

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

REF NO: FG/142/25/CLE

LOCATION: Highdown Vineyard, Dwelling At
Littlehampton Road
Ferring
BN12 6PG

PROPOSAL: Lawful development certificate to establish the existing use of the dwelling known as Highdown Vineyard as lawful.

DESCRIPTION OF APPLICATION

This application seeks a lawful development certificate to establish the existing use of the dwelling known as Highdown Vineyard in breach of condition 2 of planning permission granted under APP/C810/A/00/1056202 as lawful.

SITE AND SURROUNDINGS

The site is a detached two storey dwelling adjacent to a larger barn structure, set within agricultural land.

RELEVANT SITE HISTORY

FG/12/15/CLE	Application for a Lawful Development Certificate for an existing use - Use of the site as a winery with ancillary uses to include wine tours & tastings, the shop, restaurant area & private hire for functions & parties.	Approve 20-03-15
FG/113/14/PL	Application for removal of condition 5 imposed under planning permission FG/135/02 - the premises shall be used as a refreshment area for Highdown Vineyard only and for no other purpose.	Refused 02-10-14
FG/93/11/	Application for variation of condition 1 following a grant of planning permission FG/72/09/ relating to use of building for refreshment purposes	ApproveConditionally 02-11-11

FG/29/11/	Application for variation of condition 5 of planning permission FG/72/09/ relating to opening hours	ApproveConditionally 26-05-11
FG/65/10/A	1no non-illuminated hoarding sign	ApproveConditionally 19-08-10
FG/72/09/	Variation of condition no.5 of planning permission FG/135/02 - to use part of the premises as a refreshment area ancillary to Highdown Vineyard.	ApproveConditionally 12-08-09
FG/12/08/	Continuance of use without compliance with condition no 1 of FG/134/02 - 'extension of expiry date'.	ApproveConditionally 19-03-08
FG/36/06/	Variation of condition no 5 of planning permission FG/135/02 - part use of ground floor for customer refreshment area.	ApproveConditionally 11-05-06
FG/134/02/	Removal of condition No.2 of planning permission FG/64/00/ requiring demolition of building within 12 months of cessation of use for agricultural of horticultural purposes.	ApproveConditionally 12-02-03
FG/135/02/	Removal of condition no.5 imposed upon planning permission FG/119/99 requiring demolition of building within 12 months of cessation of use for agricultural or horticultural purposes.	ApproveConditionally 12-02-03
FG/99/00/	Erection of workers cottage (Departure from the Development Plan)	Refused 27-11-00 Appeal: Allowed 04-04-01
FG/64/00/	Erection of agricultural store (resiting of previously approved store FG/11/97).	ApproveConditionally 13-09-00
FG/119/99/	Erection of winery	ApproveConditionally 12-04-00

Permission for the dwelling was granted at appeal on 4 April 2001. A subsequent application was approved in 2002 for the removal of condition 2 from the permission, which required the demolition of the building within 12 months of cessation of use for agricultural or horticultural purposes. Various other permissions and applications for variation of conditions on the site relate to the barn building to the north of the property.

REPRESENTATIONS

Representations Received:

Ferring Parish Council - No response received.

5 No. objections received raising concerns that:

- Although the applicant may not have been involved in physical labour on the vineyard, they have managed/overseen the business over this period.
- Alternative agricultural use options have not been explored.
- The dwelling supports the surrounding agricultural land, which is adjacent to the South Downs National Park.
- The submitted statements only state that no wine has been produced in the last 5 years, therefore the applicants were managing the agricultural land in the preceding 5 years, and enforcement action may still be taken.
- This application may be the first step in gaining other planning approvals on the site.
- The proposal would result in increased traffic and has an inadequate access.
- The proposal will result in unacceptable impacts on neighbouring residential amenity and on character and visual amenity.
- Potential harm to biodiversity has not been assessed.
- The proposal conflicts with the Local Development Plan and the NPPF.

Comments on Representations Received:

Comments noted. The main issue to be assessed under this application is whether the dwelling has been occupied in breach of condition 2 of consent APP/C810/A/00/1056202 (FG/99/00) for a period of 10 years. The precise wording of the condition requires the occupiers of the house to work solely or mainly in agriculture. Although it is not disputed that some agricultural work has taken place on the agricultural land surrounding the site, the points raised above about work which was required to oversee the vineyard and the production of wine during some of the last 10 years are not conclusive in proving that the dwelling has not been occupied in breach of the condition.

Issues relating to traffic, biodiversity and impacts on neighbouring residential amenity, character and visual amenity cannot be assessed under this application as the application is for a determination as to the lawfulness of an existing use, rather than an application for planning permission. The planning merits of a proposal are not considered under this type of application, in accordance with Paragraph 009 (Reference ID: 17c-009-20140306) of the NPPG. No new development is proposed as part of this application.

CONSULTATIONS

Consultations Responses Received:

None.

LEGISLATIVE BACKGROUND

Section 191 of the Act states:

(2) For the purposes of this Act, uses and operations are lawful at any time-

- (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

Section 171B of the Town and Country Planning Act 1990 states:

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining, or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(3) 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."

The relevant time period is 10 November 2015 to 10 November 2025 where the latter is the date of the application.

Section 191 to 195 Town & Country Planning Act 1990 have the effect of requiring these applications to be determined having regard only to the evidence adduced and not planning policy:

- (i) What is judged on a balance of probability.
- (ii) The onus of proof is on the applicant (and not the Local Planning Authority (LPA)) to adduce the evidence; and
- (iii) The LPA may have on its files relevant evidence either supporting or contradicting that of the applicant.

Paragraph 006 (Reference ID: 17c-006-20140306) of the National Planning Practice Guidance (NPPG) states:

"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 counterevidence.

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."

Section 191(4) 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 of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

CONCLUSION

The applicant's evidence has been reviewed, and the following comments are made:

Affidavit by Alison Englefield - Provides evidence as to the profitability of the vineyard, stating that "Since 2015, we have only had a harvest in 4 years, all of them too small to make any profit from". The occupiers have not spent any significant proportion of their time working on the vineyard, whereas the events space has provided full-time employment for both occupiers - "by far the vast majority of both my and Paul's time has been spent working in our venue and the restaurant. This has always been a full time employment for both of us," No evidence has been received which contradicts or casts doubt on this account.

Statement by Marjorie Dowdell - Marjorie Dowdell has provided accountancy services for the occupiers during the time they have lived at Highdown Vineyard. The statement asserts whilst there had been income from wine production on the site, the events venue, shop and restaurant have been the occupiers' main source of income and employment for the last 10 years. The statement does not add additional evidence to that provided by the affidavit, however, it does support the assertions made within it.

Statement by Kerry Dart - Kerry Dart is an employee of the events business at Highdown Vineyard, employed for "almost 10 years". The statement supports that the vineyard was operating to some extent when she was first employed, but states that "In all the time that I have worked at Highdown Vineyard, Paul and Aly have both worked full time planning events and preparing the venue for upcoming functions." The lack of specificity on precisely how long Kerry Dart has been an employee at the premises reduces the usefulness of this statement, however, it does lend support to the probability of the more detailed account provided in the affidavit.

- Invoices and bills. The document provides headers for utility bills and other correspondence from 2015 to 2025, showing that Mr Englefield has been resident at the property for 10 years.

Section 191(2) states that the Local Planning Authority should grant a Lawful Development Certificate for development against which no enforcement action can be taken, either because the matter for which the certificate is sought is not development as defined under s55, does not require planning permission, or because time during which the council could enforce against the development has expired.

The application seeks to establish the lawfulness of the existing use of the dwelling at Highdown Vineyard. The dwelling was granted consent under APP/C810/A/00/1056202 in 2001. The occupiers of

the dwelling are not currently solely or mainly working in agriculture, in conflict with condition 2 of this permission. Condition 2 states:

"The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or forestry, or a widow or widower of such a person, and to any resident dependants."

The submission states that this has been the case for a period of over 10 years, and therefore the use is lawful, as the period during which the council could enforce against the development has elapsed.

The evidence submitted demonstrates that the current occupiers have been resident at the property for over 10 years, from 2010 to the present. Three statements have been submitted providing evidence as to the occupation of the occupiers during these years, provided by one of the occupiers, their accountant and an employee of the events business. The statements assert that the since moving to the property, the vineyard has not been profitable in all but one year, and that the vast majority of the occupiers' work has related to the events side of their business throughout this time. The events business has provided full-time employment for both occupiers of the dwelling since they moved to the property in 2010. In this instance, the wording of the condition is specific in stating that the occupiers must be employed mainly or solely in agriculture. Although some agricultural work has taken place on site, and the level of agricultural activity has varied from year to year within the 10 year period which is examined for the purposes of this consent, the evidence submitted demonstrates both that the majority of the occupier's time has been spent in employment other than agriculture and that the majority of their income has also not been agricultural.

The evidence judged on a balance of probability is sufficient. The LPA has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version less than probable. On this basis, the dwelling has been occupied in breach of condition 2 of consent APP/C810/A/00/1056202 for in excess of 10 years, and the period within which the LPA could take enforcement action against this breach has expired. There is therefore no good reason to refuse the application.

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 on 10 November 2025, the property had been in use as a dwelling, whose occupants are not mainly or solely working in agriculture or forestry for a continuous period of 10 years.

FIRST SCHEDULE

Use of the dwelling at Highdown Vineyard shown on the following plans for residential purposes:
- Location plan

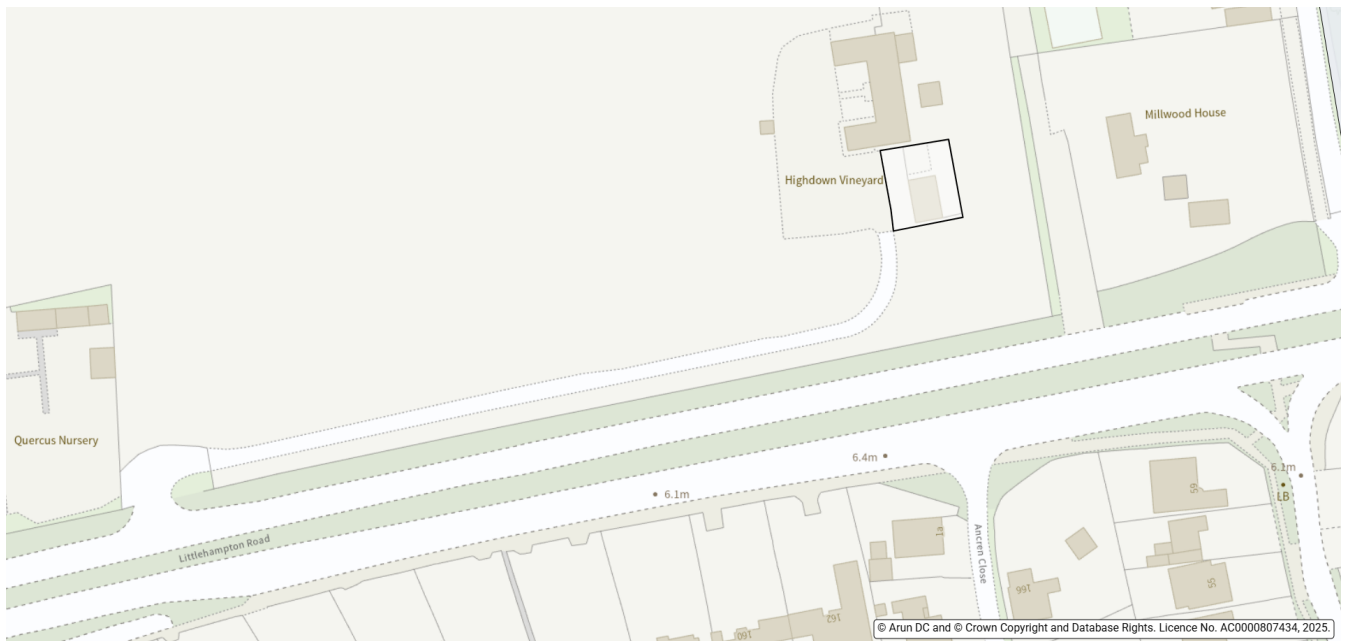
SECOND SCHEDULE

Dwelling at Highdown Vineyard, Littlehampton Road, Ferring, BN12 6PG.

EXTENT OF USE

Existing use of the dwelling at Highdown Vineyard as a dwelling, whose occupants are not mainly or solely working in agriculture or forestry.

FG/142/25/CLE - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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