

Delegated Decision

Sign off Sheet

Ref. No:	DM/25/0140	Case Officer:	Hamish Evans
Application Type:	Lawful Development Certificate -Existing		
Proposal:	Application for an Existing Certificate of Lawful Use or Development for the construction of a residential cabin.		
Site:	Cabin At , Horsepasture Wood, Wallage Lane, Rowfant, West Sussex, , ,		
Validation Date	17 Jan 2025	Overall Expiry Date:	12 Feb 2025
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Refusal	Recommendation Date:	1 Apr 2025
Target Date:	14 Mar 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:	2 Apr 2025
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/25/0140

**Cabin At , Horsepasture Wood, Wallage Lane, Rowfant, West Sussex, ,
Application for an Existing Certificate of Lawful Use or Development for the construction of a
residential cabin.**

Ms Eleanor Locker-Lampson

SUMMARY OF REPRESENTATIONS

No third-party letters of representation has been received in respect of this application.

SUMMARY OF CONSULTEES

MSDC Street Naming and Numbering

Recommend informative.

PARISH COUNCIL OBSERVATIONS

Worth Parish Council

Defer to officer.

INTRODUCTION

The application is seeking a Lawful Development Certificate for the existing use and development in relation to the construction of a residential cabin at Horsepasture Wood Wallage Lane Rowfant.

Relevant Planning History

DM/24/2310 - Application for an Existing Lawful Development Certificate for the construction of a residential cabin. Refused.

SITE AND SURROUNDINGS

The site is located outside a built up area boundary and as such is considered to be within the countryside. A location plan has been submitted with the application which includes a red line area around the cabin. This area within the red line appears to have been used as residential curtilage in association with the cabin. There is a private access track leading from Wallage Lane to the south of the cabin. Wallage Lane is located some 210 metres from the site. The site is located within the 15 metre buffer of the Ancient Woodland which is located to the south and west of the site. Woodland is located to the north and east of the site. The surrounding area consists of woodland and open countryside with sporadic residential development.

APPLICATION DETAILS

The applicant has applied for a Law Development Certificate under Section 191 of the Town and Country Planning Act 1990 for the existing use and development in relation to the construction of a residential cabin. The submitted documents state that the cabin measures some 6.0 metres in width and 5.2 metres in depth. The existing cabin that has been built is single storey in its external appearance, it is characterised by white timber clad walls, corrugated metal roofing and timber window and door frames. The plans that have been submitted show four internal rooms within the cabin these consist of a bedroom, kitchen/living room, utility area and bathroom. A location plan has been submitted with the

application which includes a red line area around the cabin. This area within the red line appears to have been used as residential curtilage in association with the cabin.

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

- Location plan,
- Sworn Statutory Declaration from the applicant confirming that the cabin was bought in 2016, was constructed over 2 years and first occupied in 2019. At which time a Pawel Kolan lived in the cabin. The statement states that the applicant moved into the cabin in June 2023 where they have lived since the date of this application,
- An invoice dated 11.01.2016 for a residential cabin,
- A statement from an individual confirming the applicant built a log cabin in 2016 and that they helped construct it,
- Photos of the foundations of the cabin dated 01.05.2016,
- Photos of the construction of the cabin between 10.05.2016 and 13.05.2017
- Photos of the cabin in situ dated 26.07.2024
- Sworn Statutory Declaration from Pawel Kolan, confirming they moved into the cabin in March 2019 and that the applicant moved into the cabin in June 2023,
- Photos of the cabin internal and external dated between 21.02.2018 and 21.06.2019,
- Copies of orders for equipment and furnishing dated from 29.05.2017 to 25.07.2022,
- Statement of account for gas bottles dated between 27.04.2018 and 01.02.2024.

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 on 20th April 2016, which was when the applicant allegedly 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 four years. The applicant is required to demonstrate on the balance of probabilities that the building in question has been used as a single residential dwelling for a period of 4 years or more since the date of the LDC 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

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.

It must be established whether on the balance of probabilities that the cabin in question has been substantially complete and has been used as a single residential dwelling for a period of 4 years or more since the date of the LDC application. 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 17th January 2021.

A sworn Statutory Declaration has been submitted by the applicant that the cabin was bought in 2016, constructed over two years and habitable in 2018. It states a Pawel Kolan lived in the cabin until June 2023 when the applicant moved into the cabin.

The photographic evidence that has been submitted as part of the application has been dated and shows the Cabin being constructed between 01.05.2016 - 13.05.2017. The Council does not have evidence to the contrary. These photos show the cabin being constructed however they do not show the building being occupied for residential use, this is due to the state of the land surrounding the cabin and the lack of residential paraphernalia in the photo from 13.05.2017.

The receipt for the purchase of the cabin is considered to carry little weight as it doesn't demonstrate when the cabin was constructed or when a residential use has been undertaken at the site and the receipt is not within the applicants name.

Excerpts from bank statements for gas bottles and copies of furnishing purchases, are not clear and precise, as some invoices/statements do not show names, and 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. Whilst it is noted that the application states that due to the location of the application site it was impractical to have these items delivered to the site this does not change the weight attributed to this evidence.

There are a number of photographs that have been submitted between 21.02.2018 and 21.06.2019. These show the external of the cabin and individuals within the cabin. There are also photos of the cabin dated 26.07.2024.

A sworn Statutory Declaration has been submitted as part of the application which states that the cabin has been used by a Pawel Kolan since March 2019 to June 2023 when the applicant moved in. A sworn Statutory Declaration has been submitted by Pawel Kolan, which confirms that they moved into the cabin in March 2019 and that the applicant moved into the cabin in June 2023.

Limited evidence has been provided to demonstrate that Pawel Kolan lived in the cabin continuously as their primary residential property between March 2019 and June 2023. Whilst it is noted that the application states that due to Pawel Kolan's lifestyle choices, there is limited evidence available to

demonstrate the occupation of the cabin by Pawel Kolan. However, the onus is on the applicant to provide evidence of the occupation of the cabin.

An anonymous representation letter was received in respect of the previous application (DM/24/2310 refers) on the site for the same proposal and whilst due to its anonymous nature it attracted negligible weight, it was still considered to be a material consideration to that application. This representation letter showed a screenshot taken 29.05.2023 of an AirBnB webpage with a photo of the cabin subject to the application and a photo of the applicant. This webpage showed the cabin available for short term holiday let and showed 19 reviews. This information was sent to the agent for the application and they have provided 18 separate periods of time between 2018 and 2024 where the cabin had been used for short term holiday let. This information was provided in an email which provided limited information other than a list of the dates and the information was not given under oath, therefore little weight was given to the evidence. There were 12 periods of time within 2018, 3 were within 2022, 2 within 2023 and 1 within 2024. It should also be noted that the anonymous representation letter showed 19 reviews. The application provided 18 time periods where the cabin has been used for short term holiday let. The bookings that were undertaken from 2022 to 2024 were *"when the applicant spent time with her elderly father whilst renting the cabin out to earn some additional income"*. The evidence available to the Council regarding the number of times the building has been used as a short-term holiday let contradicted the applicants information. This is considered still relevant in respect of the current application.

The evidence that has been provided is considered to demonstrate that the building has been in situ and substantially complete since 2018 and has been in place throughout the period of 4 years prior to the date of the LDC application. However, it is considered that the evidence provided regarding the use of the cabin as a residential dwelling is inconsistent, imprecise and ambiguous, the statements provided regarding the use are imprecise and that there is limited evidence provided with the application that the cabin has been used as a residential dwelling for four 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 4 years or more prior to 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 as described in the application cannot be granted and the application is refused.

Decision: Refusal

Case Officer: Hamish Evans