Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:
DC/24/0424
West Wantley Farm, Fryern Road, Storrington, West Sussex,

DESCRIPTION:
Application to confirm the continuous use of a former agricultural building as a single dwellinghouse for a period in excess of four years (Lawful Development Certificate - Existing)

RELEVANT PLANNING HISTORY:

None

ASSESSMENT

The application seeks a Lawful Development Certificate (existing) to confirm the continuous use of a former agricultural building as a single dwellinghouse for a period in excess of four years

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 and matters 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 four years beginning with the date on which the operations were substantially completed.

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

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

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

(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."*

Paragraph 006 of the relevant planning practice guidance (PPG) 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 from 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 alone 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 Permission

There is no planning permission in place that relates to the building subject of this certificate.

The Test

TCPA 1990 s191(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.

The Evidence

<u>Applicant's Evidence</u>

The applicant's evidence comprises the following:

- Existing Plans and Elevations reference
- Location plan reference KP4/Location
- Supporting Statement
- Statutory Declaration of Mark Doe (Applicant)
- Statutory Declaration of Thomas Parfitt
- Statutory Declaration of William Fay

The building is physically and functionally distinct from the remainder of the wider site and has been designed and adapted for residential purposes, containing all of the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse, ultimately forming a separate and independent planning unit.

The Council's Evidence

The Council's evidence comprises the following:

- Aerial Photographs dated 2001, 2007, 2012, 2018
- Google satellite imagery
- Council records of Planning history

Discussion

Section 191(4) of the Town and Country Planning Act 1990 states that:

"*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…they shall issue a certificate to that effect; and in any other case they shall refuse the application*."

F W Gabbitas v SSE and Newham LBC [1985] JPL 630 held that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the Local Planning Authority has no evidence of its own, or from 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 alone is sufficiently precise and unambiguous to justify the grant of a certificate on the "balance of probability".

It is noted that the Supporting statement indicates that the building was previously an agricultural building, but planning history indicates that the use of the building was most recently an office. Nevertheless whilst this inconsistently does not indicate that the building has not been used as a residential dwellinghouse within the periods stated. The statement highlights that the building is a dwelling because of the facilities within the building which allow someone to live independently. As indicated in the above sections, the facilities within the building are such that they would allow someone to live independently. Furthermore, the statutory declarations received from the applicant and tenants indicate that the occupation of the building was as an independent dwellinghouse for a continuous period in excess of four years:

Statutory Declaration of Mark Doe (Applicant)

- After purchasing the property the applicant undertook a refurbishment of the electrics, and facilities including toilets, shower and kitchen after June 2019. Mr Parfitt lived at the property after the renovations until August 2021. Mr Fay then occupied the property from 2021 until October 2023. From 1st October 2023 until the end of October 2023 Mr Parfitt then lived in the property again before Mr Phil Clapham moved in who is currently within the property.

Statutory Declaration of Thomas Parfitt

- Confirms Mr Doe's claim that he now lives at 1 West Wantley Cottages, Fryern Road, that he previously from August 2019 until the end of August 2021. He states that he lived there

continuously for this time and that he moved back into the property between 1st October 2023 until the end of October of the same year.

Statutory Declaration of William Fay

- States that he lived in the property in blue on the plan denoted KP4 from 1st September 2021 until the end of October 2023. States that he worked on the property known as 'Wantley Farm' and now lives into 1 West Wantley Cottages and claims that he believes Mr Phil Clapham lives within the property now.

Supporting Statement

- Outlines that the building was incidental to West Wantley Farm and was previously an agricultural building.

The Balance of Probability

The submitted evidence advocates that the building has been in residential use since at least 01 August 2019 by T Parfitt. The relevant period of four years passed on 01 August 2023, where the property was still in occupation by Mr Fay. Though no evidence has been provided to support the occupation of the unit passed this date to present (alleged occupation by P Clapham), a four year use has been demonstrated nonetheless. In any case, the submitted evidence corroborate the occupation by the current occupant. The council do not have any evidence contrary to the evidence provided by the applicant. It has been demonstrated on the balance of probability that the building (shaded in yellow on the attached Plan) has been used as an independent dwellinghouse (Class C3) for a continuous period in excess of 4 years.

Conclusion

In accordance with the provisions of S.191(4) TCPA, and in the absence of evidence to the contrary, it is therefore recommended that a certificate of lawfulness be granted to confirm the unit has been in residential occupation for a period in excess of four years.

Recommendation: Application Permitted

Conditions:

1 It has been demonstrated on the balance of probability that the building (edged in red on the attached Plan) has been used as an independent dwellinghouse (Class C3) for a continuous period in excess of 4 years.

POSITIVE AND PROACTIVE STATEMENT

Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received, in order to be able to, where possible, grant permission.

Plans list for: DC/24/0424

Schedule of plans/documents **approved**:

Plan Type	Description	Drawing Number	Received Date
Location plan		KP4	
Block plan		KP1	19.03.2024

Floor plan	Existing	KP2	19.03.2024
Elevation plan	Existing	KP3	19.03.2024
Supporting Docs	Cover letter	KCP/IT367/wjs	19.03.2024
Supporting Statement	Supplementary	none	19.03.2024
Supporting Docs	Declaration of Mark Doe	MD	19.03.2024
Supporting Docs	Declaration of Thomas Parfitt	TP	19.03.2024
Supporting Docs	Declaration of Willian Fay	WF	19.03.2024

DELEGATED

Case Officer sign/initial Hannah Darley Date: 15/04/2024

Authorising Officer sign/initial RHERMITAGE Date: 05.08.2024

PLAN

