DMH Stallard

Planning Supporting Statement

Lawful Development Certificate (existing)

The Bothy, Waterperry House, Frylands Lane, Wineham

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Lawful Development Certificate (existing) for the use of The Bothy as a separate residential unit and operational development to provide a first floor to accommodate the residential use of the building

at Waterperry House, Frylands Lane, Wineham

Planning Supporting Statement

on Behalf of

Mr R. Chatterton-Sim

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1. Introduction

1.1 This statement is submitted in support of the Lawful Development Certificate (LDC) for the Existing Use of The Bothy at Waterperry House as a separate and independent residential unit and the operational development that has been undertaken to accommodate the residential use of the building.

1.2 The Bothy has all the facilities for day to day living and is therefore capable of being occupied on a self-contained basis.

1.3 This application seeks to obtain a LDC as legal confirmation that the dwelling shown on the accompanying plan now lawfully operates as a separate self-contained residential unit on account of its continued use as such for more than 4 years.

1.4 This statement sets out a brief history of the property and the background, and then addresses the legal basis for the application and the lawfulness of the use. It is considered that the evidence submitted demonstrates that the use of the residential use of the building is lawful as it has been operating continuously in this use for over 4-years, which is the qualifying period as set out by Section 171b of The Town and Country Planning Act 1990.

1.5 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 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."*

2. The Site and Surroundings

2.1 The Bothy is a detached property located in a rural location. The site is broadly located to the east of Frylands Lane. The site is generally surrounded by open fields with sporadic detached dwellings located on Frylands Lane. The site is detailed on the aerial map outlined in red below.



Approximate site location shown outlined in red – map courtesy of Google Maps

2.2 The site is located within the parish of Shermanbury, which is a parish of predominantly rural nature, but the site benefits from being in close proximity to neighbouring villages such as Henfield and Partridge Green which are some of the more sustainable settlements in the District, and the associated facilities and services within these settlements.

3. Site History & Background

Relevant Planning History

3.1 DC/16/0840 – A certificate of Lawful Development (proposed) was permitted in May 2016 for the demolition of ancillary buildings to north of dwelling and erection of single-storey ancillary building.

3.2 DM/17/1763 – Planning permission was granted in October 2017 for a retrospective application for the erection of a stable block and construction of a sand school.

Background to the proposal

3.3 The applicant has provided a Statutory Declaration at Appendix A in support of this LDC which sets out the background of the LDC.

3.4 The applicant purchased the property in November 2013. In April 2016 the applicant applied for a Lawful Development Certificate (proposed) to demolish the two existing outbuildings on site and replace these with a larger L-shaped outbuilding. This LDC (set out in paragraph 3.1 above) was approved in May 2016. However, the applicant did not implement this permission.

3.5 The applicant then undertook repair works to the roof of The Bothy in 2017 and built a first floor as part of the works. The works to construct a first floor were completed in June 2017 and the applicant subsequently undertook the fitting out of the kitchen and bathroom at the Site.

3.6 From July 2018 to the present day the Annexe has been rented out and occupied by one individual, Mr C. Lewis. He has provided a Statutory Declaration confirming his occupation of the property and this has been submitted at Appendix B in support of the LDC.

3.7 No gaps in the tenancy of The Bothy have occurred during this period

3.8 The Bothy comprises of an access, kitchen and living room on the ground floor, and a bedroom and bathroom on the first floor. The Bothy also has a separate parking area, and small garden.

3.9 The Bothy clearly has its own facilities and does not share any functional relationship or physical link with the main dwelling or the occupiers of Waterperry House.

3.10 Given the facilities afforded to the property, the building cannot be considered to be an annexe, and is in fact a separate dwelling.

3.11 The Bothy shares the same vehicular access onto Frylands Lane as Waterperry House, but The Bothy benefits from its own separate parking, and therefore does not share any of these facilities with the other dwelling on site.

4. Relevant Planning Policy

4.1 As this is an application for a LDC for an existing use, and for works to the building to install a first floor, consideration of the application is strictly limited to whether, "on the balance of probability" the use and work undertaken to the building is, or is not lawful. Therefore, such applications are not required to be considered against the policies of the Development Plan document. Furthermore, the planning merits of the LDC application cannot be taken into consideration.

4.2 In determining the LDC, the National Planning Practice Guidance provides that if a Local Planning Authority has no evidence itself, nor any 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 is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities.

Legal Background

4.3 Section 171b of the Town and Country Planning Act 1990 refers to situations where there has been a breach of planning control consisting in the carrying out without planning permission of building or other operations, and the change of use of any building to use as a single dwellinghouse, and this states that '*no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.*'

Summary of Evidence

4.4 The above-mentioned extracts provide the legal basis for this application and consequently we have provided the following evidence to demonstrate that the building has been used as a separate residential unit of accommodation for a period in excess of 4 years.

4.5 **Appendix** A: A signed statutory declaration by Mr Chatterton-Sim. This affidavit explains the circumstances around the use of this property and confirms that this has been occupied for residential purposes for over 4 years.

4.6 **Appendix B**: A signed statutory declaration by Mr C. Lewis which confirms their tenancy of The Bothy from 3rd July 2018 to the present day

Appendix C: Signed statutory declarations from friends and neighbours of applicant. All of which confirm knowledge of the residential use of The Bothy and the works that the applicant undertook to the building. Their details are as follow:

- Elizabeth Wassenaar
- Alfie Tighe
- Anna Perry (copy of Statutory Declaration to follow)

Appendix D: Photographs of the roof works being undertaken

Appendix E: Images taken from Google Earth in 2015 & 2018 which show the roof prior to the works and after works completed.

Appendix F: Itemised invoice from Howdens for the fitting of kitchen and bathroom at The Bothy.

Appendix G: Copies of redacted bank statements from the tenant Bothy which demonstrate withdrawals for payment of monthly rent.

Appendix H: Copy of Sky invoice addressed to C. Lewis at the Annex

5. Conclusions

5.1 We consider that the evidence submitted in support of the LDC is precise and unambiguous and sufficiently demonstrates, 'on the balance of probability', that the use of The Bothy as a separate residential dwelling is lawful given that it commenced in excess of 4 years preceding the date of the submission of the LDC application and has remained in continuous use thereafter. The use is therefore lawful by virtue of the time limits imposed by section 171b of the Town and Country Planning Act 1990.

5.2 It is our view that there are no overriding constraints to the proposal. The Bothy has its own facilities and is capable of and has been used as a separate residential unit for a significant amount of time.

5.3 We therefore consider that a Lawful Development Certificate should be issued for the existing use of The Bothy as a separate residential unit.