



Delegated Report

Application for Lawful Development Certificate (Existing)

Planning Application No: 20230625

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.

Applicant: Mr Anthony Clayton

Site Visit Date: Desktop Assessment

Submitted Documents/Plans

Application Form
Site Location Plan
Floor Plans and Elevations
Photo 1
Photo 2
6 Affidavits

Relevant Planning History

Reference	Description	Decision	Decision Date
20230005	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'	Certificate Refused	16.03.2023
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

Consultees

Ward Councillors: No Response received.

Higham Parish Council: No response received.

Dickens Protection Society:

- The site is in an area within which Green Belt Policies would not normally permit new residential development.

- No special circumstance have been put forward.

Neighbouring properties

There is no statutory requirement to consult third parties. However 3no. surrounding properties were consulted and 3 comments from members of the public were received.

Summary of comment:

- Increasing numbers of properties are carrying out works and later seeing a Lawful Development Certificate.
- Second attempt at gaining consent.
- Concerns that it would enable accommodation of more people when main property is rented for party use and exacerbation of noise pollution and increased late night traffic from delivery drivers.
- The affidavits are mainly signed by family members of the applicant.
- The previous application said the use has been over 4 years and this new application says it has been in use over 10 years.

Officer Note: Many of 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 have been 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

The potential use of the main dwellinghouse as holiday accommodation does not form part of this application and will be investigated separately. It is not directly relevant to this application as the certificate looks to establish the use of the stable as a separate residential dwelling and not an annex, ancillary or not, to the main dwelling.

Officer's Analysis

It is noted that this application follows a recent refusal for '*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'*' under planning reference 20230005.

The main changes to that application are;

- The removal of the word 'ancillary' from the description.
- Provision of more affidavits than previously submitted.
- Inclusion of dates to submitted photographs.

To avoid over-repetition of the previous assessment, the delegated report for planning reference 20230005 will be included as **Appendix B** for reference. However, where relevant some points will be repeated but the focus of this assessment will be how the additional evidence/changes made from that previous application, impacts the assessment.

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

The description of existing use in the application form for this application is as follows:

Existing use of a residential dwellinghouse. The outbuilding has been used as a dwelling since 2010.

It is noted that the previous application dated that the use began in 1997 so there is a discrepancy between the last application and this.

The evidence must prove on balance that the site has been used as an independent, separate use of accommodation and not simply ancillary, for the application to be acceptable as applied for.

It is necessary therefore to revisit the definition of ancillary and independent. To ensure that the correct planning definitions are applied in line with relevant planning law.

The planning position relating to the provision of buildings or structures for annexes or the conversion of buildings for use as annexes (sometimes termed 'granny annexes') or other ancillary accommodation is quite complex and sometimes contradictory and there is case law, in relation to such development, which can itself be open to interpretation.

Case Law

The use of an existing outbuilding for ancillary residential accommodation in association with a main dwellinghouse does not require planning permission provided it complies with Sec. 55(2)(d) of the 1990 Act that provides that the use of buildings within the curtilage of a dwellinghouse for any purpose "incidental to the enjoyment" of that dwellinghouse is not development. This does not apply in this instance as the certificate is looking to obtain confirmation of the use of the outbuilding as a **separate** self contained residence

A number of cases, have shown that for the purposes of Sec. 55(2)(d) "incidental to the enjoyment" may be interpreted generously. The creation of an annexe from an existing outbuilding would therefore, be unlikely to require permission provided the building was occupied by a family member. However, the situation is not as clear where the occupant is someone who is not a member of the family but has a strong functional connection with the main dwelling, for example, a housekeeper or handyman.

However, although the case law for incidental dwellinghouses is noted for purposes of a full and thorough assessment, discussion of this further would not be necessary in this instance as the development is for use of the building as a separate dwellinghouse.

Length of use

The second issue for this application is therefore how long the building has been in independent use as an independent dwellinghouse 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 in this manner 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; 6no. sworn affidavits, signed by 4 occupiers, 1 gas engineer and 1 electrician 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 both dated on separate day in 2018. In the previous application, 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.

It is the applicant's responsibility to provide clear and convincing evidence that the Lawful Development Certificate should be issued. For a separate residential dwellinghouse to have been in use for a number of years, we would expect more evidence such utility bills, council tax records, rental agreement etc. These details have not been provided. 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:

As detailed in **Appendix B** (delegated report reference 20230005), the Local Authority undertook evidence gathering to establish further details and facts related to the use of the building. The following information was found:

- The main dwellinghouse (Higham Grange) was classed as a business for council tax purposes in 2019.
- Online Customer reviews on Airbnb date back to May 2021.
- Online rental details for the main dwellinghouse do not include use of the stable building.
- The Stable building to which this application relates does not have a council tax band and there is no history of council tax banding ever being places on this building.
- The Stable building has no separate postal address.
- Landscape changes show a physical separation between the stable and main dwellinghouse by 2021, which is not shown on the 2020 aerial image.

Conclusion & Recommendation

The previous application concluded that insufficient evidence to say for certain that the stable block was used for ancillary residential use for more than four years. Therefore, the additional evidence submitted now must prove on balance that the site has been used as an independent, separate unit of accommodation and not simply incidental for over 4 years, for the Lawful Development Certificate to be Granted.

The updated evidence provided shows that there have been individuals living at the stable building for over 4 years (based on the affidavits) and that electrical works were undertaken to install electrical sockets to three bedrooms and the kitchen/diner in 2017 and a quote was obtained for a possible gas boiler for the building, described the same. It is not stated whether the works to install the gas boiler were undertaken. The two individuals who provided affidavits stating that they reside at the building in question share the surname of the applicant, and so it can be assumed they have a familial relation. One of these individual states that they have lived there for over 4 years and one states that they have lived there for over 5 years. The photographs provided show a kitchen present inside the building in 2018. The above facts are not disputed. Details of those occupying the dwellinghouse were not previously provided in the last application and noting that they are family relations, this raises the question regarding whether the building is used as a separate unit or an incidental building.

The current situation is that the building has been occupied by familial members for over 4 years. In 2021 physical boundary separation appears between the main dwellinghouse and the stable building which these individuals reside in. It has all the independent facilities to be used as an independent dwellinghouse. The main dwellinghouse only has permission to be used as a C3 residential dwellinghouse and it has been less than 10 years since it was classed as a business use for council tax purposes.

As Per the case in **Uttlesford DC v SoS and White 1992**, simply containing all of the facilities for independent day to day living does not necessarily amount to the creation of a separate planning unit. And in that same judgement it was decided that a quality of separateness was occupation by someone who was not connected with the family occupation of the whole planning unit.

Whilst works were undertaken to the building to make it suitable for habitation more than 4 years ago, no extensions were made to the building and its footprint remains the same as when it was a stable. No evidence has been provided to indicate that the building is a separate planning unit from the main dwellinghouse. The building is occupied by family members to those occupying the main dwellinghouse and it does not have a separate postal address or council tax code. Whilst there is some physical separation between the main dwellinghouse and the stables, they share an access and vehicular drive and so there is a reliance on the main dwellinghouse. Based on the relevant case law and evidence at hand, it is more than likely that the building is being used as living accommodation incidental to the main dwellinghouse rather than completely separate. The proposal is for an independent separate residential dwellinghouse and not incidental use and there is insufficient information provided to determine that use.

For the purposes of this application, there is insufficient evidence to show that the building has had separate independent residential use as its own dwellinghouse for over 4 years. As such, the recommendation is to refuse this application for a Lawful Development Certificate.

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

Case Officer:	Ms Lisa Williams	Team Leader:	Miss Faye Hobbs
Signed:		Signed:	
Dated:	21 st August 2023	Dated:	21 August 2021