

Delegated Decision

Sign off Sheet

Ref. No:	DM/24/3042	Case Officer:	Hamish Evans
Application Type:	Lawful Development Certificate -Existing		
Proposal:	Application made under Section 191 of the Town and Country Planning Act 1990 to establish the lawfulness of 2no. independent residential dwellings (Use Class C3) and associated operational development.		
Site:	Annexe, Mill House, Old Hollow, Copthorne, West Sussex, RH10 4TB, ,		
Validation Date	12 Dec 2024	Overall Expiry Date:	8 Jan 2025
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Permission	Recommendation Date:	5 Feb 2025
Target Date:	6 Feb 2025	Recommending Officer Signature:	Hamish Evans

Date Legal Agreement Completed: (if applicable)		No of Representations:	0
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Signed and Agreed By:	Steven King	Date:	6 Feb 2025
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/24/3042

**Annexe, Mill House, Old Hollow, Copthorne, West Sussex, RH10 4TB,
Application made under Section 191 of the Town and Country Planning Act 1990 to establish the
lawfulness of 2no. independent residential dwellings (Use Class C3) and associated operational
development.**

Mr Ben Ashmore

SUMMARY OF REPRESENTATIONS

No third-party letters of representation have been received.

SUMMARY OF CONSULTEES

None received.

PARISH COUNCIL OBSERVATIONS

Worth Parish Council

Defer to officer.

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 two independent residential dwellings and associated operational development at Annexe Mill House Old Hollow Copthorne RH10 4TB.

Relevant Planning History

08/00094/LDC. Demolition of existing outbuilding, provision of ancillary accommodation to main dwelling. This is an application to establish whether the proposed development is lawful: this will be a legal decision where the planning merits of the proposed development cannot be taken into account. PERMISSION.

DM/16/5524. First floor extension over existing single storey dwelling. PERMISSION.

SITE AND SURROUNDINGS

The site is located within the countryside and the built up area boundary of Copthorne is located some 987 metres to the north of the site. The surrounding area is rural in its nature and it consists of woodland, open countryside and sporadic residential development. The application site consists of two single storey buildings with the building to the north labelled Dwelling 1 and the building to the south labelled as Dwelling 2. Dwelling 1 is characterised by timber clad walls, brown clay roof tiles and grey uPVC window and door frames. Dwelling 2 is characterised by timber clad walls, felt and corrugated metal roofing and timber window and door frames. The private amenity spaces for the dwellings are located to the west of the dwellings and parking spaces are located to the east of the dwellings. The site is accessed through a private track that is located to the east of the site and leads to another private road to the south of the site which leads to Old Hollow located to the west 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 two independent residential dwellings are lawful.

The submitted application documents state that Dwelling 1 was substantially completed and occupied in November 2020 and has been occupied on a continuous basis with no break over a period of 4 years to the present day by an individual household.

They state that dwelling 2 was substantially completed and occupied as an independent dwelling for an individual household in June 2013 and that there has been no break in residency until the present day.

Three signed affidavits have been submitted with the application that corroborate the above. These statements have been submitted by the occupiers of the dwellings. An election poll card for an election dated 2nd May 2024, a parking fine dated 5th December 2024 and a council tax bill dated 13th March 2024 have also been submitted. The documents are within the name of the applicants and the tenant of dwelling 2.

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."

Section 115 of the Levelling-up and Regeneration Act 2023 came into force on 25th April 2024. From the documents that have been submitted it is considered that the breach in question occurred on 16th February 2020, which was when the cabin had been completed. 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 two buildings have been used as independent residential dwellings 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.

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.

There is no suggestion that this is a case that has involved deliberate concealment as envisaged by the above provisions.

ASSESSMENT

The evidence that has been submitted consists of three signed affidavits corroborating the submitted information that the two buildings have been used as independent residential dwellings continuously for more than four years from the date of this application. Satellite imagery shows the construction of Dwelling 1 being in-situ in April 2020.

The submitted documents are within the names of the applicants and the tenant and they demonstrate that the applicants and the tenant do reside at the site. The documents are dated within four years from the date of this application and whilst it is noted that the parking fine and poll card refer to the address being Mill House and not the annexe, the Council do not have evidence contrary to the applicants account of the situation.

With this in mind and in the absence of any contradictory evidence, it is considered that on the balance of probabilities, that the two buildings have been used as independent residential dwellings 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 two buildings have been used as independent residential dwellings 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