

Delegated Decision

Sign off Sheet

Ref. No:	DM/26/1395	Case Officer:	Stefan Galyas
Application Type:	Lawful Development Certificate -Existing		
Proposal:	Existing Use of The Old Dairy as a separate and independent residential unit.		
Site:	Bolney Park Farm, Broxmead Lane, Bolney, Haywards Heath, West Sussex, RH17 5RJ, ,		
Validation Date	5 Jun 2026	Overall Expiry Date:	1 Jul 2026
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Refusal	Recommendation Date:	23 Jul 2026
Target Date:	31 Jul 2026	Recommending Officer Signature:	<i>Stefan Galyas</i>

Date Legal Agreement Completed: (if applicable)		No of Representations:	0
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Signed and Agreed By:	<i>Stephen Ashdown</i>	Date:	24 Jul 2026
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/26/1395

**Bolney Park Farm, Broxmead Lane, Bolney, Haywards Heath, West Sussex, RH17 5RJ,
Existing Use of The Old Dairy as a separate and independent residential unit.
Mr M Rawlins**

REPRESENTATIONS

There were no letters of representation received in response to the proposed development.

CONSULTATIONS

Parish Council: No response received.

MSDC Street Naming and Numbering: Informative recommended.

INTRODUCTION

The Certificate of lawfulness (existing) is to establish that building described as The Old Dairy has been used as a separate and independent residential unit.

RELEVANT PLANNING HISTORY

There is no relevant recent history of planning applications.

SITE AND SURROUNDINGS

The Certificate of Lawfulness relates to Bolney Park Farm which comprises a number of buildings, including those used for storage and the main farmhouse building set to the east of The Old Dairy. The site is located to the north of Broxmead Lane and is provided access through a gated driveway which forks off to the main farmhouse.

The site is not set within any designated settlement boundary and is set within the High Weald Area of Outstanding Natural Beauty (National Landscapes).

APPLICATION DETAILS

The application seeks to establish that the Old Dairy has been used as a separate and independent residential unit.

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 schedule of documents:

- Supporting Statement
- Statutory Declaration Number 1
- Statutory Declaration Number 2
- Statutory Declaration Number 3
- Statutory Declaration Number 4
- Statutory Declaration Number 5
- Location Plan
- Old Dairy Original Sketch Plan (Ground and First Floor Plans)

LEGAL FRAMEWORK

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 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 October 2019.

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 breach occurred for more than four years from the date of this application. As found within APP/Y3940/X/24/3356052 for a Section 191 for a dwelling in a former stable block, the case turns on whether The Old Dairy is actually a dwellinghouse. If it is found not to be the case, then 10 years would have to pass before no enforcement action could be taken.

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 Councils Council Street Naming and has confirmed that there has never been an official address held by The Old Dairy and therefore no Council Tax has been paid. There is record in the sites planning history to indicate that The Old Dairy has obtained planning permission to be changed into a residential dwelling.

Following a site visit conducted by the Case Officer, it was considered that The Old Dairy was accessed through the same gated access as the main farmhouse. The gated access is denoted by lettering that

states 'Bolney Park Farm'. The access forks off to the east to provide access for the main farmhouse at Bolney Park Farm.

The Old Dairy has been modified externally to include windows throughout at ground and first floor level. A front access door has been added to the northern elevation into the kitchen which does not contain a letter box nor address. The building has been converted to include a kitchen, lounge, bedroom and bathroom at ground floor level as well as two bedrooms at first floor level. Although a plant pot has been positioned to the rear (southern) elevation, it is not considered that there is any defined external amenity area.

It is asserted within the applications supporting documents that the conversion of the building took place during 2003 in order to provide accommodation for seasonal workers, including managing and looking after horses.

It is noted in Statutory Declaration 5 that the Old Dairy has continuously been used as a separate and independent residential unit and has been occupied since October 2019 and continues to be the residence of the occupier (Occupier 1). Statutory Declaration 2 comes from another occupier (Occupier 2) who states that they lived at The Old Dairy from early January 2020 until March 2022 alongside the other aforementioned occupier. Both occupiers note that the Rawlins Family are known to them but are not related.

Occupier 2 notes that they moved into the Old Dairy following an offer by Maureen Rawlins as they urgently needed accommodation within a commutable distance of their work. As for Occupier 1, they moved over to ride and train horses. Both occupiers were not charged rent and there has been no separate charge for electricity to that of the farm. In lieu of rent, the occupiers would house sit the main farmhouses' dogs and perform housekeeping duties.

In considering whether the Old Dairy constitutes a separate and independent residential unit, it is considered that the findings of *Burdle v Secretary for the Environment* [1972] 1 WLR 1207 are relevant. In applying the *Burdle* principles, particular regard should be paid to the functional relationship between The Old Dairy and the wider farming unit. It is considered that The Old Dairy sits within the farm complex and the occupiers live/ lived rent free whilst undertaking housekeeping duties and caring and look after the dogs in association with the main farmhouse.

These factors indicate that the occupation of The Old Dairy remained functionally linked to the wider agricultural holding as opposed to functioning wholly independently as a separate planning unit.

On balance, it is considered that the evidence provided neither precisely nor unambiguously demonstrates that The Old Dairy has operated as a separate or independent residential unit. As set out in The Town and Country Planning Act 1990, the burden of proof lies with the Applicant.

CONCLUSION

It is considered that the applicant has not established, on the balance of probabilities, that the site has been used as a separate and independent residential unit. As such, a certificate for lawful use cannot be issued.

Decision: Refusal

Case Officer: Stefan Galyas