

Delegated Decision

Sign off Sheet

Ref. No:	DM/25/2889	Case Officer:	Joanne Fisher
Application Type:	Lawful Development Certificate -Existing		
Proposal:	Existing Certificate of Lawfulness application for the use of part of an outbuilding as an existing dwelling.		
Site:	Floran Farm, Hophurst Hill, Crawley Down, Crawley, West Sussex, RH10 4LP, ,		
Validation Date	18 Nov 2025	Overall Expiry Date:	15 Dec 2025
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Refusal	Recommendation Date:	23 Dec 2025
Target Date:	13 Jan 2026	Recommending Officer Signature:	Joanne Fisher

Date Legal Agreement Completed: (if applicable)		No of Representations:	0
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Signed and Agreed By:	Stephen Ashdown	Date:	23 Dec 2025
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/25/2889

**Floran Farm, Hophurst Hill, Crawley Down, Crawley, West Sussex, RH10 4LP,
Existing Certificate of Lawfulness application for the use of part of an outbuilding as an existing dwelling.
Mr And Mrs Batten**

SUMMARY OF REPRESENTATIONS

None received.

SUMMARY OF CONSULTATIONS

None.

TOWN COUNCIL OBSERVATIONS

No comment.

INTRODUCTION

This application is for a lawful development certificate for the use of part of an outbuilding as an existing dwelling at Floran Farm, Hophurst Hill, Crawley Down.

RELEVANT PLANNING HISTORY

There is a long and detailed history for the wider site outside of the red line of this current application. However, in respect of the building subject of this appeal, the following are considered to be most relevant:

DM/22/0099 - Established residential use of a land parcel within the overall curtilage of Floran Farm. Refused. Within this application, a plan was submitted which identified what was considered to be the currently accepted curtilage of the dwelling house. This included part of the building and patio area of 'The Barn' subject of this current application.

DM/22/3676 - Change of use of land to residential garden land. (Amended description and amended plans received 23/2/2023 correcting location plan, amending site plan and plan showing extent of current and proposed garden land. Refused. The red line for this application on the location plan includes the house, hardstanding and parking area, building subject of this current application and garden.

AP/23/0054 - Change of use of land to residential garden land. (Amended description and amended plans received 23/2/2023 correcting location plan, amending site plan and plan showing extent of current and proposed garden land.) Dismissed.

DM/25/0773 - Proposed conversion of an existing outbuilding to a single storey residential dwelling including its partial demolition. Removal of two outbuildings and erection of a detached 3 bay garage. Removal of existing hardstanding for the formation of a domestic garden. Refused.

An appeal has been submitted in respect of the above refused application; however, it has not yet had a start letter.

SITE AND SURROUNDINGS

The existing outbuilding is set to the east of the existing dwelling known as Floran Farm within the yard area of the site. It forms a single storey large building clad in timber with a corrugated roof. Attached to the front of this building is a 3-bay enclosed garage. This building has a small, enclosed courtyard area to the south of the building set at a lower level than the rear patio area of the dwelling Floran Farm and has a gate from it leading to the main house and garden.

Surrounding the site to the north, east and west are areas of hardstanding and outbuildings accessed from the wider site by an access track which is from the north of the existing dwelling through a yard area which serves the applicants landscaping business. This access track then goes to the east of the applicant's land leading to land further to the east beyond a public right of way.

To the north are dense trees and vegetation on the boundary as well as an approximately 2 metre high fence. To the east is the internal access track with a 'Nissan' style building with a rolled roof which has a number of vehicles and equipment within it. Beyond this is a mobile home with a hot tub, a tree house, various children's play equipment and a shed and animal run. Further to the east beyond this is a dense conifer hedge on the boundary with a public right of way which runs north to south beyond and paddocks within the applicant's ownership. To the west is a large area of hardstanding and a large building used for vehicle repairs and MOT's leading to the access onto Hophurst Hill. To the south is the dwelling Floran Farm and its garden.

There is sporadic development along Hophurst Hill with linear development to the west along Cuttinglye Road of detached properties set on large plots. Floran Farm itself is set back from the highway within a rural setting. The site is relatively well screened.

The application site is situated outside of the development boundary of East Grinstead within the countryside as defined in the District Plan and the Neighbourhood Plan.

APPLICATION DETAILS

The application seeks a Lawful Development Certificate under Section 191 of the Town and Country Planning Act 1990.

The application is supported by the following documents:

- Application Form,
- Location plan;
- Existing block plan;
- Existing floor plans;
- Existing elevations;
- Covering letter from the Planning Agent; and
- 13 signed statutory declarations from different people concerning 'The Barn'.

The covering letter accompanying the application submits that:

'The site comprises a large outbuilding currently in a mixed use. The outbuilding is also referred to as 'The Barn.' The three attached garages are where Mr Batten stores his private car collection, and is used for general storage. There is an existing residential unit on the ground floor, with an existing courtyard garden.'

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 are 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 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 dwelling house, 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.*
- (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'*

In this case the relevant time period relating to the breach of condition is 4 years.

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.

Planning Practice Guidance sets out that a LDC application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. This does not preclude another application being submitted later on, if more information can be produced (Paragraph: 005 Reference ID: 17c-005-20140306).

More recently the Localism Act has introduced legislation under section 171BA for cases where 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.

This is not a case where there has been any element of concealment. Therefore, the relevant time period for the applicant to demonstrate the use of the building is four years.

The application is accompanied by thirteen statutory declarations in relation to the building. These include submissions from the applicants Mr and Mrs Batten. The submitted sworn declarations are summarised below, however, they all set out that the 'The Barn' comprises a separate property to the 'New House'.

Mr Batten

This sets out that the building referred to as 'The Barn' was converted in around 1998 where they lived until the dwelling known as Floran Farm next to The Barn was constructed. A garden room and courtyard were built as an extension to The Barn in 2005. Mr Batten advises that part of the barn houses his collectables and has been lived in as a house by himself and family for over 27 years. It sets out that there have been two separate houses side by side and two separate entrances with no covered walkway between the two.

Mrs Batten

This re-iterates the above information of her husband and that part of The Barn houses her collectables.

Mr Carrodegua

This sets out that he has known the applicants for 40 years and remembers them moving into The Barn in the late 1990's. It states that many nights have been spent at The Barn with the entire Batten family.

Mr Simmons

This sets out that when he has visited Mr and Mrs Batten, he has always seen them at The Barn.'

Mr Firmstone

This sets out that the Batten family moved into The Barn in 1999. Mr Firmstone installed the CCTV in The Barn. When he visits, he always visits in The Barn.

Mr Powell

This sets out he has worked at Floran Farm for 15 years and has done maintenance and painting in The Barn.

Mr Korcipa

This sets out he has worked at Floran Farm for over 15 years and often cleans the high beams in The Barn. He also stays in the building when the family go on holiday house sitting and looking after animals.

Mr Newbury

This sets out when he visits Mr and Mrs Batten, he always sees them in The Barn.

Mrs Newbury

This sets out when she visits Mr and Mrs Batten, she always sees them in The Barn.

Mr Jenner

This sets out that he laid the carpets and vinyl in The Barn when it was converted into living in the late 1990's. It also sets out that when he visits Mr and Mrs Batten he always goes to The Barn.

Mrs Jenner

This sets out she is a regular visitor to The Barn where she goes when she visits the Mr and Mrs Batten.

Mr Luthwaite

This sets out that he is a regular visitor to Mr and Mrs Batten and always sees them in The Barn.

Mrs Luthwaite

This sets out she is a regular visitor to Mr and Mrs Batten and always sees them in The Barn.

No further evidence has been provided as part of the application.

As set out in the Town and Country Planning Act 1990, the burden of proof lies with the applicant and the Planning Practice Guidance establishes that there is no room for ambiguity when assessing these applications, as any LDC that is granted must clearly specify what is lawful. In any event, it is considered that on the balance of probabilities that there is insufficient evidence that the building has been used as an existing separate dwelling.

Officers carried out a site visit as part of the application and viewed the building internally. To the front of the building is a roller shutter door covering the entrance. Within the building there is a large open seating area with a bar, a dining room, small kitchen, two bedrooms (one with no windows), a bathroom and a garden room. There is also a kennel area for the applicants' dogs and storage. Within the roof area there is storage accessed by two separate stairs at either end of the building. The courtyard provides access to the patio area and garden of the dwelling Floran Farm also in the applicant's ownership. At the site visit Mr Batten advised that the building has been lived in by family with his son Samuel Batten living in the building from 2020 and Mr Batten most recently.

From the evidence provided, it is considered that the building has been used as ancillary accommodation to the main dwelling Floran Farm. Details in the statutory declarations set out that those who have visited Mr and Mrs Batten do so at The Barn compared to at their main dwelling. In addition, having family members live in the building also leads Officers to consider that the use is ancillary. Within the description of the application, it sets out that part of the outbuilding has been used as a separate building. Whilst it is clear that the application excludes the three garages from consideration, it is queried what other parts are potentially excluded as a number of rooms and areas are not labelled and the submissions from Mr and Mrs Batten sets out that part of the building is used to house collectables. As such it is not clear what parts can be considered to be used as a separate dwelling.

No evidence of separate bills through electricity, water or Council Tax has been provided in relation to The Barn to corroborate that it is separate to the main dwelling. In addition, Council records show that the building of The Barn does not benefit from separate Council Tax.

Having gone through the planning history of the site, there are various applications which are considered to question the use of the building as a separate dwelling.

DM/22/0099

This was a lawful development certificate application relating to the use of land within the curtilage of Floran Farm. This included part of the building of The Barn (living room and courtyard area) within a site plan showing what the applicant considered to be the accepted curtilage of the dwellinghouse of Floran Farm.

DM/22/3676

This was an application for the change of use of land to residential garden. The application included 'The Barn' within red line of the site location plan. The submitted supporting statement was referring to the use of land as residential curtilage. As The Barn was included in the red line it leads to the view that the building forms part of the main dwelling of Floran Farm and was not considered separate.

DM/25/0773

More recently, an application for the building itself sets out in the planning statement that *'The outbuilding itself is mostly used as a car workshop, with three attached garages, and is used for general storage. There are also two no. existing residential units on the ground floor, with an existing courtyard garden.'* This statement does not match up with the submitted floor plan accompanying the current lawful

development certificate application nor does it correspond to the information provided in the statutory declarations of the applications which provides doubt on the information submitted.

In light of the above and notwithstanding the submitted evidence accompanying the application; it is considered that insufficient evidence has been provided to clearly demonstrate that on the balance of probability the building has been used as a dwelling for a period in excess of 4-years prior to the date of the application. From information provided and held, it is Officers view that building is considered to be for the purpose ancillary to the enjoyment of the dwellinghouse of Floran Farm.

CONCLUSION

Insufficient evidence has been submitted to demonstrate on the balance of probability that the building has been used as a dwelling for a period in excess of 4-years prior to the date of the application. The proposal therefore cannot be considered to be lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended).

Decision: Refusal

Case Officer: Joanne Fisher