

Parish: Southbourne	Ward: Southbourne
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**SB/21/00221/PLD**

<b>Proposal</b>	Proposed lawful development certificate for the use of land for agricultural purposes.		
<b>Site</b>	Green Acre Inlands Road Nutbourne West Sussex		
<b>Map Ref</b>	(E) 477474 (N) 105671		
<b>Applicant</b>	Seaward Properties Ltd	<b>Agent</b>	Mr Peter Cleveland

**RECOMMENDATION TO PERMIT**



	<b>NOT TO SCALE</b>	Note: Do not scale from map. For information only. Reproduced from the Ordnance Survey Mapping with the permission of the controller of Her Majesty's Stationery Office, Crown Copyright. License No. 100018803
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## **1.0 Reason for Committee Referral**

- 1.1 Red Card: Cllr Brown. Important information/opinion to raise in debate (This site was (and still is) designated for gypsy / traveller accommodation. There is a serious shortfall of such sites in the area.)

## **2.0 The Site and Surroundings**

- 2.1 The application falls within the Prinsted and Southbourne settlement boundary area; situated between Priors Orchard and dwellings fronting Inlands Road. It is served by a narrow access onto Inlands Road and Priors Orchard, however, this falls outside of the application site.
- 2.2 The site is surrounded by residential development. The site is bounded by 1.8m close board fencing with trees to the outside, including a mature tree by the southern boundary and various species of mature trees along the eastern boundary. The western and northern boundary includes mature hedgerows. The site is laid to gravel.
- 2.3 The site has a lawful use as a gypsy/traveller site comprising 5 no. pitches established under application reference 14/01678/FUL. Each pitch is served by a mobile home, with 1 no. mobile home located close to the northern boundary and 2 no. mobile homes to the western and eastern boundaries facing into the site. A stable/barn building is positioned to the southern end of the site. A single-storey utility building is located at the north-eastern end of the site.

## **3.0 The Proposal**

- 3.1 The grant of a lawful development certificate under S192 of the Town and Country Act 1990 as amended by Section 10 of the Planning and Compensation Act 1991 is sought for the proposed use of the site for agricultural purposes.
- 3.2 The covering letter advises that the use would comprise *'the grazing and keeping of livestock. No physical structures are proposed or required, nor any demolition necessary as the existing caravans on site are temporary, moveable structures.'*
- 3.3 The planning agent has advised via email correspondence with the case officer (dated 16th March 2021) that the proposed agricultural use would *'likely be for the keeping of chickens. This was a former use of the site, accordingly it can revert to this use without any works to remove hardstanding etc.'* It is further advised in an email to the case officer (dated 1st April 2021) that should a certificate be granted, it is likely that a Farm Business Tenancy will be sought and an appropriate Holding Number for livestock created.

## **4.0 History**

02/00808/COU	PER	Change of use from redundant chicken shed to stables and tack room.
04/00934/DOM	PER	Dropped kerb.
10/01463/PE	REC	Proposed restoration/alteration of two existing buildings for the purpose of single residential

property and garage/workshop with storage.

13/03608/FUL	PER106	Proposed change of use of land to three pitch site comprising the stationing of three mobile homes for settled gypsy accommodation and the construction of three associated utility buildings.
14/01678/FUL	PER106	Full application for demolition of existing stable / store and proposed change of use of land to provide two additional mobile homes pitches and one additional utility building for settled gypsy accommodation (total 5 pitch site) revised application further to permission granted under SB/13/03608/FUL for proposed change of use of land to three pitch site comprising the stationing of three mobile homes for settled gypsy accommodation and the construction of three associated utility buildings.
14/02644/FUL	REF	Site warden accommodation in relation to permissions for settled gypsy accommodation (total 5 pitch site).
15/01780/DOM	APPRET	Replace rear garage with conservatory.
19/00474/FUL	REF	Temporary change of use of land to site compound and associated amendments to construction management plan.

## 5.0 Constraints

Listed Building	NO
Conservation Area	NO
Rural Area	NO
AONB	NO
Tree Preservation Order	NO
EA Flood Zone	NO
Historic Parks and Gardens	NO

## 6.0 Representations and Consultations

### 6.1 Parish Council

The loss of a gypsy and traveller site is not acceptable and they are protected in the emerging Local Plan. In addition, 94 pitches are required in the next five years and 150 in the next 15 years.

## 6.2 Third party objection comments

3 no. third party representations of objection have been received concerning the following matters:

- a) Plan A4 S101 is inaccurate as it shows road access from Priors Orchard. The only official access is via Inlands Road.
- b) Concerns regarding the possibility of the applicant applying to build houses on the site in the future. This would result in foul sewerage concerns.
- c) Developer of Priors Orchard ignored restrictions on Inlands Road being used to supply the development

## 6.3 Third party support comments

1 no. third party representations of support have been received concerning the following matters:

- a) The land will revert back to former agricultural use
- b) The access from Inlands Road is to remain closed
- c) The former agricultural use of the site is for the keeping of chickens
- d) The use of the site for agricultural purposes will reduce noise disturbance to neighbouring residential development from vehicular traffic associated with the use of the land as gypsy/traveller pitches and Seawards using the site as a compound for construction materials

## 6.4 Applicant/Agent's Supporting Information

The applicant/agent has provided the following support information during the course of the application:

- a) Covering Letter
- b) Court of Appeal Judgement in J. L. Engineering and Another v Secretary of State and Another
- c) Queens Bench Division Judgement in North Warwickshire Borough Council v Secretary of State for the Environment and Another

## 7.0 Planning Policy

7.1 Planning policies are not relevant in the determination of a Certificate of Lawful Development application.

7.2 The application is made under Section 192 of the Town and Country Planning Act 1990 as amended by Section 10 of the Planning and Compensation Act 1991, for a Certificate of Lawfulness for a proposed use. S192 states that:

(1) If any person wishes to ascertain whether—

(a) any proposed use of buildings or other land; or

(b) any operations proposed to be carried out in, on, over or under land, would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

## **8.0 Planning Comments**

8.1 The main issues arising from this proposal are:

- i) Whether the proposed use of the land for agricultural purposes would amount to development
- ii) Other matters

### Assessment

i) Whether the proposed use of the land for agricultural purposes would amount to development

8.2 The application seeks to establish that the use of the land for agricultural purposes does not constitute development and therefore can be considered lawful.

8.3 Section 55(2)(e) of the Town and Country Planning Act 1990 (TCPA 1990) states '*the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used;*' shall not be taken to be "development" for the purposes of the act.

8.4 Section 336 of the TCPA 1990 defines "agriculture" as follows:

*"agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly;*

8.5 In considering the above sections of the TCPA 1990, it is judged that the use of the land for agricultural purposes would not amount to development and can be considered lawful for the purposes of Section 192 of the Town and Country Planning Act 1990 as amended by Section 10 of the Planning and Compensation Act 1991.

8.6 The covering letter submitted by the agent advises that the proposed agricultural use would comprise '*the grazing and keeping of livestock. No physical structures are proposed or required, nor any demolition necessary as the existing caravans on site are temporary, moveable structures.*' The planning agent has advised via email correspondence with the case officer that the proposed agricultural use would '*likely be for the keeping of chickens. This was a former use of the site, accordingly it can revert to this use without any works to remove hardstanding etc.*' It is further advised in a subsequent email to the case officer that should a certificate be granted, it is likely that a Farm Business Tenancy will be

sought and an appropriate Holding Number for livestock created. It is considered that the use of the site for the keeping of chickens would amount to a use of the land falling within the definition of "agriculture" as outlined within the TCPA 1990. It is notable however that the certificate sought is only for the use of the land for agricultural purposes and not for a specific agricultural activity. Whether the future use of the land amounts to agricultural use is a matter of fact and degree that is entirely contingent on any future activities undertaken and is not a matter for consideration in determining this certificate.

8.7 Condition 4 of planning permission 14/01678/FUL, which established the lawful use of the site comprising 5 no. gypsy/traveller pitches, contained a restriction of the use of the utility buildings on the site for any other purpose other than purposes incidental to the use of the mobile homes on the site as dwellings. The proposed agricultural use of the site would not preclude the use of the existing day rooms for agricultural purposes as defined within the TCPA 1990 as this would not amount to "development".

ii. Other matters

8.8 Comment have been received from the Parish Council and third parties referring to the planning policy merits of the proposal, however, planning policies are not a consideration in the determination of a Certificate of Lawful Development application.

**Conclusion**

8.9 Officers are satisfied that the proposed use of the land for agricultural purposes would not amount to development and can be considered lawful for the purposes of Section 192 of the Town and Country Planning Act 1990 as amended by Section 10 of the Planning and Compensation Act 1991.

**Human Rights**

In reaching this conclusion the Human Rights of the applicants and nearby occupiers have been taken into account and it is concluded that the recommendation to permit is justified and proportionate.

## **RECOMMENDATION**

**PERMIT** subject to the following conditions and informatives:-

1) The use of the land described in the First Schedule on the land described in the Second Schedule would not amount to development and can be considered lawful for the purposes of Section 192 of the Town and Country Planning Act 1990 as amended by Section 10 of the Planning and Compensation Act 1991.

### First Schedule

Use of land for agricultural purposes

### Second Schedule

Green Acre, Inlands Road, Nutbourne, West Sussex

2) This decision relates to the following plans submitted with the application:

P105 and S101

For further information on this application please contact William Price on 01243 534734

To view the application use the following link - <https://publicaccess.chichester.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=QNJR3RERLA500>