

Delegated Decision

Sign off Sheet

Ref. No:	DM/24/3082	Case Officer:	Katherine Williams
Application Type:	Lawful Development Certificate -Existing		
Proposal:	Commencement of development pursuant to planning permission DM/20/2661 through the demolition of existing buildings on the site.		
Site:	Rookwood, Tylers Green, Cuckfield, Haywards Heath, West Sussex, RH17 5DZ, ,		
Validation Date	18 Dec 2024	Overall Expiry Date:	23 Jan 2025
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Permission	Recommendation Date:	3 Feb 2025
Target Date:	12 Feb 2025	Recommending Officer Signature:	Katherine Williams

Date Legal Agreement Completed: (if applicable)		No of Representations:	0
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Signed and Agreed By:	Steven King	Date:	3 Feb 2025
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/24/3082

**Rookwood, Tylers Green, Cuckfield, Haywards Heath, West Sussex, RH17 5DZ,
Commencement of development pursuant to planning permission DM/20/2661 through the
demolition of existing buildings on the site.**

Mr John Marland

SUMMARY OF REPRESENTATIONS

None received

SUMMARY OF CONSULTEES

None

PARISH COUNCIL OBSERVATIONS

No comment

Introduction

A Lawful Development Certificate is sought to demonstrate that commencement of development pursuant to planning permission DM/20/2661 through the demolition of the existing buildings on the site.

This is an application to establish whether the development is lawful: this will be a legal decision where the planning merits of the proposed use cannot be taken into account.

Relevant Planning History

DM/24/2030 - Variation of condition 5 of planning application DM/20/2661 - to vary the wording of condition 5. Withdrawn

DM/24/2026 - Discharge of condition 5 in regards to DM/20/2661. Granted

DM/24/1815 - Discharge of Planning conditions No's 3 and 4 relating to planning application DM/20/2661. Granted

DM/21/1367 - Existing Lawful Development Certificate: Use of an existing building (Rookwood) as 2 no. independent dwelling houses. Granted

DM/20/2661 - Demolition of existing building (comprising 2 x existing dwellings, following approval of lawful development certificate DM/21/1367) and garage, and replacement with 2x 4-bed detached dwellings with garaging. Granted

Site and Surroundings

The application site is located on the northern side of Tylers Green within the countryside and adjacent to a Red Archaeological Notification Area.

The site is located at the edge of ribbon residential properties along the highway with a distinctive rural open character to the west. The residential properties within the locality vary in form, scale and design, with many partly obscured from the highway by mature front boundary planting which retains the rural character of the area.

The site is triangular in shape with public footpaths extending parallel with the western and northern boundaries of the site. The property gains access onto the vehicular highway from a gated entrance within the eastern corner of the site, which then shares access onto the highway with the adjacent neighbour, Stoneacres, which is located to the north. The property is bordered on all three sides by close boarded fencing and mature planting and trees which largely obscures the property from view.

The previous building on the site comprised of 2 No. dwellings, this use was established under an existing lawful development certificate (DM/21/1367) on the 27th May 2021.

Planning permission was granted under application DM/20/2661 for the redevelopment of the site on 29th September 2021. The description of the application was as follows:

'Demolition of existing building (comprising 2 x existing dwellings, following approval of lawful development certificate DM/21/1367) and garage, and replacement with 2x 4-bed detached dwellings with garaging.'

Subsequent to this, pre-commencement conditions 3, 4 and 5 were discharged before the 3 year time limit lapsed. There were no other pre-commencement conditions outstanding.

Application Details

A Lawful Development Certificate under Section 191 of the Town and Country Planning Act 1990 seeks to demonstrate that commencement of development pursuant to planning permission DM/20/2661 through the demolition of the existing buildings on the site.

The application is supported by the following schedule of documents:

- Application Form
- Location Plan
- Statutory Declaration
- Statement of Case

This information states:

- Pre- commencement conditions have been discharged in time, 16th August 2024 and 16th September 2024
- The site has been cleared and the original buildings demolished and removed from site, which began 8th November 2022
- Evidence for when the demolition works took place
- Letter issued by MSDC Building Control, under Building Act 1984 Section 81 to confirm acceptable of demolition works issued on 28th October 2022
- Demolition included within description detailed on the Decision Notice for application DM/20/2661
- Section 56(1) of the Town & Country Planning Act 1990 confirms that development starts when a material operation is begun and "material operation" includes "demolition" (Section 56(4) refers).

Planning Legislation and Guidance

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'.

To implement a planning permission the developer must:

- a. Carry out a "material operation" (as defined in section 56 of the TCPA 1990); and
- b. Ensure all planning conditions requiring compliance prior to commencement of development have been complied with.

Section 56 (2) TCPA 1990 states that development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. S.56 (4) lists what is meant by 'material operation':

'material operation' means—

(a) any work of construction in the course of the erection of a building;

(aa) any work of demolition of a building;

(b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;

(c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);

(d) any operation in the course of laying out or constructing a road or part of a road;

(e) any change in the use of any land which constitutes material development.'

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).

Assessment

As this is not a planning application, the planning merits of the use sought 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.

The planning permission was subject to a number of conditions, such as a 3-year time limit to implement it (running until 29th September 2024). There were 3 No. pre-commencement conditions, which were discharged on 16th August 2024 and 16th September 2024.

Any work of demolition of a building is held in case law to constitute a material operation denoting a lawful implementation of a development under Section 56(4) of the Town and Country Planning Act 1990. Therefore, the application is required to demonstrate that the works were carried out prior to 29th September 2024.

On the facts presented it is clear that works have commenced by way of demolition of the existing building and all pre-commencement conditions have been discharged.

On the balance of probabilities, it is considered that the necessary works have been carried out and the pre-commencement conditions were discharged prior to the permission lapsing on 29th September 2024.

Conclusion

It is considered that a lawful start has been made to implement planning permission DM/20/2661 and accordingly the LDC should be granted. As such, the remaining development approved under this reference can be lawfully carried out.

Decision: Permission

Case Officer: Katherine Williams

