Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:

DC/23/0953
Waterhall Farm, Deerview Barn , Prestwood Lane, Ifield, West Sussex, RH11 0LA

DESCRIPTION:

Application to confirm the use of building as an independent dwelling for a period in excess of four years prior to the date of this application (Lawful Development Certificate - Existing).

RELEVANT PLANNING HISTORY:

RS/29/00	Change of use from agricultural to light industrial storage units Site: Waterhall Farm Prestwood Lane Ifield	Withdrawn Application on 07.01.2002
RS/44/02	Conversion of 2 farm buildings into office Site: Waterhall Farm Prestwood Lane Ifield	Application Permitted on 08.10.2002
DC/14/2506	Internal and external alterations to barn and its change of use to stables, hay store, tack room and wash area and the creation of an equine sand school with associated parking	Application Refused on 15.01.2015
DC/15/0521	Conversion of three buildings to provide a 4 bed dwelling, stables and annexe accommodation alongside provision of an equestrian ménage	Withdrawn Application on 10.06.2015
DC/16/2911	Change of Use to use the disused Barn as a Craft Beer Brewery	Application Permitted on 20.03.2017
DC/22/1201	Application to confirm the use of building as an independent dwelling for a period in excess of four years prior to the date of this application (Lawful Development Certificate - Existing).	Application Refused on 14.04.2023

PLANNING ASSESSMENT

The application seeks a Certificate of Lawful Development – Existing for the use of the building referred to as “Little Deer View Barn” as a single residential dwelling

Article (2) of Section 191 of the Town and Country Planning Act 1990 states:

“For the purposes of this 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); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.”

Summary of Applicant’s Evidence

- *Letter from John Hunt dated 27 April 2023*

  Have lived at the dwelling known as Little Deer View Barn within the wider property for more than 4 years and until the present day, continuously and independently as a self-contained dwelling without any intervening uses.

There is no tenancy agreement and the Author assists with helping around the farm in lieu of rent. There is no functional relationship with Deer View Barn. Bills are part of the 'rent'.

There is no physical relationship with the main dwelling. There is no dedicated garden area, and the four walls of the building comprise the dwelling known as Little Deer View Barn.

Registered to vote at Deer View Barn.

Little Deer View Barn has been occupied since 08 June 2018. The entirety of the building, including the garage and workshop, is used to live and store personal effects.

- *Statutory Declaration of Ann Marsh*

  The property at Deer View Barn (Waterhall Farm) constitutes the detached house known as 'Deer View Barn' and a separate dwelling converted from an outbuilding known as 'Little Deer View Barn'. For in excess of 4 years until the present day, Little Deer View Barn has been continuously and independently occupied by a tenant as a self-contained dwelling without any intervening uses.

  Little Deer View Barn contained 1 bedroom, kitchen/lounge/dining area, together with a separate bathroom/shower room. Little Deer View Barn is connected to mains electricity, water and sewage.

  Little Deer View Barn has been occupied by John Hunt since June 2018. The entirety of the building, including the garage and workshop, is used to live and store his personal effects.

  John has exclusive use of Little Deer View Barn as a dwelling.
- *Legal Opinion on what constitutes a dwelling dated 22 January 2023*

- *Location and Block Plan reference 2201##_R0_000*

- *Existing Floor Plans and Elevations reference 2201##_R0_100*

Summary of Council's Evidence

- *Planning application reference RS/44/02*

  Planning permission granted to convert the subject building to 3no. offices, along with w.c's, kitchen, and reception. Mezzanine level also installed as part of the conversion.

  The existing Floor Plan indicates that the barn comprises one bay, with door openings to both ends.

  Subject of condition 3 which states:

  "The development hereby approved shall be used for B1(a) Officer and for no other purpose (including any other purpose in any class of the schedule to the Town and Country Planning (Use Classes) Order 1987).

  Reason: Changes of use as permitted by the Town and Country Planning (General Permitted Development) Order 1995 are not considered appropriate in this case."

- *Planning application reference DC/14/2506*

  Planning permission granted for the conversion of the building to stables, hay store, tack room, and wash area.

  The Existing Floor Plan indicate that the barn had been subdivided internally into 4no. bays, comprising workshop, and 3 bays labelled as storage. No mezzanine level is shown on the plans.

- *Planning application reference DC/15/0521*

  Indicated that the subject building was to be converted to stables as approved under planning permission reference DC/14/2506.

- *Planning application reference DC/16/2911*

  Planning permission granted for the change of use of the barn to a Craft Beer Brewery.

  The existing Floor Plan differs from that previously submitted, suggesting that the barn comprised a single bay internally.

Subject of condition 3 which states:

"Regulatory Condition: The premises shall be used as a micro-brewery (Use Class B2) only, as indicated within the application details submitted on the 2nd February 2017, and for no other purpose (including any other purpose in Class B2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification). Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification), no change of use shall occur without planning permission obtained from the Local Planning Authority.

Reason: To enable the Local Planning Authority to control the use of the site and for the protection of the amenities of nearby residential properties, in accordance with Policy 33 of the Horsham District Planning Framework."

- *Aerial photographs dated 2001, 2007, 2012, and 2018*

- *Response from Rusper Parish Council*

  Queries submission of subsequent application

- *Response from Electoral Services*

  No previous registered electors. Added to the Register in 2019.

- *Response from HDC Council Tax*

  Deerview Barn Waterhall Farm has been banded since 29.03.2019

- *Questionnaire Response*

  John Hunt has lived there in excess of 4 years. The property is a private dwelling.

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".

Definition of dwellinghouse

There is no definition of "dwellinghouse" within the Town and Country Planning Act 1990 (TCPA) but reference is made within other relevant planning legislation.

Part C of the Use Classes Order 1987, as amended, defines Class C3 as "dwellinghouses" and refers to *"use as a dwellinghouse (whether or not as a sole or main residence) by –*

(a) a single person or by people to be regarded as forming a single household;

(b) not more than six residents living together as a single household where no care is provided for residents; or

(c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4)."

Article 2(1) of the Town and Country Planning (General Permitted Development) Order 2015 as amended defines a "dwellinghouse" and states:

"…except in Part 3 (Changes of Use), Part 12A (development by local authorities and health service bodies) and Part 20 (construction of new dwellinghouses) of Schedule 2 to this Order, does not include a building containing one or more flats, or a flat contained within such a building."

A "Flat" is defined within the Article as "flat, except in the expression "flat roof", means a separate and self-contained set of premises constructed or adapted for use for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally".

Given the absence of a definition within the TCPA, case law has sought to clarify the meaning. In Gravesham BC v SSE and O'Brien [1983] JPL 306, it was accepted that the primary characteristic of a dwellinghouse is its ability to provide the facilities required for day-to-day existence. Grendon v FSS and Cotswold DC [2006] EWHC 1711 (Admin) considered it necessary to determine whether the building is physically capable of being a dwellinghouse, has the attributes of a dwelling and is used as such. Specifically, it is outlined that "as the cases under this Act and its predecessors have emphasised the question is to have regard, to an appropriate degree in each case, to both the physical state of the premises and their user, actual, intended and/or attempted." This is supported in R (oao Gore) v SSLG and Dartmoor NPA [2008] EWHC 3278 (Admin) where it was concluded that "it is a matter of fact and degree whether or not any particular use of a building (for example, for occasional overnight sleeping) does or does not amount to a residential use of that building."

From the above cases, it is clear that a building can be defined as a residential dwelling if it affords all of the facilities necessary to live independently. It is common practice that such facilities include bedroom, kitchen, bathroom, and living space.

The Floor Plans submitted as part of the application, alongside the Statutory Declaration of Ann Marsh, confirm that the building benefits from kitchen/living room, shower toom, and 1no. bedroom on the mezzanine. While the gross internal area of the accommodation is limited, the evidence suggests that part of the building includes all of the facilities required for day to day living. These facilities enable the accommodation to be occupied independently, and while resulting in a demonstrably small residential unit, would be sufficient to meet the definition of a dwellinghouse.

Use as a Dwellinghouse

Supporting information in the form of a Statutory Declaration by Ann Marsh and letter by John Hunt has been submitted to accompany the application. The Statutory Declaration outlines that the property known as Little Deer View Barn (the subject building) has been occupied as a separate dwelling in excess of 4 years. The Declaration states that the property has been occupied continuously by John Hunt as a self-contained dwelling since June 2018. This is corroborated by the letter of John Hunt which confirms that the Author has occupied the dwelling since 08 June 2018. This letter outlines that there is no formal tenancy agreement and the Author does not pay rent or bills.

A previous LDC Existing under planning reference DC/22/1201 considered the change of use of the building to a residential dwelling. This was refused on the grounds that it had not been demonstrated to the satisfaction of the Local Planning Authority, on the balance of probability, that the building had been used as an independent single dwellinghouse for a continuous period in excess of 4 years. The Delegated Report outlines that the Statutory Declaration (the same as that submitted for the current application) provided a vague statement of use, with no evidence provided to support the assertions. No information regarding services for the property was provided, with the evidence available suggestive that there may remain a physical and functional relationship with the property known as Deerview Barn. It was noted that the signature and witness block provided within the Statutory Declaration appeared to have been edited into the document, and there was some suspicion whether the document was a true and genuine sworn and witnessed statement. Other evidence available to the Council, in the form of a response from Electoral Services confirmed that Deer View Barn had been on the electoral roll since 2019, with no separate registration for Little Deer View. No detail had been provided to confirm who was registered at the address, with the response from HDC Council Tax suggestive that a chargeable rate had been placed on a building within the wider property (noted to be an annexe) on 29.03.2019, although this was shortly removed from the register following a claim that it was an error. Given the ambiguity and imprecise nature of the available evidence, it was concluded that it had not been demonstrated that the building had been occupied as an independent dwelling for a period in excess of 4 years.

The current application is supported by a letter from John Hunt which seeks to address the points raised within the previous Delegated Report. The letter confirms that no rent or bills are paid by the Applicant,

with these provided in lieu of work undertaken on the farm. The letter states that the Author is registered to bote and that not being on the electoral register is not fatal to a dwelling being independent. The response from Electoral Services confirms that the Author is registered at Deerview Barn, however Little Deer View Barn does not seem to be registered as a separate property for these purposes. This draws into question whether the dwelling is occupied separately and independently of Deerview Barn. No further evidence has been provided to show on the balance of probability that the building has been converted to a dwelling and occupied as such for a period in excess of 4 years. It is of note that no Building Control Notice is available for the conversion (nor that of the neighbouring property of Deerview Barn, and it is not therefore possible to confirm when conversion works took place. Furthermore, no copy of receipts for the operational development have been provided, and again there remains some uncertainty and ambiguity with regard to when the conversion works were undertaken. It is therefore considered that the additional information provided within the letter has done little to clarify the questions raised under the previous application.

It is noted that the LDC Existing seeks to confirm that the property known as Little Deer View Barn has been occupied as a separate and independent residential dwelling for a period in excess of 4 years. The evidence available is considered to be imprecise and ambiguous to confirm on the balance of probability that the building is, and has been occupied, as an independent and self-contained residential dwelling (rather than an annexe associated with Deerview Barn) for a period in excess of 4 years from the date of the application.

Other Matters

It is noted that the residential dwelling, as indicated on the submitted Floor Plan, makes up a small portion of the subject building, with the supporting information making reference to the remainder of the building being used as domestic storage, workshop and garage used in association with the residential dwelling. The photos provided within the Statutory Declaration show do not however provide clear annotation of these specific areas and to which room they form a part. While some of the photos show domestic storage, it is unclear whether this forms domestic storage associated with the application dwelling or whether this storage is in association with the established dwelling known as Deerview Barn. As illustrated within the photos and accompanying Floor Plan, there is no internal connection between the residential dwelling and the other spaces, albeit that an internal door exists between the workshop and area labelled “(Domestic) Storage”.

As evident from the aerial photographs, there is no physical separation between the buildings on site, with possible access available to each of the three residential properties on the site. The evidence available does not therefore clearly show that the areas annotated as “(Domestic) Storage”, “Garage”, “Workshop”, and “Storage w/ mezzanine above” are used solely by, and in connection with, the residential dwelling subject of this Certificate. It has not therefore been shown on the balance of probability that these areas comprise part of the planning unit of the residential dwelling refered to as Little Deer View Barn.

Conclusion

It has not been demonstrated on the balance of probability that the building subject of the application has been used continuously as a self-contained and independent residential dwelling for a period in excess of 4 years from the date the application was submitted.

Recommendation: Application Refused

1 It has not been demonstrated on the balance of probability that the building (outlined in red on the attached plan) has been used for residential purposes (Class C3) as a self-contained and independent residential dwelling for a continuous period in excess of 4 years from the date of submission.

DELEGATED

Case Officer sign/initial Tamara Dale Date: 13.10.2023

Authorising Officer sign/initial Guy Everest Date: 13.10.2023

