



Delegated Report

Application for Lawful Development Certificate (Existing)

Planning Application No: 20230005

Location: Higham Grange Hermitage Road Higham Rochester

Description: Application for a Lawful Development Certificate in respect of the continued use of previous stable building as a 3 bedroom residential dwelling ancillary to the main house 'Higham Grange'

Applicant: Mr Anthony Clayton

Site Visit Date: Desktop Assessment

Submitted Documents/Plans

Application Form
Site Location Plan
Elevations and Floor Plan Proposed
Affidavits
Photographs

Relevant Planning History

Reference	Description	Decision	Decision Date
19881013	Erection of a block of 4 no loose boxes.	Permitted	04.01.1989
19880527	Erection of an extension to the former stable block to provide swimming pool incorporating the use of the existing building as plant room, changing facilities, lobby and w.c.	Permitted	12.09.1988
19840847	Erection of triple garage adjacent to existing stable block	Permitted	23.11.1984
19810879	Erection of a new vicarage and garage	Approval of Details	27.11.1981
19810133	Outline application for erection of a new vicarage	Permitted	14.04.1981

Material Consideration

- Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended);
- The Town and Country Planning act 1990 (as amended); and
- The Use Classes Order 1987.

This application is for a Lawful Development Certificate and not a full planning application. As such, the planning merits of the case are not relevant. The determination must be based on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proof and relevant facts rests with the applicant and the evidence submitted must be sufficiently precise and unambiguous to enable

the Local Planning Authority to understand exactly what is involved. The decision must be made on the balance of probability. The case officer has had regard to the advice contained in the National Planning Practice Guidance (paragraphs 005 to 009).

Sections 191(2) and (3) of the Town and Country Planning Act 1990 (as amended) relates specifically to the determination of LDC applications and sets out what is considered to be lawful;

191(2) for the purposes of this 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); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

191(3) for the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if-

(a) the time for taking enforcement action in respect of the failure has then expired; and

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

References to Sections 171B(1)-(3) of the Town and Country Planning Act 1990 (as amended) sets out the time periods for taking enforcement action relating to different types of unauthorised development;

- (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 which 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.

Consultations, Publicity and Representations

Neighbouring properties

2no. surrounding properties were consulted and 1 comment from a member of public was received.

Summary of comment:

- Higham Grange is used solely for house parties as advertised on House Party Solutions website as accommodating 17 persons (resulting in noise disturbances every weekend and some weekday nights and parking issues.)
- The house is occasionally let to a family group who cause less noise but mostly youngsters.

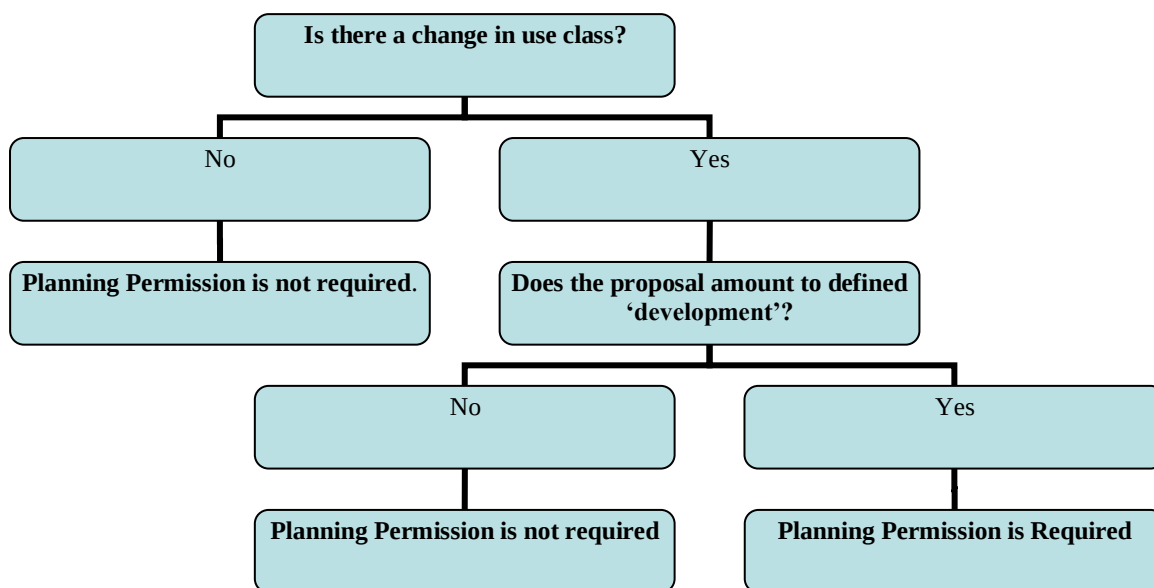
Officer Note: The concerns raised relate to the use of the main dwellinghouse and not the converted stable to which this application relates. Further consideration and explanation is given to this below. The applicants will be advised to seek planning permission for the change of use which would be subject to relevant consideration to neighbour impact and which if the application is submitted, would allow for separate neighbour notification for those matters to be fully considered.

Officer Note – Use of main dwelling

Although the use of the main dwellinghouse as holiday accommodation does not form part of this application, it is noted that no planning consent has been obtained for this use. The building appears to have begun to be used for holiday let and ceased to have a council tax band in 2021 (Based on website dating and council tax records).

There are two strands of assessment to be undertaken here. Firstly, does the proposed use result in a change of ascribed use class? If so, does the proposal result in a change which constitutes defined 'development'?

The below diagram explains the stepped process of this assessment.



Use Class C3 is described as:

Use as a dwellinghouse (whether or not as a sole or main residence) by—

- (a) a single person or by people to be regarded as forming a single household;
- (b) not more than six residents living together as a single household where care is provided for residents; or
- (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

The dwellinghouse has ceased paying residential council tax and no longer meets any of the definitions as above. Therefore, there has been a change of use class.

Definition of Development:

Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

In the case of *Moore v SSCLGA* (2012), the Court of Appeal agreed that a change of use from C3 dwelling to use as commercial leisure accommodation did not fall within class C3(a)-(c) and therefore constituted a sui generis use. In this assessment they stated:

'... whether the use of a dwellinghouse for commercial letting as holiday accommodation amounts to a material change of use will be a question of fact and degree in each case, and the answer will depend upon

the particular characteristics of the use as holiday accommodation. Neither of the two extreme propositions - that using a dwellinghouse for commercial holiday lettings will always amount to a material change of use, or that use of a dwellinghouse for commercial holiday lettings can never amount to a change of use - is correct.'

The inspectors approach regarded that the current use must be compared with the previous use in ascertaining whether the letting of the dwellinghouse resulted in a change of use from a dwellinghouse. In doing so they assessed the usual use of a dwellinghouse as occupied by a single-family unit. In this decision they ascertained that letting of a property for such a large number of people (up to 20), who came together largely as a result of shared interests did not occupy the property as 'single households'.

The judgement in this case was that *'as a matter of common sense, this particular use for holiday lettings is very far removed from the permitted use as a dwellinghouse and a material change of use has occurred.'*

[Moore v Secretary of State for Communities and Local Government & Anor \[2012\] EWCA Civ 1202 \(18 September 2012\) \(bailii.org\)](#)

I would therefore suggest that the applicants seek planning consent for change of use of the dwellinghouse to sui generis as commercial holiday accommodation. (It is noted that this does not form part of this application).

Officer's Analysis

Permitted Development

There are two main issues presented by this outbuilding; firstly does the building itself require planning consent and secondly does the current use of the building require planning consent given the length of time since it has been built?

The Planning and Compensation Act 1991 provide time limits in which the LPA can take planning enforcement action against development.

The time limits are:

- 4 years for building, engineering, mining or other operations in, on, over or under land, without planning permission. This development becomes immune from enforcement action four years after the operations are substantially completed.
- 4 years for the change of use of a building, or part of a building, to use as a single dwelling house. Enforcement action can no longer be taken once the unauthorised use has continued for four years without any enforcement action being taken.
- 10 years for all other development. The 10-year period runs from the date the breach of planning control was committed.

Ancillary/Incidental Use

A building incidental to the use of the main dwellinghouse should not be entirely independent of the original dwellinghouse. Given that all living facilities are currently provided within the building it is no longer considered to be an incidental building and is being used as an independent ancillary building for which planning permission would usually be required. The works described in the application form are as follows:

The building is currently being used as a 3 bedroomed residential dwelling and has been used for that purpose for well in excess of four years. It provides ancillary accommodation to the main house 'Higham Grange'. It has been used for residential purposes for well in excess of four years. I wish to Obtain a Lawful Development Certificate to confirm all of the above facts so that the dwelling can be recognised as a legal residential dwelling in the eyes of the law so that it can continue to be used for ongoing residential occupation.

Length of use

The second issue for this application is therefore how long the building has been in independent use as an ancillary building and whether the Planning Authority would be able to take enforcement action in line with The Planning And Compensation Act 1991. Should it be agreed that the building has been used as an ancillary building for greater than 4 years, it has become lawful through the passage of time. Planning enforcement action could no longer be taken if this were found to be the case.

Evidence provided as part of the application

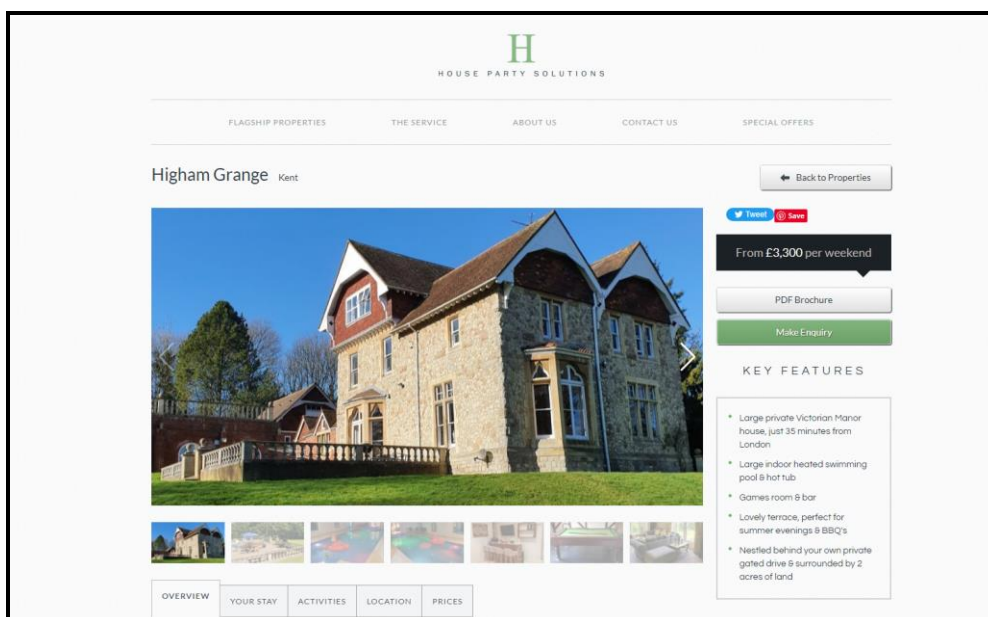
The evidence provided by the applicant is; 2no. sworn affidavits, signed by 2 owners of Higham Grange and confirming that the '3 bedroomed dwelling which lies upon the land of Higham Grange' has been used as a residential dwelling for over four years. They have also provided 2 photographs, 1 internal showing the kitchen and one showing the external door, the photographs are un-dated. The applicant stated in the application form that the building was originally constructed in 1988 as a stable block and no external increase in size has taken place since. They advise that the building had water and electricity connections and a toilet facility when it was purchased in 1997.

Having reviewed the evidence presented as part of the submission, it is felt that while the photographs show a kitchen facility and doorway to the stable building, they have little evidentiary value as they are undated and no further information has been supplied. Other than the sworn affidavits, no other evidence of value has been supplied. It is the applicant's responsibility to provide clear and convincing evidence that the Lawful Development Certificate should be issued. As such there is considered to be insufficient levels of evidence to demonstrate the use of the stable as residential for in excess of 4 years.

Other evidence gathered by the LPA:

The main dwellinghouse ceased to be listed with a council tax band in October 2019 as it was used as an Airbnb and then in October 2020 it was classed as a business for council tax purposes and categorised under NNDR (National Non-Domestic Rates). In comparison the converted stable block does not appear to have ever been given a council tax band as would be expected of a 3-bedroom dwellinghouse, or even as an annexe. It is also noted that the building does not benefit from its own postal address.

The online details for rental of the main dwellinghouse show the number of bedrooms available and this does not include the rooms within the subject structure. Details below:



The screenshot displays the website for 'House Party Solutions' featuring a property listing for 'Higham Grange' in Kent. The page includes a navigation bar with links for 'FLAGSHIP PROPERTIES', 'THE SERVICE', 'ABOUT US', 'CONTACT US', and 'SPECIAL OFFERS'. The main content area shows a large photograph of the property, a 'Back to Properties' button, and a price tag of 'From £3,300 per weekend'. Below the main image are several smaller thumbnail images. To the right of the main image, there are buttons for 'PDF Brochure' and 'Make Enquiry'. A 'KEY FEATURES' section lists the following points: 'Large private Victorian Manor house, just 35 minutes from London', 'Large indoor heated swimming pool & hot tub', 'Games room & bar', 'Lovely terraces, perfect for summer evenings & BBQ's', and 'Nestled behind your own private gated drive & surrounded by 2 acres of land'. At the bottom of the page, there is a navigation bar with links for 'OVERVIEW', 'YOUR STAY', 'ACTIVITIES', 'LOCATION', and 'PRICES'.

Number accommodated

- ◆ Sleeping a maximum of 17 people across 6 bedrooms

Bedroom & bathroom configuration

First floor

- ◆ Bedroom 1 - 1x King size bed & 1x single bed with en-suite shower room
- ◆ Bedroom 2 - 1x King size bed
- ◆ Bedroom 3 - 1x King size bed & 1x single bed
- ◆ Bedroom 4 - 1x King size bed & 1x single bed
- ◆ Two further bathrooms on the first floor. One with a bath & shower, the other with a shower only

Second floor

- ◆ Bedroom 5 - 1x double bed & 1x single bed
- ◆ Bedroom 6 - 1x double bed & 1x single bed
- ◆ Shared bathroom

Dining capacity

- ◆ Seating for 8 within the kitchen
- ◆ Dining room seats 16
- ◆ Alfresco dining for 20

Catering

- ◆ Hires on a self-catered basis however, local recommended caterers can be provided

Facilities

- ◆ Large indoor swimming pool & hot tub
- ◆ Games room
- ◆ Bar
- ◆ Terrace
- ◆ 2 acres of grounds to explore

 House Party Solutions
<https://www.housepartysolutions.co.uk> › property [PDF](#) 

Higham Grange - House Party Solutions

5 Aug 2022 — Welcome to Higham, a quaint village in Kent, the garden of. England with all it's splendour. Just outside of the village lies the impressive Higham Grange, ...

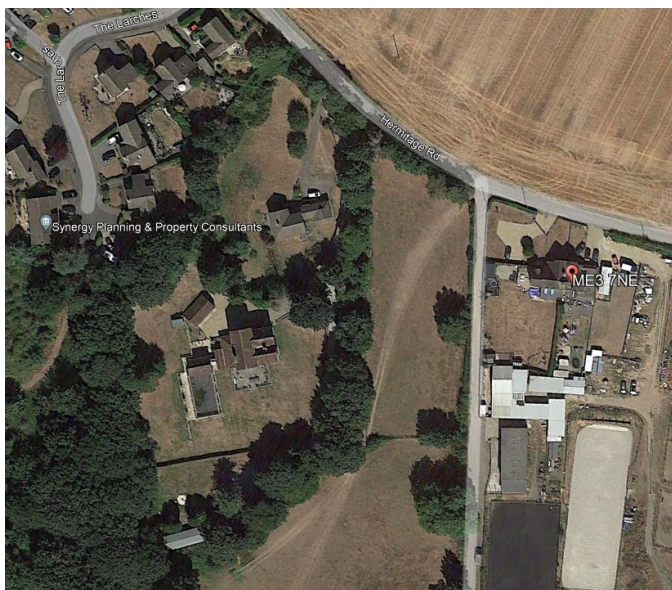
[Higham Grange , Kent | Your Stay | Luxury House Rental \(housepartysolutions.co.uk\)](#)

The dwellinghouse is also listed on Airbnb with similar details:

https://www.airbnb.co.uk/rooms/45896258?source_impression_id=p3_1678204661_3PAyJNZorGgvkBKk

It is noted that customer reviews on the Airbnb page date back to May 2021 and this is one year after the time that the council tax band was changed to NNDR.

It is also helpful to understand the change in landscape over the years and to consider what this can tell us about how the site is used and the relationship between the main dwelling and the converted stable block. The following plans detail the landscape changes over time:



This is the most recent aerial view.
Subdivision is evident.

Aerial View – 05/08/2022



In mid 2021, the main dwellinghouse began to be used for holiday rental and council tax banding was removed.
A clear separation of between the land fronting the converted stable building and the existing dwellinghouse appears.

Aerial View – 31/01/2021



Area of land fronting the stables not clearly defined and appears to be part of the wider garden area. Likely, the building was no longer used to house horses. It could be in disuse, an incidental building or an ancillary building based on the change in landscape.

Aerial View – 23/04/2020



Property was in previous ownership. Area of land fronting the stables clearly defined by difference in hue of the grass (As would be expected of an area of land used by horses). No physical demarcation of land.

Aerial View – 01/01/1990

Based on the above, it is clear that the building was originally built for equestrian use incidental to the dwellinghouse. Overtime, the building was no longer used to house horses. By 2021, the landscape surrounding the dwellinghouse and fronting the stables appears to encompass the entire plot cohesively and no separation is present at this point, indicating that it is most likely that the building is used for incidental purposes. However it is noted that the next image dated 31/01/2021 is when the plot was in the ownership of the current owners. In this image, it can be seen that a defined boundary separation between the stable block and main dwellinghouse had been created. It is also around this time that the main dwellinghouse began to be used as a holiday rental.

Conclusion & Recommendation

Based on the facts before me it appears that the stable block was used as an incidental residential dwellinghouse up until approximately 2021, when the property when the property ceased to pay council tax as a residential property and boundary separation was created between the buildings. It may have been the case that works had already been undertaken to the stable block to use the building as additional accommodation for the main dwelling, which at the time would not have required planning permission if it were incidental. Given that the main dwellinghouse no longer pays council tax as a residential property (despite not having sought formal planning permission for change to sui generis), there is no argument that this building is an ancillary unit to the main dwellinghouse, unless the use of the main dwellinghouse as a business were to cease and it became a single-family dwelling again. It also contains the necessary facilities for use as an ancillary dwellinghouse and the land has been separated since 2021 (within the 4 year time limit). These facts indicate that the building has only been in ancillary use within the last two years only.

There is no evidence that the building has been used as a separate dwellinghouse from council tax records as the converted stable block has no council tax banding. The main dwellinghouse ceased to have a council tax banding in 2019/2020 due to use of the building as a 'business'. However, it is noted that the stable block is not included in the listing of the building on either the *Airbnb* or *housepartysolutions* websites. The stable block as converted therefore does not fall within this use of the building as a 'business' and cannot be ancillary residential accommodation of the main dwelling house of Higham Grange is no longer residential.

No details of individuals occupying the converted stable block have been provided and, in many instances, it would be expected that rental evidence could be provided, unless the building is of course occupied by the owners. This then raises a further question if this is the case. At what stage would the owners of the site have ceased using the larger main dwellinghouse as their primary address and began to occupy the

converted stables? The assumption would be when the main dwellinghouse began to be used as a holiday accommodation for let and when it ceased to pay council tax banded. Both of these things appear to have happened in late 2020 and in early 2021 the landscape shows separation between the buildings. (Based on the online reviews of the main dwellinghouse, the website dates, the landscape changes and when the council tax status changes on the main dwellinghouse.)

Retrospective assessment does leave room for error, and a certain level of assumption is necessary based on the evidence presented. However, based on the strength of the evidence which we can be certain of (i.e. landscape changes, council tax records, website dating and ownership records), it is felt that the evidence submitted by the applicant in this case (i.e. affidavits of the owners and undated photographs) does not provide strong evidence of the use of the building as ancillary outside of the 4 year limitation. The evidence suggests that the stable block began to be used as ancillary accommodation in 2021.

My recommendation is therefore that a Lawful Development Certificate cannot be granted due to insufficient evidence being provided.

(For detailed conditions / reasons for refusal and informatives, see draft Decision)

Case Officer:	Ms Lisa Williams	Team Leader:	Miss Faye Hobbs
Signed:		Signed:	
Dated:	15th March 2023	Dated:	15 March 2023