Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:
DC/25/0329
Violets Barn, Guildford Road, Slinfold, West Sussex, RH13 0RA

DESCRIPTION:
Application to confirm the extension of land as residential garden in excess of 10 years (Lawful Development Certificate Existing)

RELEVANT PLANNING HISTORY:

DC/20/2594	Construction of a 3No. bay garage with a first floor above.	Application 05.03.2021	Permitted	on
DC/10/1466	Conversion of attached stables and store to habitable space, internal and external alterations	Application 05.10.2010	Permitted	on
DC/08/1864	Occupation of barn as a single dwellinghouse since 1992 (Certificate of Lawful Use - Existing)	Application 30.09.2008	Permitted	on

ASSESSMENT

The application relates to the confirmation of the extension of land as residential garden to the west of the dwellinghouse at Violets Barn in excess of 10 years (Lawful Development Certificate – Existing)

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 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 –*

(a) in the case of a breach of planning control in England, ten 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 –

(a) in the case of a breach in planning control in England, ten 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.'

The Planning Practice Guidance (PPG) on Lawful Development Certificates 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 form 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 S.191(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

Applicant's Evidence

- Location Plan at 1:1250
- Location Plan showing highway access at 1:5000
- 2 x legal declarations from owners of the property, Mr and Mrs Gordon

Council's Evidence

- Lawful Development Certificate application DC/08/1864
- Planning application DC/10/1466
- Planning application DC/20/2594
- Consultation Response: Horsham District Council – Democratic Services
- Consultation Response: Slinfold Parish Council
- 2x Lawful Development Questionnaires
- Google Earth Aerial Satellite Images (06.06.2013, 26.09.2018)
- Council Aerial Photography (2007, 2012, 2018)
- ESRI World Imagery (20.02.2014, 25.10.2016, 30.10.2019)

Planning History

Violets Barn was partly converted in the 1960s for staff accommodation and was later converted into an individual residential unit. The lawful use of Violets Barn as an independent dwellinghouse has been approved under Lawful Development Certificate ref: DC/08/1864 in 2008.

A further planning application in 2010, ref: DC/10/1466, was submitted for the conversion of stables and store attached to the dwellinghouse of Violets Barn to two guest annex accommodations ancillary to the main dwelling, with condition 3 of the planning consent restricting the uses of the annex solely for purposes ancillary to the occupation and enjoyment of Violets Barn as a dwelling.

Planning application for a 3-bay garage with a first-floor home office above have also been permitted in 2021 under ref: DC/20/2594.

Discussion

There is no record of a planning application for the change of use of land to incorporate parts of the agricultural paddock west of the dwellinghouse at Violets Barn to a domestic garden. This application is to confirm the extension of garden land to parts of the agricultural paddock west of the dwellinghouse of Violets Barn as residential garden for the period in excess of 10 years (Lawful Development Certificate - Existing).

<u>Existing Use of the Field West of Violets Barn</u>

The applicant has submitted location plans as part of this application with the red line boundary indicating the area of land currently converted into a residential garden as part of the curtilage of Violets Barn. Through reviewing aerial images of Horsham District Council from 2018, Google Earth from 26 September 2018, and ESRI World Imagery from 30 October 2019, it is confirmed that physical boundaries, i.e., fencing has been removed between the original rear garden of Violets Barn, and the

enclosed field west of the dwelling, with what appears to be football goal posts identified, as well as an outbuilding with an unknown use.

In addition, the location plan of previous planning consent DC/20/2594 shows that the enclosed field to the west of Violets Barn have been incorporated into the curtilage of Violets Barn.

It has therefore been demonstrated that the enclosed field has been incorporated and used as part of the residential garden and curtilage of Violets Barn since at least 2018.

Duration of Use of Field West of Violets Barn as a Residential Garden

This Lawful Development Certificate was validated on 4 March 2025. Evidence must therefore be available showing the enclosed field west of the dwellinghouse at Violets Barn was incorporated as a residential garden in association with the dwellinghouse on or before ten years prior to the above date, 4 March 2015.

According to the legal declarations of the owners of the property, Mr and Mrs Gordon, the land at Violets Barn have been purchased by them in 2009. According to the declarations, the paddock to the west of the dwelling was fenced off with timber fencing in March 2010 to extend the garden area of the dwellinghouse, which has been of a continuous use since.

Two Lawful Development Questionnaires were sent to neighbours of Violets Barn, with both completed and returned to the Department.

One of the completed Lawful Development Questionnaires states that the property was sold to Mr and Mrs Gordon in 2010, and parts of the paddock west of Violets Barn was fenced more than ten years ago. The Council's Democratic Services also confirms that Mr and Mrs Gordon have been on the electoral register at Violets Barn since 2011.

Aerial images from Horsham District Council taken in 2012, Google Earth images taken on 6 June 2013, and satellite images available on ESRI World Imagery taken on 20 February 2014 show that the paddock to the west of Violets Barn have been enclosed for a period in excess of ten years. A small building was also identified on the south-eastern corner of the enclosed field, which appears similar to that identified on Horsham District Council's 2018 aerial image. However, its use remains unknown.

Despite proof that the paddock west of Violets Barn has been enclosed from the rest of the agricultural land to the north and west of the site with evidence of lawn mowing, according to available aerial images, the relevant paddock was fully enclosed. Physical boundaries, i.e., fencing, were still present between the paddock and the curtilage of the dwellinghouse at Violets Barn. This shows that despite a separation from the rest of the agricultural land on site, the enclosed paddock remained physically separate and enclosed from the curtilage and garden of the dwellinghouse at Violets Barn.

No aerial image from 2015 was available. The earliest available aerial image of the enclosed paddock being incorporated into the curtilage of the dwellinghouse of Violets Barn was in 2018 through aerial images from Horsham District Council and Google Earth, when parts of the fencing separating the enclosed paddock and the rear garden of the dwellinghouse were removed. Aerial image taken on 25 October 2016 available on ESRI World Imagery still shows that the paddock to the west of Violets Barn was still fully enclosed from the agricultural paddock adjacent and the curtilage of the dwelling.

Additionally, apart from legal declarations, no photos or any other forms of evidence were provided by the applicant to demonstrate that the enclosed paddock west of the dwellinghouse of Violets Barn have been used as a garden for a period in excess of ten years.

Furthermore, despite one of the completed Lawful Development Questionnaires confirming that "fence alterations" were carried out more than ten years ago, no information was provided as to whether such enclosed area was used as a domestic garden for more than ten years.

The second completed Lawful Development Questionnaire does not confirm nor dismiss that the paddock to the west of Violets Barn is being used as a domestic garden in excess of ten years.

With physical boundaries between the enclosed paddock and the dwellinghouse not removed until less than ten years ago, the relevant land is not considered to be part of the curtilage of the dwellinghouse of Violets Barn for a period in excess of ten years.

Conclusion

There is sufficient evidence showing parts of the agricultural land to the west of the dwellinghouse at Violets Barn have been enclosed from the rest of the agricultural land on site for a period in excess of ten years. However, according to available aerial images, such land was fully enclosed, with clear physical boundaries separating the enclosed land and the curtilage of the dwellinghouse.

Moreover, the applicant has failed to demonstrate that such enclosed area has been used as a residential garden in associated with the dwellinghouse, and the Council also has no additional evidence proving such land has been used as a residential garden for more than ten years.

On the basis of available evidence from both the applicant and the Council, it has not been demonstrated that the residential garden of Violets Barn has been extended to parts of the agricultural land to the west of the dwellinghouse for a period in excess of ten years. The Certificate of Lawfulness of Existing Use cannot therefore be approved on this basis.

Recommendation: Application Refused

1 It has not been sufficiently demonstrated on the balance of probabilities that the fenced paddock to the west of the dwellinghouse at Violets Barn have been used as residential garden land in association with that dwelling for a period in excess of ten years from the date of this application.

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

Plan Type	Description	Drawing Number	Received Date
Supporting Docs	Affidavit C Gordon	none	04.03.2025
Supporting Docs	Affidavit M Gordon	none	04.03.2025
Location plan	Location Plan	none	18.03.2025
Location plan	Highway Access	none	18.03.2025

DELEGATED

Case Officer sign/initial Joshua Lee Date: 24.04.2025

Authorising Officer sign/initial RHERMITAGE Date: 29.04.2025