

Section '4' - Applications recommended for REFUSAL or DISAPPROVAL OF DETAILS

Application No : 12/03653/ELUD

Ward:
Chelsfield And Pratts
Bottom

Address : Cookham Farm Skeet Hill Lane
Orpington BR5 4HB

OS Grid Ref: E: 548838 N: 165519

Applicant : Mrs Sally Campbell

Objections : NO

Description of Development:

Use of land as a residential curtilage and use of outbuildings ancillary to main residential use. CERTIFICATE OF LAWFULNESS FOR AN EXISTING DEVELOPMENT.

Key designations:

Special Advertisement Control Area
Biggin Hill Safeguarding Birds
Biggin Hill Safeguarding Area
Green Belt
London City Airport Safeguarding

Proposal

The application seeks a legal determination as to whether the residential curtilage of Cookham Farm as shown on the submitted drawings is lawful and that the outbuildings within this area have been used for purposes ancillary to the existing dwelling for in excess of ten years continuously.

Location

The application site is located to the southern edge of Skeet Hill Lane and features a two storey detached dwelling.

Comments from Local Residents

Nearby owners/occupiers were notified of the application and no representations were received.

Comments from Consultees

Legal opinion has been sought, which has concluded that the certificate be refused as the evidence submitted by the applicant is insufficient to demonstrate a residential use within the area cited for ten years or more and that the boundary indicated fails the relevant legal tests.

Planning Considerations

The application is submitted under Section 191 (a) of the Town and Country Planning Act 1990 (as amended) and requires the Council to consider whether the the existing residential use of the land and associated buildings is lawful.

In determining whether the residential use of the land is lawful, and the use of the buildings within this as ancillary to the main dwelling, Section 171B (3) states that:

“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.”

As such it falls to be considered as to whether the use of the land in question for residential purposes has existed for a period of ten years or more, which for the purposes of this application is ten years prior to the date of submission, which is November 2002. Members should note that the onus is upon the applicant to provide sufficient evidence to demonstrate this to the Council’s satisfaction.

Planning History

Three lawful development certificates have previously been submitted, as follows:

12/02411 for the proposed development of a two storey rear extension, single storey side extension and porch to front elevation. This was refused on the grounds that:

“The proposed side and rear extensions do not constitute development within the curtilage of a dwellinghouse and are not development permitted under Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, (as amended).”

12/02418 for the proposed development of a single storey outbuilding for use as a gym and games room within the residential curtilage for purposes incidental to the enjoyment of the main dwelling. This was refused on the grounds that:

“The proposed outbuilding is located outside of the residential curtilage of the dwellinghouse and its size and proposed use go beyond that expected for an ancillary building and it is therefore not development permitted under Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, (as amended).”

12/02419 for the proposed use of an existing outbuilding to the eastern boundary as workshop, home office, bedroom, bathroom and storage ancillary to main dwelling. This was refused on the grounds that:

“The outbuilding is located outside of the residential curtilage of the dwellinghouse and does not constitute a use ancillary to the main dwelling.”

In relation to ref. 12/02419, enforcement action has been authorised and is being held in abeyance pending the outcome of this application.

Conclusions

Consideration is given to the requested determination in three parts:

Council Records

The residential curtilage is shown as being far bigger than that which is evident for the dwelling on any Ordnance Survey (O/S) maps or the Council's aerial photos. It is noted that the most recent of these from 2010 clearly shows a total absence of any enclosure or obvious boundary to the west of the site where the vegetable patches and fencing are now present. Indeed, in the Council's aerial photos of 2010, 2006, 2001 and 1998 there is a clear sign of increased vegetation around the boundary shown on the O/S map, creating a demarcation between the residential curtilage of the dwelling and the agricultural and commercial uses of the farm as a whole.

These photos also show, from 2006 and 2010, a large degree of what appears to be waste and/or building material to the southern and eastern edges of the now claimed residential curtilage, with a number of large vehicles also present in these and the 2001 photo. Although it is relatively unclear as to the precise nature of the use at this time, the available evidence shows that the use is not what would normally be considered residential.

This evidence, combined with the lack of any clear boundary for the curtilage other than for the intimate area around the dwelling leads to the conclusion that the residential use claimed within the area of land shown on the submitted plans has not been present for ten years. Therefore this area is not considered to form part of the residential curtilage of the dwelling.

Evidence Submitted

In support of the application, a number of statements have been submitted by the applicant consisting of those made by two neighbours (Mr Sparkes and Mr Wolfe), the applicant (Mrs Campbell and Mr Hollyoake) and the planning consultant acting as agent for this application (Mr Pete Hadley). In addition there is a condition survey report for the workshop to the eastern boundary and a delegated report dated 30th March 2009 for Hazeldene Skibbs Lane. Since this case must be determined on its own legal merits, other examples such as Hazeldene are of limited value.

Mr Sparkes is resident opposite the site and states that this has been the case for 25 years and has known various owners of Cookham Farm for 45 years. It is stated at paragraph 2 that the land in question has been neglected for the 20 years prior to the current ownership in 2011, with the site being repossessed in late 2010. The

land is stated as being residential in use with all of the building in residential use between 2003 and 2010. It is noted that none of the land annotated on the attached aerial photo is included within the claimed residential curtilage of this application. It is claimed that the land around the house was occupied by various cars in various states of disrepair and domestic rubbish, with the workshop building accommodating the previous owners hobby of repairing cars. Work is stated as being undertaken to this workshop to make it more suitable for residential purposes.

Mr Wolfe concurs with much of Mr Sparkes' statement, including that there was a large amount of abandoned vehicles and domestic waste to the land surrounding the property. In addition it is stated that Area 2 was also used to store scaffolding equipment. Again most of the areas annotated on the same attached aerial photo are not relevant to this application.

These two statements are not considered sufficient to establish the now claimed residential curtilage as such. The evidence does not provide any firm conclusion that the land in question was in use as residential curtilage. In addition to it failing the test of intimate association with the dwelling, the storing of large amounts of dilapidated vehicles, domestic waste and scaffolding is not considered to reflect what would be accepted as a residential use.

The statement from the applicants is only relevant to the period from June 2011 and as such does not establish any residential use for the ten years from 2002.

Mr Hadley's statement states that his firm was instructed in 2007 by the previous occupants to undertake an assessment of the development potential of Cookham Farm. It is stated that the storage of vehicles was present and that the residential curtilage was consistent with that now submitted. This statement supports the others in terms of the amount of waste on site. It is noted that this information is from a visit in 2007, which does not establish a ten year period.

The condition survey report was commissioned by Mr Hadley in November 2007 for the 'garage/workshop' and adjacent 'piggery buildings' to satisfy the Council that the building is capable of conversion to a residential unit. It is clearly stated at section 2.00 that the building comprised a garage and workshop, with internal office space. It is noted that no mention is made of any residential accommodation being present in the building and that, again, the date does not establish a use for a ten year period.

It is not considered that any of the evidence submitted establishes the residential curtilage as submitted for a period of ten years or more. In particular there does not appear to be any evidence dating back to 2002, and some of the evidence even points to potentially commercial uses, such as scaffolding storage.

Legal Test

Case law establishes that in order to establish different planning units within single units of occupation and different uses within a single planning unit, there must be a physical and functional separation. It is important to note that for there to be two

physically separate and distinct areas there must be substantially different and unrelated purposes. In effect the application seeks to establish the extent of the residential planning unit within the wider unit of occupation – Cookham Farm – by being for substantially different purposes to the rest of the site.

Although the land in question is within the same ownership as the wider site, it is not subject to any physical separation from the remainder of the land to which it forms part (e.g. it does not have a distinct curtilage or access). A fence has been erected within the last 18 months to the western edge of the claimed curtilage which is far short of the required ten years and to the south and south-east there is an absence of any form of physical distinction between one area and another. It should be noted that the only area where an obvious physical separation occurs is around the residential curtilage identified by the O/S map, where there is fencing and typical garden planting.

In terms of functional separation, it is considered that the garden area immediately adjacent to the dwelling as outlined on the O/S maps are obviously apparent as residential garden land, whilst the area being claimed beyond this is not distinct from the wider land within the holding and is occupied by what are obviously barns and other non-residential structures. For instance, to the south of the claimed curtilage there are two barns within very close proximity, with the northern building set within the claimed curtilage and the smaller southern one excluded, yet there is no obvious functional difference between the two, or that matter any physical separation. For the reasons stated above there is also no functional form of separation.

Conclusion

The Council contends that as a matter of fact and degree the area of land in question has not been in continuous residential use for a period of ten years for the reasons listed above. As such the certificate should be refused.

Background papers referred to during production of this report comprise all correspondence on files refs. 12/03653, 12/02411, 12/02418 and 12/02419, excluding exempt information.

RECOMMENDATION: THE EXISTING USE/DEVELOPMENT IS NOT LAWFUL

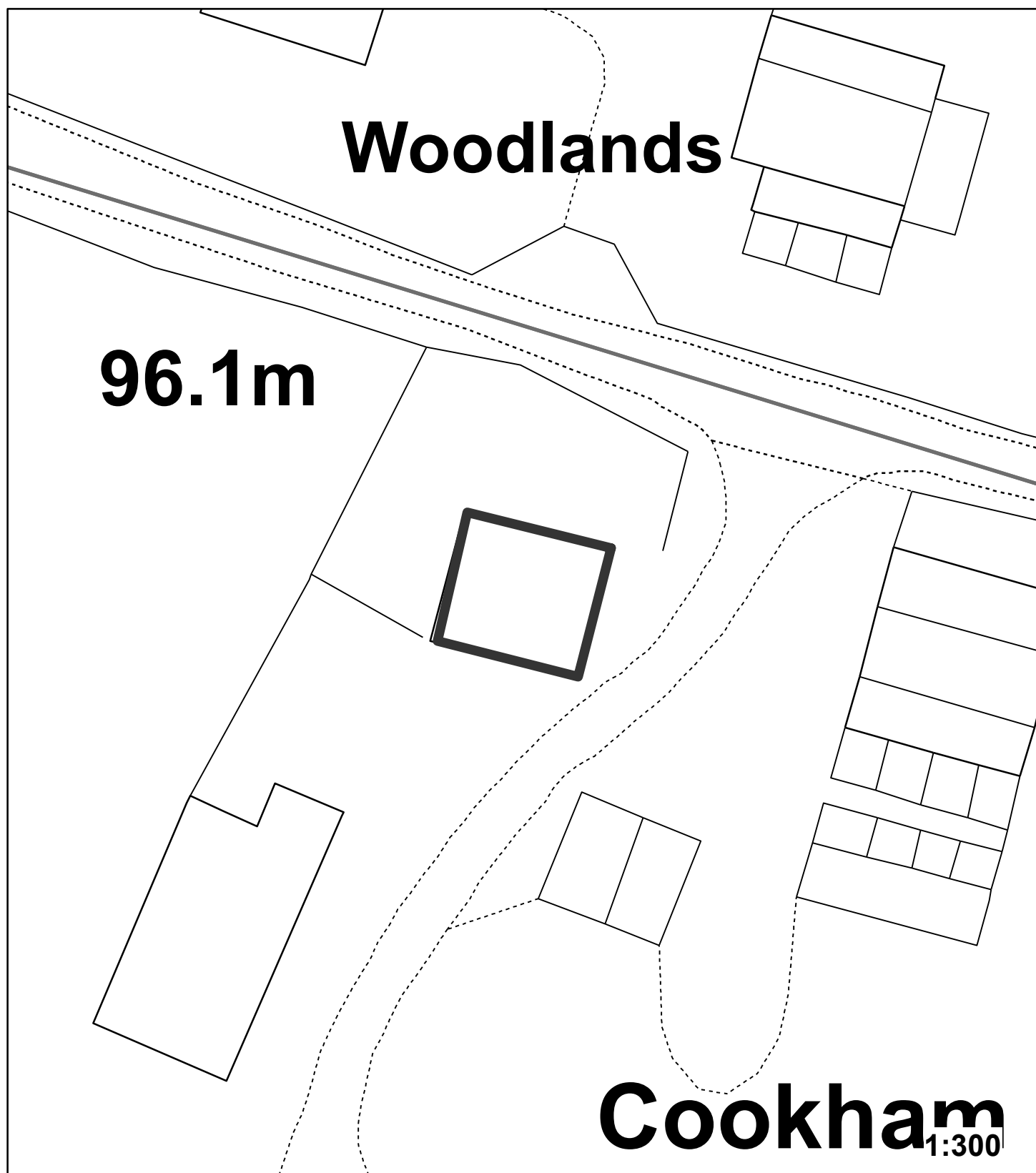
for the following reasons:

- 1 The residential curtilage identified has not subsisted, on the balance of probabilities, for more than ten years continuously and as such is not considered to be lawful and as such the outbuildings contained therein do not constitute a use ancillary to the main dwelling.

Application:12/03653/ELUD

Address: Cookham Farm Skeet Hill Lane Orpington BR5 4HB

Proposal: Use of land as a residential curtilage and use of outbuildings ancillary to main residential use. CERTIFICATE OF LAWFULNESS FOR AN EXISTING DEVELOPMENT.



"This plan is provided to identify the location of the site and should not be used to identify the extent of the application site"

© Crown copyright and database rights 2012. Ordnance Survey 100017661.