



Supporting Statement

Town and Country Planning Act (as amended) – Section 191

Application for a Certificate of Lawfulness of Existing Use or Development for the construction of a residential cabin. Revised application following the refusal of DM/24/2310

Cabin in Horsepasture Wood, Wallage Lane, Rowfant

January 2025

Application for a Certificate of Lawfulness of Existing Use or Development in relation to construction of a residential cabin. Revised application following the refusal of DM/24/2310

Cabin, Horsepasture Wood, Wallage Lane, Rowfant

Supporting Statement
on Behalf of
Ms Eleanor Locker-Lampson

January 2025

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1. Introduction

1.1 This Supporting Statement has been prepared by DMH Stallard LLP on behalf of the applicant, Ms Eleanor Locker-Lampson to support a revised application for a Certificate of Lawfulness of Existing Use or Development (CLEUD) made under Section 191 of the Town and Country Planning Act 1990 (as amended).

1.2 The application seeks to certify that the construction of a timber cabin used for residential purposes was substantially completed more than four years ago.

1.3 The application has been submitted following the refusal of an earlier application for the same development, submitted in September 2024, and refused by way of a notice dated 27 November 2024 under reference DM/24/2310. The reason for refusal of the previous application was in the following terms:

"It is considered that the applicant has not established on the balance of probabilities that the lawful use of the existing building and surrounding redline area as residential. Accordingly, a LDC for the development as described in the application cannot be granted and the application is refused."

1.4 In addition to this Supporting Statement and appended documentary evidence pack the application comprises the following:

- Covering letter.
- Completed application form.
- Site location plan.
- Plan showing curtilage of the cabin.
- Drawings of the cabin.
- Statutory Declaration of Ms Eleanor Locker-Lampson and annex's 1 to 7.
- Statutory Declaration of Mr Pawel Kolan and annex 1

1.5 The structure of the remainder of this Supporting Statement is as follows:

- Section 2 provides a description of the site.

- Section 3 provides a description of the development to be certified as lawful.
- Section 4 describes the evidence to support the claim for lawfulness including addressing the various issues that were highlighted in the officers delegated report for the previously refused application, DM/24/2310.
- Section 5 sets out the grounds on which the certificate is sought.

2. Description of the Site

- 2.1 The application site comprises a cabin and its associated curtilage. The original cabin measures 6m x 5.2m. One small extension has been added in early 2024 to the original structure.
- 2.2 The site of the cabin is located within Horsepasture Wood, approximately 125 metres to the north-west of the property known as Ramble On that lies on the northern side of Wallage Lane, Rowfant. Woodpeckers Fishery lies to the west of the site and Rowfant Residential Home to the east of the site.

3. Description of Development to be Certified

- 3.1 The application seeks to certify that both the construction of the original cabin was substantially completed more than four years prior to the date of this application. At the time of the construction, there was no intention to add the small store extension.
- 3.2 The application accordingly seeks a Certificate that confirms the construction of the original cabin is lawful for planning purposes.

4. The Evidence to Support the Claims Made.

- 4.1 We set out below our comments in response to the various issues identified in the officers delegated report for the previously refused application, DM/24/2310 and present the evidence to support the claim made in this application.

- 4.2 Dealing first with the fourth paragraph under the Assessment section of the officers delegated report where it states: *"These photos show the cabin being constructed however they do not show the building being occupied for residential use, this is due to the state of the land surrounding the cabin and the lack of residential paraphernalia in the photo from 13.05.2017"*. In response the applicant fully accepts that the cabin was not occupied in May 2017 since, as is set out elsewhere in the report and as presented in the evidence previously submitted, the cabin was not in fact first occupied as a dwelling until March 2019.
- 4.3 Turning to the fifth paragraph under the Assessment section of the officers delegated report, which states: *"The receipt for the purchase of the cabin is considered to carry little weight as it doesn't demonstrate when the cabin was constructed or when a residential use has been undertaken at the site and the receipt is not within the applicants name"*. The receipt was provided as evidence of the purchase of the cabin. We accept that the receipt alone cannot demonstrate when the cabin was constructed. That is demonstrated in photographic and testimonial evidence. The reason for the receipt not being in the applicants' name is that it was bought at the same time by the applicants' brother when he acquired his cabin, and it was delivered to one place to save on delivery costs.
- 4.4 In the sixth paragraph under the Assessment section of the officers delegated report, this states: *"The statements submitted by friends are given little weight to the evidence as they are not statutory declarations in accordance with the provisions of the Statutory Declarations Act 1835. It should also be noted that the statement submitted by Pawel Kolan contradicts the Statutory Declaration made by the applicant for when the applicant moved into the cabin"*. The Statement of Mr Pawel Kolan has now been resubmitted as a Statutory Declaration and should therefore be given greater weight. Mr Kolan is Polish and there is a language barrier. Whilst he speaks English to a reasonable standard, he does have trouble reading and writing it. He had a friend help him compose his statement that was submitted with the previous application with the help of a translator. The discrepancy in the month being July not June in his statement is purely a human

error. The applicant considers he would almost certainly get these two months muddled. We therefore consider that there is a plausible and credible explanation for this minor discrepancy in the dates previously quoted.

- 4.5 In the seventh paragraph under the Assessment section of the officers delegated report, this states: *"Excerpts from bank statements for gas bottles and copies of furnishing purchases, are not clear and precise, as some invoices/statements do not show names, and the delivery addresses are varied and do not include the property subject to the application and, therefore the evidence is not consistent and would be considered to carry very little weight"*. In response the applicant confirms that due to the nature and location of the cabin away from Wallage Lane it is impractical for items to be delivered to the cabin itself. Prior to 2020, in the main deliveries were made to Ramble On and after this date, the main deliveries were made to Rowfant Lodge where the applicants father resided until earlier in 2024.
- 4.6 In the ninth paragraph under the Assessment section of the officers delegated report, this states: *"A sworn Statutory Declaration has been submitted as part of the application which states that the cabin has been used by a Pawel Kolan since March 2019 to June 2023 when the applicant moved in. A statement has been submitted by Pawel Kolan, which confirms that they moved into the cabin in March 2019 and that the applicant moved into the cabin in July 2023. As such there is a discrepancy between these statements in when the applicant moved into the cabin."* The apparent discrepancy is explained as per paragraph 4.4 above.
- 4.7 In the tenth paragraph under the Assessment section of the officers delegated report, this states: *"Limited evidence has been provided to demonstrate that Pawel Kolan lived in the cabin continuously as their primary residential property between March 2019 and June 2023"*. The applicant advises that Pawel Kolan is a loner, he keeps himself very much to himself and has no smart phone. The applicant was living elsewhere and in the first four years of Mr Kolan residing in the cabin the applicant had little interaction with him or indeed the cabin as a whole as the

applicant was still going through an acrimonious divorce and then recovering from it.

- 4.8 In the eleventh paragraph under the Assessment section of the officers delegated report, this states: *"An anonymous representation letter has been received in respect of this application and whilst due to its anonymous nature it attracts negligible weight it is still considered to be a material consideration to this application. This representation letter shows a screenshot taken 29.05.2023 of an AirBnB webpage with a photo of the cabin subject to the application and a photo of the applicant. This webpage shows the cabin available for short term holiday let and shows 19 reviews. This information was sent to the agent for the application and they have since provided 18 separate periods of time between 2018 and 2024 where the cabin has been used for short term holiday let. This information was provided in an email which provides limited information other than a list of the dates and the information was not given under oath, therefore it is given little weight to the evidence. "There were 12 periods of time within 2018, 3 were within 2022, 2 within 2023 and 1 within 2024. It should also be noted that the anonymous representation letter shows 19 reviews and the applicant has provide 18 time periods where the cabin has been used for short term holiday let. The email states that the bookings that were undertaken from 2022 to 2024 were "when the applicant spent time with her elderly father whilst renting the cabin out to earn some additional income". This statement appears to contradict the statements by the applicant and Pawel Kolan that state the applicant did not reside at the cabin until either June or July 2023 and that Pawel Kolan resided at the cabin before June or July 2023. This inconsistency is considered to be ambiguous"*
- The applicant insists that the cabin was only rented out on 18 occasions, not the 19 occasions as alleged by the local planning authority. The dates are now included in the Statutory Declaration of the applicant and therefore this evidence should be given greater weight. The applicant has also clarified that for the latter six dates that the cabin was rented out in 2022, 2023 and 2024, both the applicant and Mr Kolan stayed with the applicant's elderly father, who resided at Rowfant Lodge, apart from the last rental in May 2024 when it was just the applicant. By this time,

Mr Kolan had become a firm family friend and even cared for the applicants' father at times, doing jobs, cooking for him and even washing him and getting dressed. As previously stated, the applicant spent these short bookings at her father's so she could earn a little extra income whilst caring for her father.

- 4.9 It is noted from the twelfth paragraph in the Assessment section of the officers delegated report that sufficient evidence had been previously submitted to demonstrate that the building has been in situ and substantially complete since 2018 and has been in place throughout the period of 4 years prior to the date of the LDC application.
- 4.10 There is a wealth of evidence in this case to support the claim made by Ms Locker-Lampson that the cabin was substantially completed more than four years ago and has been lived in as a single-family dwelling by others, including her and as a sole means of residence for more than four years.
- 4.11 The following evidence is produced and comprises:
- Statutory Declaration of Ms Eleanor Locker-Lampson – the declaration confirms that the cabin was acquired in 2016 and substantially complete in 2018 as evidenced by the photographs in Annex 4.
 - A copy of the payment receipt dated 11 January 2016 for the cabin (Annex 2 of Ms Locker-Lampson's Statutory Declaration).
 - Dated photographs of the construction of the cabin from 1 May 2016 to 13 May 2017 in Annex 4 of Ms Locker-Lampson's Statutory Declaration.
 - A Statutory Declaration from Mr Pawel Kolan confirming that he lived in the cabin before Ms Locker-Lampson and then moved out when she moved in.
 - A number of photographs showing that the cabin has been lived in permanently in Annex 4 of Ms Locker-Lampson's Statutory Declaration.
 - Orders for various items of equipment for use in the cabin included in Annex 5 of Ms Locker-Lampson's Statutory Declaration.

- Proof payments for propane gas bottles from Calor Gas in Annex 6 of Ms Locker-Lampson's Statutory Declaration.

5. The grounds on which the certificate is sought

- 5.1 As the District Council will be aware, Planning Practice Guidance advises that the statutory framework covering lawfulness for lawful development certificates is set out in Section 191(2) of the Town and Country Planning Act 1990 (the Act). In summary lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force (Paragraph: 003 Reference ID: 17c-003-20140306).
- 5.2 Whilst there have been changes to the enforcement regime set out in the Levelling-up and Regeneration Act 2023 and implemented by The Planning Act 2008 (Commencement No 8) and Levelling-up and Regeneration Act 2023 (Commencement No 4 and Transitional Provisions) Regulations 2024 that have come into force that increase the time to take enforcement action to 10 years for all forms of development, by virtue of the transitional provisions included therein, the time for taking enforcement action in relation to operational development and use as a single dwelling remain at 4 years for breaches undertaken before 25 April 2024 as is the case here.
- 5.3 Planning Practice Guidance also advises local planning authorities that the burden of proof in applications made under Section 191 for a Certificate of Lawfulness for an Existing Use or Development is firmly with the applicant and that the relevant test is the "balance of probability". Authorities are further advised that if they have no evidence of the own to contradict or undermine the applicant's version of events, there is no good reason to refuse the application, provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of the certificate (Paragraph: 006 Reference ID: 17c-006-20140306).

- 5.4 Furthermore, Planning Practice Guidance states that in considering the application, it needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process (Paragraph: 009 Reference ID: 17c-009-20140306).
- 5.5 In this case, there is a wealth of evidence provided to clearly demonstrate that the cabin was constructed and substantially completed during 2018 which the local planning authority has accepted in the previous application. This evidence comprises both testimonial evidence in the form of a statutory declaration from the applicant herself and her friend, as well as documentation in the form of orders and payment receipts for various items of equipment used in the cabin, dated photographic evidence of its construction and use since.
- 5.6 The evidence is now considered to clearly and irrefutably demonstrate that the cabin was constructed and was substantially complete during 2018 and therefore it is abundantly clear that in this instance, a Certificate of Lawfulness for the construction and subsequent occupation of the cabin as a single dwelling should be issued by Mid Sussex District Council.