

Section '3' - Applications recommended for PERMISSION, APPROVAL or CONSENT

Application No : 15/01584/ELUD

Ward:
Darwin

Address : Yonder Farm Orange Court Lane Downe
Orpington BR6 7JD

OS Grid Ref: E: 543164 N: 162712

Applicant : Ms Sarah Williams

Objections : YES

Description of Development:

Use of part of barn as residential dwelling
CERTIFICATE OF LAWFULNESS FOR AN EXISTING USE

Key designations:

Biggin Hill Safeguarding Birds
Biggin Hill Safeguarding Area
Green Belt
London City Airport Safeguarding
Sites of Interest for Nat. Conservation
Proposed World Heritage Site

Proposal

A Lawful Development Certificate for an Existing Use is sought in respect of the use of part of a building within the site as a residential dwelling. A previous similar application for a Certificate of Lawfulness for an Existing Use involving the use of part of one of the barns as a residential dwelling (ref. 14/03188) was refused by the Committee which convened on 5 March. This is a repeat application but includes a Statutory Declaration which has been signed by the applicant.

The dwelling has been formed within part of a barn which is also used as a feed shed and workshop and is situated to the northern end of the main complex of buildings within the site. The accommodation is set on two levels and occupies an L-shape within that structure.

The application is accompanied by a Statutory Declaration made by the applicant and various evidence comprising of 12 exhibits, made up of the following items:

- time sheets provided by builder who converted the building to residential use
- invoices and receipts

- documents relating to rental of applicant's former property
- TV licenses
- car insurance details
- utilities bills
- bank statements
- letters
- letters from visitors and friends
- photographs

This application is accompanied by a second application for a Certificate of Lawfulness for an Existing Use relating to the use of buildings and land as a stable and riding school without complying with condition 3, 4 and 7 of permission ref 02/01905, which is also included in this Committee agenda (ref. 14/03187). Application ref. 14/03187 was deferred to seek additional evidence, and is again considered alongside this application in the same agenda.

Location

The site is situated to the north of Downe Village, along the northern side of Orange Court Lane, and approximately 200 metres to the east of its junction with Farthing Street. The site falls within the Green Belt.

Comments from Local Residents

Nearby owners/occupiers were notified of the application and the following comments were raised by the Downe Residents' Association:

- this latest application is to be determined under the 4 year rule it seems. According to the minutes of Plans Committee 4 of 5 March, the previous application was refused under the 10 year rule
- it seems applicant has deliberately exercised concealment
- no planning permission was sought before work commenced in 2007, and it would be wrong to suggest that applicant was unaware of the need to do so
- question of whether this development can be classed as deliberate concealment, given the dwelling cannot be seen from adjoining footpaths

Comments from Consultees

Legal opinion is that on balance the use is subject to section 171B(2) and therefore the 4-year residential rule.

Planning Considerations

This Lawful Development application is to be considered under Section 191 of the Town and Country Planning Act 1990 (as amended). The Town and Country Planning Act 1990, section 191 provides for consideration of a Certificate of Lawfulness of existing use or development if any person wishes to ascertain whether any existing use of buildings or other land is lawful.

For the purposes of the 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);
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

Planning History

The site planning history is summarised in the table below:

Reference	Proposal	Decision	Date of Decision
91/00682	Detached dwelling and garage (outline)	Refused	04.07.1991
01/01958	Conversion of barn into a dwelling	Refused	03.08.2001
02/01905	Use of buildings and land for stables and construction of sand school; use of land for keeping of horses	Permission	02.10.2003

A previous and similar application for a Certificate of Lawfulness for an Existing Use involving the use of part of part of one of the barns as a residential dwelling (ref. 14/03188) was refused by the committee.

Conclusions

The application requires the Council to consider whether or not the operation has subsisted continuously for the past 4 or more years.

The Government's Planning Practice Guidance advises that in the case of applications for existing use, if a local 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 alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

In light of legal advice, it is considered that the evidence submitted - namely in the form of utility statements, bank statements, insurance statements, and TV licenses all addressed to the applicant at the site address, as well as a Witness Statement from the applicant, various supporting letters from associates of the applicant - that on the balance of probability test, there are sufficient grounds upon which to grant a Lawful Development Certificate for the existing use. Furthermore, following the previous application (ref.14/03188) a Statutory Declaration has now also been provided by the applicant which adds further weight to the evidence in support of this application.

Whilst letters of objection have been received in relation to the use, no compelling evidence has been provided to suggest that the use has occurred for a period of less than 4 years. Accordingly, Members are advised to grant a certificate.

Background papers referred to during production of this report comprise all correspondence on the file refs set out in the Planning History section above, excluding exempt information.

**RECOMMENDATION: GRANT CERTIFICATE FOR EXISTING USE/
DEVELOPMENT**

- 1 On the balance of probabilities the use of the part of the barn shown on the attached plan as a residential dwelling has subsisted for at least 4 years.