Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:

DC/24/0765
1 Bayley Paddock, Mill Lane, Partridge Green, West Sussex, RH13 8JU

DESCRIPTION:

Erection of a porch and chimney (Lawful Development Certificate - Proposed).

RELEVANT PLANNING HISTORY

DC/18/1827	Change of use of existing stable building to 2no. holiday-let units, with associated landscaping and parking	Application Permitted on 24.10.2018
DC/20/2583	Application to determine whether the 2no. holiday-lets (subject of planning approval DC/18/1827) would benefit from permitted development rights under Classes A to H of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 when completed (Certificate of Lawful Development - Proposed)	Split Decision on 21.04.2021
DC/21/2324	Conversion of stable building, previously approved for two holiday-lets, into a single dwellinghouse with associated alterations and provision of incidental garage and greenhouse	Application Refused on 01.02.2022
DC/22/0181	Change of use and alterations to existing stable building to form 1no holiday-let unit (part-retrospective)	Application Permitted on 29.03.2022
DC/22/0811	Change of use and alterations to existing stable building to form 1no dwellinghouse.	Application Refused on 21.06.2022
DC/23/0107	Removal of Condition 5 of previously approved application DC/22/0181 (Change of use and alterations to existing stable building to form 1no holiday-let unit (part-retrospective)) to allow for the removal of the occupancy limitation(s).	Application Refused on 14.03.2023
DC/23/0154	The development proposed is described on the application form as: Alterations and extensions to stables, approved for 2 dwellinghouses, to form a single dwelling	Application Refused on 24.03.2023
DC/24/0176	Alterations to existing building, two storey extension to dwelling and erection of a detached store/carport and pergola	Application Permitted on 03.04.2024

PLANNING ASSESSMENT

The application relates to a Lawful Development Certificate Proposed to determine whether a proposed porch and chimney would represent permitted development under Class D and Class G respectively of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

Article 1 of Section 192 of the Town and Country Planning Act 1990 states that:

"If any person wishes to ascertain whether –

(a) any proposed use of buildings or other land; or

(b) any operations proposed to be carried out in, or, over or under land,

would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question."

Article 2 of the aforementioned section states that:

"If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application."

Planning History

The application site was originally converted to 1no. holiday-let unit under planning reference DC/22/0181. This was subject of condition 5 which stated:

5 ***Regulatory Condition**: The holiday-let accommodation hereby permitted shall only be occupied/operated as holiday accommodation and shall not be occupied by an individual, family or group for more than 4 consecutive weeks in any 8 week period commencing with the first day of letting or by an individual, family or group for more than 4 weeks in any 26 week period commencing with the date of the first letting to their individual family or group.*

Reason: The establishment of an additional independent unit of accommodation would give rise to an over-intensive use of the site and/or lead to an unsatisfactory relationship between independent units of living accommodation contrary to Policies 26, 28 and 33 of the Horsham District Planning Framework (2015).

There were no conditions imposed on this permission that removed permitted development rights under Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

An application was submitted to remove condition 5 of the approval under planning reference DC/23/0107. The purpose of this application was to facilitate the use of the building as 1no. unrestricted residential dwelling. This application was refused on the grounds that the removal of the condition would result in a permanent and unrestricted dwelling within a countryside location, where it had not been demonstrated that the development would be essential to its countryside location. It had not been demonstrated that a business or commercial use would be unviable or unnecessary, and the resulting development was considered to only make a modest contribution to housing supply in the District. Notwithstanding the absence of a 5-year housing land supply, and the provisions of paragraph 11(d) of the NPPF, it was considered that there were no material considerations in this instance that would outweigh the harm arising from conflict with Policies 1, 2, 3, 4, and 26 of the HDPF.

This decision was appealed to the Planning Inspector where it was considered that the use of the property as a permanent residential dwelling would likely result in a similar number of vehicular trips as the approved holiday-let. No substantive evidence had been presented to demonstrate that the permanent occupation of the premises would increase activity within the site above and beyond what could be reasonably expected by the holiday-let which could be in use year-round. It was thereby concluded that the unrestricted use of the building as a C3 dwelling would not be inappropriate development for the purposes of Policy 26 of the HDPF, where it was recognised that the as the building already benefitted from planning permission for a dwelling, the removal of the occupancy condition would not conflict with Policies 1 to 4 of the HDPF. The Inspector considered that there was no clear evidence to demonstrated that a small loss of holiday accommodation would significantly harm tourist accommodation or that there is a shortage of holiday accommodation in the area. In concluding, the Inspector outlined that it was not necessary or reasonable to restrict the occupation of the dwelling for holiday-let purposes and the appeal was allowed.

The lawful use is therefore an unrestricted C3 residential dwelling. There are no conditions on the dwelling that restricts permitted development rights under Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

A later application under reference DC/24/0176 gave permission for alterations and extension to the existing building, including a two-storey side extension and the erection of a detached store/car port and pergola. This was permitted on 03.04.2024. There is no evidence to suggest that this development (as approved) has been substantially completed.

Discussion

The Applicant has submitted a Cover Letter and associated plans detailing the proposed development. The Cover Letter outlines that the dwelling benefits from permitted development rights where these have not been removed or restricted by planning condition. It is the Applicant's view that the proposed porch would comply with Class D of Part 1 Schedule 2 of the Order, and the proposed chimney would comply with Class G of Part 1 Schedule 2 of the Order.

The plans submitted in support of the application refer to the "Proposed Floor Plans" (reference 0939.80/03 and "Proposed Elevation Plan" (reference 0939.82/04). These plans are dated January 2024 and it is assumed that these have been submitted to demonstrate the dwelling as existing. Further plans titled "Proposed Floor Plan" (reference 0939.86/02) and "Proposed Elevations" (reference 0939.86/03) have been submitted. These plans are dated May 2024 and it is assumed that these have been submitted to demonstrate the proposed development.

For the purpose of the Certificate of Lawful Development, the proposed development should represent a building operation permitted under the General Permitted Development Order which is capable of construction on the date the application is submitted to the Local Planning Authority.

The proposed porch would sit between, and extend from, the eastern projection of the existing building and the approved two storey extension to the south, with the proposed chimney extending from the southern wall of the approved two storey extension. There is no evidence to demonstrate that building operations to commence the development approved under planning reference DC/24/0176 were commenced at the time this application was submitted, and subsequently there is no evidence to demonstrate that the extension as approved has been substantially completed. As such, it is therefore necessary to determine whether the proposed development would be undertaken as a single operation alongside the approved two storey extension, or whether it would be carried out as a separate operation.

As shown by the submitted plans, the development proposed has a structural reliance on the approved extension, whereby the proposed additions could not be erected without the approved two storey development. There is no evidence to indicate that the two-storey extension approved under planning reference DC/24/0176 has been substantially completed, with the proposed development having a structural reliance on this approved extension. Based upon the above assessment, it is considered that the proposed development would be undertaken as a single building operation alongside the approved two storey addition. It is not possible to separate the proposed development from the approved development, where it is necessary to consider whether the whole of the development represents permitted development.

Garland v MHLG [1968] 20 P&CR 93 outlines that for the purpose of determining lawfulness, development carried out as a single operation must be considered it its entirety and should not be subdivided into parts that constitute permitted development and parts that do not. If one part of the development does not comply with permitted development criteria, then no part of it amounts to permitted development.

On the basis of the case law above, it is necessary to assess whether the development as a whole (comprising the two-storey side extension, porch, and chimney) would represent permitted development under the General Permitted Development Order.

The two-storey side extension would exceed the conditions and limitations as permitted under Class A of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. This part of the development would not therefore represent permitted development. As a single building operation falling within the meaning of development as set out in Section 55 of the Town and Country Planning Act 1990, either the whole of the development benefits from permitted development or none of the development benefits from permitted development. As outlined, the development would fail to meet the requirements of permitted development under the General Permitted Development Order, and the Certificate is recommended for refusal on this basis.

Recommendation: Application Refused

1 On the basis of the available information the porch and chimney additions would be carried out as a single building operation alongside the two-storey side extension approved under planning permission reference DC/24/0176. The development when taken as a whole would fail to meet the requirements of Class A of Part 1 within Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.