Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:

DC/23/2047
Midwinter Farm, Orltons Lane, Rusper, West Sussex,

DESCRIPTION:

Application to confirm the building works for the erection of a detached building were substantially completed more than four years before the date of this application (Lawful Development Certificate - Existing)

DETAILED DESCRIPTION:

The Certificate applied for is for operational development comprising substantial completion of the following: A detached building including solar panels on lower roof slope.

The evidence submitted by the applicant in support of this application comprises:

- A lawful Development Statement with embedded Aerial photograph (not date stamped but contended by the applicant to be September 2018). It is contended by the applicant that this aerial photograph shows solar panels in situ on the lower southern roof section of the detached building.
- Undated photograph of building exterior substantially completed with scaffolding to its exterior.
- Undated photograph of building exterior substantially completed.
- Drawing No. PRR 1 showing elevations of building exterior with metric dimensions and solar panels.

RELEVANT PLANNING HISTORY:

DC/23/1576	Application to confirm the building works for the erection of a detached building were substantially completed more than four years before the date of this application (Lawful Development Certificate - Existing).	Application Refused on 17.10.2023.
DC/23/0688	Installation of new overhead line (including poles) for a single phase domestic supply.	NO OBJECT Overhead Line on 02.06.2023
DC/16/0477	Proposed agricultural barn for the storage of hay, feed, agricultural plant and machinery together with the incubation of emu eggs and the rearing of Emus	Application Permitted on 20.07.2016

PLANNING ASSESSMENT

The application relates to a Lawful Development Certificate Existing to confirm that the operational development relating to the erection of a detached building occurred in excess of 4 years prior to the date of submission.

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

A lawful Development Statement with embedded Aerial photograph (not date stamped but contended by the applicant to be September 2018). It is contended by the applicant that this aerial photograph shows solar panels in situ on the lower southern roof section of the detached building.

- Site Location Plan showing the outline of the building footprint, the subject of the application, in red.
- Undated photograph of building exterior substantially completed with scaffolding to its exterior.
- Undated photograph of building exterior substantially completed.
- Drawing No. PRR 1 showing elevations of building exterior with metric dimensions and solar panels.

Summary of Council's Evidence

- Planning application reference DC/16/0477 and DC/23/1576
- Compliance investigation reference EN/19/0354
- Compliance investigation reference EN/23/0254
- Response from Rusper Parish Council:

  No objection providing restriction put for equestrian and agricultural only.
- Aerial photographs dated 2012 and 2018

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's Evidence

The September 2018 aerial photo confirms that solar panels were in situ on the lower southern roof section for more than 4 years and have remained. The Statement contends that the flue and additional solar panels (those to the upper southern roof section) would not have triggered a material affect on the external appearance of the building on the basis that: they are not visible from a number of normal vantage points; they are not visible from a neighbouring building; the degree of visibility must be material and materiality must take account the nature of the building and be judged in relation to the building as a whole.

The Council's Evidence

Aerial photography of the site in 2018 shows the building in place. The Council also hold records of the building following compliance investigations at the site in 2019. The site visit photographs for compliance investigation reference EN/19/0354 are dated 06.08.2019 and 29.08.2019, and show the building in situ. The photographs appear to show the building as substantially complete. The application was submitted on 08.11.2023, where the evidence available to the Council confirms that the building has been in situ for a period in excess of 4 years from the date of the application.

Legal Definitions

Section 55(1) of the Town and Country Planning Act 1990 states that "Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land."

Section 55(1A) outlines that for the purposes of the Act, "building operations" include the demolition of buildings; rebuilding structural alterations or additions to buildings; and other operations normally undertaken by a person carrying on business as a building.

Section 55(2)(a) continues that the carrying out for the maintenance, improvement or other alteration of the building of works which affect only the interior of the building, or do not materially affect the external appearance of the building, shall not be taken for the purposes of the Act to involve development of the land.

Burroughs Day v Bristol City Council 1996 held that changes in external appearance had to be judged in relation to the building as a whole in order to determine the materiality of their effect. It was also stated that any change to the external appearance must be visible from a number of normal vantage points, and that part of the test for "material effect" must depend on the degree of visibility. The judgement listed factors to be taken into account when deciding that alterations to a building were material including it must be seen from outside the building; roof alterations must be seen from the ground or from within a neighbouring building; the degree of visibility must be material; and materiality must take into account the nature of the building and be judged in relation to the building as a whole.

The installation of solar panels and flue have materially affected the external appearance of the building and are therefore considered to represent development as defined by Section 55 of the Town and Country Planning Act 1990. Both elements represent an addition to the building and are therefore considered to represent "building operations" as defined by Section 55(1A) of the Act.

Balance of Probabilities based on the Applicant's and Council's Evidence

Following a site visit on 16.08.2023 by the Council's Planning Compliance team, it was noted that solar panels and a flue had been fitted to the building. On separate occasions (site visits by Council staff on 06.08.2019 and 29.08.2019) photographs taken by Council staff do not show the solar panels and flue in situ and the aerial photograph claimed to be September 2018 in this certificate submission does not clearly identify these either.

The Application has been supported by minimal evidence beyond the description of development and an aerial photograph purported to be September 2018 in which the solar panels are not clearly identifiable. Additionally, several undated photographs have been provided showing the building under construction and in situ. However, other than showing the building in situ, these photographs provide no clear evidence to demonstrate the date the building operations began and were completed. This evidence does not therefore demonstrate that the building has been in situ for a period in excess of 4 years from the date of the application.

Conclusion

On the balance of probabilities, it has NOT been demonstrated the building subject of the application, as shaded in red on the attached plan, has been substantially completed for a period in excess of 4 years from the date of the application.

Recommendation: Application Refused

1. On the balance of probabilities it has NOT been demonstrated the building subject of the application, as shaded in red on the attached plan, has been substantially completed for a period in excess of 4 years from the date of the application.

Plans list for: DC/23/2047
(The approved plans will form Condition 1 on the Decision Notice of all Permitted applications)

Schedule of plans/documents **refused**:

Plan Type	Description	Drawing Number	Received Date
Location plan		NONE	08.11.2023
Elevation plan	Ariel photograph, September 2018, as existing	PRR1	08.11.2023
Photos	Building under construction x2, and Building in Situ	NONE	08.11.2023
Supporting Statement	Planning Statement	NONE	08.11.2023

DELEGATED

Case Officer sign/initial Matthew Porter Date: 17-09-2024

Authorising Officer sign/initial J Hawkes Date: 18.09.2024