Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:

DC/24/0231
Selehurst Gardens, The Cottage, Brighton Road, Lower Beeding, West Sussex, RH13 6PR

DESCRIPTION:

Application to confirm the use of The Cottage as self-contained, independent dwelling for continuous period in excess of 4 years (Lawful Development Certificate - Existing)

RELEVANT PLANNING HISTORY:

LB/19/85	Extension to dwelling (From old Planning History)	Application Permitted on 05.05.1985
LB/33/84	Extension to dwelling (From old Planning History)	Application Permitted on 19.09.1984
LB/68/69	Alterations and additions to existing house (From old Planning History)	Application Permitted on 14.11.1969
LB/8/89	Demolition of garage and erection of 2 storey extension (From old Planning History)	Application Permitted on 31.03.1989

ASSESSMENT

The application relates to Application to confirm the use of The Cottage as self-contained, independent dwelling for continuous period in excess of 4 years (Lawful Development Certificate - Existing). The application comes as it was noted during the course of DC/23/2084 that the proposed represents a self-contained residential dwelling that would not be considered ancillary as the principle of The Cottage as an independent dwelling had not be established as lawful.

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 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

- Land Registry Title [21/06/2006]
- Letter to Tennant (re: tenants deposit protection certificate) [22/12/2009]
- Statutory Declaration (Margaret Harris) [09/02/2024]; Assured Shorthold Tenancy Terms [26/11/2009]
- Council Tax 2023/2024; Letter of Rent Increase [28/07/2014]; Gas Safety Record [07/06/2012]; Email correspondence from ex-tenant and applicant

Council's Evidence

- Application LB/1/84
- Application LB/19/85
- Application LB/33/84
- Application LB/51/70
- Application LB/68/69
- Application LB/8/89
- Application DC/23/0359
- Application DC/23/2084
- Consultation Response: Horsham District Council - Compliance
- Consultation Response: Horsham District Council - Elections
- Consultation Response: Horsham District Council - Revenues

Planning History

Selehurst Gardens is a large property off Brighton Road / A281, Lower Beeding. The property is a large dwelling which has a separate, adjoined, independent dwelling known as 'The Cottage'. The planning history of Selehurst Gardens goes back to 1969 and incidentally, the creation of 'The Cottage' under planning permission LB/68/69 (Alterations and additions to existing house (From old Planning History). The development was connected to the main dwellinghouse and was not separated / closed off internally. There have been several planning permissions connected to Selehurst Gardens since 1969, however most relate to the main dwelling of Selehurst barring under LB/19/85 which also included works to the front of The Cottage.

Viewing the floorplans of LB/68/69, it is clear that 'The Cottage' (described as a cottage / servants quarters within LB/68/69) was a large extension capable of housing 2 people with 2 bedrooms and included a living room and bathroom. However, the extension seemed to maintain reliance on Selehurst Gardens as there is no indicated kitchen area. These floorplans indicate that the dwelling was connected both on ground floor and first floor.

Subsequent drawings from later planning permissions omit the inclusion of 'The Cottage' and its connected floorspace to Selehurst Gardens barring the recent submissions of DC/23/0359 (Demolition of existing cottage and erection of a replacement two-storey side extension) which was withdrawn and DC/23/2084 (Demolition of existing conservatory and erection of a two storey extension to serve existing annexe) which is pending decision. Both applications detail the existing floorplan of Selehurst Gardens and include The Cottage's floor space. The Cottage's current floor plan shows the upstairs blocked off from Selehurst Gardens, though the downstairs of The Cottage is still connected to the main dwelling. Since the creation of what is now known as 'The Cottage' under LB/68/69, the 'laundry and sewing room' that was built as part of the extension has been seeded over to the main dwelling

Discussion

The application seeks a Certificate of Lawful Development Existing for the use of the property as a residential dwelling in excess of 4 years from the date of the application.

Co-owner of Selehurst Gardens with husband since 04/03/1983. Details 'The Cottage' being regarded as one unit and occupied by several different families in the years since 1969 until 1983. At some point before 1983, The Cottage was 'sealed' from Selehurst Gardens, both upstairs and downstairs, thus severing the internal link to the main dwelling. After the applicant purchased the dwelling, their parents occupied The Cottage which at this point was unsealed with Selehurst Gardens and The Cottage used as one dwelling house. After the applicants parents passed, The Cottage was then 'sealed' off again and let out to various tenants over the years. These tenants paid the council tax on what is now known as The Cottage. In 2009, a new tenant took occupation at The Cottage, paying council tax, electricity and LPG (which is separate from the main dwelling) and occupied the dwelling for 14 years. The declaration also includes the Assured Shorthold Tenancy Agreement with the tenant dated 2009 (included as part of the evidence).

Definition of a Dwelling

There is no definition of "dwellinghouse" within the Town and Country Planning Act 1990 (TCPA) but reference is made within other relevant planning legislation.

Part C of the Use Classes Order 1987, as amended, defines Class C3 as "dwellinghouses" and refers to *"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 no 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)."

Article 2(1) of the Town and Country Planning (General Permitted Development) Order 2015 as amended defines a "dwellinghouse" and states:

"…except in Part 3 (Changes of Use), Part 12A (development by local authorities and health service bodies) and Part 20 (construction of new dwellinghouses) of Schedule 2 to this Order, does not include a building containing one or more flats, or a flat contained within such a building."

A "Flat" is defined within the Article as "flat, except in the expression "flat roof", means a separate and self-contained set of premises constructed or adapted for use for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally".

Given the absence of a definition within the TCPA, case law has sought to clarify the meaning. In Gravesham BC v SSE and O'Brien [1983] JPL 306, it was accepted that the primary characteristic of a dwellinghouse is its ability to provide the facilities required for day-to-day existence. Grendon v FSS and Cotswold DC [2006] EWHC 1711 (Admin) considered it necessary to determine whether the building is physically capable of being a dwellinghouse, has the attributes of a dwelling and is used as such. Specifically, it is outlined that "as the cases under this Act and its predecessors have emphasised the question is to have regard, to an appropriate degree in each case, to both the physical state of the premises and their user, actual, intended and/or attempted." This is supported in R (oao Gore) v SSLG and Dartmoor NPA [2008] EWHC 3278 (Admin) where it was concluded that "it is a matter of fact and degree whether or not any particular use of a building (for example, for occasional overnight sleeping) does or does not amount to a residential use of that building."

From the above cases, it is clear that a building can be defined as a residential dwelling if it affords all of the facilities necessary to live independently. It is common practice that such facilities include bedroom, kitchen, bathroom, and living space.

From the existing floor plan submitted, though not explicitly labelled, the building includes kitchen, sitting room, bathroom, and two bedrooms The building benefits from all of the facilities necessary for private day-to-day existence, independent from the main dwelling and is therefore considered to represent a dwelling.

Use as an Independent Dwellinghouse

The Statutory Declaration by the applicant has provided information of the history of The Cottage including the use of The Cottage before their ownership, the sealing of The Cottage at some point prior to 1983 (though not evidenced) and the use of The Cottage within the scope of Selehurst Gardens as one dwelling due to cohabitation with their parents. With the demise of the applicants parents, the unit was 'sealed' again at some point and rented out.

Horsham District Council's Revenue Department have reported that since 2003, council tax has been paid on The Cottage by multiple tenants, which would indicate that The Cottage has existed as an independent dwelling in excess of 20 years and that the work to turn into a separate dwelling house occurred at some point prior to 2003, though it is not known when.

Attached to the applicant's statutory declaration was the assured tenancy agreement with a tenant who has resided at The Cottage between 2009 and 2023. This tallies with the council tax record. Since July 2023, there has not been an occupant at The Cottage with the council tax paid for by the applicant's husband. It is considered that there has not been a gap which indicates a break in the occupation since July 2023 as it is noted that a planning application was received in March 2023 and November 2023 (DC/23/0359 and DC/23/2084 respectively) for works to The Cottage. It would be reasonable to assume that these works would be completed before another tenant could move in.

While this does bring into question when the layout of The Cottage allowed for independent occupation (2003 or earlier), on the balance of all the available evidence, it is considered on the balance of probability that the dwelling has been occupied for a continuous period of at least 4 years and is considered to be an independent dwelling separate from Selehurst Gardens.

The Balance of Probability

On the basis of the available evidence, it is considered on the balance of probability that The Cottage has been an independent dwelling, separate to that of Selehurst Gardens in excess of 4 years from the date of the application submission. The building operations to facilitate the conversion are considered to have been substantially constructed for a period in excess of 4 years from the date of the application submission, and the area around the building is considered to have been used as domestic purposes, in association with the dwelling, for a period in excess of 4 years.

Recommendation: Application Permitted

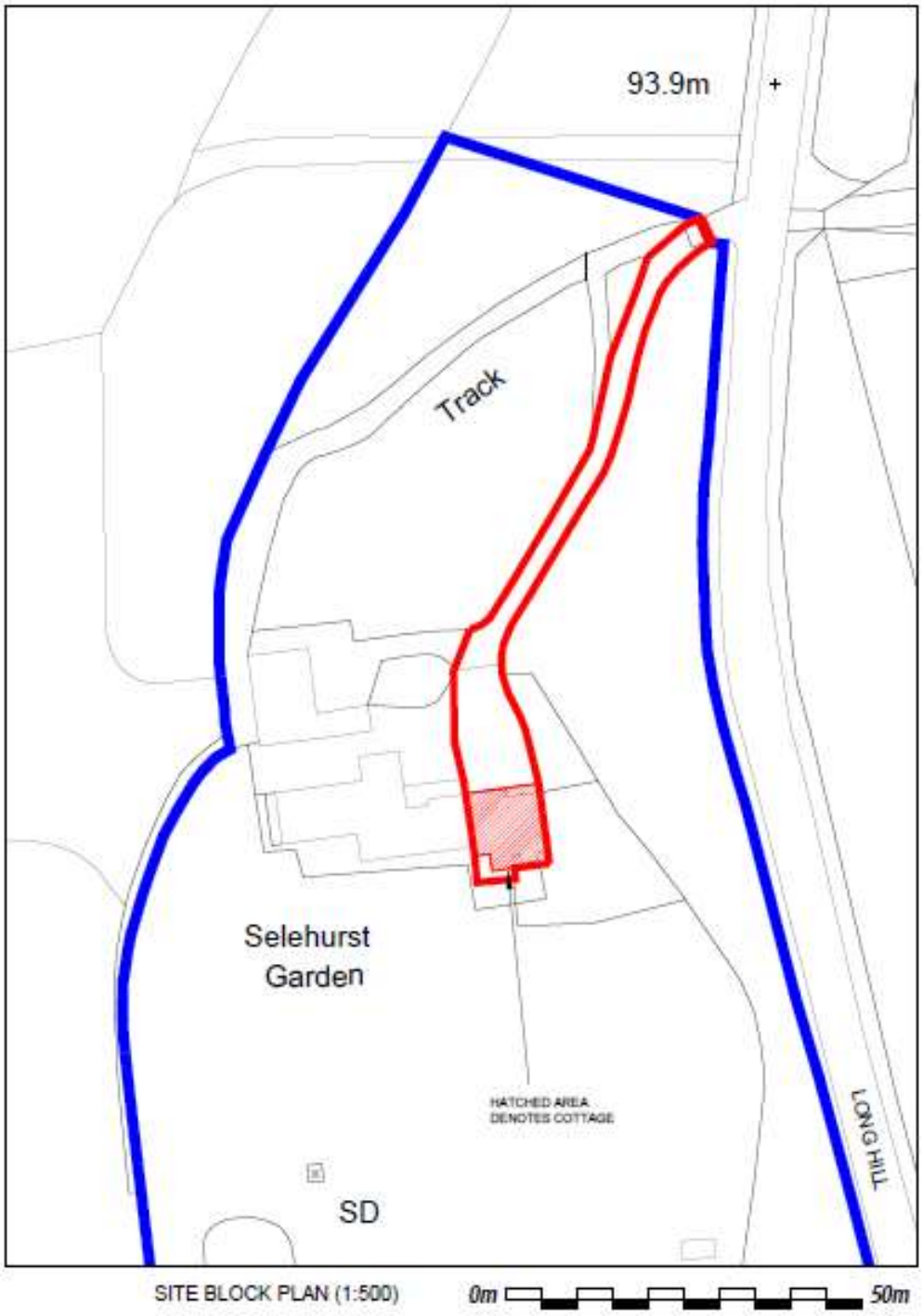
1 It has been demonstrated, on the balance of probability, that the building shaded in red on the attached plan below has been in continuous occupation as an independent residential dwelling (Use Class C3) for a period in excess of 4 years from the date of the application.

DELEGATED

Case Officer sign/initial J.Burrowes Date: 04/04/2023

Authorising Officer sign/initial RHERMITAGE Date: 05.04.2024

Plan


93.9m
Track
Selehurst
Garden
HATCHED AREA
DENOTES COTTAGE
SD
LONG HILL
SITE BLOCK PLAN (1:500)
0m
50m