Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:

DC/24/0894
Woodside Equestrian Centre, Forest Road, Colgate, West Sussex, RH12 4TF

DESCRIPTION:

Application to confirm the erection of a dwellinghouse for residential purposes for a period in excess of ten years (Lawful Development Certificate - Existing)

RELEVANT PLANNING HISTORY:

DC/21/0325	Prior notification for access to paddocks for management and maintenance purposes	Prior Approval Required and REFUSED on 07.04.2021.
DC/12/1501	Proposed storage barn	Application Permitted on 10.01.2013.

SITE LOCATION & APPLICATION DESCRIPTION

The application site comprises an equestrian centre located outside of the built-up area and with the High Weald area of outstanding natural beauty. The application building is located towards the south-east of the site behind the equestrian building. The site is not within a conservation area and there are no Article 4 Directions covering the site.

ASSESSMENT

The application seeks a Certificate of Lawful Development to confirm the erection of a dwellinghouse for residential purposes for a period in excess of ten years from the date of the 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 building was initially approved under consent DC/12/1501 for a '*proposed storage barn'*. Condition 3 attached to the permission stated:

3 The building hereby approved shall be used solely for purposes in connection with Woodside Equestrian Centre and shall not be used independently there from.

Reason: To accord with the terms of the application, in the interests of the amenity and with the accordance with policy DC1 of the Horsham District Council Local Development Framework: General Development Control Policies (2007).

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

The Applicant's Evidence

The applicant has provided the following information in support of their case, comprising:

- Location Plan
- Block Plan
- Existing Floor Plan 3
- Statutory Declaration L Carey
- Statutory Declaration S Fitzsimmons
- Statutory Declaration L Fitzsimmons
- Statutory Declaration C Thompson
- Statutory Declaration A Swiers
- Planning Statement

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
- Google Earth Imagery
- The Council's Revenues and Benefits (Council Tax) consultation response

Public Representation

The following public representation was received during the course of the certificate's determination period:

- Parish Council consultation response
- Questionnaire response from Mobile Home, Forest Road
- Representation letter from The Oak House
- Representation letter from Stone Lodge

Assessment of the Evidence

The application contends that the evidence submitted demonstrates that the dwellinghouse was erected in excess of ten years. As per the legislation set out above, building operations and residential

uses only need to be demonstrated for a period in excess of four years. However, a change of use of the land needs to be demonstrated for a period in excess of ten years.

The statutory declaration of L Carey states that they have been employed as yard manager since on the site since 2011. The building was a prefabricated stable building to be adapted into a dwelling, and works on the base commenced in February 2013. The basic stable structure was erected by March 2013, and by the end of April 2013, the building was complete. Since May 2013, the building has been used as a dwelling. L Carey moved into the building on 1 May 2013. The building was extended in 2015 (to the south-east) and a porch was added in December 2020 (to the south-west).

The applicant submitted a Planning Statement which outlines that the basic stable structure was erected in March 2013, with this being substantially completed by the end of April 2013. The evidence to support this includes statutory declarations from a number of residents on site, and the occupant of the dwelling, all of which confirm that the occupant has lived within the building since May 2013. The Statutory Declaration from Ms Carey provided photographs of the building under construction and floor plans, with the internal layout designed for residential accommodation. Further evidence in the form of an email from Calor gas company, confirmed that the tank was installed in February 2013, and the property has had a continuous supply of domestic fuel to date. The property has therefore had a gas supply since 2013 which would be affiliated with a domestic property. A further email confirms that Mr Hambin converted the building into a 1-bedroom dwelling, with plumbing and plastering, in March/April 2013. These emails confirm what was stated in the statutory declarations, that the building has been a dwelling since 2013.

Photographs from 2013 and 2020 have been provided, as well as an email from Mr Hambin Snr who confirms he did the internal works to the building in order to convert it into a 1 bed dwelling. A further email from Hannah from Calor gas confirmed that the boiler was installed in February 2013 and has supplied domestic fuel continuously since that date.

Statutory declarations of S Fitzsimmons, L Fitzsimmons, and A Swiers corroborate the building was constructed in early 2013 and has been occupied by L Carey since then.

The Council's aerial photography, in addition to Google Earth imagery, illustrate the building in situ since c. 2013. The photography does not assist in demonstrating the use of the building, and the Council possess no evidence to the contrary as demonstrated by the applicant. However, it does assist in establishing further operational development and use of the land. As above, the applicant states that the extension (south-east) was substantially completed in 2015- aerial photography illustrates this to be the case. It further illustrates that the porch (south-west) began construction c. April 2020, which shows the foundations for the structure. Furthermore, the applicant states that the works were substantially completed in December 2020. At the time of submission of this certificate (June 2024) the four year period has not yet passed. Though the Council does not doubt that works commenced within four years, they do not appear to have been substantially completed (as set out in the applicant's evidence). Therefore, the porch to the south-west of the building has not yet passed its compliance period thus is not lawful by virtue of time.

In terms of residential curtilage: aerial photography illustrates a clearly delineated boundary around the building from c June 2013 (11 years at the point of submission). The aerial photography shows the curtilage remaining the same shape April 2015. However, c. September 2018, the curtilage extends to the south-west, incorporating additional land and the laying of hardstanding. As above, a change of use of the land is subject to a compliance period of a period in excess of ten years. In order for the use of this land to be lawful for residential purposes, it would have been required to have been in situ since June 2014 (ten years prior to the point of submission). As the curtilage appears to have been extended between April 2015 and September 2018, it would not be possible for this change of use of the land to have occurred within the relevant period. As such, the lawful use of this section of land for residential purposes has not been demonstrated to have occurred within a period in excess of ten years from the submission of this certificate.

The Balance of Probability

The evidence available therefore has shown on the balance of probability that the subject building (shaded in red in the plan below) was substantially completed and occupied for residential purposes since 2013, for a period in excess of a period four years from the date the application was submitted, and the part of the curtilage (edged in red on the map below) has been in residential use for a period in excess of ten years. However, the evidence before the Council does not suitably demonstrate that the porch was substantially completed for a period in excess of four years, and the extended curtilage to the south-west has not been in residential use for a period in excess of ten years.

Recommendation: SPLIT Decision

Reason for GRANTING the certificate:

1 It has been demonstrated, on the balance of probability, that the building (shaded in red on the plan below) has been used as a dwellinghouse for residential purposes, in connection with Woodside Equestrian Centre, for a period in excess of four years prior to the date of the submission of this application.

2 It has been demonstrated, on the balance of probability, that the curtilage (edged in red on the plan below) has been used for residential purposes in association with the dwelling subject of this certificate for a period in excess of ten years prior to the date of the submission of this application.

Reason for REFUSING the certificate:

1 It has not been demonstrated that the porch erected to the south-west of the building was substantially completed for a period in excess of four years prior to the date of the submission of this application.

2 It has not been demonstrated that the extended curtilage to the south-west of the building has been in residential use in association with the dwelling subject of this certificate for a period in excess of ten years prior to the date of the submission of this application.

Plans list for: DC/24/0894
Schedule of plans/documents:

Plan Type	Description	Drawing Number	Received Date
Location plan		NONE	12.06.2024
Block plan		NONE	12.06.2024
Floor plan	As existing	NONE	12.06.2024
Supporting Statement	Planning	NONE	12.06.2024
Supporting Statement	Statutory Declaration L Carey	NONE	12.06.2024
Supporting Statement	Statutory Declaration L Fitzsimmons	NONE	12.06.2024
Supporting Statement	Statutory Declaration S Fitzsimmons	NONE	12.06.2024
Supporting Statement	Statutory Declaration C Thompson	NONE	12.06.2024
Supporting Statement	Statutory Declaration A Swiers	NONE	12.06.2024

DELEGATED

Case Officer sign/initial RHERMITAGE Date: 13.08.2024

Authorising Officer sign/initial TDALE Date: 13.08.2024

PLAN

