Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:
DC/24/1857
Honeycroft, Mill Lane, Partridge Green, West Sussex, RH13 8JU

DESCRIPTION:
Application to confirm the continuous use of the plot consisting of the field to the south-west of the dwelling that has been used as garden land in association with the dwelling for a period in excess of ten years (Lawful Development Certificate - Existing)

RELEVANT PLANNING HISTORY:

DC/16/1286	Oak-Framed Garage Building	Application Refused on 27.07.2016
WG/21/03	Erection of 1 dwelling Site: Delholme 2 Mill Lane Partridge Green	Application Permitted on 20.06.2003

ASSESSMENT
The application relates to Application to confirm the continuous use of the plot consisting of the field to the south-west of the dwelling that has been used as garden land in association with the dwelling for a period in excess of ten years (Lawful Development Certificate – Existing)

Relevant Legislation and Guidance

Section 191(2) of the Town and Country Planning Act 1990 (TCPA) provides that *'for the purposes of this Act uses and operations are lawful at any time 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.'

The land subject of this application are not subject of an extant enforcement notice, as such, there would be no automatic exemption from the grant of a certificate of lawfulness by virtue of the provisions of S.191(2)(b) TCPA 1990.

S.171B of the TCPA states:

'*(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 period of –*

(a) in the case of a breach of planning control in England, ten 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 dwellinghouse, no enforcement action may be taken after the end of the period of –

(a) in the case of a breach in planning control in England, ten 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 beach 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.

(4) The preceding subsections do not prevent—

(a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

(b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.'

S.191(4) of the TCPA states:

'If, on an application under this section, 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.'

The Planning Practice Guidance (PPG) on Lawful Development Certificates explains that the applicant is responsible for providing sufficient information to support an application. This paragraph, furthermore, explains that, in the case of applications for an existing use, if the authority holds no evidence itself, nor form any 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 along is sufficiently precise and unambiguous to justify the grant of a certificate on a balance of probability.

Case law, furthermore, confirms that in the determination of an application for a certificate of lawfulness, the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the authority holds no evidence itself, or from others, to contradict or call into question the probability of the applicant's version of events there is no good reason to refuse an application.

The Test

TCPA 1990 S.191(1) provides that if any person wishes to ascertain whether:

- *Any existing use of buildings or other land is lawful;*
- *Any operations which have been carried out in, over or under land are lawful; or*
- *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 apply to the local planning authority specifying the land and describing the use, operations or other matter.

If on such an application, the local planning authority is satisfied with the lawfulness of the use, operations, or other matters described in the application, or that description as modified or substituted by them, it shall issue a certificate or refuse the application.

The Act provides that in respect of a failure to comply with any condition or limitation subject to which planning permission has been granted, any matter constituting such a failure is lawful at any time if:

a) The time for taking enforcement action in respect of the failure has 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

Applicant's Evidence

- Planning Statement
- Location Plan

Council's Evidence

- Application WG/21/03
- Application DC/06/1500
- Application DC/16/0219
- Application DC/16/1286
- Consultation Response: Horsham District Council – Compliance
- Consultation Response: Horsham District Council – Democratic Services
- Consultation Response: Horsham District Council – Revenues
- 5x Lawful Development Questionnaires
- Google Street View (2013, 2015, 2024)
- Council Aerial Photography (2007, 2012)
- ESRI World Imagery (20.02.2014)
- Zoopla

Planning History

The dwellinghouse at Honeycroft was erected under planning permission WG/21/03. The dwellinghouse was built on land comprising the southern part of the rear garden of Delholme, a detached property fronting Mill Lane. A planning application for a replacement stable block and feedstore which covers the field of the application site (field to the south-west of the existing dwellinghouse Honeycroft), was subsequently submitted and refused under ref: DC/06/1500.

The dwellinghouse of Honeycroft was first occupied in either 2013 or 2014 according to Council data, and two planning applications for the proposed erection of a detached garage, DC/16/0219 and DC/16/1286, were submitted and refused. As part of the consideration of DC/16/1286 is was stated that the location of the garage, the field south-west of the dwellinghouse, would be positioned outside the original residential curtilage of the main dwellinghouse within an open former paddock area.

Discussion

The application is to confirm the continuous use of the plot consisting of the field to the south-west of the dwelling that has been used as garden land in association with the dwelling for a period in excess of ten years (Lawful Development Certificate - Existing).

Apart from the access road, the red line boundary of planning permission WG/21/03, for the erection of the dwellinghouse of Honeycroft, was fully located within the rear garden south of Delholme. Evidence from the Council and subsequent planning applications suggest that the proposed red line boundary under WD/21/03 was never followed. Much of the northern part of Honeycroft, proposed as a garden according to paragraph 1.3 of the Committee Report of planning permission WG/21/03, was not included in the existing boundary, and the field south-west of Honeycroft, was a paddock.

There is no record of a planning application at the field south-west of the existing dwellinghouse of Honeycroft regarding the change of use of land from a paddock to land for residential use. There is also no record of a planning application altering the red line boundary in previous planning permission WG/21/03.

Historic Ownership of Paddock Land South-west of the Dwellinghouse

Evidence has been submitted by the applicant showing the current owners of Honeycroft having two separate land titles covering the existing red line boundary, the immediate residential curtilage of the dwellinghouse, as well as the paddock south-west of the dwellinghouse – the land relevant to this application. For clarity purposes, the paddock south-west of the dwellinghouse, will be referred to as 'the Field' in this report.

Paragraphs 4.8 to 4.10 of the applicant's Planning Statement state the reason of the red line boundary of WD/21/03 not being pursued was a 'misunderstanding on the amount of land that was being purchased', which resulted in a significant reduction of the originally intended garden space on the north of the existing dwellinghouse. However, such 'misunderstanding' of land purchased claimed by the applicant did not involve the purchase of the Field.

The refused planning application, DC/06/1500, for a replacement stable block and feedstore, involved a large area of land south of the dwellinghouse of Honeycroft, including the Field. At this time the Field has not been incorporated into the incidental curtilage of Honeycroft.

An enforcement complaint was received relating to the development of Honeycroft under WG/21/03 in 2006 (case ref: EN/06/0150), as the dwellinghouse was not built in the correct location. This breach did not involve the Field.

According to available aerial photography dating from 2007, Honeycroft appears to have been mostly built and part of the paddock to the south-west of the dwelling has been fenced up to what appears to be the current red line boundary of Honeycroft. Such fenced-up area also matches the existing size and boundaries of the Field. This gives evidence that the Field may have been incorporated as part of Honeycroft since it was first constructed. The Transfer of Part, signed on the 18th of January 2007, provided on Appendix H of the applicant's Planning Statement, appear to support the incorporation of the Field into the boundaries of Honeycroft at this time.

Use of the Field

The historic marketing details for Honeycroft, including the Field, indicate a listed for sale as a single residential property in July 2012, with photos from this time showing that the Field was fenced up and contained a driveway connecting the dwellinghouse. In addition, the property listing states that – "*the property is approached via a five bar gate from a private road off Mill Lane to an area of garden with ranch style fencing with a large area of lawn and a driveway to a secluded gravelled courtyard area with high hedges which provides additional parking, further lawn areas.*" This supports the notion that the Field formed a functional part of Honeycroft in 2012.

It is further noted that later aerial photography from 2015 indicates domestic garden furniture being present on the Field.

While noted that in 2016 it was considered (as part of DC/16/1286) that the Field was "outside of the original residential curtilage of the main dwellinghouse", this did not comment on whether the Field was being used in this manner. Photos from this time indicate use of the Field for incidental residential purposes, with a letter box located at the front gate of the Field, a small garden allotment present, and garden furniture. In addition, property listings in 2018 and 2022 provide evidence of a continued and intensifying domestic use of the Field incidental to the enjoyment of the dwellinghouse, with a garden outbuilding and a large front gate being erected. Trees and hedges were also planted along the site boundary.

Seven Lawful Development Questionnaires were sent to neighbours of Honeycroft, of which five have been completed and returned to the Department. Four representations provided within the

Questionnaires indicate that the Field has been used as garden land incidental to the enjoyment of Honeycroft for a period in excess of ten years, with one of those representations indicated that the domestic use of the Field has been intensified over time. One other representation from a neighbour who moved into the area in 2017 also explained that the Field has been used as garden land since he moved in.

Conclusion

The Council has no evidence which would bring into question the applicant's version of events. On the basis of available evidence, and on the balance of probability, it has been demonstrated that the field south-west of the dwellinghouse of Honeycroft has been used as garden land in association with the dwelling for a period in excess of ten years. The Certificate of Lawfulness of Existing Use can therefore be approved on this basis.

Recommendation: Application Permitted

1 It has been demonstrated on the balance of probability that the field south-west of the dwellinghouse of Honeycroft has been used as garden land in association with that dwelling for a period in excess of ten years from the date of this application.

DELEGATED

Case Officer sign/initial Joshua Lee Date: 22.01.2025

Authorising Officer sign/initial Guy Everest Date: 27.01.2025

Location Plan (not to scale)

Location Plan

Honeycroft
Littleworth
Partridge GreenRH13 8JU

Batcheller Monkhouse



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50 m
Scale 1:1250 (at A4)

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