Warren Wood
Hammerpond Road
Plummers Plain

Certificate of Lawful Existing Use or Development Statement
0466

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1. Introduction

1.1 This is an application for a certificate of lawfulness of proposed use or development ('***COLPUD***') for the installation of a forestry office and water facilities using fixtures and fittings as shown on accompanying plans to act as toilet, washing and kitchenette facilities ('***the proposal***') at Warren Wood, Hammerpond Road, RH13 6PE ('***the site***'). The applicant is Mr Cook ('***the Applicant***'). The local planning authority is Horsham District Council ('***the Council***'). The proposal does not constitute development for the purposes of the Town and Country Planning Act 1990 ('***the 1990 Act***') and therefore planning permission is not required. Certification of the lawfulness of the proposal is requested.

2. Background

The site

2.1 The application site is located to the north of Hammerpond Road, outside of any defined built-up area boundary. The site is therefore located within a countryside location in policy terms. The site is set back from the public highway and is accessed via a private drive that extends to approximately 270m. The site has been cleared and is surrounded by mature trees and vegetation, and comprises relatively level ground, albeit that it drops to the north. The wider area is characterised by open countryside with sporadic residential development positioned in closer proximity to the road. Application DC/23/1443 was approved granting retrospective permission for erection of a forestry drying and processing barn ('***the Permission***').

2.2 Forestry is undertaken on the land, pursuant to a Woodland Management Plan and Felling Licence approved by the Forestry Commission in March 2020. A large proportion of the timber removed is processed on site for charcoal, bulk and bagged sawn firewood, chip wood and dried oak beams, with felled wood also brought from off-site and processed at the site. Furniture and other wood products are also to be made on-site. A steel barn is also located on the site which is used in connection with the forestry business, and this is used for the drying of timber, storage of equipment, and staff welfare facilities.

3. Legal and policy basis

Meaning of development

3.1 Section 55 of the 1990 Act concerns the meaning of "***development***" and "***new development***". It provides as follows in relevant part (with emphasis added):

"*(1) 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.*

(1A) For the purposes of this Act "building operations" includes—

(a) demolition of buildings;

(b) rebuilding;

(c) structural alterations of or additions to buildings; and

(d) other operations normally undertaken by a person carrying on business as a builder.

(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

(a) the carrying out for the maintenance, improvement or other alteration of any building of works which—

(i) affect only the interior of the building, or

(ii) do not materially affect the external appearance of the building,

and are not works for making good war damage or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground…

[…]

(e) *the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used…*"

Material change of use

3.2 Not every change in the use of land or buildings is development, only those which are "material". This is a matter of fact and degree, to be assessed on a case-by-case basis in all the circumstances. The Planning Practice Guidance states (emphasis added):

"*When does a change of use require planning permission?*

A change of use of land or buildings requires planning permission if it constitutes a material change of use. There is no statutory definition of 'material change of use'; however, it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of a case.

If planning permission is required for change of use, there may be permitted development rights which allow change of use without having to make a planning application.

Paragraph: 011 Reference ID: 13-011-20140306

Revision date: 06 03 2014

[…]

Do I need planning permission to home work or run a business from home?

Planning permission will not normally be required to home work or run a business from home, provided that home working or a business use is incidental to the use as a dwellinghouse. The local planning authority must consider whether any purposes to which it is put are reasonably incidental to its use as a dwellinghouse. Where such uses result in a material change of use of a dwellinghouse, planning permission will be required. Whether a material change of use has taken place, or will take place, is a matter of fact and degree and this will be determined on the individual merits of a case.

When determining whether a material change of use has occurred, or will occur, a local planning authority must consider whether home working or a business has led, or will lead, to a notable change in the character of the property's use. Environmental impacts may be used to indicate a notable change of character of the property, for example: increase in traffic and parking, disturbance to neighbours caused by regular or the number or timing of, visitors or deliveries, abnormal noise or smells, or the need for any major structural changes or major renovations.

Paragraph: 014 Reference ID: 13-014-20230726

Revision date: 26 07 2023"

Ancillary/incidental

3.3 The main or primary use of land will include such uses or purposes as are ancillary or incidental to the primary use. The pursuit of such uses will not involve development. An example is the operation of a non-residents' bar in a hotel, provided the bar can be regarded as incidental to the main hotel use *Emma Hotels v Secretary of State for the Environment* (1980) 41 P. & C.R. 255; [1981] J.P.L. 283. Another would be the Inspector's decision in *Dr Jyoti Narayan Ray v Medway Council* [2015] J.P.L. 387 where a pharmacy was ancillary to the primary doctor's surgery use of the building. Both the nature and scale of a use are relevant to deciding whether it should be regarded as ancillary or incidental to the main use. For example, use as a farm will include the maintenance and repair of vehicles and implements used on the farm, but not the repair of vehicles and implements from outside. Similarly, the sale of farm produce can be regarded as ancillary to agricultural use, whereas the sale of imported produce cannot (see *Allen v Secretary of State for the Environment* [1990] J.P.L. 340). Intensification of the ancillary use can also lead to the conclusion that it has become more than simply ancillary and that consequently a material change of use has taken place. The result of such a change may be that a dual or mixed use has come into being (*Trio Thames Ltd v Secretary of State for the Environment and Reading BC* [1984] J.P.L. 183). An ancillary use is not a use in itself but is "parasitic" on the main use concerned. [1]

3.4 In *R (on the application of Dean Fewings) v The Secretary of State for Communities and Local Government* [2008] EWHC 2401 (Admin), Ouseley J stated:

1 Sweet & Maxwell's Planning Law: Practice & Precedents, 2.10.

"*21. I turn briefly to the question of relative scale and the decision in… All parties accept that uses ancillary to agriculture can include the buying, sale and repair of agricultural machinery to be used on that agricultural holding, or for residential related uses, including for the purposes of cannibalising a vehicle for its spares for use in agricultural equipment to be used on the farm, and the subsequent sale of the scrap can also fall within the scope of an ancillary use. If buying and selling agricultural plant and machinery is an independent use and more than de minimis, that will involve a material change in the use of land. The test for whether something is an ancillary use is not simply and solely whether it is relatively small in relation to the other uses. A use can be relatively small, but nonetheless an independent use giving rise to a material change. But scale is relevant to the question of whether a use is de minimis or a material change of use judged by reference to the planning unit, and is relevant to what is the primary use or an ancillary use which is part of that primary use. I do not see in what the Inspector has actually said any passage which shows an error of law, principle or approach in that respect. Suggestions to the contrary I found quite unpersuasive.*

24. …It was open to her to take the view, as it is clear that she has done, that insofar as the vehicles on site were not ancillary to agriculture because of their use in relation to the farm, that the level at which the business was carried out was de minimis, that is to say, so small that it did not give rise to any material change of use."

3.5 In *Sage v Secretary of State for Housing, Local Government and Communities [2021] EWHC 2885* (Admin), Ouseley J stated at paragraph 82 that (emphasis added): "***The crucial test is whether there has been change in the character of the use.***"

4. Planning Assessment

Office

4.1 The proposed office will only require internal alterations to the building and will not require any external alterations to the building. It therefore falls within the exception set out at s55(2)(a) of the 1990 Act and would not comprise operational development.

4.2 Neither would the proposed office amount to a material change of use such as to trigger a requirement for planning permission in light of the case law set out above. The proposed office would remain ancillary and incidental to the primary use for forestry drying and processing and therefore would not constitute development. The office is for use in connection with the surrounding forestry estate. The office use would not be of a scale that would cause a dual or mixed use would come into being, and it cannot be said that there would be a change in the character of the use of the planning unit. The situation is analagous to that dealt with in the PPG set out above, where planning permission will not normally be required to home work or run a business from home, provided that home working or a business use is incidental to the use as a dwellinghouse. Likewise, in this case, the office use will remain reasonably incidental to the forestry barn use and will not change its overall character. It is also analogous to the situation in Fewings above, where the court endorsed the inspector's decision that the secondary use remained de minimis and ancillary and incidental to the agricultural use.

4.3 As an ancillary and incidental use to the primary use, and therefore part of the overall forestry use, the proposal would also fall within the ambit of s55(2)(e) of the 1990 Act.

Water neutrality

4.4 The installation of water supply to the building, and associated internal fixtures and fittings, is not restricted or controlled by planning condition and is not development as it falls within the exception at s55(2)(a) of the 1990 Act as discussed above. Consequently, water neutrality requirements also do not apply, as these 'bite' on "development".

4.5 It is important to take note of the fact that planning permission DC/23/1443 was not subject to any covenanted controls on water usage by reason of a s.106 agreement. Nor did the decision include any restrictive planning conditions.

5. Conclusion

5.1 The proposal does not constitute development as set out above and therefore planning permission is not required. There are no controls on the development preventing connection to the exisitng mains supply on site nor installation of an office and toilet facilities. The propsal is therefore lawful. Confirmation of the lawfulness of

the proposal is requested as described below:

Use of part of the barn as a forestry estate office, installation of a kitchenette and bathroom are not development within section 55 of the 1990 Act and no conditions or legal agreements prevent connection of the barn to mains water.