

Delegated Report

Lawful Development Certificate (Existing)

Application no:	20230491
Location	Starwood, Pear Tree Lane, Shorne, Gravesend, Kent, DA12 3JU
Proposal:	Application for a Lawful Development Certificate in respect of the existing concrete framed barn in the rear garden.
Applicant:	Mr T Russell
Site Visit	N/A Desktop Assessment

Plans & Documents

- Application Form - dated 05/05/2023;
- Planning Statement (ref: 3837.PN) - dated 05/2023;
- Supplementary Information - Land Registry Register K424735;
- Supplementary Information - Land Registry Title K424735;
- Supplementary Information - Pre-Application Response (ref: PRE20200330);
- Supplementary Information - Statutory Declaration by applicant (Mr Russel) - dated 16/05/2023;
- Supplementary Information - Statutory Declaration by applicant (Mrs Russel) - dated 16/05/2023;
- Supplementary Information - Statutory Declaration by applicant (Mr Filmer) - dated 16/05/2023;
- Supplementary Information - Builder Time Recording Sheets;
- Supplementary Information - Building Material Invoices and Payments;
- Supplementary Information - Photograph of Structure - dated 30/03/2019;
- Drawing no. 01 - Site Location Plan (scale - 1:1250);
- Drawing no. 02 - Existing Block Plan (scale - 1:500);
- Drawing no. 03 - Existing Floor Plan;
- Drawing no. 04 - Existing Elevations;
- Drawing no. 05 - Aerial Photograph 2018;
- Drawing no. 06 - Aerial Photograph 2020;
- Drawing no. 07 - Aerial Photograph 2022.

Proposal

This application is made under section 191 of the Town and Country Planning Act (1990) (as amended) for a Certificate of Lawfulness to confirm the existing use of the concrete framed building.

Relevant Planning History

Reference	Description	Decision	Decision Date
20221342	Demolition of existing stables and removal of containers and conversion of existing framed structure to form	REFUSED	15.02.2023

	separate bungalow with three bedrooms plus erection of detached double garage, additional single storey rear extension, front porch and use of existing access		
20220531	Demolition of existing stables and removal of containers and conversion of existing framed structure to form separate bungalow with three bedrooms plus erection of detached triple garage, additional conservatory, porch and use of existing access.	REFUSED	30.09.2022
20210376	Application for a Lawful Development Certificate in respect of the existing use of land and for residential purposes, falling within Use Class C3(a) of the Use Classes Order 1987 (as amended).	CERTIFICATE GRANTED	15.10.2021
20171122	Formation of an additional vehicular access and driveway onto a classified road.	PERMISSION	04.04.2018
20130450	Formation of an additional vehicular access onto a classified road.	PERMISSION	05.02.2014
20060227	Construction of a sand ménage.	WITHDRAWN	07.03.2007
20050912	Variation of condition (iii) of planning permission reference number GR/74/472 for erection of a detached garage; to allow the store in the roof space above the garage to be used as a hobby room and construction of dormer extensions in both side roof slopes of garage to provide enlarged roofspace for the hobby room/store.	PERMISSION	15.12.2005
20050675	Application for a Lawful Development Certificate in respect of the proposed construction of a dormer extension in both of the side roof slopes of the detached garage at the front.	CERTIFICATE REFUSED	20.10.2005
20050529	Application for Lawful Development Certificate in respect of the proposed erection of a stable block with tack and feed store and a hay barn within the residential curtilage.	CERTIFICATE GRANTED	22.08.2005
20010321	Erection of a detached double garage in the front garden with storage in the roof space and external staircase on the side elevation. Erection of an open porch on the front elevation	REFUSED PERMISSION	17.08.2001
19910714	Demolition of s/s lean-to on east elevation; erection of 1st floor extension on west elevation to form bedroom; construction of eyebrow dormer in the south roof slope & 2no dormer windows in the north roof slope &	PERMISSION	10.01.1992

	erection of single storey infill extension on the north elevation to form enlarged kitchen.		
19910379	Conversion of and single storey extension to the existing car port at the side to form lounge/ dining area, kitchen, wc and entrance hall.	PERMISSION	16.07.1991
19910126	Conversion of the existing detached double garage at the front into a dwelling incorporating the construction of dormer extensions in the northern and southern roof slopes and erection of a covered walkway linking it to the existing dwelling.	REFUSED	26.04.1991
19910032	Section 64 determination as to whether planning permission is required for the use of part of the ground floor as a guest house for 3 no. paying guests.	PLANNING PERMISSION NOT REQUIRED	14.02.1991
19870855	Formation of a vehicular access on to a classified road.	WITHDRAWN	16.03.1989
19820776	Retention of car port at the side.	PERMISSION	04.02.1983
19800995	Erection of a two-storey rear extension to form enlarged lounge with two bedrooms at first floor level.		13.01.1981
19750472	Alterations and additions to provide additional living accommodation and erection of a detached garage.	PERMISSION	19.08.1975
19750235	Demolition of existing lean to and conservatory and erection of 2 storey extension at rear and single storey extensions at side for garages and workshops and formation of rooms in roof space.	REFUSED	08.07.1975
19600015	Erection of bungalow and garage.	PERMISSION	26.02.1960
19570315	Stationing of a caravan for storage purposes.	TEMPORARY PERMISSION	09.02.1960
19570314	Stationing of a caravan for weekend use. (Date App. Rec. 15.12.1956)	PERMISSION	16.01.1959
19570254	Stationing of caravan for week-end use.	PERMISSION	23.12.1957
19480151	Erection of a dwelling.	PERMISSION	23.06.1949

Consultations, Publicity and Representations

This is an application for a Lawful Development Certificate that is considered on its facts and relevant planning law. As confirmed in national planning guidance, views expressed by third parties on the planning merits of such cases are irrelevant. Accordingly, unlike planning applications, there is no statutory requirement to undertake publicity or consultation.

Legislation

The Town and Country Planning Act (1990) (as amended) Section 191: Certificate of Lawfulness of existing use or development.

Procedure for determination

This application seeks a determination by the Local Planning Authority as to the whether the concrete framed building is a lawful use as it has been constructed for more than 4 years as set out under s.171B (1) of the Town and Country Planning Act 1990.

National Planning Guidance on determining applications of Lawful Development Certificates for existing uses or development is clear in stating that the onus is on the applicant to provide sufficient information to demonstrate that the use of development is lawful beyond any reasonable doubt. Furthermore, in the case of an application for exiting uses, 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 applicants evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

To confirm the lawful status of the outbuilding, the Local Planning Authority need to be satisfied that the building was constructed and has been in situ for at least 4 years.

Analysis

This application is for a Lawful Development Certificate and not for a planning permission. 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 proving 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 (the section relating to LDCs, paragraphs 005 to 009).

Starwood is a detached property located on the northern side of Peartree Lane. It benefits from a curtilage of 0.6 hectares, with an additional 10.2 hectare within the applicant's ownership. The building in question is located to the rear of the property, set back from the rear wall by some 33m.



The evidence provided to support this application consists of plans, aerial photographs, land registry documents, a historic pre-application report, statutory declarations, builder timesheets, photographs of the structure and building material invoices/payments.

The Local Planning Authority have considered the evidence presented as part of this application and have undertaken an investigation to validate the aerial images provided. These corroborate with the submitted evidence and suggest that the structure has been in situ since March / April 2019. The other parts of evidence provide more certainty in the form of dated invoices and photographs. There are also statutory declarations from the applicants and the builder.

Therefore, notwithstanding the Local Planning Authorities investigation, the evidence provided in this case is considered to, on the balance of probabilities, prove that the building was constructed in March / April 2019, has been in place for 4 years and would be lawful through the passage of time.

Conclusion

On the balance of probabilities and in the absence of any evidence to the contrary, it is considered that the concrete structure is lawful by reason of Section 171B (1) of the Town and Country Planning Act 1990, as amended.

The use is therefore lawful by reason of Section 191(3) (a) of the Act and Certificate of Existing Use is duly issued.

Recommendation: Grant Lawful Development Certificate			
Case Officer:	Mr Ethan Bonthron	Team Leader:	Miss Faye Hobbs
Signed:		Signed:	
Dated:	6 th July 2023	Dated:	07 July 2023