

[REDACTED]
Kerves Barn
Kerves Lane
Horsham
RH13 6RJ

To: Horsham District Council

Date: Thursday 23rd July 2026

Subject: Objection to Application Proposed Lawful Development Certificate DC/26/1012

Application Reference: DC/26/1012 Kerves Farm Cottage, Kerves Lane, Horsham, West Sussex RH13 6RJ

Submitted by: [REDACTED] Owners of Kerves Barn

Executive Summary

This representation is submitted in respect of application **DC/26/1012**, seeking a Lawful Development Certificate ("LDC") for the construction of three rear dormers within the roof of Kerves Farm Cottage.

As the owners and occupiers of the adjoining property, Kerves Barn, we recognise that an application for a Lawful Development Certificate is fundamentally different from an application for planning permission. We also recognise that the Council is not being asked to consider whether the proposal is desirable or acceptable in planning terms, nor to determine any private legal rights between neighbouring landowners.

Instead, the question before the Council is whether the applicant has demonstrated, on the balance of probabilities, that the proposed development would be lawful under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO"). The burden of proving lawfulness rests entirely with the applicant.

It is our respectful submission that the evidence currently before the Council is insufficient to discharge that burden.

In particular, the application does not adequately demonstrate:

- the correct "original dwellinghouse" and "original roof space" baseline against which Class B permitted development rights must be assessed;
- how previous roof enlargements and alterations, including those approved under planning permission **DC/13/1328**, have been taken into account within the cumulative roof-volume calculation;
- whether the current roof form accurately reflects the lawful baseline, given the apparent differences between approved drawings and the building as constructed;
- that the proposal complies with all relevant limitations and conditions contained within Class B of Part 1, Schedule 2 of the GPDO.

These are not minor technical matters. They are fundamental to determining whether the proposed development is lawful.

The relationship between Kerves Farm Cottage and Kerves Barn is also unusually close. The application building forms the shared boundary with our property, and the proposed dormers would be located approximately **3.5 metres** from our conservatory, which forms part of our principal living accommodation, as well as in close proximity to our master bedroom. Whilst we appreciate that neighbour amenity is not, of itself, the determining consideration for an LDC application, this unusually constrained relationship reinforces the need for the Council to ensure that every statutory requirement of Class B has been positively demonstrated before issuing a certificate.

We also draw the Council's attention to the fact that, when Kerves Barn and Kerves Farm Cottage were separated into independent ownership, restrictive covenants were entered into which specifically recognise the sensitivity of the relationship between the two properties by restricting alterations affecting light, air and overlooking between them. Whilst we fully recognise that the Council is not responsible for determining private legal rights, the existence of those covenants provides important factual context as to the nature of the relationship between the buildings and the reason why careful scrutiny of the application is warranted.

For the reasons set out in this representation, we respectfully submit that the applicant has not demonstrated, on the balance of probabilities, that the proposed development complies with the requirements of Class B of Part 1, Schedule 2 of the GPDO. Accordingly, we request that the Council decline to issue the requested Lawful Development Certificate unless and until sufficient evidence is provided to establish the lawfulness of the proposal.

Background and Site Summary

2.1 Introduction

This representation is submitted by [REDACTED]
the owners and occupiers of Kerves Barn, Kerves Lane, Horsham.

Kerves Barn immediately adjoins the application property, Kerves Farm Cottage, and the two buildings share a particularly close physical relationship. The western elevation of Kerves Farm Cottage forms the boundary with Kerves Barn, with the rear roof slope that is the subject of this application facing directly towards the principal living accommodation and private courtyard garden of Kerves Barn.

Whilst this representation has been submitted by adjoining owners, it is not intended to address the planning merits of the proposal in the manner of a conventional planning objection. Rather, it seeks to assist the Local Planning Authority in determining whether the applicant has provided sufficient evidence to establish, on the balance of probabilities, that the proposed development would be lawful under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO").

2.2 The Application Site

The application relates to Kerves Farm Cottage, a detached two-storey dwelling located on Kerves Lane, Horsham, West Sussex.

The dwelling occupies a rural setting and forms part of what was historically a single residential holding comprising Kerves Barn, Kerves Farm Cottage and associated land. The buildings remain physically very close despite their separation into individual ownership.

The current application seeks a Lawful Development Certificate for the construction of three rear dormers within the rear roof slope of Kerves Farm Cottage.

The proposed dormers would be positioned on the roof slope directly facing Kerves Barn.

2.3 Relationship Between the Properties

Unlike many neighbouring properties considered under the GPDO, Kerves Barn and Kerves Farm Cottage are separated by only a very short distance.

The proposed dormers would be situated approximately 3.5 metres from the conservatory at Kerves Barn, which forms an important part of the property's principal living accommodation. They would also be clearly visible from the adjoining garden and from the first-floor master bedroom.

This unusually close relationship is illustrated within the accompanying photographs contained in Appendix B.

Whilst the impact upon neighbouring amenity is not itself the determining consideration in a Lawful Development Certificate application, the proximity of the buildings demonstrates why careful consideration should be given to whether every statutory limitation and condition of Class B has been fully satisfied before any certificate is issued.

2.4 Planning History

The planning history of the site is of particular importance to this application because the availability of permitted development rights under Class B depends upon the lawful history of the dwelling and its roof.

Planning permission **DC/13/1328** approved significant alterations to the property, including roof alterations. Those approved works form an important part of establishing the lawful baseline against which the cumulative limits contained within Class B must now be assessed.

As explained later within this representation, it is not currently clear from the submitted information:

- whether the existing roof has been constructed entirely in accordance with those approvals;
- whether previous roof enlargements have been correctly accounted for;
- how the applicant has calculated the remaining roof volume available under Class B; or
- whether the statutory cumulative limits have therefore been exceeded.

These matters are fundamental to determining whether the proposed development benefits from permitted development rights.

2.5 Separation of Ownership

Although Kerves Barn and Kerves Farm Cottage are now separately owned residential properties, they remained within common ownership until relatively recently.

When the properties were separated into independent ownership, restrictive covenants were entered into between the titles recognising the particularly sensitive relationship between the buildings. Those covenants specifically seek to prevent future alterations which would adversely affect light, air or overlooking between the two properties. Whilst these private legal rights are not matters for determination within an LDC application, they provide important factual context to the unusually close physical relationship that exists between the buildings and explain why alterations to this roof slope have the potential to materially affect the adjoining property.

2.6 Purpose of this Representation

This representation has been prepared to assist the Council in determining the application by examining whether the evidence submitted is sufficient to demonstrate compliance with the statutory requirements of Class B of Part 1, Schedule 2 of the GPDO.

It is not suggested that the Council should determine private legal rights or assess the planning merits of the proposal beyond the scope of an LDC application. Instead, this document focuses upon whether the applicant has discharged the burden of proving, on the balance of probabilities, that the proposed development is lawful.

3. Legal Framework for the Determination of a Lawful Development Certificate

3.1 Introduction

This application has been submitted under Section 192 of the Town and Country Planning Act 1990 seeking a Lawful Development Certificate ("LDC") for proposed development.

It is important to distinguish an application for an LDC from an application for planning permission. An LDC is not concerned with whether development is acceptable in planning terms, whether it would have an adverse impact on neighbouring amenity, or whether planning permission ought to be granted. Those matters fall outside the scope of the Council's determination.

Instead, the Council must determine a narrower legal question: whether the proposed development would be lawful if carried out.

Accordingly, this representation has been prepared with reference to the statutory test applicable to an LDC application, rather than the wider planning merits of the proposal.

3.2 The Statutory Test

Section 192 of the Town and Country Planning Act 1990 provides that a Lawful Development Certificate should only be issued where the Local Planning Authority is satisfied that the proposed use or operational development would be lawful.

In determining an application, the Council is therefore required to establish whether the proposed development benefits from permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO"), or whether planning permission would otherwise be required.

For this application, the relevant provisions are contained within:

Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015

The issue before the Council is therefore not whether the proposal is desirable or acceptable, but whether it fully complies with every limitation and condition contained within Class B.

3.3 Burden of Proof

The Planning Practice Guidance makes clear that the burden of proof in an LDC application rests entirely with the applicant.

The applicant must demonstrate, on the balance of probabilities, that the proposed development would be lawful.

It is not the responsibility of the Local Planning Authority, nor of neighbouring landowners, to establish whether the proposal fails to comply with permitted development rights. Rather, it is for the applicant to provide sufficient evidence to positively demonstrate compliance.

Where there is genuine uncertainty regarding compliance with the GPDO, that uncertainty should not be resolved by assumption or inference in favour of the applicant. If the evidence is insufficient to establish lawfulness, the statutory test has not been met and a certificate should not be issued.

3.4 Requirement for Sufficient Evidence

Applications for Lawful Development Certificates are evidence-based.

The Council is required to assess the information submitted with the application and determine whether that information is sufficient to establish lawfulness.

Where the application depends upon matters such as:

- the lawful planning history of the dwelling;
- the extent of previous roof enlargements;
- cumulative roof-space calculations;
- the "original dwellinghouse";
- or compliance with dimensional limitations contained within Class B,

the supporting evidence must enable those matters to be verified.

The absence of sufficient evidence cannot be remedied through assumption or speculation.

3.5 Importance of the "Original Dwellinghouse"

Permitted development rights under Class B are subject to cumulative limitations based upon the "original dwellinghouse" and previous enlargements of the roof.

Accordingly, establishing the lawful baseline against which the proposal must be assessed is fundamental to determining whether permitted development rights remain available.

Where previous planning permissions have altered the roof form, or where uncertainty exists regarding whether the dwelling has been constructed in accordance with approved plans, the applicant must clearly demonstrate:

- what constitutes the original roof space;
- what previous roof enlargements have occurred;
- the volume of those enlargements; and
- how the remaining permitted development allowance has been calculated.

Without that evidence, it is not possible to conclude that the proposal complies with the cumulative limitations imposed by Class B.

3.6 The Role of the Local Planning Authority

The Local Planning Authority is not required to determine private legal rights, restrictive covenants or matters relating to neighbouring property disputes when considering an application for a Lawful Development Certificate.

Equally, the Council is not required to consider whether the proposal represents good design or whether it would be acceptable on planning merit.

Its role is confined to determining whether the applicant has demonstrated that the proposed development is lawful under the GPDO.

This representation has therefore been prepared to assist the Council in assessing whether the evidence submitted is sufficient to satisfy that statutory test.

3.7 Scope of this Representation

Whilst reference is made within this document to the close physical relationship between Kerves Barn and the application site, those matters are included only where they provide relevant factual context or assist in understanding the planning history and physical circumstances of the site.

This representation does **not** invite the Council to refuse the application on the basis of neighbour impact, private legal rights or planning judgement. Instead, it respectfully submits that the applicant has not provided sufficient evidence to establish, on the balance of probabilities, that the proposed development satisfies every requirement of Class B of the GPDO.

Accordingly, unless and until that burden of proof has been discharged, it is submitted that a Lawful Development Certificate should not be issued.

4. Planning History and Establishing the Lawful Baseline

4.1 Introduction

Before the Council can determine whether the proposed development is lawful under Class B of Part 1, Schedule 2 of the GPDO, it must first establish the correct lawful baseline against which the proposal is to be assessed.

This is not simply a matter of identifying the current appearance of the building. The GPDO requires consideration of the original dwellinghouse, previous enlargements and alterations, and the cumulative effect of those works on the available permitted development allowance.

Accordingly, a clear understanding of the planning history of Kerves Farm Cottage is fundamental to determining whether the proposed dormers benefit from permitted development rights.

4.2 Planning Permission DC/13/1328

Planning permission **DC/13/1328** approved significant alterations to the dwelling, including changes to the roof configuration.

Those approved works are directly relevant to the present application because Class B expressly requires previous roof enlargements to be taken into account when calculating the maximum roof enlargement permitted under the GPDO.

The Council must therefore be satisfied that:

- the development approved under DC/13/1328 has been correctly identified;
- any roof enlargement resulting from that permission has been accurately quantified;
- those enlargements have been included within the cumulative Class B volume calculation; and
- sufficient permitted development allowance remains to accommodate the three proposed dormers.

The application currently provides insufficient evidence to demonstrate that this assessment has been undertaken.

4.3 Establishing the "Original Dwellinghouse"

The GPDO does not assess roof enlargements against the dwelling as it exists today.

Instead, Class B requires assessment against the "original dwellinghouse", together with all subsequent roof enlargements, regardless of whether those enlargements were carried out under planning permission or permitted development rights.

This distinction is critical.

If previous roof alterations have already consumed part of the permitted development allowance, only the remaining available volume may be used for further enlargement.

Consequently, the Council cannot determine whether the proposed dormers are lawful unless the applicant has clearly demonstrated:

- what constitutes the original roof space;
- which previous roof enlargements have taken place;
- the volume of each enlargement; and
- the cumulative roof volume created to date.

No such assessment appears to accompany the current application.

4.4 Importance of the Existing Roof Form

The application also relies upon the assumption that the existing roof accurately represents the lawful baseline against which Class B should be assessed.

However, where a property has been altered over time, particularly following planning permissions involving roof alterations, it is necessary to establish that the existing building has been constructed in accordance with those approvals.

If the roof has been built differently from the approved drawings, or if later alterations have occurred, this may affect:

- the lawful baseline;
- the available roof volume;
- the position of the original roof plane; and
- the extent of remaining permitted development rights.

Accordingly, it is submitted that the Council should be satisfied that the existing roof configuration has been properly evidenced before concluding that the proposal complies with Class B.

4.5 Burden of Demonstrating Compliance

The Planning Practice Guidance makes clear that the burden of establishing lawfulness rests with the applicant.

Accordingly, it is not sufficient for the application simply to assert that the proposal constitutes permitted development.

The applicant should provide evidence enabling the Local Planning Authority to verify that:

- the correct baseline has been identified;
- all previous roof enlargements have been taken into account;
- cumulative calculations are accurate; and
- every limitation and condition contained within Class B has been satisfied.

Without this information, the Council cannot be satisfied, on the balance of probabilities, that the proposal would be lawful.

4.6 Consequences for the Current Application

The matters identified above are not procedural or technical formalities.

They form the foundation upon which the lawfulness of the proposal must be assessed.

Unless the lawful planning baseline has been clearly established, it is impossible to determine whether the proposed dormers remain within the cumulative limits prescribed by Class B.

It is therefore respectfully submitted that the current application does not contain sufficient evidence to enable the Council to conclude that the statutory requirements of the GPDO have been met.

5. Assessment of Compliance with Class B of the GPDO

5.1 Introduction

The current application seeks a Certificate of Lawfulness on the basis that the proposed development constitutes permitted development under Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015.

The issue before the Council is therefore whether the applicant has demonstrated, on the balance of probabilities, that every limitation and condition contained within Class B has been satisfied.

It is respectfully submitted that the supporting information currently before the Council does not provide sufficient evidence to reach that conclusion.

5.2 Cumulative Roof Enlargement

One of the principal limitations contained within Class B is the cumulative restriction on roof enlargements.

For detached dwellinghouses, the total enlargement of the roof space must not exceed 50 cubic metres, taking account of all previous roof enlargements, regardless of whether those enlargements were carried out under planning permission or under permitted development rights.

This cumulative assessment lies at the heart of the present application.

Whilst the submitted drawings illustrate the proposed dormers, they do not demonstrate:

- the volume of each proposed dormer;
- the cumulative volume of all previous roof enlargements;
- how the remaining permitted development allowance has been calculated;
- the methodology used to calculate roof volume; or
- the assumptions adopted in reaching those calculations.

Without this information, it is not possible for the Council to verify compliance with the statutory cumulative limit.

5.3 Previous Roof Alterations

The planning history demonstrates that previous alterations have been approved under planning permission **DC/13/1328**.

Those alterations are directly relevant because the GPDO requires previous roof enlargements to be included within the cumulative calculation.

However, the current application contains no clear explanation of:

- which elements of the existing roof constitute previous enlargements;
- whether those enlargements have been measured;
- the resulting cumulative roof volume; or
- how much permitted development allowance, if any, remains available.

Given that the burden of proof rests with the applicant, it is respectfully submitted that this information should accompany the application rather than requiring the Council to reconstruct the planning history itself.

5.4 Establishing the Existing Roof

The submitted drawings necessarily rely upon the existing roof configuration.

However, before that roof can be used as the baseline for assessment, it should first be established that it represents the lawful built form of the dwelling.

Where previous planning permissions have altered the roof, the Council should be satisfied that:

- the existing roof accords with approved plans;
- any variations have themselves been authorised;
- the lawful roof configuration has been correctly identified; and
- cumulative calculations have been undertaken using that lawful baseline.

No evidence has been provided to demonstrate these matters.

5.5 Compliance with Class B Limitations

Class B contains a number of dimensional limitations which must all be satisfied before development benefits from permitted development rights.

Whilst the submitted drawings illustrate the proposed development, they do not clearly demonstrate how each statutory limitation has been assessed.

In particular, the application does not clearly explain:

- how each dormer has been measured;
- the relationship between the proposed dormers and the existing roof planes;
- the relationship with the existing eaves;
- whether every dimensional limitation has been independently verified; and
- the calculations supporting those conclusions.

An assertion that development constitutes permitted development is not, of itself, sufficient evidence.

5.6 Compliance with Conditions

In addition to the dimensional limitations, Class B also imposes conditions relating to the construction and appearance of roof enlargements.

The application should enable the Local Planning Authority to verify that each of those conditions has been satisfied.

Where supporting evidence is absent or incomplete, the Council cannot simply infer compliance.

The statutory burden remains upon the applicant to demonstrate that every applicable condition has been met.

5.7 Standard of Evidence

Applications for Certificates of Lawfulness are fundamentally different from planning applications.

Planning applications often involve the exercise of planning judgement.

Certificates of Lawfulness do not.

They require the Council to determine a legal question based upon evidence.

Accordingly, where critical information has not been provided—particularly information necessary to establish compliance with the GPDO—the absence of evidence cannot properly be interpreted as evidence of compliance.

5.8 Conclusion

The current application does not adequately demonstrate:

- the lawful planning baseline;
- the cumulative roof volume calculation;
- the extent of previous roof enlargements;
- the methodology used to calculate remaining permitted development allowance; or
- compliance with every limitation and condition contained within Class B.

These are fundamental matters upon which the issue of a Lawful Development Certificate depends.

It is therefore respectfully submitted that the applicant has not discharged the burden of demonstrating, on the balance of probabilities, that the proposed development would be lawful under the GPDO.

6. The Physical Relationship Between Kerves Barn and Kerves Farm Cottage

6.1 Introduction

Whilst the purpose of a Lawful Development Certificate is not to assess the planning merits of a proposal, an understanding of the physical relationship between the application

site and adjoining land is nevertheless important when considering whether the evidence submitted is sufficient to establish lawfulness.

Kerves Barn and Kerves Farm Cottage occupy an unusually constrained relationship which differs significantly from that found in many detached residential properties. The buildings were historically part of a single residential holding and remain in extremely close proximity following their separation into independent ownership.

This section provides factual context to that relationship.

6.2 Proximity of the Buildings

The rear roof slope which is the subject of this application directly faces Kerves Barn.

The proposed dormers would be located approximately 3.5 metres from the conservatory attached to Kerves Barn, which forms an integral part of the principal living accommodation.

In addition, the proposed dormers would be clearly visible from:

- the principal private garden;
- the conservatory;
- the ground floor living accommodation;
- and the first-floor master bedroom.

Unlike many neighbouring dwellings where roof alterations are viewed across substantial separation distances, the proposal would occupy an unusually close relationship with the adjoining property.

Figure 1 – Relationship between Kerves Barn and Kerves Farm Cottage (existing).



6.3 Existing Character of the Roof

At present, the rear roof slope presents a traditional pitched roof profile.

The roof rises away from the shared boundary in a continuous plane, creating a relatively simple and uninterrupted form.

This existing roof shape contributes significantly to the spatial relationship between the buildings.

Although visible from Kerves Barn, the roof currently presents a relatively recessive built form because its mass slopes away from the neighbouring property.

6.4 Effect of the Proposed Dormers

The proposed development would substantially alter the existing roof profile through the introduction of three large rear dormers.

Whilst the Council is not required to determine the planning merits of the proposal within an LDC application, the scale of the proposed alterations illustrates why it is essential that every statutory requirement of Class B has been positively demonstrated before a certificate is issued.

The proposal would replace substantial sections of the existing pitched roof with large vertical structures projecting from the roof slope.

This would fundamentally change the appearance and massing of the rear roof when viewed from Kerves Barn.

6.5 Relationship with Principal Living Accommodation

The conservatory at Kerves Barn forms one of the property's principal living spaces.

Unlike secondary accommodation or ancillary outbuildings, it is occupied daily throughout the year and provides direct access to the garden.

Similarly, the first-floor master bedroom enjoys direct views towards the application property.

The close relationship between these rooms and the proposed dormers demonstrates why the physical context of this application differs from more typical examples of domestic roof enlargements.

This is not advanced as an argument on planning merits but as evidence of the unusually close relationship between the buildings.

6.6 Importance of Accurate Assessment

Because of this close relationship, the Council should be particularly satisfied that:

- the correct lawful baseline has been identified;
- cumulative roof-volume calculations are accurate;
- all previous enlargements have been properly accounted for; and
- every limitation and condition of Class B has been fully demonstrated.

Given the unusually constrained circumstances of the site, the issue of a Lawful Development Certificate should be based upon clear and verifiable evidence rather than assumption.

6.7 Relationship Recognised in Property Documentation

The close physical relationship between Kerves Barn and Kerves Farm Cottage is not simply evident on site; it has also been recognised historically in the legal arrangements governing the properties.

When the properties were transferred into separate ownership, reciprocal restrictive covenants were imposed to protect the relationship between the buildings. Those covenants specifically restrict alterations that would interfere with light, air or create overlooking between the two properties. Whilst those private legal rights are not matters for determination within this application, they demonstrate that the proximity and sensitivity of the relationship were recognised when the land was divided.

This provides additional factual context to the exceptional nature of the relationship between the two properties.

6.8 Summary

The relationship between Kerves Barn and Kerves Farm Cottage is materially different from that of many neighbouring residential properties.

The buildings remain exceptionally close, the application roof directly faces principal living accommodation at Kerves Barn, and the proposed dormers would occupy a highly prominent position within that relationship.

For these reasons, it is respectfully submitted that the Council should ensure that every statutory requirement of Class B has been positively demonstrated before concluding that the proposed development is lawful.

7. Technical Review of the Submitted Application Documents

7.1 Introduction

The purpose of this section is to assess whether the information submitted with application **DC/26/1012** is sufficient to demonstrate, on the balance of probabilities, that the proposed development would be lawful under Class B of Part 1, Schedule 2 of the GPDO.

This assessment is not intended to comment upon the planning merits of the proposal. Rather, it considers whether the supporting documentation enables the Local Planning

Authority to verify compliance with the statutory limitations and conditions governing permitted development.

It is respectfully submitted that the submitted information does not provide sufficient evidence to enable that conclusion to be reached.

7.2 Absence of a Cumulative Roof Volume Assessment

One of the principal requirements of Class B is that roof enlargements do not exceed the statutory cumulative volume allowance.

The submitted application does not appear to include:

- a roof volume calculation;
- a schedule of previous roof enlargements;
- calculations demonstrating cumulative compliance;
- a methodology explaining how roof volumes have been calculated; or
- any professional verification of those calculations.

Without this information, the Council cannot independently verify that the statutory roof volume limitation has been complied with.

This is particularly significant given the planning history of the property and previous approved roof alterations.

7.3 Lack of Evidence Identifying the Lawful Baseline

The application appears to proceed on the basis of the existing roof configuration.

However, no supporting evidence has been provided demonstrating:

- that the existing roof reflects the lawful built form of the dwelling;
- that previous planning permissions have been fully implemented in accordance with approved drawings;
- or that the existing roof represents the correct baseline for assessment under Class B.

In the absence of such evidence, it is difficult to understand how the cumulative calculations required by the GPDO have been undertaken.

7.4 Previous Planning Permissions

The submitted documents do not explain how previous planning permissions affecting the roof have been considered.

In particular, the application does not identify:

- previous roof enlargements;
- the volume created by those works;
- whether those works have reduced the remaining Class B allowance; or
- how those earlier permissions have informed the current proposal.

Given that previous roof enlargements are expressly relevant under Class B, this omission is significant.

7.5 Existing Versus Approved Development

Where a property has been altered over time, it is important that the Local Planning Authority is able to distinguish between:

- the dwelling as originally built;
- subsequent approved alterations;
- and the building as it currently exists.

The submitted application does not appear to include evidence reconciling these stages of development.

Without such evidence, it is not possible to confirm that the existing roof has been correctly adopted as the basis for the assessment.

7.6 Demonstrating Compliance Rather than Assuming Compliance

Throughout the submitted application there appears to be an assumption that the proposal falls within permitted development rights.

However, the purpose of an application for a Lawful Development Certificate is to demonstrate that this is the case.

The statutory burden of proof rests with the applicant.

It is respectfully submitted that where essential supporting information is absent, compliance cannot simply be inferred.

7.7 Need for Clear Supporting Evidence

Given the complexity of the planning history and the importance of the cumulative roof enlargement provisions, it would have been reasonable to expect the application to include documentation such as:

- a roof volume assessment prepared by a suitably qualified professional;
- annotated roof calculations;
- a chronology of previous roof alterations;
- comparison drawings identifying previous enlargements;
- confirmation of the lawful baseline;
- and a schedule demonstrating compliance with every limitation and condition contained within Class B.

The absence of such information significantly limits the Council's ability to independently verify the applicant's conclusions.

7.8 Standard of Proof

The legal test applicable to this application is not whether the proposal *appears likely* to comply with permitted development rights.

Nor is it whether the Council considers non-compliance unlikely.

The statutory question is whether the applicant has demonstrated, on the balance of probabilities, that the proposal is lawful.

Where material evidence is absent, that burden has not been discharged.

7.9 Summary

The submitted documentation does not adequately demonstrate:

- the lawful planning baseline;
- cumulative roof enlargement calculations;
- the treatment of previous roof alterations;
- compliance with the cumulative limitations contained within Class B;
- or the evidence upon which those conclusions have been reached.

Accordingly, it is respectfully submitted that the current application does not provide sufficient information to enable the Council to conclude that the proposal satisfies the statutory requirements for the issue of a Lawful Development Certificate.

8. Relevant Legal Principles and Application of the Burden of Proof

8.1 Introduction

The determination of an application for a Lawful Development Certificate is governed by established statutory principles and planning guidance.

Unlike an application for planning permission, the Local Planning Authority is not exercising planning judgement or balancing competing planning considerations. Instead, it must determine whether the applicant has demonstrated that the proposed development would be lawful.

The legal principles summarised below provide the framework within which the present application should be considered.

8.2 The Burden of Proof

It is well established that the burden of proving lawfulness rests entirely with the applicant.

The applicant must demonstrate, on the balance of probabilities, that every statutory requirement necessary for permitted development has been satisfied.

The Local Planning Authority is not required to establish that a proposal is unlawful. Equally, neighbouring landowners are not required to prove that a proposal fails to comply with the GPDO.

Where sufficient evidence has not been provided to establish lawfulness, the statutory test has not been met.

8.3 The Requirement for Positive Evidence

Applications for Lawful Development Certificates are evidence-based.

The issue before the Council is not whether it considers the proposal likely to comply with permitted development rights.

Rather, the question is whether the evidence submitted enables the Council to conclude, on the balance of probabilities, that the proposal complies with every relevant limitation and condition contained within the GPDO.

Where material evidence is absent, incomplete or incapable of verification, the Council cannot simply assume compliance.

8.4 The Importance of Establishing the Correct Baseline

The GPDO requires assessment against the original dwellinghouse and cumulative previous enlargements.

Accordingly, the lawful planning baseline is fundamental to determining whether permitted development rights remain available.

Where uncertainty exists regarding:

- the lawful built form;
- previous roof enlargements;
- cumulative roof volume;
- or remaining permitted development allowance,

those matters should be positively demonstrated through supporting evidence.

The absence of such evidence prevents the statutory test from being satisfied.

8.5 The Role of the Local Planning Authority

The Council's role is not to reconstruct the planning history on behalf of the applicant, nor to undertake its own technical calculations where these have not been provided.

Whilst the Council is entitled to examine its own records as part of the determination process, the statutory burden remains with the applicant to establish that the proposal is lawful.

Accordingly, where the application depends upon technical calculations or analysis, those matters should ordinarily be demonstrated within the submitted evidence.

8.6 Private Legal Rights

This representation refers to the restrictive covenants affecting Kerves Barn and Kerves Farm Cottage only as factual background.

It is fully accepted that the Council is not responsible for determining the existence, interpretation or enforceability of private legal rights when considering an application for a Lawful Development Certificate.

Nevertheless, those covenants demonstrate that the unusually close relationship between the two buildings has long been recognised. They therefore provide relevant factual context to the physical characteristics of the site, although they are not relied upon as a reason to refuse the application.

8.7 Application of these Principles to the Present Case

Applying the above principles, it is respectfully submitted that the current application does not provide sufficient evidence to enable the Council to conclude, on the balance of probabilities, that the proposed development complies with Class B of the GPDO.

In particular, the application does not clearly demonstrate:

- the lawful planning baseline;
- the cumulative roof enlargement calculation;
- the treatment of previous roof alterations;
- the remaining permitted development allowance;
- or compliance with every applicable limitation and condition.

These are not matters that can properly be resolved by assumption.

Unless and until the applicant provides sufficient evidence to demonstrate compliance, it is respectfully submitted that the statutory burden of proof has not been discharged.

9. Overall Conclusions and Requested Determination

9.1 Summary of Representation

This representation has been prepared to assist the Local Planning Authority in determining whether the applicant has demonstrated that the proposed development would be lawful under Section 192 of the Town and Country Planning Act 1990 and Class B of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

It is not submitted as a conventional planning objection based upon planning merits or neighbour amenity.

Rather, it addresses whether the evidence submitted is sufficient to satisfy the statutory test applicable to the grant of a Lawful Development Certificate.

9.2 Principal Matters of Concern

For the reasons set out throughout this representation, it is respectfully submitted that the application does not adequately demonstrate:

- the correct lawful planning baseline;
- the extent of previous roof enlargements;
- the cumulative roof-volume calculation required by Class B;
- the methodology used to determine compliance with the GPDO;
- or that every statutory limitation and condition has been satisfied.

These are fundamental matters upon which the lawfulness of the proposal depends.

9.3 Request to the Local Planning Authority

The burden of proving lawfulness rests with the applicant.

Where sufficient evidence has not been provided to demonstrate compliance on the balance of probabilities, it is respectfully submitted that the statutory test for the issue of a Lawful Development Certificate has not been met.

Accordingly, we respectfully request that Horsham District Council decline to issue the requested Lawful Development Certificate unless and until sufficient evidence is provided to positively demonstrate that the proposal complies with every relevant limitation and condition contained within Class B of the GPDO.

Should the applicant submit additional technical information or amended documentation during the determination of the application, we respectfully request the opportunity to review that material before any decision is made.

We respectfully request that the Local Planning Authority gives careful consideration to the matters raised within this representation and, in applying the statutory test required under Section 192 of the Town and Country Planning Act 1990 and the GPDO, declines to issue the requested Lawful Development Certificate unless and until the applicant has demonstrated, on the balance of probabilities, that the proposed development is lawful.

We thank the Council for taking the time to consider this representation and would be pleased to provide any further information or clarification should it assist in the determination of the application.

Yours Sincerely,

 [owners, Kerves Barn]

Appendix A – Planning History Chronology

Date	Reference	Description	Relevance
Original construction	-	Original dwellinghouse	Establishes GPDO baseline
2013	DC/13/1328	Approved roof alterations	Must be included in cumulative Class B assessment
2025	Property subdivision	Kerves Barn and Kerves Farm Cottage transferred into separate ownership	Explains physical relationship
2026	DC/26/1012	Current LDC application	Subject of this representation

Appendix B – Site Photographs

Figure B1

View from Kerves Barn conservatory towards the application roof.



Figure B2

View from master bedroom.



Figure B3

Relationship between buildings.

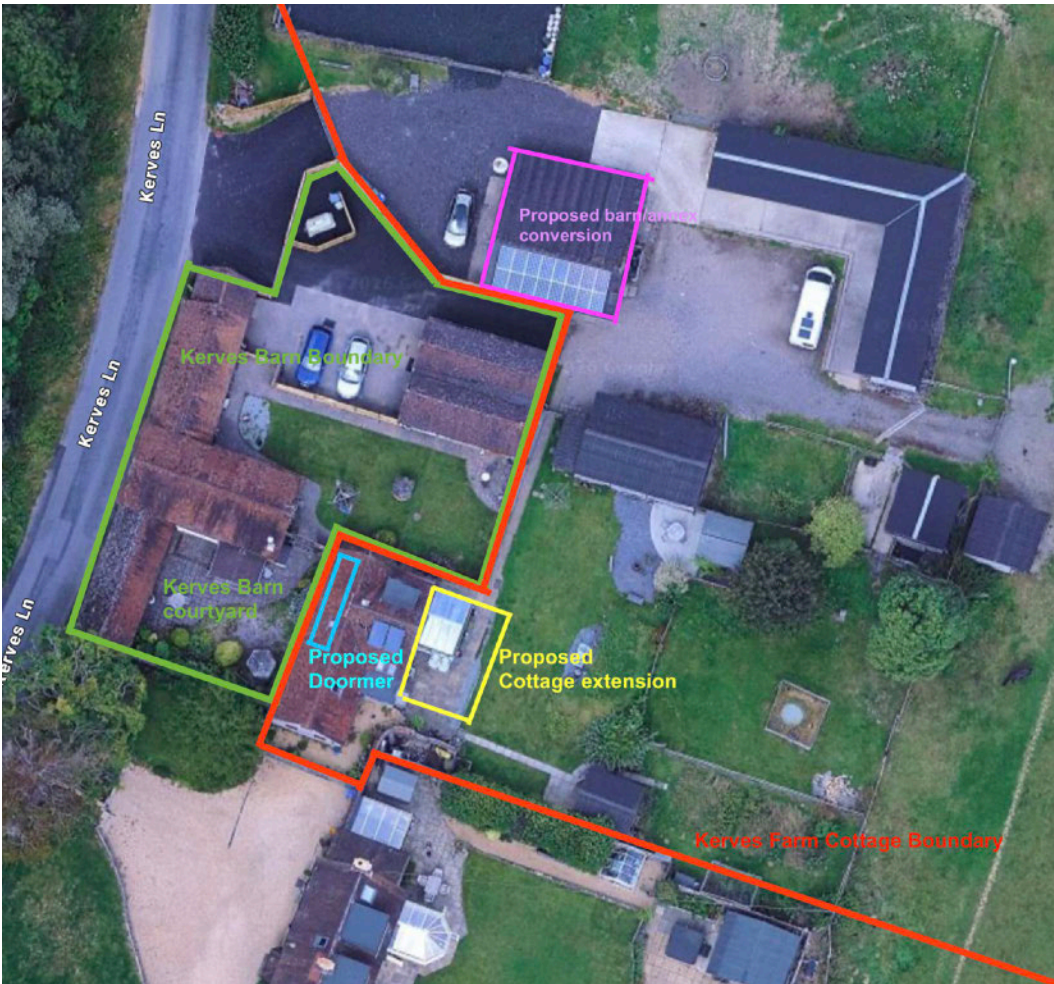


Figure B4

Existing roof profile.



Appendix C – Site Plan



Appendix D – Extract from TP1

HM Land Registry

Transfer of part of registered title(s)

TP1

Any parts of the form that are not typed should be completed in black ink and in block capitals.

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

For information on how HM Land Registry processes your personal information, see our Personal Information Charter.

Leave blank if not yet registered.

When application for registration is made these title number(s) should be entered in panel 2 of Form AP1.

Insert address, including postcode (if any), or other description of the property transferred. Any physical exclusions, such as mines and minerals, should be defined.

Place 'X' in the appropriate box and complete the statement.

For example 'edged red'.

For example 'edged and numbered 1 in blue'.

Any plan lodged must be signed by the transferor.

1 Title number(s) out of which the property is transferred: Part of WSX224855

2 Other title number(s) against which matters contained in this transfer are to be registered or noted, if any:

3 Property:
Part of Kerves Lane Farm, Kerves Lane, Horsham RH13 6RJ

The property is identified

☒ on the attached plan and shown:
edged green the Plan

☐ on the title plan(s) of the above titles and shown:

Restrictive covenants by the Transferor

12.7 The Transferor covenants with the Transferee for the benefit of the Property and each and every part of it with the intention of binding the Retained Land and each and every part of it:

- a) Not to do anything at the Retained Land that would cause loss, damage, injury, nuisance, annoyance, disturbance or inconvenience to the Transferee or the owners or occupiers of any neighbouring property or the Property
- b) Not to erect any fence which nor allow any hedging on the boundaries of the Retained Land to exceed 6 feet in height.
- c) Not to erect any extension or make any alteration to the Retained Land which would restrict the light and air which reaches the Property nor to carry out any extensions or alterations which would result in windows overlooking the Property.