Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:

DC/24/0212
Robin Hood Cottage, Robin Hood Lane, Warnham, West Sussex, RH12 3RR

DESCRIPTION:

Application to confirm the continuous occupation of Robin Hood Cottage in non-compliance with the agricultural occupancy condition placed on it by application ref WN/28/75 for a period in excess of ten years (Lawful Development Certificate - Existing).

RELEVANT PLANNING HISTORY:

WN/14/75	Dwelling Comment: Outline (From old Planning History)	Application 24.07.1975	Refused	on
WN/28/75	Erection of 1 dwelling Comment: Outline (From old Planning History)	Application 24.11.1975	Permitted	on
WN/7/76	Erection of 1 dwelling Comment: A.r.m. (From old Planning History)	Application 10.05.1976	Permitted	on
WN/63/01	Change of use of land & buildings to allow equestrian rehabilitation Site: Broomlands Farm Robin Hood Lane Warnham	Application 14.02.2002	Permitted	on

ASSESSMENT

The application seeks a Lawful Development Certificate (existing) to confirm that a breach of Agricultural Occupancy Condition 3 of Planning Permission WN/28/75 took place and has continued for a period in excess of ten years prior to the date of this application.

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

The application dwelling was subject to planning application reference WN/28/75. Condition 3 attached to that permission required:

> *'The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in section 290(1) of the Town and Country Planning Act 1971 or in forestry (including any dependents of such a person residing with him), or a widow or a widower of such a person.'*

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 Applicants' Evidence

The applicants have submitted evidence which supports their claim that they have been in breach of condition 3 of WN/28/75 for a period in excess of ten years, including:

- A supporting statement, comprising:
    - Appendix A – WN/28/75 Permission Documentation
    - Appendix B – Title Registry Title
    - Appendix C – Statutory Declaration of C Lucas (signed and witnessed)
    - Appendix D – Statutory Declaration of D Gardner (signed and witnessed)
    - Appendix E – Council Tax Information
    - Appendix F – Tenancy Information

The Council's Evidence

The Council holds the following evidence relating to this certificate:

- Aerial photography of the site, dated 2001, 2007, 2012 and 2018
- Consultation response from the Council's Revenues and Benefits Team
- Consultation response from the Council's Democratic Services Team

Public Representation

One questionnaire response was received from a neighbouring property.

Assessment of the Evidence

The Planning Statement outlines that the property has been occupied by tenants not employed in agriculture or forestry since 11 March 2010. Bteween 11 March 2010 and August 2012, the property was occupied by Gary and Corina West, with the occupation of builder. Between August 2012 and April 2019, the property was occupied by Stephanie Pentecost (a hairdresser) and Robert O'Donoghue (a builder). Between April 2019 and August 2019 the property underwent repairs and renovations and a new Letting Agent was employed, with new occupants between August 2019 and 31 September 2021 being Keith Rummary (a self-employed builder/property developer) and Caroline James (retired/partner's assistant). Between 31 September 2021 and 20 May 2022 the property underwent further repairs and renovations until the Tenant Farmer surrendered tenancy to CJ Lucas Childrens Trust. From 20 May 2022 to present day, Mr Charles Lucas became the sole owner of the property.

Appendix A of the supporting statement contains the decision notice and condition that the applicant alleges to have breached. This information does not support the allegation.

Appendix B comprises the ownership of the site. The document notes that it is not an official copy. Regardless, the ownership of the site does not assist in confirming a breach of the condition.

Appendices C and D comprise statutory declarations of C Lucas (the estate manager) and D Gardner (tenant farmer). The statement of C Lucas details that between the period of 29.09.2001 and 20.05.2022, D Gardner sub-let the application site, which has been continuously occupied by three separate tenants since March 2010 to September 2021 (a period of 11 years), of which none of the occupants are declared to have worked in agriculture of forestry within the locality.

Appendix E comprises a gov.uk property information for the application site, confirming that the site is in council tax band E. this document does not assist in confirming a breach of the condition.

Appendix F comprises the rent collected from the property between April 2010 and September 2021, which is signed by D Gardner.

The Council's aerial photography illustrates that the site was in situ within the time period as above. However, it does not assist in determining whether the site was occupied in breach of condition 3.

The response from the Council's election team confirms the occupancy of one of the tenants between 2014-2020 (Mssrs O'Donoghue). The response from the Council's revenues and benefits team confirms the occupancy of the current tenant, which is not detailed in the applicant's submission, and confirms the owner of the site as P Gardner.

The neighbouring questionnaire response confirms that 3 different families over the past 9 years, stating that none were employed in agriculture of forestry.

<u>The Balance of Probability</u>

Appendices A, B and E, in addition to the Council's aerial photography, do not assist in ascertaining whether or not a breach of condition 3 of WN/28/75 has occurred within the intervening period. Appendices C and D confirm that the dwelling was occupied between March 2010 and September 2021 occurred by those not in the employment of agriculture or forestry within the locality. Given the statements are signed and witnessed in the presents of a solicitor, the Council has no reason to doubt the statements as presented. Furthermore, the Council possess no further evidence to counter these claims. Appendix F confirms that rent was collected from the site within the alleged period. Though this does not explicitly state the tenants within this period, it does confirm consistent occupancy within the period.

It is recognised that gaps in occupation occurred between April 2019 to August 2019 (a period of 4 months) and again between 31 September 2021 and 20 May 2022 (a period of 8 months). It is stated that the property was renovated and refurbished during these periods. The Council hold no evidence to suggest that these gaps were not for the purposes suggested, and it is not considered that these would amount to a significant break in occupation.

The Council's evidence in the form of the election team response does confirm that Mr O'Donoghue occupied the dwelling within the period alleged by the applicant. Though no further names are provided for the remaining time, the evidence will only go so far as to demonstrate who occupied the dwelling, not their employment. The response from the revenues and benefits team details the current occupant (presumably), which is not detailed in the applicant's submission. However, the evidence presented by the applicant demonstrates that a breach of the condition occurred for the relevant period of ten years.

The questionnaire response received from the neighbour confirms that '3 different families' have occupied the dwelling in the past nine years. Whilst the response does not corroborate with the alleged breach of the condition for a period in excess of ten year, it does give weight to the allegation that the occupation has been comprised by three separate tenants, as per the applicant's evidence.

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 dwelling has not been occupied in accordance with the agricultural occupancy condition (condition 3) attached to permission approved under WN/28/75 for a continuous period in excess of 10 years.

Recommendation: Application Permitted

Reason:

1 It has been demonstrated on the balance of probability that the dwelling (shaded in red on the plan below) has been occupied as a dwellinghouse in breach of condition 3 of WN/28/75 for a continuous period in excess of 10 continuous years (up until the date of this application).

POSITIVE AND PROACTIVE STATEMENT

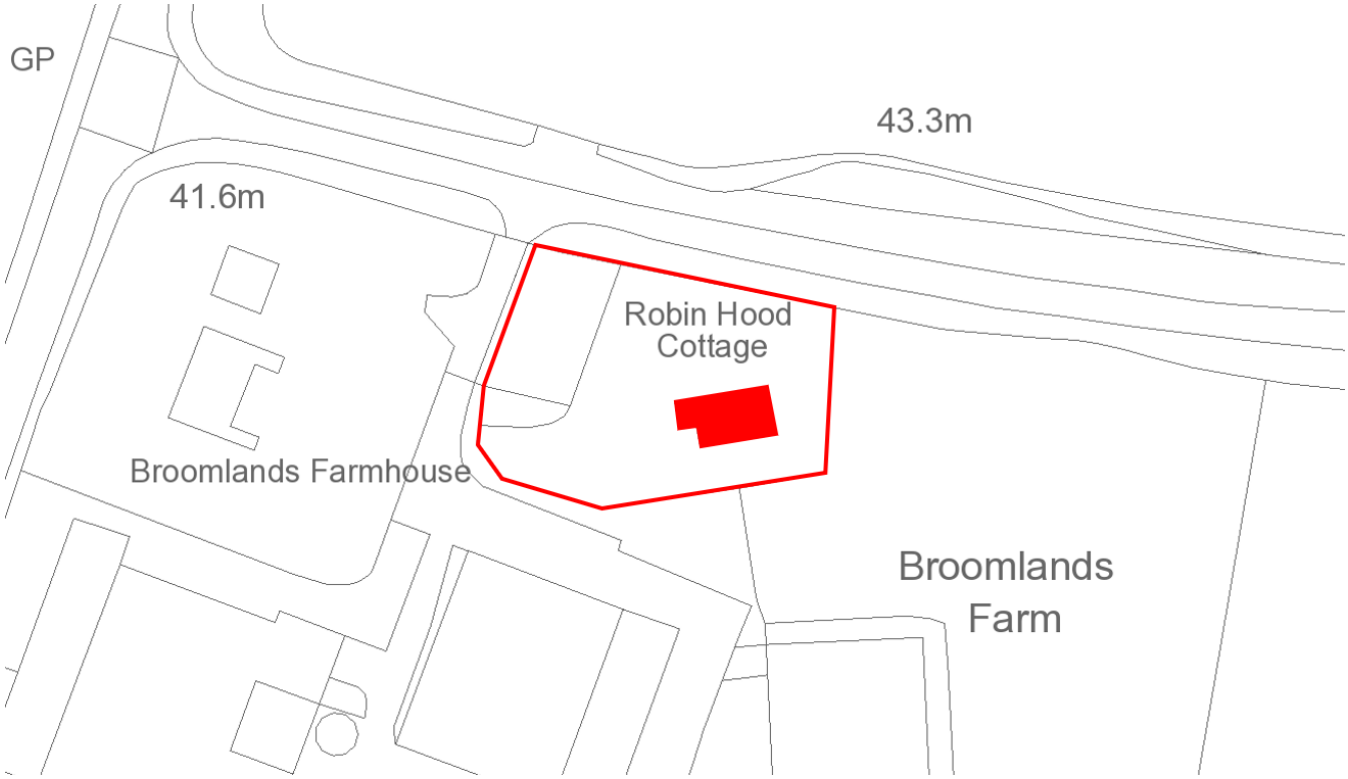
Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning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

DELEGATED

Case Officer sign/initial RHERMITAGE Date: 03.04.2024

Authorising Officer sign/initial TDALE Date: 03.04.2024

PLAN


GP
43.3m
41.6m
Robin Hood
Cottage
Broomlands Farmhouse
Broomlands
Farm