

Delegated Decision

Sign off Sheet

Ref. No:	DM/25/0464	Case Officer:	Hamish Evans
Application Type:	Lawful Development Certificate -Existing		
Proposal:	Use of property as an independent residential dwellinghouse.		
Site:	The Studio, Brickyard Cottages, Wallage Lane, Rowfant, Crawley, West Sussex, RH10 4NQ,		
Validation Date	20 Feb 2025	Overall Expiry Date:	19 Mar 2025
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Permission	Recommendation Date:	1 Apr 2025
Target Date:	17 Apr 2025	Recommending Officer Signature:	Hamish Evans

Date Legal Agreement Completed: (if applicable)		No of Representations:	0
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Signed and Agreed By:	Stephen Ashdown	Date:	1 Apr 2025
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/25/0464

The Studio, Brickyard Cottages, Wallage Lane, Rowfant, Crawley, West Sussex, RH10 4NQ
Use of property as an independent residential dwellinghouse.
Mr Thomas Harbour

SUMMARY OF REPRESENTATIONS

No third-party letters of representation have been received.

SUMMARY OF CONSULTEES

MSDC Street Name and Numbering

No objection, recommend informative.

PARISH COUNCIL OBSERVATIONS

Turners Hill Parish Council

No objection.

INTRODUCTION

The proposal is seeking a Lawful Development Certificate under section 191 of the Town and Country Planning Act 1990, to establish the lawfulness of one independent residential dwelling at The Studio Brickyard Cottages Wallage Lane Rowfant RH10 4NQ.

Relevant Planning History

None relevant.

SITE AND SURROUNDINGS

The site is located within the countryside and the built up area boundary of Turners Hill is located some 1000 metres to the south east of the site. The surrounding area to the north, east and west of the site is semi-rural in its nature and it consists of woodland, open countryside and sporadic residential development. The surrounding area to the south of the site consists of an industrial estate. The application site consists of a two-storey building which is characterised by bare brown brick work walls, brown clay roof tiles and brown and grey uPVC window and door frames. There is a relatively modest private amenity space surrounding the building and parking spaces are located to the south of the dwelling. The site is accessed through a private road that is located to the west of the site which leads to Wallage Lane located to the north of the site.

APPLICATION DETAILS

The application is seeking a Lawful Development Certificate under section 191 of the Town and Country Planning Act 1990 as to whether the independent residential dwelling is lawful.

The submitted application documents state that the building became a dwelling in 2005 and has been let by the applicant since 2005. Six tenancy agreements have been provided with the application these have been signed and dated. The first agreement was from 2005-2008, the second from 2008-2012, the third from 2012-2013, the fourth from 2013-2014 and the final from 2014-present.

RELEVANT LEGISLATION

Section 191 of the Town and Country Planning Act 1990 indicates that the burden of proof lies with the applicant. The relevant test is 'the balance of probability' and Local Planning Authorities are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events there is no good reason to refuse the application provided that the applicants' version is precise and unambiguous to justify the grant of a certificate. This section also indicates that 'if on an application under this section, the LPA 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 the application, they should issue a certificate to that effect; and in any other case they shall refuse the application'.

Time limits for enforcement set out in Section 171B of the Town and Country Planning Act 1990:

'(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 -

(a) in the case of a breach of planning control in England, ten years beginning with the date in which the operations were substantially completed, and

(b) in the case of a breach of planning control in Wales, 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 -

(a) in the case of a breach of planning control in England, ten years beginning with the date in which the operations were substantially completed, and

(b) in the case of a breach of planning control in Wales, four years beginning with the date on which the operations were substantially completed.

(2A) There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).

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.

4) The preceding subsections do not prevent -

a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.'

It should be noted that Section 171B of the Town and Country Planning Act 1990 was amended by the section 115 of the Levelling-up and Regeneration Act 2023. The amendments in part removed the previous enforcement period in (2) of section 171(B) which was four years and replaced it with a 10 year enforcement period.

Section 115 of The Levelling-up and Regeneration Act 2023 includes transitional arrangements for this change which state that the alterations to section 171(B) made by the 2023 Act

'do not apply where -

(a) in respect of a breach of planning control referred to in section 171B(1) of the 1990 Act (5) (time limits), the operations were substantially completed, or

(b) in respect of a breach of planning control referred to in section 171B(2) of the 1990 Act (time limits), the breach occurred,

before the day on which that section comes into force.'

The 2023 Act came into force on the 25th of July 2024. From the documents that have been submitted it is considered that the breach in question occurred in 2005, which was when the building was first used as an independent dwelling.

As such the transitional arrangements as set out within the 2023 Act are considered appropriate and the relevant time period is four years. The applicant is required to demonstrate on the balance of probabilities that the building has been used as an independent residential dwelling continuously for more than four years from the date of this application

The onus of proof is firmly on the applicant and the standard of proof is the balance of probability. If there are contradictions in the applicant's evidence on material issues, then the LPA would be entitled to refuse the certificate.

More recently the Localism Act has introduced legislation under section 171BA for cases where the LPA that there has been deliberate concealment. This states:

'171BA Time limits in cases involving concealment

1) Where it appears to the local planning authority that there may have been a breach of planning control in respect of any land in England, the authority may apply to a magistrates' court for an order under this subsection (a "planning enforcement order") in relation to that apparent breach of planning control.

2) If a magistrates' court makes a planning enforcement order in relation to an apparent breach of planning control, the local planning authority may take enforcement action in respect of-

a) the apparent breach, or

b) any of the matters constituting the apparent breach, at any time in the enforcement year.

3) "The enforcement year" for a planning enforcement order is the year that begins at the end of 22 days beginning with the day on which the court's decision to make the order is given, but this is subject to subsection (4).

4) If an application under section 111(1) of the Magistrates' Courts Act 1980 (statement of case for opinion of High Court) is made in respect of a planning enforcement order, the enforcement year for the order is the year beginning with the day on which the proceedings arising from that application are finally determined or withdrawn.

5) Subsection (2)-

a) applies whether or not the time limits under section 171B have expired, and

b) does not prevent the taking of enforcement action after the end of the enforcement year but within those time limits.'

This confirms that where a person has deliberately set out to mislead the LPA, the time limits set out in Section 171B of the Town and Country Planning Act 1990 do not apply.

ASSESSMENT

The evidence that has been submitted consists of five signed and dated tenancy agreements and a photograph taken of the property in 2006. These agreements are signed and dated and cover from 2005 to the date of the application. The most recent agreement is dated from 2014-present.

With this in mind and in the absence of any contradictory evidence, it is considered that on the balance of probabilities, the building have been used as an independent residential dwelling continuously for more than four years from the date of this application.

CONCLUSION

It is considered that the applicant has established on the balance of probabilities that the building has been used as an independent residential dwelling continuously for more than four years from the date of the Lawful Development Certificate application and a Lawful Development Certificate can be issued.

Decision: Permission

Case Officer: Hamish Evans