

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

REF NO: WA/87/20/CLE

LOCATION: Stoneybrook Farm
Eastergate Lane
Walberton
BN18 0BA

PROPOSAL: Lawful development certificate for the existing use of first floor of southern end of building as a single dwelling house.

DESCRIPTION OF APPLICATION

The application relates to the first floor of the southern end of a modern storage barn building located at Stoney Brook Farm. Access is existing from Eastergate Lane and serves the nursery.

SITE AND SURROUNDINGS

The site is located outside the village centre of Walberton in a rural area comprising sporadic dwellings and nurseries.

RELEVANT SITE HISTORY

WA/61/19/PD Notification for Prior Approval under Part 3, Class O for No Objection
change of use from an office (Class B1) to 1 No. dwelling 19-08-19
(Class C3).

WA/61/19/PD relates to the ground floor which occupies part of the area below the application premises.

REPRESENTATIONS

Representations Received:

Walberton Parish Council

Objection

A previous planning application WA/55/90 was refused for one agricultural dwelling. The precedent reason still applies. We recommend refusal on the same grounds.

The PC has raised concerns about potential unapproved development on this site in recent years and that planning regulations have been circumnavigated to facilitate an unapproved dwelling on an

agricultural / horticultural site. The Parish Council has an outstanding Planning Compliance Case ENF/298/19. In the statements provided it is noted that Thomas Reynolds, lived with his parents in the north side of the barn; was permission granted for this to be used as a dwelling? In application WA/61/19/PD; the plan shows the remainder of barn with no mention of a dwelling. On the application form, Question 7 says there are no existing residential units, but he states he previously lived with his parents on the north side of the barn. Stoneybrook Farm was sold on 1st March 2019 to Stoneybrook Farm Limited which classes its activities as of real estate investment trusts. The applicant is now seeking retrospective approval based on the passage of time, but their past actions appear to have complete disregard for planning decisions and on this basis.

Comments on Representations Received:

The application submitted cannot be determined on planning merit. It can only be determined on whether the evidence submitted is sufficient to demonstrate the use applied for has existed for the last 4 years on the balance of probability. The application referred to by the Parish was a planning application. This proposal cannot be refused for the same reasons.

CONSULTATIONS**Consultations Responses Received:**

Council's Solicitor - Evidence submitted does not satisfactorily demonstrate use as a separate planning unit.

Comments on Consultation Responses:

Council's Solicitors comments are agreed.

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 relevant time period is 05 November 2016 to 05 November 2020 i.e. 4 years to the date of the application.

CONCLUSION

The evidence submitted with this application comprises a primary Statutory Declaration of the sole occupier of the dwellinghouse, Tom Reynolds, who has confirmed the following:

1. He previously lived in his parents dwelling which for a very long time has been in the northern end of the barn.
2. In early 2013 it was decided that it would be best for him to have his own place to live and due to his inability to afford anywhere to rent or buy they decided that the best option would be to convert the first floor area of the southern part of the barn which had been used for general storage.
3. So in March 2013 he obtained a quotation from Tom Bradstock of Ford Construction for the general timber works necessary to achieve the conversion.
4. Works started in the early summer of 2013 and the works took a considerable period of time as he self-funded them in order to avoid taking out a mortgage which he knew would be difficult for him to obtain.
5. During the conversion works he used not only Ford Construction but also various individuals who provided the necessary help when he needed it.
6. He attaches at Exhibit TR2 various photographs that he has managed to find on his mobile phone of the works in progress. These are: (1) 13 December 2013 - spray foam insulation on underside of roof and initial stud work with infill insulation on south and west walls; (2) 14 November 2014 - new chipboard floor down and studwork on east wall; (3) 7 January 2015 - plasterboarding and skim plastering finished; (4) 20 September 2015 - walls painted, electrics fitted and kitchen just finished; and, (5) 21 March 2016 - living in the flat.
7. He confirms that the internal layout that was created is the same as that shown on the plan attached as Exhibit TR3. It has always had this layout.
8. The flat provides him with all the facilities that he needs for day to day existence. In particular it has: a combined kitchen/living/dining area; a bedroom; and, a bathroom.

9. Since his parents retain ownership of the land and building he has had a tenancy agreement with them. He attaches this as Exhibit TR4 and this confirms the date of his first occupation of the flat as 3rd October 2015.

10. He confirms that he has continuously occupied the said flat since this date; that it provides him with all the facilities required for day to day living; and, that he is not dependent upon his parents for anything. He lives wholly self-contained and self-sufficient from them.

An additional four Statutory Declarations have been provided by people involved in the works of conversion in order to confirm dates of the said works. These four Declarations collaborate the facts set out in the Declaration of Tom Reynolds in respect of the period of time taken to undertake the conversion works.

The evidence submitted in the form of the Statutory Declarations documents; photographs and a Tenancy Agreement purports to claim that the first floor of the southern part of the subject building has been in continuous use as a separate dwellinghouse since October 2015. This period of occupation is said to exceed the required four year period.

It is for the applicant to provide sufficient evidence that No 2 has been a separate residential unit for the last 4 years. The PPG states that 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.

Normally accompanying bills, Council Tax or insurance documents would be provided for the separate unit.

The accommodation is provided within a building used for other purposes and is close to the dwelling occupied by the applicant's parents and it is not clear that the premises do constitute a separate dwelling rather than a family annexe.

Analysis of the evidence submitted, by the Council's Solicitor has been undertaken as follows:

Information submitted by agent

12.11.20 Stephen Jupp - no council tax records provided with the application in response to request made by ADC.

16.11.20 Stephen Jupp - No garden or parking area for exclusive use of the flat. Stairs go outside the flat and not inside the ground floor of the barn.

29.10.2020 Statutory Declaration of Thomas Reynolds - lives at the first floor flat at Stoney Brook Farm, previously lived with parents in the barn. Works between 2013 - 2015, living in flat 2015, tenancy agreement 3.10.2015 (Assured Shorthold Tenancy Agreement for 10 years). Kitchen/Bedroom/Bathroom. Parents retained ownership of all the land and building.

Other statutory declarations confirm the works took place 2013-2015 to create the flat.

Walberton Parish Council allege Stoneybrook Farm sold on 1/3/2019 to Stoneybrook Farm Limited

A recent appeal decision with respect to annex occupation has been considered. Appeal Ref: APP/R5510/X/18/3206551 The Barns, 204 Northwood Road, Harefield, Uxbridge UB9 6PT.

The Inspector's considerations have been applied to the facts/evidence provided: -

Occupiers of the converted building: the son

Ownership of the site: Not clear. Statutory declaration states parents own the whole land and buildings however the Parish Council states otherwise. Clarification on title required - perhaps a land registry title search could be provided?

Access to the site: looking at the plans is via one current single access to the highway which continues to serve the house and flat with no separation of the two properties.

Garden and parking: there is no demarcation between the two properties, although Mr Jupp states there is no garden or parking exclusively for the flat.

Access to a shared space: There is no exclusive garden/parking space because they are shared facilities, which indicates a close physical connection between the two units;

Postal address and utilities: no evidence has been provided of separate bills or addresses;

Relative floor space: it appears that the area dedicated to residential use within the flat is not unduly large in comparison to the associated dwelling.

WA/61/19/PD - This application online only refers to part of the ground floor and its conversion from office to dwelling. It provides no evidence in relation to part of the first floor which is what this application relates to.

Stoneybrook Farm sold on 1/3/2019 to Stoneybrook Farm Limited - Parish Council claims. We don't know if part of the land/all of the land. A copy of the Land Registry Title would verify the position and assist in demonstrating whether the flat is a separate planning unit, or not.

ENF/298/19 - has no bearing on the application.

At this stage, the Local Planning Authority is not satisfied, on the balance of probability, that a separate planning unit has been created. It would appear that a family annexe was created, which does not require planning permission.

RECOMMENDATION

REFUSE

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 not lawful within the meaning of section 191 of the Town & Country Planning Act 1990 by reason that at the date specified above, it has not been satisfactorily demonstrated that the property had been in use as a separate private dwelling for a continuous period of 4 years.

FIRST SCHEDULE

Use of southern part of first floor of barn at Stoney brook Farm as a separate self-contained dwelling.

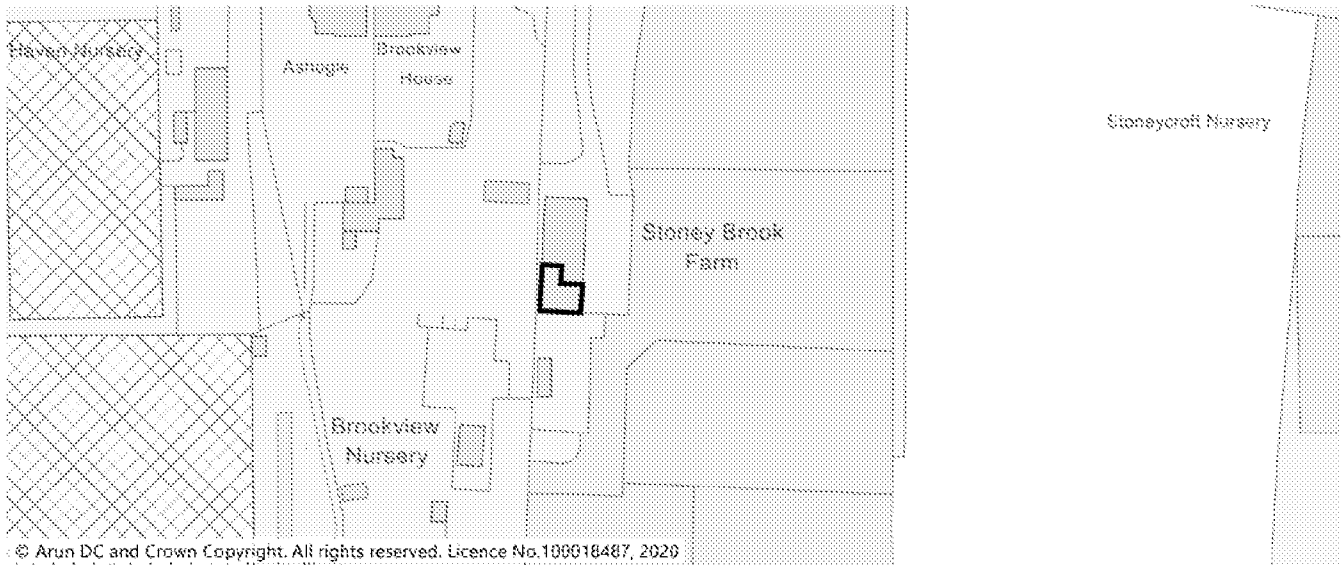
SECOND SCHEDULE

Barn at Stoneybrook Farm, Eastergate Lane, Walberton, BN18 0BA

EXTENT OF USE

The extent of use is that defined on the submitted First Floor Plan (1:50), Drawing 2 Block Plan and Location Plan and relates to the use of the southern end of the first floor of the former storage barn at Stoneybrook Farm comprising combined kitchen/living/dining area; a bedroom; and, a bathroom.

WA/87/20/CLE - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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