Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:

DC/24/0267
Hampshires Barn, Countryman Lane, Shipley, Horsham, West Sussex, RH13 8PZ

DESCRIPTION:

Application to confirm the continuous use of the Barn at Hampshires Farm for car storage, with sales online and by appointment only, for a period in excess of ten years (Lawful Development Certificate - Existing)

RELEVANT PLANNING HISTORY:

SP/30/90	Conversion of barn & outbuildings to residential unit & car port Site: Hampshire Barn Knepp Castle Est Shipley	Application Permitted on 12.12.1990
SP/35/95	Amendment on approval for carport to now become a triple garage Site: Hampshires Barn Shipley	Application Permitted on 10.10.1995
DC/24/0266	Retention of a resurfaced access track/hardstanding and a timber shed for use ancillary to the Hampshires Barn.	Pending Consideration

PLANNING ASSESSMENT

The application relates to a Lawful Development Certificate Existing to confirm the continuous use of the Barn at Hampshires Farm for car storage, with sales online and by appointment only, for a period in excess of ten years.

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."

Summary of Applicant's Evidence

- *Supporting Statement*

  The application site comprises a former agricultural barn the extent of which is edged in red on the submitted Location Plan. It is attached to two smaller former agricultural barns to both the western and eastern elevations, and is bound to the north and south by hardstanding. It is located within a complex of rural buildings which form part of Hampshires Farm which is within the ownership of Knepp Castle Estate. The building is currently in use by Anthony James Cars Ltd who specialise in luxury vehicles. The vehicles are store in the Barn and advertised for sale online for distribution once sold.

  The building has had two Tenants over the ten years prior to the date of the application. The details of these tenancies are set out within the Tenancy Agreements and corresponding Sworn

Statement of Jason Emrich who has been the Estate Manager for the Knepp Castle Estate since 2000.

- *Sworn Statement of Mr Jason Emrich*

  The Estate Manager for the Knepp Castle Estate since August 2000. Confirm that Hampshires Farm, Countryman Lane is owned by the Knepp Castle Estate and the Author has been responsible for managing the associated land and buildings on behalf of the Estate during his employment.

  The agricultural building edged in red on the Location Plan is part of Hampshires Farm and has been used continuously for over 10 years for the purposes set out below:

  Between 07.07.2013 and 05.11.2019 the building was let continuously to Mr Andrew Feeney. The building was used throughout this time for the storage of cars, for sale online and sales by appointment only. This is confirmed by the signed Tenancy Agreements between the period of 01.07.2013 and 05.11.2019.

  In May 2019, the Author pursued an enquiry from Daniel Hall at Anthony James Cars Ltd as it was felt that the company had more potential than Mr Feeney's. Mr Feenery's tenancy was not renewed at the end of its term and it was agreed that Anthony James Cars Ltd could take over the lease under the same use.

  Anthony James Cars Ltd needed the building weather and bird proof so renovation work and updates to drainage and barn floor were carried out prior to occupation in March 2020.

  Can confirm that since 01.03.2020 the building edged in red has been in continuous use to date by Anthony James Cars Limited for the storage of cars for sale, online and by appointment only.

- *Tenancy Agreement of Andrew Feeney dated 01.07.2013 (period of 6 months to 06.01.2014)*

  Refers to the use of the building for car storage only. Point 20 of Schedule Three of the Tenancy Agreement specifies that the premises will not be used for, among other things, any retail or wholesale trade.

- *Tenancy Agreement of Andrew Feeney dated undefined month 2014 (period of 1 year to* 06.01.2015)

  Refers to the use of the building for car storage only. Point 20 of Schedule Three of the Tenancy Agreement specifies that the premises will not be used for, among other things, any retail or wholesale trade.

- *Tenancy Agreement of Andrew Feeney dated 24.10.2014 (period of 1 year to 05.11.2015)*

  Refers to the use of the building for car storage only. Point 20 of Schedule Three of the Tenancy Agreement specifies that the premises will not be used for, among other things, any retail or wholesale trade.

- *Tenancy Agreement of Andrew Feeney dated 28.10.2015 (period of 1 year to 05.11.2016)*

  Refers to the use of the building for car storage only. Point 20 of Schedule Three of the Tenancy Agreement specifies that the premises will not be used for, among other things, any retail or wholesale trade.

- *Tenancy Agreement of Andrew Feeney dated 11.11.2016 (period of 1 year to 05.11.2017)*

  Refers to the use of the building for car storage only. Point 20 of Schedule Three of the Tenancy Agreement specifies that the premises will not be used for, among other things, any retail or wholesale trade.

- *Tenancy Agreement of Andrew Feeney dated 15.11.2017 (period of 1 year to 05.11.2018)*

  Refers to the use of the building for car storage only. Point 20 of Schedule Three of the Tenancy Agreement specifies that the premises will not be used for, among other things, any retail or wholesale trade.

- *Tenancy Agreement of Andrew Feeney dated 06.11.2018 (period of 1 year to 05.11.2019)*

  Refers to the use of the building for car storage only. Point 20 of Schedule Three of the Tenancy Agreement specifies that the premises will not be used for, among other things, any retail or wholesale trade.

- *Tenancy Agreement of Anthony James Cars Limited dated 07.04.2020 (period of 3 years from 01.03.2020)*

  Refers to the use of the building for the storage of prestige performance cars in association with the tenant's business. Point 20 of Schedule Three of the Tenancy Agreement specifies that the premises will not be used for, among other things, any retail or wholesale trade.

- *Tenancy Agreement of Anthony James Cars Limited dated 19.05.2023 (period of 3 years from 01.03.2023)*

  Refers to the use of the building for the storage of prestige performance cars in association with the tenant's business. Point 20 of Schedule Three of the Tenancy Agreement specifies that the premises will not be used for, among other things, any retail or wholesale trade.

Summary of Council's Evidence

- *Consultation response from HDC Elections*

  No details as the address is not residential

- *Response from Interested Parties*
  - Noise at unreasonable hours
  - Negative effect on area
  - Removal of hedging
  - Car sales has been running for several years
  - Impact on privacy
  - Between March 2018 and August 2021 the site was open 7 days a week with constant comings and goings of people and cars
  - The site and tenants have not been selling cars and operating continuously within the barn for in excess of 10 years
  - The previous tenant Andrew Feeney of AWF Car Sales said that the tenancy agreement stated in schedule 3.19 and 3.20 not to use the premises for any retail or wholesale trade
  - No evidence on HDC website for a change of use of the barn from agricultural to industrial use
  - Anthony James Cars Ltd have clauses in their tenancy agreement stating not to use the premises for any retail or wholesale trade and not to do at the premises anything which may interfere with or disturb or become a nuisance or annoyance to the landlord or to the owners tenants or occupiers of the estate or any adjoining or adjacent premises

Discussion

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."

F W Gabbitas v SSE and Newham LBC [1985] JPL 630 held that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the Local Planning Authority has no evidence of its 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 Sworn Statement of Mr Jason Emrich outlines that the building subject of the Certificate of Lawful Development was let out continuously to Mr Andrew Feeney between 07.07.2013 and 05.11.2019 for the

storage of cars for sale online and sales by appointment only. The Sworn Statement continues that Mr Andrew Feeney's tenancy was not extended at the end of it's term and Anthony James Cars Ltd took up the lease from Match 2020. Since 01.03.2020, the subject building has been used for the purposes of car storage for sales online and by appointment only by Anthony James Cars Ltd.

Copies of Tenancy Agreements between Knepp Castle Estate and Mr Andrew Feeney have been provided between 01.07.2013 and 05.11.2019. The Tenancy Agreements refer to the building being used for car storage only, with point 20 of Schedule Three of the document specifying that the premises will not be used for, among other things, any retail or wholesale trade.

Copies of Tenancy Agreements between Knepp Castle Estate and Anthony James Cars Ltd have been provided between 01.03.2020 and 01.03.2026. The Tenancy Agreements refer to the building being used for car storage only, with point 20 of Schedule Three of the document specifying that the premises will not be used for, among other things, any retail or wholesale trade.

While the Tenancy Agreements do suggest that the building was used for the purpose of car storage from 01.07.2013 to the present date, there is some ambiguity regarding the sales carried out from the building as suggested within the Sworn Statement. The Tenancy Agreements include an exclusion at point 20 of Schedule Three which specifies that no retail sales can take place from the premises. No evidence has been provided to demonstrate that car sales took place from the site, with no copies of receipts submitted. Based upon the evidence, there is some ambiguity with regard to retail sales taking place from the subject building between 01.07.2013 and present date, and it is considered that the application submission is insufficiently evidenced in this regard to demonstrate on the balance of probability that this has been carried out continuously for a period in excess of 10 years.

The description of the development to which the Certificate of Lawful Development relates also refers to sales by appointment only. The Tenancy Agreements submitted specify that retail sales cannot be undertaken from the building, and no evidence through receipts and appointment logs, have been submitted. Based upon the evidence available, it has not been demonstrated on the balance of probability that sales by appointment only have been carried out from the building for a continuous period in excess of 10 years.

Conclusion

It has been demonstrated on the balance of probability that the barn subject of the Certificate of Lawful Development Existing has been used for the purposes of car storage for a period in excess of 10 years from the date of the application.

However, insufficient evidence has been submitted to demonstrate on the balance of probability that sales online and by appointment have been conducted from the application site for a period in excess of 10 years from the date of the application.

Recommendation: Split Decision

Lawful:

1 It has been demonstrated on the balance of probability that the barn outlined in red on the attached plan has been used for car storage purposes only for a period in excess of 10 years from the date of the application.

Not Lawful

1 It has not been demonstrated on the balance of probability that the barn outlined in red on the attached plan has been used for the purposes of sales online and by appointment only for a period in excess of 10 years from the date of the application.

DELEGATED

Case Officer sign/initial Tamara Dale Date: 20.03.2024

Authorising Officer sign/initial Guy Everest Date: 12.04.2024