Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:
DC/24/0338
Little Frylands , Wineham Lane, Wineham, West Sussex, BN5 9AW

DESCRIPTION:
Application to confirm that the dwelling is continuously and independently occupied by tenants as a self-contained dwelling for a period of in excess of four years (Lawful Development Certificate - Existing).

RELEVANT PLANNING HISTORY:
There is an extensive planning history for the site, of some relevance to this current submission are: -

DC/21/2560	Application to confirm the use of building as a single dwellinghouse for a period of more than four continuous years before the date of this application (Lawful Development Certificate - Existing).	Application Permitted on 12.01.2022
DC/21/2559	Application to confirm the occupation of the building as an independent dwelling in excess of four years (Lawful Development Certificate - Existing).	Application Permitted on 12.01.2022

PLANNING ASSESSMENT

The application seeks a Certificate of Lawful Development (Existing) – continuous use of an outbuilding as residential for a period in excess of 4 years 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

- *Location Plan 2310/061 identifying the site in red*
- *Existing Floor and Elevations 2310/001*
- *Applicant Statement/Planning Statement*
- *Electrol Poll Card*
- *DVLA*
- *Credit Search History*
- *Tenancy Agreement*
- *Photographs*
- *Witness Statements – Tenants*

Summary of Council's Evidence

- *Compliance Investigation*

  Complaint received regarding the use of an outbuilding for residential purposes. This application has been invited from the compliance case.

- *Consultation Revenues Team – Confirming liability date*
- *Neighbour Testimony*
- *Aerial Photograph dated 2001, 2007, 2021 and 2018*
- *Application documents and site photographs*

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".

The applicant has asserted that the outbuilding, referred to as the 'Summer House,' has been converted into a residential dwelling and has been continuously occupied by tenants as a self-contained dwelling. Aerial photography confirms the presence of the structure since 2018. Although there is no planning permission for a residential outbuilding, the structure has existed for over 4 years.

The applicant has provided documentation dating back to 2019 up to the present, which purportedly shows that the building has been used as a residential dwelling and rented for more than 4 years.

These claims do however conflict with a previous investigation on the site by Planning Compliance under ref: EN/20/0144. This investigation concerned the erection of a wooden cabin used as independent residential accommodation (at the time as short-term accommodation through Airbnb). This case was closed following confirmation that the use had ceased as was to be kept vacant for the duration of 2020. This clearly contradicts with the version of event's indicated in the submitted evidence, which is not in the form of a statutory declaration and does not acknowledge this previous compliance investigation.

The presence of a break in occupation during 2020 at a time when a lawful use (as a dwellinghouse) of the outbuilding had not been established had the effect of ceasing any use against which the Council could have enforced against and would have the effect of stopping the immunity period.

In light of this conflicting information and taking into account all available evidence, it has not been demonstrated on the balance of probabilities that the building has been used in the manner of a self-contained dwellinghouse for a continuous period in excess of 4-years from the date of submission. It is therefore recommended that a lawful development certificate be refused.

Recommendation: Application Refused

Reason(s) for Refusal:

1. It has not been demonstrated, on the balance of probability, that the building (outlined in red on the attached Plan) has been used in the manner of a self-contained dwellinghouse for a continuous period in excess of 4 years.

Plans list for: DC/24/0338
(The approved plans will form Condition 1 on the Decision Notice of all Permitted applications)

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

Plan Type	Description	Drawing Number	Received Date
Supporting Statement	Tenant Statement 1		30.05.2024
Supporting Statement	Tenant Statement 2		30.05.2024
Supporting Statement	Poll Card		30.05.2024
Supporting Docs	Credit Search History		30.05.2024
Supporting Docs	DVLA		30.05.2024
Supporting Statement	Tenancy Agreement		07.03.2024
Supporting Statement	Applicant Statement		28.02.2024
Elevation & Floor plan	Existing	2310/001	28.02.2024
Location plan		2310/061	28.02.2024

DELEGATED

Case Officer sign/initial Shazia Penne Date: 03.07.2024

Authorising Officer sign/initial Guy Everest Date: 10.07.2024