

Delegated Report

Existing Lawful Development Certificate

Application no:	20230904
Location	Longacre Valley Lane Meopham Gravesend
Proposal:	Application for a Lawful Development Certificate in respect of the continued use of the annex as incidental to the main dwelling.
Applicant:	Mr Philip Parfitt
Site Visit	9.11.23

Preliminary Matters

A description alteration was agreed with the agent on 17.11.23 to make it clear that the existing annex is used incidental to the main dwelling.

Plans & Documents

Application Form;
Supplementary Information – Planning Statement;
Supplementary Information – Burden of Proof; and
OS Plan (received on 29.08.23).

Material Consideration

- Town and Country Planning Act 1990 (as amended).

The law relating to Lawful Development Certificates can be found in Sections 191 to 193 of the Town and Country Planning Act 1990 (as amended). For the purposes of this application the relevant section is 191, being a certificate sought for an existing use.

The application seeks to determine that the existing use of the stable building as an annex, ancillary to the main dwellinghouse, is lawful for planning purposes under Section 191 of the Town and Country Planning Act 1990 by virtue of the passage of time. Section 191(2) and (3) of the Town and Country Planning Act 1990 prescribes:

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 of 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.

Relevant Planning History

Reference	Description	Decision	Decision Date
20140540	Erection of a detached stable and tackroom/hay store.	Permitted	29.07.2014

Development Plan

As this is an application for a Lawful Development Certificate the matter is dealt with on the basis of an assessment of the available evidence; the issue of whether the use complies or not with the Development Plan does not apply in such circumstances.

Consultations, Publicity and Representations

There is no statutory requirement to consult third parties. However, the application has been advertised by individual neighbour letters to 7 properties, the Local Ward Councillors and Meopham Parish Council. The consultation period expired on 28.09.23.

Whilst there is not a statutory requirement to consult third parties, it can be considered *reasonable for a local planning authority to seek evidence from these sources*, as per paragraph 008 of the Planning Practice Guidance on Lawful Development Certificates.

A response from Meopham Parish council was received, however, as this is a lawful development certificate application, *views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.*

Analysis

Background Information

There are inconsistencies with the information submitted with this application. The application form states the Lawful Development Certificate should be granted because *'this (The Stable) Annex has been used as residential accommodation since March 2017, therefore this is more than 4 years.'* In addition, the grounds selected for this application for a Lawful Development certificate are; *'the building works (for instance, building or engineering works) were substantially completed more than four years before the date of this application.'* However, the Planning Statement makes reference to the ten year rule within the planning statement:

Extract from Planning statement

As such, the evidence submitted with this application is considered to be sufficiently precise and unambiguous to confirm that the annex would be immune from enforcement action under Section 171 B(3) of the Town and Country Planning Act 1990. Therefore It is hoped that this Lawful Development Application will succeed.

These inconsistencies do not impact the assessment of the application, which shall be carried out below.

Assessment

Paragraph 006 of the Government Guidance on Lawful Development Certificates 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.'

Evidence provided as part of this application

- Planning Statement
- Burden of Proof (containing plans, images, aerial images and statutory declarations etc.)

Evidence gathered by the Local Planning Authority

- The Council Tax department confirmed it holds no records for an annex at the property.
- Street Naming and Numbering – unaware of anyone living in an annex at the property.
- STG Building Control – no application for the reported use of the stable as an annex.
- Site visit undertaken.

Following the site visit and with regard to the evidence provided, it is considered on the balance of probability that the annex has been used for at least the past four consecutive years prior to the application being made and is therefore lawful due to the passage of time.

Recommendation:

Approve Certificate of Lawfulness – Existing Development

Recommendation: Grant Lawful Development Certificate

Case Officer:	Mrs Lucy Hankin	Team Leader:	Richard Hart
Signed:	L Hankin	Signed:	<i>R Hart</i>
Dated:	17th November 2023	Dated:	17th November 2023