



DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:

DC/26/0636

Hawthorns, Bar Lane, Southwater, West Sussex, RH13 9DL

DESCRIPTION:

Lawful Development Certificate with regards to Conversion of stables and barn to 2no dwellinghouses (Class C3)

RELEVANT PLANNING HISTORY:

N/1/85	Storage barn, rearing and stock pens (From old Planning History)	Application Permitted on 19.07.1985
DC/13/0257	Conversion of existing buildings to equestrian stud facilities and construction of sand arena	Application Permitted on 18.07.2014
DC/17/2216	Proposed site for settled gypsy accommodation with 4 pitches.	Application Permitted on 08.06.2018
DISC/18/0275	Approval of details reserved by conditions 3,4,5,6,7,9 and 10 on DC/17/2216	Split Decision on 27.11.2018
DC/19/0182	Change of use of existing building to holiday let	Withdrawn Application on 21.03.2019
DC/19/0763	Change of use of land for 4.No park homes and change of use of existing buildings to provide 2.No holiday lets	Application Refused on 10.06.2019
DISC/19/0178	Approval of details reserved by conditions 3, 5 and 10 on DC/17/2216	Split Decision on 13.01.2020
DISC/20/0037	Approval of details reserved by conditions 3 and 5 to approved application DC/17/2216	Application Permitted on 20.03.2020
DC/20/0741	Variation of condition 17 to previously approved application DC/17/2216 (Proposed site for settled gypsy accommodation with 4 pitches) Relating to the number (8) of caravans stationed on the site at any time	Withdrawn Application on 11.06.2020
DC/23/0173	Non Material Amendment to previously approved application DC/17/2216 (Proposed site for settled gypsy accommodation with 4 pitches) to allow for the retention of a dormer window to the rear of the larger of the two existing ancillary buildings.	Application Refused on 19.05.2023. Appeal withdrawn.

PLANNING ENFORCEMENT HISTORY

EN/18/0390	Alleged: Commencement of development after 3 year of planning application DC/13/0257 being approved	Case Closed 19.11.2018
EN/18/0565	Alleged works to Barn 1 without planning permission.	Case Closed 28.08.2019
EN/19/0266	Alleged : Breach of pre-commencement conditions 3, 5, and 10 of DC/17/2216	Case Closed 13.12.2019
EN/20/0076	Alleged: Change of use of barn to holiday let despite refusal of DC/19/0763	Case Closed 04.09.2020
EN/20/0208	Alleged: Internal and external works to building without	Case Closed 04.09.2020

planning permission

EN/20/0512	Alleged: excavation of land involving the creation of a large hole	Case Closed 24.03.2021
EN/21/0107	Alleged: Change of use of the buildings and installation of a dormer window to the roof of the barn and stationing of a storage container.	Case Closed 15.05.2023
EN/23/0296	Alleged: installation of a dormer window to the roof of the barn, following refusal of application DC/23/0173	Case Closed 20.10.2023
EN/24/0002	Retention of 1no dormer window to the rear of the larger of the two existing ancillary buildings, following refusal of DC/23/0173 and application DC/23/1565 being invalid	Case Closed 02.02.2026

SITE LOCATION & APPLICATION DESCRIPTION

The Application site, Hawthorns, sits within the Parish of Nuthurst however also borders the Parishes of West Grinstead and Shipley. The site is located outside of any built-up area boundary and therefore sits within a countryside location for planning policy purposes. The site is not within a conservation area, is not subject to any heritage constraints and there are no Article 4 Directions, or applicable enforcement notices covering the site.

This Application relates to two buildings, Building A, a former stable building and sited to the east and Building B, a large former agricultural barn sited to the west. The buildings will be referred to as such going forward.

PLANNING ASSESSMENT

The Application seeks a Lawful Development Certificate with regards to Conversion of stables and barn to 2no dwellinghouses (Class C3), seeking clarification that the works were substantially completed more than four years ago.

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.”*

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.

Applicant's Evidence

The following supporting evidence has been supplied in support of this Application:

- Location Plan
- Statutory Declaration – Philip Rowe (summarised as follows)
The declaration states that the property was purchased on 14th June 2016, by both the applicant and their wife, at which point the two buildings subject of this certificate Application were already in situ. For the purposes of the declaration, the two buildings are referred to as Building A, the former stables building, and Building B, the former open-ended agricultural barn. The property is known as 'Midsummer Farm', alongside Hawthorns.

Building A

During the period of 2018 to 2020, Rowe carried out the works to convert Building A, with submitted photographs covering the conversion works, covering the period 11th August 2018 to 2 May 2020. Substantial completion of the conversions had occurred by 2nd May 2020. Rowe details that the conversion afforded all facilities for day-to-day private domestic existence, with the result of the conversion forming a C3 dwellinghouse, which remains to present day. Since completion, the building has had a bedroom, bathroom, kitchen, living/dining area, hot and cold running water, drainage and an electricity supply. The building is self-contained, furnished, with its own front door and a small patio area. The building at times is known as 'Owl Barn' or 'Owl Roost'.

Building B

In 2018, the works were carried out by Rowe to enclose the open ends of Building B, during the period 8th November 2018 to 9th April 2019. The works to convert the Building into an alleged dwellinghouse took place following this, assisted by a carpenter. The submitted photographs cover the period 23rd August 2019 to 8th January 2022, showing the conversion works taking place, with substantial completion occurring by 8th January 2022. Rowe details that the conversion afforded all facilities for day-to-day private domestic existence, with the result of the conversion forming a C3 dwellinghouse, which remains to present day. Since completion, the building has had bedrooms, a bathroom on the ground floor, bathroom on the first floor, kitchen, living/dining area, hot and cold running water, drainage and an electricity supply. Building B incorporates a dormer window. The building at times is known as 'Midsummer Farmhouse'.

The Statutory Declaration is signed and witnessed by a Solicitor, dated 16th April 2026.

Appendix –

The Appendix contains a number of pages of photographs showing the works to both buildings being undertaken, some of which contain captions describing the photographs. These photographs are dated and timed; however, the original photographs are not supplied and therefore it is not possible to study their digital footprint.

Council's Evidence

- HDC Democratic Services and Elections Consultation Response
Confirms no details for the site held under the following address names:
 1. Land on the East Side of Bar Lane, Southwater
 2. Midsummer Farm.
 3. Owl Barn
 4. Owl Roost
 5. Midsummer Farmhouse
 6. Hawthorns, Bar Lane
- HDC Benefits and Revenues Consultation Response
No record of the property, Hawthorns, Bar Lane, on either Council Tax or Business Rate records.
- HDC Planning Compliance Response
No comments to make

- Nuthurst Parish Council Consultation Response
- Shipley Parish Council Consultation Response
No knowledge of site, support Nuthurst PC's response for objecting
- Site's Planning History
- Lawful Development Questionnaire – Fountain House, Bar Lane
The respondent confirms they have lived at the neighbouring property for the last 20 years and knows the site well. They state they do not know who operates from the site or who lives there. They further state that in their opinion, the application is without merit as the site was not completed over 4 years ago, going by the noticeable activity and noise being emitted from the site. They raise concerns relating to residential amenity issues, if the alleged dwellings become occupied and the precedent this will give rise to.

Two letters of representation have been received from two addresses, raising objections for the reasons summarised below. Where the matters raised below are not addressed within the Planning Assessment of this report, they are not considered relevant to the determination of this Lawful Development Certificate Application. The Application undertakes a legal assessment only, in which the planning merits of the proposal are not a material consideration.

- The buildings have/are being used for storage purposes, the owner does not live on site
- Site is untidy
- The development is outside the settlement boundary and therefore does not comply with the Nuthurst Neighbourhood Plan (NNP) or the HDPF
- The site is located outside of any settlement boundary therefore the development would be contrary to the NNP and the HDPF
- Inappropriate development within the countryside
- Two more houses are not required within the Parish of Nuthurst, given there is sufficient supply provided by the NNP
- Works have been undertaken on the site without planning permission over the years and enforcement action should be taken to return all unlawful works to their original condition

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."

The Court held in *F W Gabbitts v SSE and Newham LBC* [1985] JPL 630 that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their 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".

Planning History

The planning history relating to this site is extensive, with multiple Applications and enforcement investigations. Planning permission for both Building A and B, was originally granted under the consent, reference N/1/85, although it appears they were not fully constructed at the time. A subsequent Lawful Development Certificate, reference DC/07/0648, confirmed that this permission had been lawfully implemented and the development could be completed.

In 2017, the site, including these subject buildings, was granted planning permission for the '*Proposed site for settled gypsy accommodation with 4 pitches*', under reference DC/17/2216. In granting this permission, the Council imposed the following condition which was applicable to both of these buildings:

Condition 22 of DC/17/2216:

“The existing buildings on the site shall be used for purposes ancillary to the use of the site only and shall not be used for any industrial, commercial or business activities

Reason: In the interests of amenity and in accordance with Policies 26 and 33 of the Horsham District Planning Framework (2015)’.

All relevant pre-commencement conditions were discharged under DISC/20/0037 (submitted on 12 February 2020 and permitted on 20 March 2020), and the permission was considered to have been implemented. No subsequent permissions have been granted. As part of this DISC Application, the Applicant/owner provided a proposed plan which showed their intention for Building A to be used for “plant and material storage” and Building B to be used as a “site office”. It was therefore clear at that time the Applicant/owner was aware of the requirements imposed by condition 22.

In July 2018, the Council’s Planning Enforcement team (“Compliance”) received an allegation that works were being undertaken to Building B without planning permission. During the course of this investigation, the applicant confirmed via email, dated 31/07/2019, to the team that the works being undertaken related to permission DC/17/2216, in which the barns were permitted for ancillary storage.

On 12 February 2020, Compliance undertook a site visit following the receipt of a further allegation that works were being undertaken without the benefit of planning permission. Confirming by means of return email, the applicant confirmed that nobody was living on site, with no electricity or gas to the property. They further confirmed that the barns were being used for ancillary storage, in line with DC/17/2216. However, the applicant stated it was their view that Condition 22 does not prohibit the buildings from being used as ancillary residential accommodation and subject to the appropriate permission, they will become some form of accommodation, albeit ancillary or otherwise. However, Compliance confirmed via return email on 9 March 2020, that the buildings cannot be used for residential purposes and only as utility buildings, with the current ancillary storage Use not constituting a breach of condition at that time.

02 May 2020 – Date owner relies on for substantial completion of Building A, as detailed within their statutory declaration.

On 4 June 2020, Compliance again received a further allegation relating to unauthorised works being undertaken to these buildings. The applicant responded to Compliance via email, confirming that the buildings were being used for ancillary purposes as per condition 22. During a site visit dated 2 July 2020, the officer observed no kitchen facilities, no evidence of plumbed water, with a copper bath present but also not connected. It was concluded that there was no breach of planning control, given the evidence before the officer was that the buildings formed the ancillary Use as permitted.

08 January 2022 – Date owner relies on for substantial completion of Building B, as detailed within their statutory declaration.

On 31 January 2023, the applicant submitted an Application seeking a non-material amendment to the previously approved Application DC/17/2216. The description read as follows:

Non Material Amendment to previously approved application DC/17/2216 (Proposed site for settled gypsy accommodation with 4 pitches) to allow for the retention of a dormer window to the rear of the larger of the two existing ancillary buildings.

As per the description, both buildings are referred to as ‘existing ancillary buildings’. Furthermore, within the submitted Application form in which the applicant is asked to describe the non-materials amendments sought, the Applicant quotes Condition 22 and states ‘*The Lawful use of the site is a residential use. The existing buildings are ancillary to that use*’.

Discussion of Evidence

The matter before the Council relates to whether the submitted evidence, is sufficiently precise and unambiguous to justify the granting of a certificate relating to the change of Use to two dwellinghouses

within Use Class C3. The applicant maintains that the development commenced and was substantially completed more than 4 years before the date the Application was received, relying on this Gravesham test. The applicant has submitted a statutory declaration, and whilst this has been summarised previously in this report, is detailed again as follows:

At paragraph 4 of the Statutory Declaration, concerning Building A, the applicant states: *“During the course of 2018-2020, I carried out works for the conversion of Building A... The result of the conversion was (and is) a building affording all the facilities for day-to-day private domestic existence. In other words, the result of the conversion works was (and is) a Class C3 dwellinghouse”*. At paragraph 5, concerning Building B, the applicant states *“In 2018, I carried out works to enclose the ends of Building B (as shown on the appended photographs covering the period 6 November 2018 to 9 April 2019. I then carried out works for the conversion of Building B to a Class C3 dwellinghouse, helped by a carpenter.”* They further state *“Substantial completion had occurred by, at the very latest, 8 January 2022. The result of the conversion was (and is) a building affording all the facilities for day-to-day private domestic existence. In other words, the result of the conversion works was (and is) a Class C3 dwellinghouse.”*

Operational Development

Site photos taken by the Council during a site visit under DC/17/2216, clearly show both barns have not been converted and no operation development has been undertaken, with both still under an agricultural Use, storing hay, machinery and animal feed. These photos are dated October 2017.

Photos taken by the Council's Planning Compliance team, during the course of the investigation EN/18/0390 and EN/18/0656, appear to show the external building works to Building A complete, comprising fenestration alterations through additional walls, doors and windows. Whilst works are being undertaken to Building B, through the enclosing of the open sided elevations of this Building, the works are complete. These photos are dated November 2018.

A further visit by Compliance undertaken on 17/07/2019, confirms the external work to Building A is complete, alongside the external works to Building B. These photographs taken by the Council collaborate the account provided by the Applicant detailed within their Statutory Declaration and supporting photos.

Therefore, on the basis of the available information, it has been demonstrated, on the balance of probability, that the external operation works to both Building A and Building B were substantially completed for a period in excess of four years, prior to the date of the application.

Notwithstanding the above, even if the Council accept that the physical conversion works were substantially completed more than four years prior to the application, that would not in itself establish the lawfulness of the development claimed. The applicant's case is not simply that operational development has occurred, but that the buildings have become two independent Dwellinghouses within Use Class C3. Whether the buildings were in fact used as separate dwellinghouses is a distinct matter requiring separate evidential consideration.

Use

Class C3 is a Use class under the Town and Country Planning (Use Classes) Order 1987 encompassing “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 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).”

The evidence submitted as part of this Application is minimal, solely relying on the statutory declaration and the applicant's time stamped photographs showing the works being undertaken and “substantial completion”. No further evidence has been supplied to the Council, relating to when services within the dwellings were connected, utility bills/invoices, information concerning Council Tax or Electoral

Records, material receipts, construction or tradespersons receipts. The statutory declaration addresses what works have been carried out and when these were carried out. However, there is no information whatsoever as to who (if anyone) occupied the Application Buildings, when they did so and whether any occupation was ancillary to the lawful use of the Land. The Council's own enquiries have confirmed that neither building is registered for Council Tax, nor is any person registered at the site for the purposes on the electoral register.

Within this CLEUD Application there is repeated reference (including in the description of existing Use, building works or activity) to a Class C3 dwellinghouse. That is a Use, rather than simply internal building works. It would not encompass a Use which is ancillary to the lawful Use of the Land pursuant to the DC/17/2216 permission. Furthermore, whilst a building has all of the facilities for independent day-to-day living, it does not mean that it becomes a separate planning unit, with the circumstances being a matter of fact and degree.

Furthermore, it is agreed that planning permission DC/17/2216 was lawfully implemented. As is detailed within the following paragraph, the applicant repeatedly confirmed to the Council, including during enforcement and planning investigations, that the subject buildings were being used in accordance with the approved development and remained ancillary to the lawful use of the site, consistent with the requirements of Condition 22 of permission DC/17/2216. On the basis of the applicant's own representations, the Council has no evidence that Condition 22 has been breached. As such, there is no evidence before the Council that the applicant has been in breach of condition 22, for a period of 10 years or more, therefore becoming immune from enforcement action.

As above, at all times and as recently as 2023, which is noted is during the relevant 4-year period, the applicant has informed the council that both the subject buildings were in an ancillary use to the lawful use of the land, contradicting the details provided within the statutory declaration. Furthermore, if the buildings had genuinely become independent Class C3 dwellinghouses by May 2020 (Building A) and January 2022 (Building B), it is reasonable to expect that the applicant would have disclosed this fact during the interactions with the Council's Compliance Team and in the subsequent planning applications. Instead, on each occasion the applicant represented the buildings as being used for ancillary purposes only, including within the non-material amendment application submitted in January 2023. This is significant statement, as it was made prior to the submission of this CLUED. It is the council's view that, even if the applicant could establish that the buildings had been used as Class C3 dwellings for the required period of time, in those circumstances, the applicant's statements would have been directly intended to undermine the planning process and would have in fact undermined the planning process. If the applicant had informed the council that the buildings had been converted to Class C3 dwellings, the council would have taken enforcement action, as is evident from the numerous enforcement investigations. As a result of this, the applicant would benefit from the time limitation periods not running and would have positively deceived the council.

On the applicant's own evidence, the works were undertaken for the purpose of creating buildings providing all the facilities for day-to-day private domestic existence and therefore formed an integral part of the alleged residential Use. In these circumstances, the Council is not satisfied that the evidence demonstrates, on the balance of probabilities, the lawfulness of the claimed residential use.

Whilst the Council has accepted the external works were completed (as above), the substantial completion of these of external building operations does not, in itself, demonstrate that the buildings had become lawful independent planning units or that a material change of use to two separate dwellinghouses had occurred. Evidence of actual use as independent dwellings is limited and has not been demonstrated to the requisite standard.

In conclusion, for the reasons set out above, the Council is not satisfied, on the balance of probabilities, that the evidence demonstrates that the buildings have been used as independent dwellings with Use Class C3, for a period in excess of four years prior to the date of this Application. The applicant's statutory declaration is contradicted by evidence, including representations made by the applicant to the Council between 2020 and 2023 confirming that the buildings remained in ancillary Use. The evidence submitted in support of the use is therefore neither sufficiently precise nor sufficiently unambiguous to discharge the applicant's burden of proof.

As outlined within this report, the Lawful Development Certificate is therefore recommended for a Split Decision.

Recommendation: Split Decision

Lawful:

1. It has been demonstrated, on the balance of probability, that the external operational works to both Building A (shown in red on the attached plan) and Building B (shown in blue on the attached plan) were substantially completed for a period in excess of four years, prior to the date of the application.

Unlawful:

1. It has not been demonstrated, on the balance of probabilities, that the evidence submitted is sufficiently precise and unambiguous to evidence that the buildings have been used as independent dwellinghouses within Use Class C3 for a continuous period exceeding four years prior to the date of the Application.
2. It has not been demonstrated, on the balance of probabilities, that Buildings A and B have been used as independent dwellinghouses within Use Class C3, in breach of Condition 22 of planning permission DC/17/2216, for a continuous period in excess of 10 years prior to 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.

Plans list for: DC/26/0636

Schedule of plans/documents **approved**:

Plan Type	Description	Drawing Number	Received Date
Supporting Statement	Statutory Declaration of Philip Rowe - <u>Regarding External Works to Buildings A and B</u>	NONE	20.04.2026

Schedule of plans/documents **not approved**:

Plan Type	Description	Drawing Number	Received Date
Supporting Statement	Statutory Declaration of Philip Rowe - <u>Regarding Use</u>	NONE	20.04.2026

DELEGATED

Case Officer sign/initial Sam Nye Date: 14/09/2026

Authorising Officer sign/initial RHERMITAGE Date: 23/09/2026

PLAN

