

Delegated Decision

Sign off Sheet

Ref. No:	DM/25/0249	Case Officer:	Tanya Leete
Application Type:	Lawful Development Certificate -Existing		
Proposal:	Application for a Certificate of lawful existing use or development for the construction of a residential cabin. Revised application following the refusal of DM/24/1956		
Site:	Cabin At Grid Reference 531955 137109, Horsepasture Wood, Wallage Lane, Rowfant, West Sussex, , ,		
Validation Date	31 Jan 2025	Overall Expiry Date:	25 Feb 2025
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Refusal	Recommendation Date:	24 Mar 2025
Target Date:	28 Mar 2025	Recommending Officer Signature:	<i>Tanya Leete</i>

Date Legal Agreement Completed: (if applicable)		No of Representations:	6
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Signed and Agreed By:	<i>Stephen Ashdown</i>	Date:	25 Mar 2025
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/25/0249

**Cabin At Grid Reference 531955 137109, Horsepasture Wood, Wallage Lane, Rowfant, West Sussex, ,
Application for a Certificate of lawful existing use or development for the construction of a residential cabin. Revised application following the refusal of DM/24/1956
Ms Rosie Nelson**

SUMMARY OF REPRESENTATIONS

6 representations received in support of this application.

SUMMARY OF CONSULTATIONS

None received.

TOWN/PARISH COUNCIL OBSERVATIONS

Defer to Officer

INTRODUCTION

The application is seeking a Certificate of Lawful Development for the construction of a residential cabin at land at Horsepasture Wood, Wallage Lane, Rowfant, Crawley Down. This application is revised application following the refusal of DM/24/1956.

RELEVANT PLANNING HISTORY

DM/24/1956 - Application for a Certificate of Lawful Existing Use or Development for the construction of a residential cabin- Refused 22.11.2024 for the following reason:

'It is considered that the applicant has not established on the balance of probabilities that the lawful use of the existing building and surrounding redline area as residential. Accordingly, a LDC for the development as described in the application cannot be granted and the application is refused.'

SITE AND ITS SURROUNDINGS

The site of the cabin is located in woodland, on the south-western edge of a pond situated in the northern most part of Horsepasture Wood. There is no vehicular access to the site, and is accessed through a pedestrian track, some 530 metres or so north of the junction of Wallage Lane with Turners Hill Road. Woodpeckers Fishery lies to the west of the site and Rowfant Residential Home to the east of the site. A location plan has been submitted with the application which includes a red line area around the cabin, within the red line appears to have been used as residential curtilage in association with the cabin, this measures approximately 25m by 26m.

The site is located outside a built-up area boundary and as such is considered to be within the countryside. The site is also located within the 15-metre buffer of the Ancient Woodland which is located within the middle of the site.

APPLICATION DETAILS

The applicant has applied for a Law Development Certificate under Section 191 of the Town and Country Planning Act 1990 for the construction of a residential cabin. The original cabin measures 5.95m x 4.5m with a height of 2.36m to eaves and 3.71m to its ridge. The roof overhangs to create a small, covered

veranda such that the length of the roof is 7.05m. Two extensions have been added to the original structure, the first was erected in February 2021 and the second was completed in August 2022. The internal layout consists of living/dining room, kitchen, mezzanine bedroom/storage, bedroom, storage room, bathroom. The toilet is housed in a separate building outside the cabin.

The following evidence has been submitted in support of the application:

- Location plan
- Existing site plan
- Existing Floor and Elevation Plans
- A payment receipt for the cabin
- Sworn statutory declarations from Rosie Nelson, Rosie partner, Jeremy Nelson (Rosie's father) and 6 further declarations from family and friends.
- Statements from friends who visited the cabin between 2019 - 2021.
- Photographs of the cabin inside and out, dated 2019 - 2024
- Excerpts from bank statements for gas bottles at Calor gas November 2019 - March 2020
- Excerpts from bank statements for gas bottles at Burstow Nurseries April 2022 -March 2024
- Excerpts from Instagram account and personal phone conversations
- Copies of purchases made for the cabin, including the main cabin itself, construction materials and furnishings for inside the cabin
- Excerpts of personal conversations - November 2020, February & April 2023

LEGAL FRAMEWORK AND LIST OF POLICIES

As this is an application to establish the lawful use of the dwelling and will be a legal decision, the planning merits cannot be taken into consideration and therefore, there are no relevant planning policies.

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 September 2019, which was when the applicant moved into the cabin and started living there. This has been stated in the submitted application documents.

As such the transitional arrangements as set out within the 2023 Act are considered appropriate and the relevant time period is ten years. Whilst the application is predicated upon proving the development has been completed for more than four years, in the opinion of the LPA the development subject to the application should attract a 10 year period of immunity.

In way of explanation, and noting that the provisions of The Levelling-up and Regeneration Act 2023 do not apply in this instance as by common agreement the development was complete prior to the requirements of the Act coming into effect, the provisions of s.171B(2) stated:

'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'

The section is clear that it relates to the '*change of use*' of any building and not to the construction of a new residential dwellinghouse.

Rather in this instance the limitations as laid out in s.171B(3) should apply as the development subject to the application is the construction of a new single residential dwellinghouse and the change of use of the land upon which it lies, and further surrounding land, from woodland to a mixed use of woodland and for use for residential purposes.

The development subject to the application should therefore attract the '10-year rule' rather than the 4-year rule, and it would need to be proved, on the balance of probability, that the development was substantially complete and the change of use of the land occurred 10 years prior to the date of the application, ie: 31st January 2015.

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 consider 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

As this is not a planning application, the planning merits of the development are not relevant. The test is to establish on the balance of probabilities that what is being sought in the LDC has occurred. The submitted evidence must be precise in order for the LPA to clearly say in a certificate, exactly what is lawful.

As noted above the LPA is of the opinion that the unauthorised development subject to the application relates to the construction of a single residential dwelling and the change of use of the land upon which it lies. It must therefore be established whether on the balance of probabilities that the building in question has been substantially complete and has been used as a single residential dwelling for a period of 10 years or more since the date of the LDC application, and that the evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. For the purposes of this application, it is necessary for the evidence to prove the building in question has been substantially complete and had been used as a single residential dwelling prior to the 31st January 2015.

By common agreement, and it is not suggested anywhere within the submission, that the use of the land or the construction of the dwelling took place at any time prior to 2019 and therefore no evidence has been provided which proves, on the balance of probability, that the development took place prior to January 2015.

On this basis the relevant test has not been met and a LDC confirming that the use of the building and surrounding red line area for residential purposes cannot be granted.

It is noted this current application, leading on from the refusal of previous CLUED application (DM/24/1956 refers), has sought to address the previous refusal by providing further evidence to prove, on the balance of probability, that the building was completed prior to 31st January 2021.

The photographic evidence that has been submitted as part of the application has been dated and shows the building being constructed in July 2019, and in situ in August 2020. The Council does not have any information contrary to the above.

Photo evidence of kitchen shows the part installation of a kitchen without any taps, and photos from April 2020 show little sign of residential occupation, with none of the domestic paraphernalia that would be

expected if the building was being occupied for that purpose. Additional information provided from the application states they gathered rainwater and filtered this through a Berkey water filter. They also cooked on a camping stove, which therefore indicates that the cabin was not substantially completed as a residential unit.

Excerpts from bank statements for gas bottles and copies of furnishing purchases, are not clear and precise, the delivery addresses are varied and do not include the property subject to the application and, therefore the evidence is not consistent and would be considered to carry very little weight. While further statements from the applicant confirming that as the cabin does not have an address, family members addresses were used for delivery are not persuasive and this evidence carries little weight.

Photo evidence dated 22nd July 2020, shows a wooden structure with no roof or door, according to the statement this structure is indicated as a toilet shed, which stated was completed. A fully operational toilet would be required for residential occupation and as such it would be highly unlikely residential occupation since September 2019 would have taken place without toilet facilities and the evidence would therefore not be consistent considering the other statements made and submitted. Further statements provided by the applicant stated a fully operational toilet was not required for residency and they dug "catholes" to dispose of waste. This further concludes that the cabin was not substantially complete for a continuous residential use.

Statutory Declarations have been provided from the applicant's partner, family and friends, stating that the applicant and her partner having been living in the cabin since September 2019.

There are a number of photographs that have been submitted between September 2019 and March 2021. These show the external of the cabin and individuals within the cabin. The evidence is not precise, as it does not show that the building was occupied continuously throughout this period. The photo evidence contradicts the statements submitted and as such the evidence is considered to be ambiguous.

Representations have been received as part of this application, the comments by individuals have contradicted the evidence submitted, as individuals have not visited the cabin and also only knowing the applicant's partner since 2022.

Notwithstanding the application makes no attempt to prove the lawfulness of the development for a period of 10 years, even on the basis of attempting to prove the 4 year period, the evidence provided regarding the use of the cabin as a residential dwelling is inconsistent, imprecise and ambiguous, and there is limited evidence provided with the application that the cabin has been used as a residential dwelling for 4 years prior to the date of this application.

Taking into account the above it is considered that on the balance of probability, the cabin that has been built has not been used as a residential dwellinghouse continuously throughout the period of 10 years or more since the date of this Lawful Development Certificate application.

On this basis the relevant test has not been met and a LDC confirming that the use of the building and surrounding red line area for residential purposes cannot be granted.

CONCLUSION

To conclude it is considered that the applicant has not established on the balance of probabilities that the lawful use of the existing building and surrounding redline area as residential. Accordingly, a LDC for the development subject to the application cannot be granted and the application is refused.

Decision: Refusal

Case Officer: Tanya Leete