

Delegated Decision

Sign off Sheet

Ref. No:	DM/25/2293	Case Officer:	Tracie Axford
Application Type:	Lawful Development Certificate -Existing		
Proposal:	Retaining brick wall and levelled areas.		
Site:	28 The Martins, Crawley Down, Crawley, West Sussex, RH10 4XU, , ,		
Validation Date	11 Sep 2025	Overall Expiry Date:	6 Oct 2025
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Refusal	Recommendation Date:	5 Nov 2025
Target Date:	6 Nov 2025	Recommending Officer Signature:	<i>Tracie Axford</i>

Date Legal Agreement Completed: (if applicable)		No of Representations:	0
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Signed and Agreed By:	<i>Stephen Ashdown</i>	Date:	6 Nov 2025
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/25/2293

**28 The Martins, Crawley Down, Crawley, West Sussex, RH10 4XU, ,
Retaining brick wall and levelled areas.
Mrs Clare Horle**

SUMMARY OF REPRESENTATIONS

None

SUMMARY OF CONSULTEES

None

TOWN/PARISH COUNCIL OBSERVATIONS

Worth Parish Council deferred the decision to the planning officer.

INTRODUCTION

The application seeks to obtain a certificate for the lawful use for the existing change of ground levels in the rear garden.

RELEVANT PLANNING HISTORY

DM/17/0722 - To erect an orangery to the rear of the property. Granted Permission 06.04.2017

SITE AND SURROUNDINGS

The application site is a two storey semi-detached pitched roofed property. The property is characterised face brickwork and upvc doors and windows. A rear extension (as approved under planning permission reference: DM/17/0722) has been erected extending the full width of the original property.

To the north of the site is a front garden and footpath, to the south of the site is a rear garden with close boarded fencing to neighbour beyond, to the east of the site is a part hedged and part fenced boundary to adjoining neighbour beyond and to the west of the site is a staggered close boarded fencing with adjacent neighbour beyond.

The site is within the built up area of Crawley Down.

APPLICATION DETAILS

The application seeks a Lawful Development Certificate under Section 191 of the Town and Country Planning Act 1990 for the retention of a retaining wall and a levelled area constituting a change to the original ground levels in the rear garden.

The application is supported by the following schedule of documents:

- o Witness Statement dated 31.08.2025 from neighbour at 27 The Martins
- o Photos taken September 2025
- o Photosheet including various photographs of the garden between April 2020 and 2024, and a diagram (not to scale) of the garden
- o Screenshot of messages between the applicant and the builder
- o Screenshot of applicant's bank statement dated July 2021
- o Planning Statement form the applicant.

This information states that the retaining wall and levelled area was constructed in July 2021 and finished for use on 26th July 2021.

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 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 existing use is four years as per 171B(1).

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.

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 retaining wall and levelled area 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 retaining wall and levelled area of the rear garden in question has been substantially complete prior to the 11th September 2021.

A witness statement from the neighbour at no. 27 The Martins states that some building work was taking place in the garden and states that it took place during the summer of 2021, however it did not confirm either the exact dates that the work took place. This therefore does not confirm beyond reasonable doubt that the work the exact dates that the work has been substantially completed for four years.

The photosheet with the diagram showing the works completed contains a series of photos, which appear to have been taken from social media, and a diagram (not to scale) of the garden. I have listed the photos below in turn, according to the dates that they are alleged to have been posted.

- a. 08/04/2020 - This picture does not show any evidence that it is the rear garden to 28 The Martins
- b. 11/09/2021 - This picture does not clearly show that this is the rear garden of 28 The Martins. It does also not show any detail proving what works have taken place nor that they are substantially complete.
- c. 19/11/2022 - This picture shows slabs being laid in 2022. This picture suggests that at this point, the works are not substantially completed which would prove that the 4 year rule cannot apply here.
- d. 20/05/2023 - This picture shows with some clarity that the works are substantially complete at this stage, as a small portion of the raised garden level can be seen in the picture. However, this picture does not substantiate that the works have been completed for 4 years, which is what is required here.
- e. 19/07/2024 - The picture is not clear that it relates to 28 The Martins, nor does it substantiate that the works have been substantially completed for 4 years.

The copy of telephone messages submitted does not state the property that it relates to, nor the works that are being done by the builder, so this piece of evidence cannot prove that the works were substantially complete for 4 years.

The bank statement shows a number of transactions made during the month of July 2021 to a Jonita Gheorghii. There are no details of who this is, nor what the payments are for. They therefore do not substantiate that the works have been complete for 4 years.

Taking into account the above, it is considered that on the balance of probability, it is not possible to establish beyond a reasonable doubt that the change in ground levels and erection of the retaining wall has been substantially completed for a period of four years.

On this basis the relevant test has not been met and a LDC confirming that the works to erect a retaining wall and to alter the ground level of an area in the back garden cannot be completed.

CONCLUSION

To conclude it is considered that the applicant has not established on the balance of probabilities that the lawful development of the existing levelled area and retaining wall has been substantially completed for four years. Accordingly, a LDC for the development as described in the application cannot be granted and the application is refused.

Decision: Refusal

Case Officer: Tracie Axford