Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:

DC/24/0882
Land Parcel at 518747 128789, Sedgwick Lane, Horsham, West Sussex,

DESCRIPTION:

Application to confirm the completion of the Tree House, linking bridge and nature viewing platform, on 27/07/2019 (Lawful Development Certificate - Existing)

RELEVANT PLANNING HISTORY:

DC/19/1500	Prior notification for the erection of a steel framed extension to an existing agricultural building (DC/16/1055), constructed of cement fibre roof, concrete panel walls to rear and side with timber cladding to rear and gable end.	Prior Approval Not Required on 19.08.2019.
DC/22/1207	Retrospective application for the erection of a tree house with linked bridge to nature viewing platform.	Application Refused on 17.04.2024.

SITE LOCATION & APPLICATION DESCRIPTION

The application site comprises a wooded area belonging to Top Paddock Farm towards the west of the main farm complex. The site is surrounded by fields and sits within a wooded area. The site is not within a conservation area and there are no Article 4 Directions covering the site.

PLANNING ASSESSMENT

The application seeks a Certificate of Lawful Development to confirm the substantial completion of a tree house, linking bridge, and nature viewing platform in 2019, with this being in situ for more than 4 years prior to the date of the application.

The tree house, linking bridge and viewing platform were erected without planning permission, with a retrospective planning permission submitted in 2022 and subsequently refused in 2024. The reason for the refusal was due to the following:

The development fails to enhance the setting of the ancient woodland area and have resulted in the erosion of the landscape character of the locality, adding a domestic form of development within this wooded area which is outside of the residential curtilage of the main dwelling. The proposal dilutes the landscape character of the ancient woodland and cumulatively leads to an increase in the level of activity within the undeveloped, open countryside location. The works are therefore contrary to policies 25, 26, 30, 32 and 33 of the Horsham District Planning Framework (2015).

The current application seeks to evidence that the tree house, linking bridge, and viewing platform have been in situ and substantially completed for a period in excess of 4 years, where the development has become immune from enforcement action and planning permission is not therefore required.

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 evidence submitted:

- *Location Plan (1:2500)*

- *Statutory declaration*

  Owner of the land which forms part of Top Paddock Farm. Planning Application DC/22/1207 was submitted to regularise the works, this was refused. Commencement of the construction of the tree house, linking bridge and nature viewing platform started in February 2018. The Council's compliance team visited in April 2022 when the development had been in place for around 2.5 years.

- *EXHB BR1 – Location Plan*

- *EXHB BR2 – Plan of tree house with linked bridge to nature viewing platform.*

- *EXHB BR3 – Receipts/Invoices for associated materials.*
  Invoice 1 - dated 11/05/2017.
  Invoice 2 - dated 05/05/2017.
  Invoice 3 - dated 21/05/2018.
  Invoice 4 - dated 22/02/2018.
  Invoice 5 - dated 20/01/2017.

- *EXHB BR4 – Photographs of the tree house, linked bridge and nature viewing platform.*
  Photo 1 dated 09.03.2019.
  Photo 2 dated 15.04.2019.
  Photo 3 dated 30.08.2019.
  Photo 4 dated 27.07.2019.
  Photo 5 dated 27.07.2019.
  Photo 6 dated 27.07.2019.
  Photo 7 dated 27.07.2019.
  Photo 8 dated 02.05.2020.
  Photo 9 dated 02.05.2020.
  Photo 10 dated 02.05.2020.
  Photo 11 dated 02.05.2020.

Council's evidence:

- *Aerial Photographs dated 2001, 2007, 2012, and 2018*

- *Google Earth images*

- *Compliance consultation response*

- *Planning Application DC/22/1207*

  A site visit was undertaken by the case officer in July 2022, with site photographs attached to the application.

- *Questionnaire response from Oakdean*

- *Consultation response from Watermill barn*

The application contends that the evidence submitted shows that the tree house, linking bridge and nature viewing platform has been substantially completed for a period of 4 years since 27th July 2019.

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 Gabbitas 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".

The site visits from both the Council's Compliance team in April 2022 and a Planning Officer in July 2022 confirm that the structure was fully complete and in situ on those dates, where application ref; DC/22/1207 sought to regularise the works. The onus is therefore on the applicant to prove that the structure has been in place for at least 2 years prior to these visits.

Invoices and receipts of materials dated from 2017-2018 have been provided, with the statutory declaration from the applicant stating that works commenced in February 2018. Photographs provided by the applicant from 2019-2020 evidence that the tree house, linking bridge and viewing platform were in place or under construction on those dates. Photographs from March 2019 and April 2019 shows the steel framing and timber boarding as laid and the structure under construction. Further photographs from July 2019 show the structure substantially completed. Additional photographs from May 2020 show the structure fully complete and in situ. The photographs evidence that the structure was substantially completed by May 2020, which is 4 years prior to the date of this application.

On the basis of the available information, it has been demonstrated, on the balance of probability, that the tree house, linking bridge and nature viewing platform has been substantially completed for a period in excess of 4 years prior to the date of the application. A certificate of lawfulness should therefore be granted.

Recommendation: Application Permitted

Conditions:

1 It has been demonstrated, on the balance of probability, that the tree house, linking bridge and nature viewing platform, as shown outlined in red on the attached plan, have been substantially completed for a period in excess of 4 years prior to the date of this application.

DELEGATED

Case Officer sign/initial Bethan Tinning Date: 25.07.2024

Authorising Officer sign/initial Tamara Dale Date: 07.08.2024

