

Section '3' - Applications recommended for PERMISSION, APPROVAL or CONSENT

Application No : 14/01818/ELUD

Ward:
Bromley Common And
Keston

**Address : Hasells Nursery Jackson Road Bromley
BR2 8NS**

OS Grid Ref: E: 542769 N: 165975

Applicant : Mr J Hasell

Objections : NO

Description of Development:

Use of the site shown on the attached plan for a composite use in connection with a bedding plant nursery and a general building and ground works company and in particular comprising use of building A for vehicle maintenance and repair, of building B for storage and maintenance of tools, of area D for car and lorry parking, of building I to store building and fencing materials and of building J to store tractors and excavators and of buildings C, E, F, G and H as a bedding plant nursery

CERTIFICATE OF LAWFULNESS FOR AN EXISTING USE OR DEVELOPMENT

Key designations:

Biggin Hill Safeguarding Birds
Biggin Hill Safeguarding Area
Biggin Hill Safeguarding Area
Green Belt
London City Airport Safeguarding
London City Airport Safeguarding
Open Space Deficiency

This application was deferred from Plans Sub Committee on 23rd October, without prejudice to any future consideration, to seek further details and clarification on the use of the land and more detailed information on the concept of abandonment as it relates to planning. Further to that committee meeting the agents wrote to Members seeking to clarify a number of matters and to offer Members an accompanied site visit. The letter makes reference to the concept of abandonment and highlights that for abandonment to occur there should be clear evidence that there is no intention by the owner to resume the use; that the site might not be used for a short period or at a low level of use does not in law constitute abandonment. The letter addresses the reference made at Committee that there appeared to be little activity taking place at the time when certain Members visited the site. The letter advises that in the summer the greenhouses would have been

seen to be full of plants and in relation to the landscape contractor, fencing and ground works uses, activity falls to early morning/late afternoon with loading up vans to carry out work at various sites. A copy of that letter is available to view on file.

For information the following excerpt is taken from the well-regarded reference publication "Development Control Practice" in respect of the concept of 'abandonment':

'Abandonment is a legal concept used by the courts to describe the circumstances in which rights to resume a use which has been lawfully carried on in the past may be lost because of the cessation of that use. As it is not a principle embodied in planning law assessments of whether "abandonment" has occurred may create contention, particularly as court decisions on the matter have not been entirely consistent. However, the basic rules which have emerged are that abandonment may occur where a use has ceased a) due to leaving premises vacant for a considerable period or by allowing the building/s on which the use relies to deteriorate to the extent that re-use would involve what would be tantamount to rebuilding b) by the introduction of a different use (whether with or without planning permission) supplanting that which went before. However note should be made of the judgment in *Smith v Hillingdon LB*. 5/5/93 where it was held that changes having planning permission but which only apply to part of a planning unit do not mean that "abandonment" has occurred per se.

The case of *Trustees of Castell-y-Mynach Estate v SoS* 10/7/84 laid down the criteria to be considered when determining whether the residential use of an existing building had been abandoned. These were repeated in the *Hughes* case detailed later. The four factors relevant to an assessment of abandonment are:

- 1) - the physical condition of the building;
- 2) - the length of time for which the building had not been used;
- 3) - whether it had been used for any other purposes; and
- 4) - the owner's intentions.

These criteria are of equal relevance and are to be tested by considering whether a reasonable man with knowledge of all the circumstances would conclude that the building had been abandoned. In the *Hughes* Court of Appeal case it was found that the test was an objective one and, accordingly, it was wrong to regard the wishes and intentions of the owner as the determinative factor. The intentions were only one of the factors to be taken into account by the inspector, who, in evaluating all the circumstances, had been entitled to conclude that residential use had been abandoned'.

Based on the tests set out above it is clear that there is no question of the use of this site being considered abandoned in planning terms.

The planning report has considered the available evidence, including comments received from nearby neighbours. The application claims that there are two

companies operating from the site and there is no compelling evidence before the Council to refute that claim. Although the uses are not particularly active at the moment it appears, on the balance of probability that the land and buildings have been used for a variety of purposes for Kent House Nursery and for JT Hassell Services which is a building and ground works company and that these uses remain the lawful use of the site. Therefore the considerations within the report lead to the said recommendation, using the Council's substituted description.

The previous report is repeated below.

Proposal

This application seeks to establish the lawful use of the land and buildings. The response to Section 8 on the application form, which asks 'What is the existing site use(s) for which the Certificate of lawfulness is being sought?', states 'use of land and buildings for a mixed use comprising Use Classes B1, B2 and B8 and Bedding Plant Nursery as more particularly described in accompanying statement and statutory declaration'. It is claimed that use began more than 10 years before the date of application.

The supporting letter to the application states 'The applicant is giving consideration to the future of the site which comprises previously developed land located within the Green Belt'. He wishes therefore, to obtain legal confirmation of the commercial uses that have been carried out at the site for more than 10 years and which continue to be carried out at the site at the current time'. It goes on to state that 'The site has been used for more than 10 years for a mixed use relating to vehicle and machinery maintenance workshops, building and fencing contracting yard and offices in connection therewith, the parking of commercial vehicles, building materials, plant and machinery. These uses would all appear to fall within Use Classes B1, B2 and B8. In addition, the site is also used for the propagation and potting of bedding plants, a horticultural use and has been so used for more than 10 years'.

The application is supported by documentary evidence and Statutory Declaration by Mr James Hasell. The Statutory Declaration advises that two businesses are run from the site J T Hasell Services and Kent House Nursery - for more than 10 years; that J T Hasell Services is a building and groundworks company which undertakes general building work, landscape contracting and fencing contracting. The activities undertaken on the land in connection with this business are: the storage and manufacture of goods for the building works that are undertaken; storage of building materials; vehicle maintenance; parking of commercial vehicles; storage of skips for waste, plants and machinery. Kent House Nursery is a bedding plant nursery which uses the glasshouses; plug plants are bought and potted on for wholesale merchandisers and garden centres. The bedding plants are bought to the site on HGVs. HGVs are used to transport the plants around London to the Wholesalers

Additional information received 9/7/14 includes:

- Copy of Letter from Bromley Demolition Co Ltd - advises they have used JT Hasell based at 60 Jackson road Bromley for building and ground works contracts for over 15 years. It advises that it has used the yard premises to park, maintain equipment, including a lorry and excavator, stack various building materials including a range of fencing.
- Copy of Letter from PJ Construction - which confirms that JT Hassel Services have allowed us to store plant and equipment at 58 Jackson Road since c 1998. It advises '...They have also provided us with ground working and landscaping equipment from the same premises over that period of time. We are currently storing timber and some machinery there'.
- Copy of letter from Ravensbourne Property Services Ltd - advises JT Hasell Services have been a contractor of theirs for the last 10 years starting in 2002 carrying out landscaping and paving and various other projects including fencing. He stores materials for us at 60 Jackson road which include temporary fencing, site toilets and various other materials that he delivers in his lorries and vans
- Copy of a letter from S & L United Storage Systems Ltd - advises that for more than the last 10 years that have used J T Hassell Services of Kent Road Nursery, Jackson Road to erect and dismantle racking systems supplied by them. He stores equipment for us and they have use of his forklift truck. On one occasion they placed a skip at Kent House Nursey for old panes of glass and had new panes delivered.

Additional information received 8th August includes:

- Clarification of the site and addresses
- Records of the horticultural side of the business back to 2005/06
- Invoices for services/supply notes in relation to Kent House Nursery
- Invoices/letters bills relating to J T Hasell Services

Location

The site is located within the Green Belt to the east side of Jackson Road. Buildings adjacent the site at 48, 58 and 60 Jackson Road are listed.

Comments from Local Residents

Nearby owners/occupiers were notified of the application and a number of representations were received which can be summarised as follows:

- lived at Seymour Drive for over 25 years and the Hasell Nursery has been in operation throughout this period. Although cannot comment in detail - are aware that the outbuildings consist of glass-houses and a small amount of brick built structures which have been used as office/light industrial space. The land-locked pasture to the rear has been used for grazing of livestock.
- investigated the premises prior to buying a nearby property - advised it was a bedding nursery only;
- advised deliveries to and from premises were roughly once in the morning and once in the evening with the odd small van in between and nothing at

weekends apart from people to water the plants - since moving in the traffic has been much as discussed. No sign of any other business operating from the premises - fencing stores may not have been too obvious

- references to camping have been made - (note - this was in connection with the letter from the Council erroneously saying 'camping' instead of 'comprising')
- aware of use as the premises as a nursery since moving to property in 1995. Not aware of any other use of the property
- resident since 1934 - advises use as a nursery throughout those years
- resident since 1937 - always been a bedding plant nursery
- confirm open grassland been used for grazing (since resident moved in, in 2008) - no other activity on that land. Cannot confirm what activities have taken place inside the buildings. There is very little external activity on a day to day basis (on the east side of the site) and very little disturbance; there are large day time bonfires on a fairly regular basis from Spring to Autumn
- lived nearby since 1999 - aware that the premises have been used as a bedding plant nursery and (I believe) the base for a landscaping business
- since resident in 2003 the site has operated as a nursery

Comments from Consultees

The division dealing with the collection of Business Rates for the Council have no record of Business Rates being paid at the site. . Following enquiries in relation to this Certificate Application it is understood that the valuations office have been asked to consider rating the property.

Comments from the Applicant's Agent

The Agent advises that in his opinion it is clear that the site has functioned as one planning unit, used and operated by the two businesses owned by Mr Hasell.

Burdle v Secretary of State for the Environment

The planning unit is a concept which has evolved as a means of determining the most appropriate physical area which to assess whether a material change of use has occurred. The general rule and starting point is that the whole of the area in the same ownership or occupation should be considered. However the High Court in the case of Burdle suggested three broad tests for determining the appropriate planning unit.

First, whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered. That proposition emerges clearly from *G. Percy Trentham Ltd. v. Gloucestershire County Council* [1966] 1 W.L.R. 506, where Diplock L.J. said, at p. 513:

"What is the unit which the local authority are entitled to look at and deal with in an enforcement notice for the purpose of determining whether or not there has been a 'material change in the use of any buildings or other land'? As I suggested in the course of the argument, I think for that purpose what

the local authority are entitled to look at is the whole of the area which was used for a particular purpose, including any part of that area whose use was incidental to or ancillary to the achievement of that purpose."

But, secondly, it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time, but the different activities are not confined within separate and physically distinct areas of land.

Thirdly, however, it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit.

To decide which of these three categories apply to the circumstances of any particular case at any given time may be difficult. Like the question of material change of use, it must be a question of fact and degree. There may indeed be an almost imperceptible change from one category to another. Thus, for example, activities initially incidental to the main use of an area of land may grow in scale to a point where they convert the single use to a composite use and produce a material change of use of the whole. Again, activities once properly regarded as incidental to another *1213 use or as part of a composite use may be so intensified in scale and physically concentrated in a recognisably separate area that they produce a new planning unit the use of which is materially changed. It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.

Planning Considerations

This Lawful Development application is to be considered under Section 191 of the Town and Country Planning Act 1990 (as amended). The Town and Country Planning Act 1990, section 191 provides for consideration of a Certificate of Lawfulness of existing use or development if any person wishes to ascertain whether any existing use of buildings or other land is lawful.

For the purposes of the 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);

Planning History

The planning history of the site includes a previous planning refusal of an outline application ref. 90/02426 for the demolition of the glasshouses and the erection of single storey nursing home (Class C2). This was also refused on appeal.

The inspector noted in the appeal decision 'The appeal site is an irregularly shaped former nursery, now disused'.

Conclusions

If, on an application under section 191, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

To assess the Lawfulness of the use applied for the supporting documentation, local comments received and any other evidence must be carefully considered.

Exhibit 1 shows a plan with a red line around the site to which the application refers. The red line excludes adjacent sites at Nos. 60 and 58 Jackson Road as numbered on the plan. Information received 8th August seeks to clarify the position regarding the site. It states '... the site shown within the red line application plan is actually No. 60 Jackson Road. The adjacent dwelling to the south of the access drive (shown as No. 60 on plan) is No. 60A Jackson Road. Historically the site has been known as Kent House Nursery and you will see from subsequent documents to which reference is made that the site is described in many of these as Kent House Nursery. Additionally I should also advise you that the applicant, Mr Hasell resides at No. 58 Jackson Road. Although this is a dwelling with its own residential curtilage, the garden opens straight into the yard such that Mr Hasell lives 'on site'. As you will see from some of the evidence submitted and subsequently referred to, there are certain documents which are addressed to No. 58 Jackson Road and others to Kent House Nursery. Because Mr Hasell effectively lives on site, the billing address for many suppliers is No. 58 Jackson Road because it is simpler for invoices etc to be delivered to Mr Hasell's home rather than to be put into a post box in the yard...'. The information goes on to advise that the various documents submitted are addressed '...variously to Kent House Nursery, J T Hasell, No. 60 Jackson Road and No. 58 Jackson Road. They all relate, however, to the same site, the same business and the same use...'.

It is noted that a number of the submitted documents also indicate the delivery address to Kent House Nursery, Park Farm, Frittenden, Cranbrook, for example the statement from Southern Farmers Ltd for March 2006 (including goods from February 2006), Haynes Invoice dated 29/3/2006, NP Seymour invoice 28/02/2006. A number of the invoices, March/April 2006, indicate deliveries from Florenis (trading name of Hamer Flower Seeds Limited) and are invoiced to JT Hasell Services Kent House Nursery No. 58 Jackson Road, similar from Fargo, March/ April 2006 to Kent House Nursery at No. 60 Jackson Road, and a number relate to JT Hasell Kent House Nursery, No. 58 Jackson Road Bromley.

Local comments have been received which for the most part indicate awareness of the use of the site as a bedding plant nursery with very little activity going on. One letter indicates a belief that it may now be the base for a landscaping business. One letter has been received which indicated an awareness that the outbuildings consist of glass-houses and a small amount of brick built structures which have been used as office/light industrial space.

As part of the supporting documentation Exhibit 3 is a map of the site on which are marked the various buildings. The following building references and descriptions are taken from Exhibit 3 and the Statutory Declaration, with officer comment in italics below:

Building A - the building is metal clad and used as a vehicle workshop

The site visit revealed this building to have some storage racking and various paraphernalia in it; the rear section of the building seems to act as storage and includes some gardening equipment and various other items including domestic appliance; photos available on file.

Aerial photos from 1998, 2001/3, 2006, 2010 and 2013 reveal one parked vehicle between the space of Building A and Building B

Building B - Brick building used for storage and maintenance of tools

The site visit revealed the building hosted an oil tank and various tools; photos available on file

Building C - Glasshouse used for bedding plant nursery

The glasshouse had some plants (vegetable) growing; a small outside area adjacent to Building C had plants growing. The site visit photos also record a stack of blue pallets adjacent to Building C

Area D - main parking area for the site/ used for some vehicle maintenance

At the time of the site visit there were some cars parked in this area and a van pulled alongside. The available aerial photos indicate between 3 and 7 vehicles parked in the area - a mix of cars and vans

Building E - glasshouse used for bedding plant nursery

Building F - glasshouse used for Nursery

Building G - glasshouse used for Nursery

Building H - glasshouse

Building I - corrugated metal clad storage building - used mainly to accommodate all of the building and fencing materials used by J T Hasell Services

The site visit revealed this building to have an inner breeze block structure to part of it which Mr Hasell advised he used as a stabling area for his children's horses when they had them. The area appeared to be used for storage with a few fence and trellis panels included. Other parts of the building housed what looked like a horsebox, a car and various other items of equipment; photos available on file.

Building J - storage building in which tractors and excavators are kept; larger tools stored and maintained in area to the front of Building J

The site visit did not reveal any storage of tractors or excavators; there was some minor storage of items but the grass did not appear in a 'ridden over' state and there appeared no evidence of any vehicle tracks to this area. A goat was wandering loose in the vicinity; photos available on file. The aerial photos provide no evidence of any external storage to the front of this building.

Area K - concrete hardstanding area on which is stored fork lift trucks, Pallets used for deliveries, fencing and other materials; racking for storage of a range of building material

At the time of the site visit there was a large royal Mail van, a transit van and fork lift parked in the area. There was some racking with storage of hard landscaping materials. There were what looked like some old gas cylinders. The 1998 aerial photos do not seem to show any racking or vehicles parked in this area. Those from 2001/3 onwards seem to indicate the presence of racking and some parking of vehicles. It is quite a tightly defined area rather than relating to the entire area K as indicated on plan

Exhibit 4 - Certificate of Public Liability Insurance

Shows date of commencement of insurance as 3/12/04-3/12/05 and 3/12/03 - 3/12/04. The Certificates do not indicate or identify the location to where the business was based/carried out from. The business described for the purpose of the Certificate of Public Liability Insurance is 'Builders - General Fencing Contractor Landscape Gardeners

Exhibit 5 - letters from the accountants

Dated 17/4/14 re JT Hasell Services

These advise they have been accountants for JT Hasell Services for over twenty years and state '...We can confirm that JT Hasell Services has been engaged throughout this period in the business of general builders, contractors, fencing contractors, ground works and drainage contractors.

To our knowledge these business operations have been carried out for that same period of time at the site of Jackson Road Nursery, at No. 60 Jackson Road.

We can confirm that the businesses are currently undertaken at this site, which is used jointly with Kent House Nursery'.

Dated 17/4/14 re Kent House Nursery

These advise they have been accountants for Kent House Nursery for over twenty years and state '...We can confirm that Kent House Nursery has been engaged throughout this period in the business of commercial production of bedding plants and their wholesale trade.

To our knowledge this business operation has been carried out for that same period of time at the site of Jackson Road Nursery, at 60 Jackson Road. The use involves plants being brought in on heavy goods vehicles and subsequently delivered to London markets in heavy goods vehicles.

We can confirm that the business is currently undertaken at this site, which is used jointly with the business operated by JT Hasell Services'.

The applicant is responsible for providing sufficient information to support an application. The applicant's evidence should be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

The application claims that '...the site has been used for more than 10 years for a mixed use relating to vehicle and machinery maintenance workshops, building and fencing contracting yard and offices in connection therewith, the parking of commercial vehicles, building materials, plant and machinery. These uses would all appear to fall within Use Classes B1, B2 and B8. In addition, the site is also used for the propagation and potting of bedding plants, a horticultural use and has been so for more than 10 years...' and that there are two companies operating from the site Kent House Nursery and JT Hasell which relate to '...the same site, the same business and the same use...'. The application claims that there are two companies operating from the site and it seems there is no evidence before the Council to refute that claim.

In relation to the use of the site for more than 10 years as a bedding plant nursery some records are available from 2005/2006. Historically the site appears to have been used as a bedding plant nursery and whilst there may have been a period of non-use (see planning history) from c 1988 the site history and knowledge from the majority of local comments appear to support the bedding plant nursery use of the site. There is no evidence to show payments for Business Rates in this respect however given the existing (and historical) layout of the site this does not necessarily demonstrate or provide evidence that there has been a new chapter in the planning history of the site particularly given the existing (and historical) site layout. From the available information and evidence submitted it seems that the use of the site as a bedding plant nursery has continued for at least a ten year period.

In relation to the use of the site for more than 10 years by JT Hasell Services there is some evidence for uses relating to vehicle and machinery maintenance, landscaping, building and fencing materials, the parking of commercial vehicles, plant and machinery, with a number of documents submitted, however the application claim is wider than that in respect of separate B1, B2 and B8 uses at the site.

A number of invoices, mostly dated around June 2003, from Southern Motor Factors have been submitted in support of the application but these do not appear to offer any link to deliveries to/or works at the application site. Another from Morgan Elliot Ltd, 5/2/04, gives the operators name and address as James Hasell, 60 Jackson Road. A number of other invoices are submitted in support and include from aggregate, fencing and timber companies. Some are addressed to 58 and some to 60 Jackson Road. Some use this as a delivery address and some seem just to invoice. The extent of storage on site at the time of the site visit appeared limited and Building A and Area D did not have the appearance of vehicle maintenance workshop/facility.

Local knowledge suggests little external activity at the site and there is no evidence to show payments for Business Rates in this respect.

The Insurance Certificate describe the business as Builders - General, Fencing Contractor, Landscape Gardeners and the accountants letter as general builders, contractors, fencing contractors, ground works and drainage contractors. The letter from the Accountant confirms a use in similar terms.

From the available information and evidence it would appear that the glasshouses C, E, F, G and H have been used for the purposes of a bedding plant nursery. Mr Hasell in his affirmation states "Kent House Nursery is a bedding plant nursery which uses the glasshouse". He makes the express claim that these buildings have been used for the bedding plant nursery (other than building H for which no claim is made). However the glass houses require access and servicing from the remainder of the site and on balance it is not felt there is a sufficient physical and functional separation for the glasshouses to be regarded as a separate planning unit from the remainder of the site. The conclusion is that the second Burdle test applies rather than the third.

It is difficult to ascertain separate on-going use of the remainder of the site. Although the uses are not particularly active at the moment it appears, on the balance of probability that the land and buildings have been used for a variety of purposes for Kent House Nursery and for JT Hassell Services which is a building and ground works company. On the basis of the information submitted whilst it would appear that there is a composite use for the bedding plant nursery and for a general builder and groundworks company. Whilst the use of the site may encompass a number of mixed uses including storage and vehicle repair change totally to a use within one of the named use classes may be material and require planning permission.

However, on balance the evidence is appears to be sufficiently precise and unambiguous to justify a Certificate being granted in revised terms as set out in the recommendation rather than a more widely drawn Certificate encompassing separate B1, B2 and B8 uses.

Background papers referred to during production of this report comprise all correspondence on the file ref(s) set out in the Planning History section above, excluding exempt information.

as amended by documents received on 09.07.2014 08.08.2014

RECOMMENDATION: EXISTING USE/DEVELOPMENT IS LAWFUL

That the claimed description of the claimed use be modified pursuant to section 191(4) of the Town and Country Planning Act 1990:

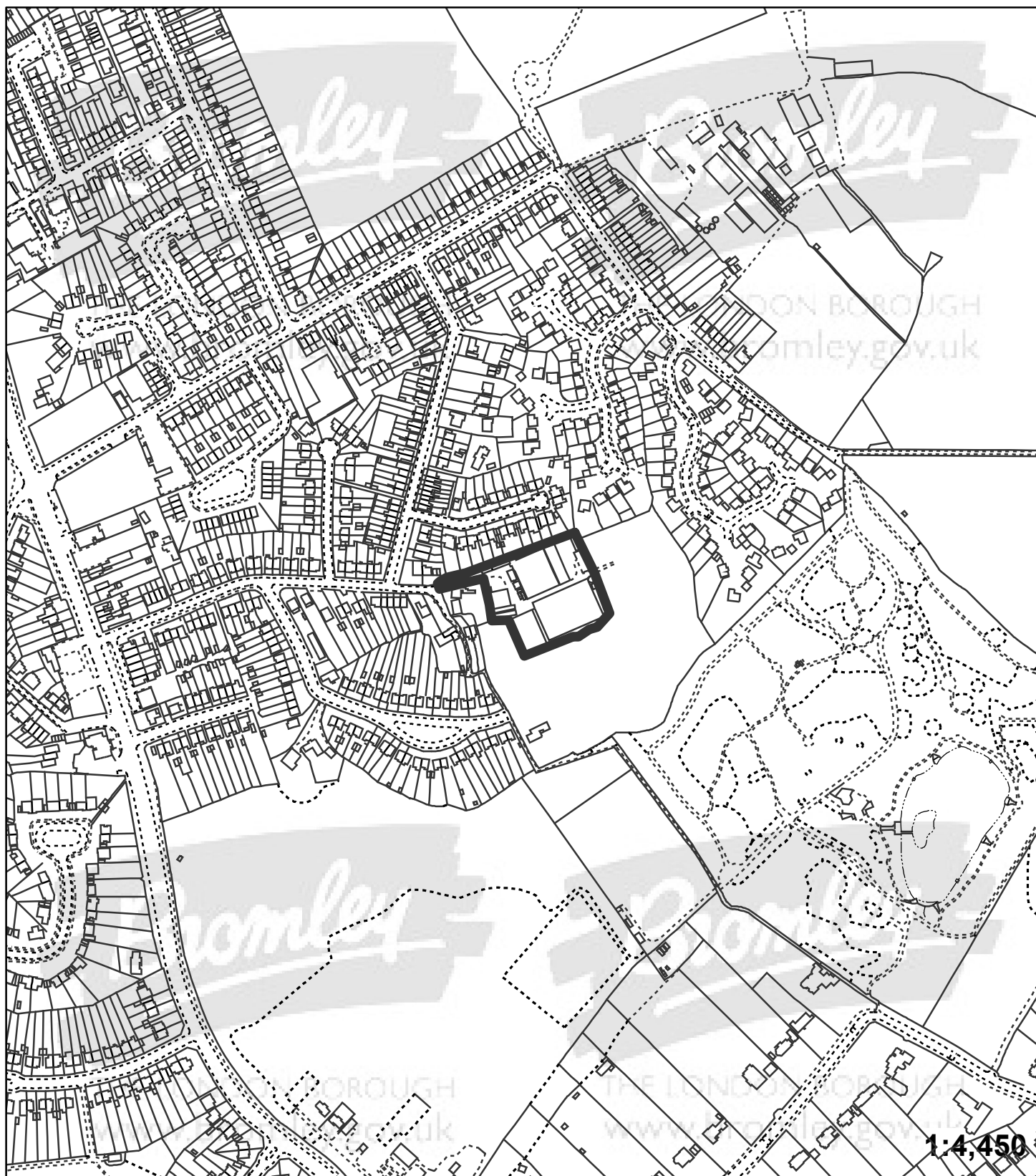
Use of the site shown on the attached plan for a composite use in connection with a bedding plant nursery and a general building and ground works company and in particular comprising use of building A for vehicle maintenance and repair, of building B for storage and maintenance of tools, of area D for car and lorry parking, of building I to store building and fencing materials and of building J to store tractors and excavators and of buildings C, E, F, G and H as a bedding plant nursery.

Reason: For a period of at least 10 years it is considered that the use of the premises as certified has been carried on, on the balance of probability, is therefore considered to be lawful. The Council has use the powers under section 191 (4) of the Town and Country Planning Act 1990 to substitute this description as it has concluded that the site is being used for composite purposes and change to a single use within a use class may be material and require planning permission.

Application:14/01818/ELUD

Address: Hasells Nursery Jackson Road Bromley BR2 8NS

Proposal: Use of the site shown on the attached plan for a composite use in connection with a bedding plant nursery and a general building and ground works company and in particular comprising use of building A for vehicle maintenance and repair, of building B for storage and maintenance



"This plan is provided to identify the location of the site and should not be used to identify the extent of the application site"

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