

Recommendation Report for Lawful Development Certificate for an Existing Use or Operation or Activity including those in breach of a planning condition.

REF NO: AL/48/20/CLE

LOCATION: Blackmill Spinney
Blackmill Lane
Aldingbourne
PO18 0JU

PROPOSAL: Lawful development certificate for the existing use of former swimming pool house as separate dwelling house.

DESCRIPTION OF APPLICATION

This application is for a Certificate of Lawfulness for the separate residential use of swimming pool house to Blackmill Spinney. The accommodation comprises two bedrooms, one of them en suite, a living/dining room, kitchen, utility, shower and an open porch.

SITE AND SURROUNDINGS

Large grounds consist of a large two storey detached dwelling characterized by a half-hipped roof with outbuildings and stable block. The dwelling was originally a bungalow which has evolved to become a large two storey 7 bedroom dwelling. Close to the outbuildings is well maintained swimming pool. The subject of this application is an approximately 24m long single storey pitched roofed building to the east from the main building. The site is situated on the southern side of Blackmill Lane.

Rural area with the main A27 dual carriageway to south of site with four detached properties on the large plots to the north of the site in Blackmill Lane.

RELEVANT SITE HISTORY

AL/44/11/	Division of existing dwelling into 2 units	Withdrawn 14-06-11
AL/25/10/	Horsebox/Haystore building (renewal of AL/41/05).	ApproveConditionally 20-04-10
AL/30/06/	Conservatory at front.	ApproveConditionally 26-05-06

AL/41/05/	Horsebox & haystore building.	ApproveConditionally 31-05-05
AL/55/02/	Alterations and additions to existing bungalow to form two storey dwelling.	ApproveConditionally 14-08-02
AL/3/02/	Outline application for removal of existing outbuildings and erection of new dwelling (Departure from the Development Plan)	Refused 20-03-02

There are numerous previous planning applications in respect of Blackmill Spinney:

Application AL/44/11/ for a division of existing 7 bed dwelling into 2 units has been withdrawn.

AL/55/02/ for alterations and additions to existing bungalow to form two storey dwelling was approved conditionally. Condition 3, attached to this permission: "The accommodation hereby permitted shall be occupied solely for purposes incidental to the occupation and enjoyment of Blackmill Spinney as a dwelling and shall not be used as a separate unit of accommodation".

Outline application for removal of existing outbuildings and erection of new dwelling (Departure from the Development Plan), reference AL/3/02/, was refused on the following grounds: the site lies outside an existing built up area where there is a strong presumption against development not required for an essential rural purpose

REPRESENTATIONS

Representations Received:

Lindy Nash

Objection: the 'creeping housing development' that occurs as a result of such applications. If the planning authority are minded to grant the application despite this objection, this authority asks that it only be granted for use by members of the family of the owners of the current main property. This requirement 'family use only' requirement should then remain in force for all future purchases of the properties.

Comments on Representations Received:

This application is restricted to test the legal merits of what is being applied for i.e whether the former swimming pool house has been used as a separate residential use for more than 4 years.

CONSULTATIONS

Consultations Responses Received:

ADC Solicitor:

The applicant dated 20 May 2020 claims that the former swimming pool house has been used as a separate residential amenity to the main house of Blackmill Spinney since 2012, therefore for around 8 years.

The Planning Statement states that the applicants have lived at Blackmill Spinney since 1998. In September 2012 they moved into Little Spinney which is the former swimming pool house after converting it to their permanent residence. Blackmill Spinney was then rented out initially until 2012 and then until 2014 was used as a B&B until that closed in November 2019. Little Spinney has a separate entrance and there is a separate pedestrian entrance with bell and mailbox. Further, all utilities are separate for Little Spinney, namely oil, septic tank, phone line and electricity.

There is evidence that Blackmill Spinney was used as a B&B and it is clear when you google Blackmill Spinney that it is on various websites including booking.com as a B&B however it is not clear how many rooms were used as B&B accommodation. The B&B has been closed since November 2019 - does that mean it has remained empty whilst the applicant has remained in Little Spinney? It was noted that the Level 2 Award for Food Safety in August 2014 was addressed to Lisa Vine at Blackmill Spinney rather than Little Spinney although in the Planning Statement they state they had their own mail box.

There is a Statutory Declaration from Lisa and Mark Vine stating they have lived in Little Spinney since September 2012 as their main residence. The Declaration states they started to convert the swimming pool house in March 2012. Blackmill Spinney is still in their ownership however they state they have not lived in that house since 2012. They confirm that Blackmill Spinney has from 'time to time been rented out and used for B&B accommodation'.

There is also a Statutory Declaration from Jane and Keith Saunders dated 29 July 2020. They confirm that they lived in Blackmill Spinney from July 2012 to April 2014 where they ran a children's foster home. They state during that time Mr and Mrs Vine lived at Little Spinney.

The supporting evidence is as follows:

Invoice dated 21 May 2012 from Chichester Bathroom Design, Heating Plumbing Services for various items - there is no evidence to categorically state the items were for Little Spinney

b. Photographs of the outside of Little Spinney, there are no photographs

c. Letter from AA detailing an overnight inspection at Blackmill Spinney B&B on 9 March 2018

d. Food Hygiene Intervention Report dated 10 September 2014

e. R T Spencer Services Fire Fighting Appliance Certificate of Inspection for Blackmill Spinney dated 21 June 2016

f. Level 2 Award in Food Safety for Catering for Lisa Vine dated 15 August 2014. This is addressed to Lisa Vine at Blackmill Spinney.

Additional information as follows (some of which were duplicates):

Invoices

Kew Electrical dated 16 April 2012 for £50.40

Covers dated 3 April 2012 for £64.85

Covers dated 25 May 2012 for £22.18

Beaver Tool Hire dated 3 April 2012 for £25.84

Beaver Tool Hire dated 12 April 2012 for £28.37 (note address on invoice is Blackmill Spinney)

Beaver Tool Hire dated 17 April 2012 for £56.40

Beaver Tool Hire dated 19 April 2012 for £96.96

Beaver Tool Hire dated 24 April 2012 for £383.91

Beaver Tool Hire dated 28 May 2012 for

A R Vick (agricultural and domestic fuel) dated 25 June 2012 for £596.92 delivered to 'The Shed, Blackmill Spinney'
A R Vick (agricultural and domestic fuel) dated 22 February 2013 for £359.25 delivered to 'Blackmill Spinney (shed)'
A R Vick (agricultural and domestic fuel) dated 26 June 2015 for £209.21 delivered to 'Holiday Let, Blackmill Spinney'
GMS Plumbing and Heating dated 28 March 2012 for £1,062.00
Jewson dated 29 May 2012 x 2
Dulux Centre dated 11 May 2012 for £282.95
Covers dated 1 May 2012 for £39.36
M A Paine Ltd (boiler service) dated 16 November 2019 for £478.28 at 'Little Spinney, Blackmill Lane'
Heating Plumbing Services dated 21 May 2012 for £997.22
Heating Plumbing Services dated 21 May 2012 for £828.48
Ironmongers dated 23 May 2012 for £221.00
BT bill dated 25 February 2013 addressed to 'The Annex, Blackmill Spinney'
BT bill dated 26 January 2014 addressed to 'The Annex, Blackmill Spinney'
BT bill dated 25 February 2014 addressed to 'The Annex, Blackmill Spinney'
BT bill dated 25 March 2014 addressed to 'The Annex, Blackmill Spinney'
BT bill dated 14 October 2014 addressed to 'The Annex, Blackmill Spinney'
BT bill dated 15 November 2014 addressed to 'The Annex, Blackmill Spinney'
BT bill dated 16 April 2015 addressed to 'The Annex, Blackmill Spinney'
BT bill dated 13 June 2015 addressed to 'The Annex, Blackmill Spinney'
BT bill dated 14 July 2015 addressed to 'The Annex, Blackmill Spinney'
BT bill dated 14 August 2015 addressed to 'The Annex, Blackmill Spinney'
BT bill dated 14 September 2015 addressed to 'The Annex, Blackmill Spinney'

Insurances

Home and Lifestyle Insurance Quotation dated 13 July 2012 in respect of 'The Annex, Blackmill Spinney'

Conclusion

As you are aware it is for the applicant to provide sufficient information to support an application. The additional information I have now been supplied does provide sufficient information. In particular I note:

- large amount of invoices for building work around 2012 - as stated in the Statutory Declaration
- invoices for fuel dated 2012-2015 delivered to 'the shed' or 'holiday let'
- numerous BT bills dated between February 2013 and September 2015 all addressed to 'The Annex'
- insurance quotation dated July 2012 in respect of 'The Annex'

The test in the PPG is if a LPA 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, providing the applicant's version alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

I note that the evidence relates to 2015 and earlier however unless the LPA has anything to contradict the submissions by the applicant that Little Spinney was being used as residential then I would advise the application should be granted.

Comments on Consultation Responses:

The Council has also sought evidence from its Council Tax officers. This property was only brought into the Valuation List on 24 May 2020, but the start date was backdated to 1 April 2017.

LEGISLATIVE BACKGROUND

Section 192(2) of the Town and Country Planning Act 1990 states:-

If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

Section 191 to 195 Town & Country Planning Act 1990 and NPPG guidance on LDC's have the effect of requiring these applications to be determined having regard only to the evidence adduced and not planning policy.

Section 192(2) 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 that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application."

Paragraph 006 (Reference ID: 17c-006-20140306) of the Planning Practice Guidance (PPG) states that: "The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

In the case of applications for existing use, 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 alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."

Paragraph 009 (Reference ID: 17c-009-20140306) of the PPG points out that:

"A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

In determining an application for a prospective development under section 192 a local planning authority needs to ask "if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"

Section S171(1)-(3) and S191 TCPA 1990. The change of use to a single dwelling is 4 years. The relevant time period is 30 June 2016 to 30 June 2020 i.e. 4 years to the date of the application.

CONCLUSION

Further evidence:

Invoice dated 28 Mar 2012 from GMS Plumbing and Heating

Invoice dated 16 April 2012 from KEW Electrical

Invoice dated 3 April 2012 from Covers Trade Centre Branch
Invoice dated 1 May 2012 from Covers Trade Centre Branch
Invoice dated 25 May 2012 from Covers Trade Centre Branch
Invoice dated 23 May 2012 from Chichester Trade Centre
Cash Hire Contract from Beaver Tool Hire dated 3 April 2012 - 4 April 2012
Invoice dated 3 April 2012 from Beaver Tool Hire
Invoice dated 12 April 2012 from Beaver Tool Hire
Cash Hire Contract from Beaver Tool Hire dated 17 April 2012 - 18 April 2012
Invoice dated 23 April 2012 from Beaver Tool Hire
Hire Delivery Note dated 24 April 2012 from Beaver Tool Hire
Invoice dated 24 April 2012 from Beaver Tool Hire
Cash Hire Contract from Beaver Tool Hire dated 19 April 2012 - 26 April 2012
Invoice dated 8 May 2012 from Beaver Tool Hire
Cash Hire Contract from Beaver Tool Hire dated 28 May 2012 - 29 May 2012
Invoice dated 3 April 2012 from Beaver Tool Hire
Invoice dated 25 May 2012 from Jewson
Invoice dated 29 May 2012 from Jewson
Invoice dated 11 May 2012 from AkzoNobel (Paint)
Invoice dated 22 Feb 2013 from A.R. VICK (fuel)
There is no evidence to categorically state the items above were for Little Spinney (address Blackmill Spinney).

Invoice dated 14 Jul 2015 from BT for The Annex Blackmill Spinney
Invoice dated 16 April 2015 from BT for The Annex Blackmill Spinney
Invoice dated 14 Aug 2015 from BT for The Annex Blackmill Spinney
Invoice dated 13 Jun 2015 from BT for The Annex Blackmill Spinney
Invoice dated 25 Feb 2013 from BT for The Annex Blackmill Spinney
Invoice dated 25 Feb 2014 from BT for The Annex Blackmill Spinney
Invoice dated 14 Sept 2015 from BT for The Annex Blackmill Spinney
Invoice dated 26 Jan 2014 from BT for The Annex Blackmill Spinney
Invoice dated 14 Jun 2015 from BT for The Annex Blackmill Spinney
Invoice dated 25 Mar 2014 from BT for The Annex Blackmill Spinney
Invoice dated 15 Nov 2014 from BT for The Annex Blackmill Spinney
Invoice dated 14 Oct 2014 from BT for The Annex Blackmill Spinney

The relevant dates for this application are from 30 June 2016 to 30 June 2020.

Invoices from Your Home and Lifestyle Insurance for 'Property at Blackmill Spinney, Guest House/Bed and Breakfast and 'The Annex Blackmill Spinney' covering period from 13 July 2012 to 13 July 2013; from 7 August 2014 to 13 July 2015; from 13 July 2015 to 13 July 2016 and from 13 July 2017 to 13 July 2018. All invoices are addressed to Mrs Lisa Vine and Mark Vine at Blackmill Spinney.

The above invoices (Your Home and Lifestyle Insurance) made it clear that in the B&B were provided 5 letting rooms whilst the Blackmill Spinney is a 7 bed property.

Invoice dated 16 Dec 2019 from M A Paine Ltd - there is no evidence to categorically state the items were for Little Spinney (address Blackmill Spinney).

It is for the applicant to provide sufficient evidence that Little Spinney has been used as a residential amenity for the last 4 years. Although the PPG states if a LPA 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.

Within the submitted documents/evidence and planning documents submitted as a part of previous planning applications there are no reference to Little Spinney. All invoices are addressed at Blackmill Spinney only BT invoices are for The Annex Blackmill Spinney and documents and invoices from Your Home and Lifestyle Insurance refer to The Annex Blackmill Spinney with no reference to Little Spinney or swimming pool house. The only reference to Little Spinney is within an application form (applicant details).

However, as the ADC Solicitor concluded her comments: 'the evidence submitted by the applicant is sufficient' to demonstrate that the 2 bedroom swimming pool house has been in a continuous separate residential use for at least the last 4 years.

It is considered on the balance of probability that consent should be granted. It is therefore recommended that the certificate is granted in accordance with the following terms.

RECOMMENDATION

APPROVE

The use described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191 of the Town & Country Planning Act 1990 by reason that at the date specified above, the property had been in use as a private dwelling and not a swimming pool house for a continuous period of 4 years.

FIRST SCHEDULE

Use of the existing swimming pool house as a separate self-contained 2 bedroom dwelling.

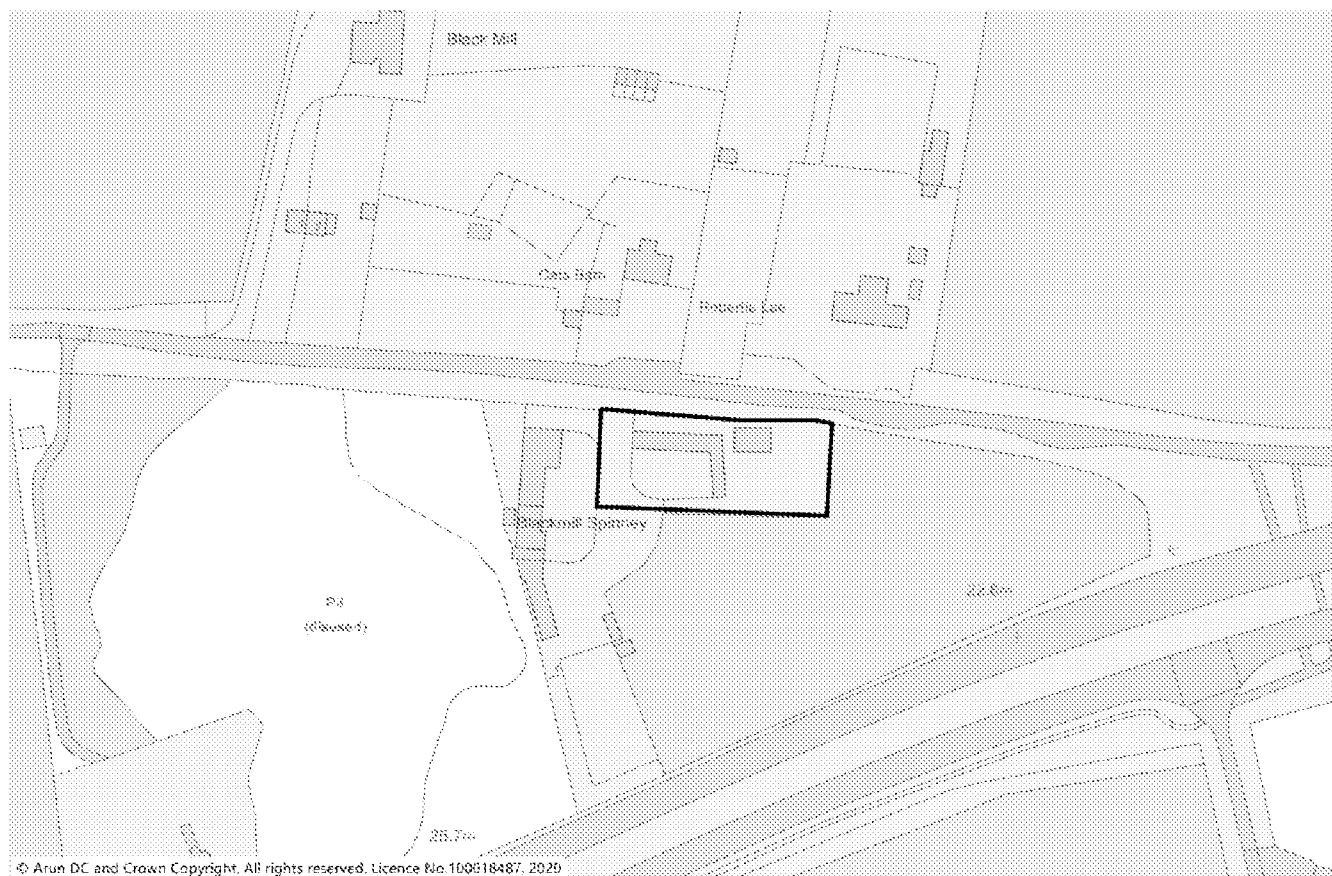
SECOND SCHEDULE

Swimming pool house, Blackmill Spinney, Blackmill Lane, Aldingbourne, PO18 0JU

EXTENT OF USE

The extent of use is that defined on the submitted Ground Floor and Elevations plan (1:100) and relates to the use of this single storey swimming pool house as a separate dwelling comprising of two bedrooms, one of them en suite, a living/dining room, kitchen, utility, shower and an open porch.

AL/48/20/CLE - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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