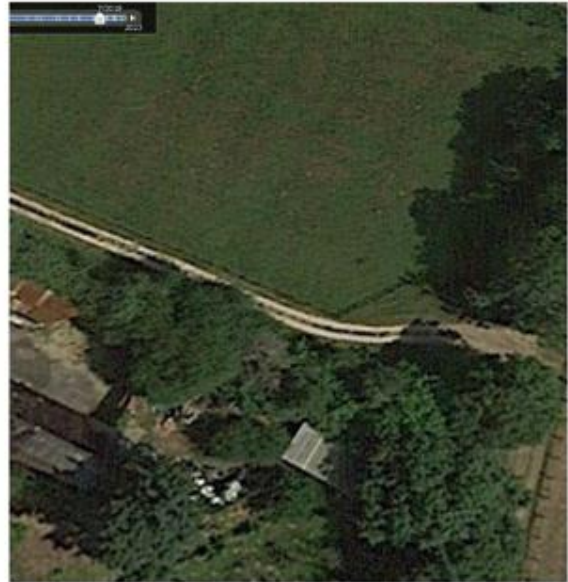
February 2014



April 2014



May 2017



July 2018



April 2020



June 2023

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- Statutory Declaration to support the application, by Stuart James Coles – dated 28th March 2024

I, Mr Stuart James Coles, of [REDACTED]
[REDACTED] do solemnly and sincerely declare that:-

1. I can confirm that I previously lived in the property known as The Treehouse, Anchor Paddock, Holt Wood, Wimborne BH21 7DS since February 2013. During my time living at the property it was known as The Cabin.
2. I wish to confirm that the rear extension along the north side of the dwelling at Anchor Paddock was in situ during my time living at The Treehouse. This is identified by a red rectangle below.
3. I also wish to confirm that there has always been a greenhouse to the east of the site as highlighted by the blue rectangle below.
4. I am aware that this aerial image was taken in April 2014.



Relevant Planning History

03/79/2625/HST - Anchor Paddock, Batchelors Lane, Holt Wood, Holt – Erect addition to side of dwelling and make alterations – Refused on 18/01/1980. ERECT ADDITION TO SIDE OF DWELLING AND MAKE ALTERATIONS

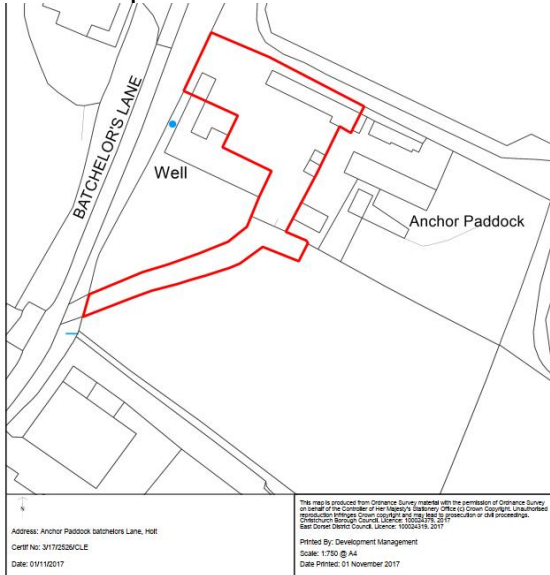
03/80/1027/HST - Anchor Paddock, Batchelors Lane, Holt Wood – Erect extension – Refused on 24/06/1980

03/80/1858/HST - Anchor Paddock, Batchelors Lane, Holt Lane, Holt – Erect extension – Granted on 19/09/1980.

3/16/1460/CLE - Anchor Paddock, Batchelors Lane, Holt, Wimborne, Dorset, BH21 7DS - Use of the land, including 9 self-contained brick and timber chalets, as bed and breakfast holiday accommodation – Refused on 10/10/2016

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3/17/2526/CLE - Anchor Paddock, Batchelors Lane, Holt, Wimborne, Dorset, BH21 7DS - C1 (Bed and Breakfast). Use of land, including 9no self-contained brick and timber chalets, as bed and breakfast holiday accommodation – Lawful on 02/11/2017
Location plan shown below : -

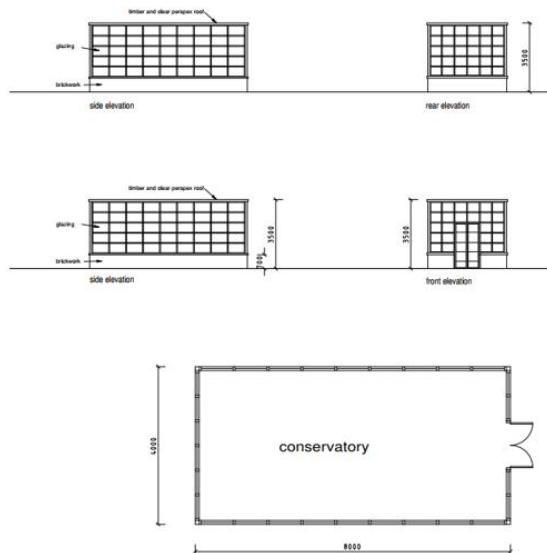


The submission had a larger red line including land on which the greenhouse building is sited.

Other evidence available to the Local Planning Authority

- Evidence provided for application 20/2281/PNAGD showing the 'greenhouse'.
- Plans submitted for this application showing as existing.

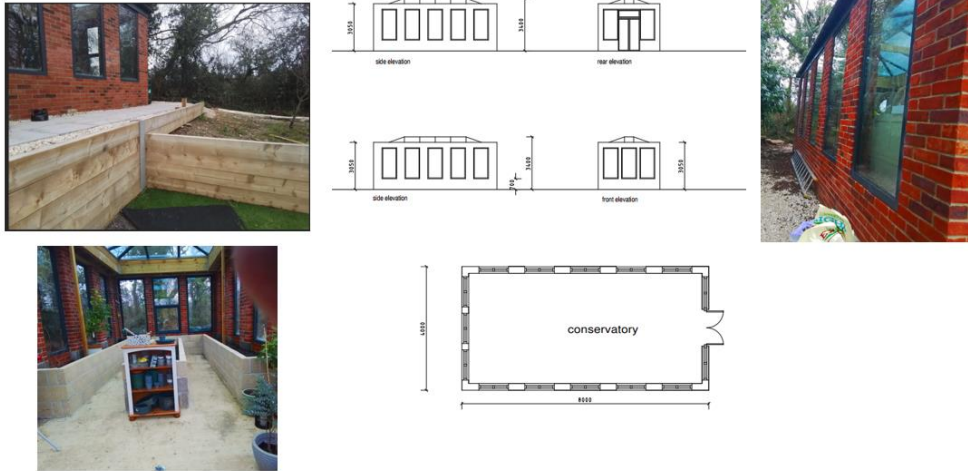
Below photograph from the agent during application for 3/20/2281/PNAGD showing that derelict wood building.



As existing plans submitted

- Plans submitted for this application showing as built (above)
- Photos of the as built building (Below)

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1) Analysis of Evidence

- 1.1 The lawful use of the land to which this application relates is claimed via the submitted planning application form to be C3 dwellinghouse.
- 1.2 The application form submitted provides as the description of existing use 'Retention of greenhouse' while the submitted floor plans annotate the detached outbuilding as a 'conservatory'. The claimed use therefore lacks consistency, but the existing outbuilding has a residential appearance rather than horticultural. No evidence has been provided to demonstrate that the original outbuilding was used for purposes ancillary to a residential use on the holding rather than an agricultural/ horticultural use.
- 1.3 It does not appear the building evident on the site prior to 26/03/2014 was within the curtilage of the authorised dwelling on the wider site (Anchor Paddocks) which is located approx. 63m to the northwest nor has any evidence been provided to demonstrate a functional link between the building and residential use.
- 1.4 Between 2020 and 2024 design changes to the building on the application site are evident from the information available. The new 'greenhouse/conservatory' is substantially different to the old structure which was wooden and resembled fruit cages. The new structure is brick with glazed windows, sited partially on raised ground as evidenced by the application drawings and site photos above.
- 1.5 The changes to the building which include different materials, an increase in height and roof form, are such that the building, albeit apparently built on the same footprint, constitutes development requiring formal planning permission.
- 1.6 Although a statutory declaration has been received to which significant weight can be attached, this only confirms the presence of a greenhouse on the site, which is evident in the aerial photographs. No evidence has been provided to expand upon the use of the structure which has since been replaced.

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Conclusion

In order to be considered lawful the evidence would need to demonstrate that the claimed use of the land, assumed to be 'use of the land for residential purposes', had been continuous for more than 10 years before the start of this application. Whilst the applicant has demonstrated that a greenhouse structure has been on the land for more than 10 years, they have not demonstrated that it was in continuous use for purposes ancillary to a residential use rather than for agricultural or horticultural purposes.

Additionally, as demonstrated above, the wooden structure ('greenhouse') was demolished and replaced within the last 4 years; it has not been evidenced that the existing 'greenhouse' building was substantially complete more than 4 years ago, so the building is not lawful by reason of time.

Recommendation: Not lawful for the following reasons:

1. The Applicant has not provided the Council with sufficient evidence to establish on the balance of probability that the use of the land (on which a greenhouse is sited) for ancillary residential use has been continuous for more than ten years prior to the date of the application.
2. Insufficient evidence has been provided to demonstrate that the structure shown on plans 4419-BE(4) A and 4419-BE(4) annotated 'as built', was substantially complete more than 4 years ago so as to be immune from enforcement action.

First Schedule:

Certificate of Lawfulness: Retention of greenhouse

Second Schedule:

White Barn Batchelors Lane Holt BH21 7DS

Case Officer Signature:	KA	Authorising Officer Signature:	EAD
Date:	10/6/24	Date:	12/06/2024