Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:

DC/25/0838
Violets Barn, Guildford Road, Slinfold, West Sussex, RH13 0RA

DESCRIPTION:

Application to confirm the change of use of land to form and extend the residential garden for a period in excess of ten years. (Lawful Development Certificate - Existing).

RELEVANT PLANNING HISTORY:

DC/20/2594	Construction of a 3No. bay garage with a first floor above.	Application Permitted on 05.03.2021
DC/25/0329	Application to confirm the extension of land as residential garden in excess of 10 years (Lawful Development Certificate Existing)	Application Refused on 29.04.2025
DC/10/1466	Conversion of attached stables and store to habitable space, internal and external alterations	Application Permitted on 05.10.2010
DC/08/1864	Occupation of barn as a single dwellinghouse since 1992 (Certificate of Lawful Use - Existing)	Application Permitted on 30.09.2008

ASSESSMENT

This 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 is 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
- Two legal declarations from the owners of the property, Mr and Mrs Gordon
- Appendix A – Photos of the site from 2011.
- An invoice from LR Consultancy – dated 24th November 2011
- An invoice from L Rodway – dated 24th November 2011
- A letter from L Rodway – dated 08th July 2011

Council's Evidence

- Lawful Development Certificate (Existing), reference DC/08/1864
- Planning Application, reference DC/10/1466
- Planning Application, reference DC/20/2594
- Lawful Development Certificate (Existing), reference DC/25/0329
- Consultation Response: HDC's Democratic Services
- Consultation Response: HDC's Revenues and Benefits Service Department
- Slinfold Parish Council
- A Lawful Development Questionnaire
- Google Earth Aerial Satellite Images (2005, 2012, 2013, 2018, 2020, 2021, 2022, 2024, 2025)
- Council's Aerial Photographs (2012, 2018)
- ESRI World Imagery (2011, 2013, 2018, 2020, 2023)

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 was 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 was also permitted in 2021 under ref: DC/20/2594.

Assessment of Evidence

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.
A previous linked Lawful Development Certificate (Existing), reference DC/25/0329, regarding the same description of this application, was refused on the 29th April 2025. Whilst this application agreed that it had been demonstrated that the enclosed field had been incorporated and used as part of the

residential garden and curtilage of Violets Barn since at least 2018, the application was refused as insufficient evidence had been submitted demonstrating this has occurred in excess of ten years.

This application, DC/25/0838, is essentially a resubmission of the previous application, with further evidence having been submitted.

Assessment of Evidence

Existing use

Aerial imagery provides clear evidence that the site in question has been used as residential garden land since at least 2018. This is supported by:

- A Google Earth Image dated 26th September 2018
- An image from HDC's Internal Mapping System, dated 2018
- An ESRI World Image photograph, dated 5th May 2018.

These images confirm that the physical boundary separating the original rear garden of Violets Barn from the enclosed paddock to the west have been removed by that time. Additionally, what appear to be football goals are visible within the area and remain present in the subsequent images.

In light of this, the same conclusion is reached as in the previous application, (DC/25/0329): there is evidence before the Council that confirms the enclosed field has been used as residential garden land, since at least 2018.

Duration of use

It is necessary for the applicant to demonstrate that the site in question has been used as residential garden land for in excess of ten years.

As part of this application, two legal declarations have been submitted by the owners, Mr and Mrs Gordon. They confirm that they purchased Violets Barn in 2009 and, in March 2010, extended the garden by fencing off a portion of the adjacent agricultural field to create additional space for their children. They state that this area has been maintained continuously since then, primarily through regular mowing.

A Lawful Development Certificate Questionnaire has been returned by the occupants of Violets Farm, who moved in during 2022. They confirm that the land has been used for typical garden activities since their arrival and that such use has had no adverse impact on them. They raise no objections to the application.

Under the previous application (DC/25/0329), the owners of the adjoining property, Carlines of Violets Farm, submitted a further questionnaire. This questionnaire confirmed that the fencing alterations were made more than ten years ago, but no further information was provided about this.

Aerial Imagery from as early as October 2011 (ESRI Image) shows that the paddock had been fenced off from the surrounding agricultural land to the north and west. This fencing remains visible in all subsequent images. The applicants also state that the boundary fence between the paddock and Violets Barn was removed in 2011. Two photographs showing the partial removal of this fence, which appears to coincide with building works on the main house under planning permission DC/10/1466, have been provided within Appendix A. Although the photographs are not date and time stamped, a 2011 Building Control record confirms inspections were carried out during that period, and this is also supported by the supporting document submitted, namely building invoices.

However, aerial images seem to disprove the account above in part, in that the fence between Violets Barn and the paddock was reinstated following the completion of the building works. This is confirmed by a Google Earth image dated September 2012, which shows the two areas as physically separated.

This physical separation remains in the June 2013 Google Earth image and the August 2013 Google Earth image. There is no available imagery from 2014 to September 2018, where the Google Earth image dated August 2018 shows the fence partially removed. No aerial images are available for 2015. Notwithstanding this, it is evident that the full extent of the fence line was in situ until August 2013.

The 2018 image shows that the fence had again been partially removed, and football goals are now visible within the paddock. Aside from the legal declarations, no additional photographic or documentary evidence has been submitted to demonstrate that the paddock was used as garden land prior to 2018.

There is ambiguity with regard to the period of time the area has been used for residential purposes. Due to the time gaps with the evidence, the information available is not sufficiently precise to determine on the balance of probability that the area of land has been used for residential purposes for a period in excess of 10 years.

Conclusion

There is sufficient evidence to confirm that parts of the agricultural land to the west of Violets Barn have been enclosed from the wider agricultural holding for more than ten years. While it is recognised that there are gaps within the aerial photographs, no further evidence through dated photographs etc, have been provided to demonstrate that the land was not physically separate from the garden land on dates between 2013 and 2018. As such, there is some ambiguity with the period of time that the fencing has been removed, where limited reference has been made to this in the Statutory Declarations.

Furthermore, the applicant has not provided adequate evidence to demonstrate that the enclosed land has been used as a residential garden in association with the dwellinghouse for a continuous period exceeding ten years. The Council also holds no additional evidence to support such a claim.

The evidence is sufficiently ambiguous and imprecise to draw into question the period of time during which the land has been used as a residential garden associated with Violets Barn. It has not therefore been demonstrated on the balance of probability that the residential garden of Violets Barn has extended into the adjacent land for the required ten-year period. As such, the application for a Certificate of Lawfulness of Existing Use cannot be approved.

Recommendation: Application Refused

Reason(s) for Refusal:

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 has 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.

Plans list for: DC/25/0838
(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	Photos	Appendix A	20.05.2025
Location plan		NONE	20.05.2025
Supporting Docs	Affidavit - M Gordon	NONE	20.05.2025

Supporting Docs	Affidavit - C Gordon	NONE	20.05.2025
Supporting Docs	Building Invoices	NONE	20.05.2025
Supporting Docs	Rodway - Building Manager Letter	NONE	20.05.2025

DELEGATED

Case Officer sign/initial Sam Nye Date: 14/07/2025

Authorising Officer sign/initial Tamara Dale Date: 15/07/2025