

## Delegated Decision

### Sign off Sheet

|                                              |                                                                                                                                                                    |                                        |                   |
|----------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|-------------------|
| <b>Ref. No:</b>                              | DM/25/1532                                                                                                                                                         | <b>Case Officer:</b>                   | Rachel Richardson |
| <b>Application Type:</b>                     | Lawful Development Certificate -Existing                                                                                                                           |                                        |                   |
| <b>Proposal:</b>                             | Application for an Existing Certificate of Lawful Use or Development for the use of part of the annex as a separate independent unit of residential accommodation. |                                        |                   |
| <b>Site:</b>                                 | Garage Annexe, Big Edgerley Barn, College Lane, Hurstpierpoint, West Sussex, BN6 9QY, ,                                                                            |                                        |                   |
| <b>Validation Date</b>                       | 12 Jun 2025                                                                                                                                                        | <b>Overall Expiry Date:</b>            | 8 Jul 2025        |
| <b>Pre-Commencement Conditions Required:</b> |                                                                                                                                                                    | <b>Pre-Com Conditions Date Agreed:</b> |                   |
| <b>Recommendation:</b>                       | Permission                                                                                                                                                         | <b>Recommendation Date:</b>            | 7 Aug 2025        |
| <b>Target Date:</b>                          | 7 Aug 2025                                                                                                                                                         | <b>Recommending Officer Signature:</b> | Rachel Richardson |

|                                                        |  |                               |   |
|--------------------------------------------------------|--|-------------------------------|---|
| <b>Date Legal Agreement Completed: (if applicable)</b> |  | <b>No of Representations:</b> | 0 |
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|                              |                 |              |            |
|------------------------------|-----------------|--------------|------------|
| <b>Signed and Agreed By:</b> | Stephen Ashdown | <b>Date:</b> | 8 Aug 2025 |
| <b>Comments:</b>             |                 |              |            |

## **MID SUSSEX DISTRICT COUNCIL**

**DM/25/1532**

**Garage Annexe, Big Edgerley Barn, College Lane, Hurstpierpoint, West Sussex, BN6 9QY,  
Application for an Existing Certificate of Lawful Use or Development for the use of part of the  
annex as a separate independent unit of residential accommodation.  
Mr And Mrs S Baldey**

### **SUMMARY OF REPRESENTATIONS**

NA

### **TOWN/PARISH COUNCIL OBSERVATIONS**

No comment.

### **Introduction**

The application seeks to obtain a certificate for the lawful use of part of the annex as a separate independent unit of residential accommodation.

### **Relevant Planning History**

07/00395/FUL Change of Use of Big Edgerley Barn from ancillary residential use to a dwelling. There were 2 subsequent applications for an extension of time in 2010 and 2013.

07/00396/FUL Proposed double garage with cart shed and fuel store.      Permission 19.04.2007

09/01735/FUL Amendment to 07/00396. Permission was granted in 2009 for the erection of a garage with store above, this was an amendment to the previously approved application 07/00396/FUL which was approved in 2007.

10/00187/FUL - Planning permission was granted in March 2010 for the change of use of room over the garage from storage to ancillary accommodation and the insertion of new window and door.

DM/15/2969 - Planning permission was refused in September 2016 for the proposed conversion of the garage to enlarge the existing annex to form self-contained ancillary accommodation for a family member. This application sought permission for the conversion of the ground floor to create additional ancillary accommodation.

DM/16/1656 - Planning permission was granted in September 2016 for alterations and extension of existing barn conversion to create additional residential accommodation, and alterations to the existing annexe to provide disabled accessible accommodation and home office.

### **Site and Surroundings**

The Annexe, the subject of this application, is a detached residential barn located to the west of College Lane, albeit set back some distance from College Lane and accessed via a long driveway. The site is generally surrounded by open agricultural land with areas of recent residential development further west and northwest of the site.

There is a mix of residential properties in the surrounds which reflects the former farm estate use of the site. Big Edgerley is a large, detached dwelling located to the south and was built in the 1990's on the footprint of 2 Victorian farm cottages that were demolished in 1994/95. Big Edgerley Barn is a former

barn converted into a separate residential dwelling, and the Annexe and Cart Lodge have been converted to provide ancillary accommodation to Big Edgerley Barn.

The Annexe shares an access track from College Lane with both Big Edgerley and Big Edgerley Barn. However, the Annexe has its own separate curtilage with courtyard garden and parking.

The application site is location within the countryside outside of the built-up area boundary as defined in the District Plan.

## **Application Details**

The application seeks a certificate of lawfulness of existing use under Section 191 of the Town and Country Planning Act 1990 for the use of The Annexe at Big Edgerley Barn as a separate and independent residential unit.

The application is accompanied by statutory declarations and a planning statement with appendices including photographs and letters.

The erection of the building known as the Annexe was granted planning permission in April 2007 under application 07/00396/FUL. A subsequent application (09/01735/FUL) allowed for an amendment to 07/00396/FUL to provide a store over the garage. Then in March 2010 planning permission was granted under 10/00187/FUL for the change of use of the storage room in the garage to ancillary accommodation. In September 2016 alterations to the annexe were permitted under application DM/16/1656 to provide disabled accessible accommodation.

The Annexe comprises of an access and kitchen on the ground floor, and a bedroom, living room and bathroom on the first floor. The Annexe also has a separate parking area, a garden and a terrace.

The applicant contends that whilst the building is called the 'Annexe', the rented part of the building clearly has its own facilities and does not share any functional relationship or physical link with the main dwelling or the occupiers of Big Edgerley Barn.

The Annexe also benefits from its own courtyard garden and separate parking. Given the facilities afforded to the property, the building cannot be considered to be an annexe, and is in fact a separate dwelling.

The Annexe shares the same vehicular access onto College Lane as Big Edgerley Barn and Big Edgerley, but the Annex benefits from its own separate drive and parking, and therefore does not share any of these facilities with the other dwellings on site.

## **Legislative 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 2005, which was when the building was first used as an independent dwelling.

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 building has been used as an independent residential dwelling 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.

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 applicant is required to demonstrate on the balance of probabilities that the land in question has been used as a separate single dwelling house for a period of 4 years or more back from the date of the 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 evidence submitted includes the statutory declaration's from the applicants and explains that the Annexe was built and designed to enable their elderly father to live in the property. The Annexe was occupied by their father until 2019, at that time their elderly father came to share the facilities in the main house of Big Edgerley Barn and used only the disability suite of the Annexe, which is located on part of the ground floor of the Annexe.

From September 2020 to the present day the Annexe has been rented out and occupied by four separate individuals. Each of these occupants has provided a Statutory Declaration confirming their occupation of the property.

The timeline of the use and occupation of The Annexe is as follows;

- o Ms E. Killa (07/09/2020 - 20/01/2021)
- o Mr J. Davies (27/02/2021 - 28/08/2021)
- o Maintenance and decoration (September - October 2021)
- o Mr D & Ms C. Doyle (30/11/2021 - 25/12/2022)
- o Ms B. Redman (20/01/2023 - Mid-February 2023)
- o Mr A. Walker (15/04/2023 - present day)

The only gap in the tenancy of the Annexe is between September and November 2021, during this period the applicants undertook maintenance and decorating of the Annexe prior to the next rental which began at the end of November 2021.

Taking the above into consideration, and in the absence of any contradictory evidence, it is considered that on the balance of probabilities, the building has been used as an independent residential dwelling continuously for more than four years from the date of this application.

Other than the above, the LPA has no evidence to dispute or contradict the applicant's version of events. It is therefore considered that the applicants have established on the balance of probabilities that the Annexe has been used as a separate single dwelling house to Edgerley Barn as a single dwelling house for more than four years from the date of application. On this basis, it is recommended that a certificate of existing lawful use can be issued.

## **Conclusion**

It is considered that the applicant has established on the balance of probabilities that the part of the building and associated curtilage known as the Annexe, as outlined in red on the Block Plan accompanying the application, has been used as a separate residential dwelling for more than four years from the date of the LDC application. A certificate for lawful use to confirm the use of the Annexe as a self-contained dwelling can therefore be issued.

Decision:       Permission

Case Officer: Rachel Richardson