

OFFICERS REPORT

Application No: Y16/1152/SH

Location: Oak Tree Farm Tea Rooms Lymbridge Green Stowting Common
Ashford Kent TN25 6BL

Proposal Certificate of existing lawful development for continued use of the property as a residential dwellinghouse.

ASSESSMENT

Performance data:-

Date application valid: 13.10.16

Applicable 8/13/16 week target date: 08.12.16

Planning Performance Agreement (PPA) or Planning Extension Agreement (PEA) ? No

If Yes, revised 8/13/16 week target date: NA

Is the application being determined after 26 weeks without a PPA or a PEA? No

APPLICANT: Mr D Chiverrell

SITE

The application site is within the rural Parish of Stowting and hamlet of Lymbridge Green in the open countryside, outside of any settlement boundary and within the Kent Downs AONB and Special Landscape Area.

The site is located off the Lymbridge Green highway upon the south west side which is adjacent to the Jacksons business building yard to the south.

The site in question is a small single storey building with a rear garden which is set back from the road and accessed via a private driveway which is shared by Oak Tree Farm dwelling sited to the north. Within the site and positioned between the road and the Oak Tree Tea Room are old agricultural building's that were previously used as a museum and now used for storage purposes.

To the west immediately adjacent to the driveway and highway is the dwellinghouse known as Appleby Lodge.

SITE VISIT

A site visit was carried out on the 08.06.2016 where the building was viewed externally from inside the site.

PLANNING HISTORY

There is a long planning history for this site and oak tree farm adjacent which are linked. The most recent and relevant are listed below,
Y16/0509/SH - Certificate of existing lawful development for the continued use of the building as a dwellinghouse. Refused.
Y12/0788/SH - Change of use of land for the keeping of horses and erection of a stables building. Approved with conditions.
Y11/0087/SH - Change of use and conversion of a tea room to a single residential dwelling. Refused.
88/1221/SH - Proposed erection of building for tea room and change of use of poultry shed to a museum (as amended by plan Nos. 545:85:1D 545:85 6/10/88). approved
90/0005/SH - outline application for the erection of 2 dwellinghouses.
89/0502/SH - Outline application for the erection of 3 dwellinghouses.
88/1882/SH - Proposed change of use from poultry shed to craft workshop and storage
Y08/0764/SH - Certificate of lawfulness for continued occupation of dwelling in breach of agricultural occupancy condition 7 of planning permission SH/85/0127.
Y08/0368/SH - Removal of condition 7 of planning permission 85/0127/SH to allow the unrestricted use as a single residential dwelling.
85/0608/SH - Details of the erection of a farm house (AS AMPLIFIED BY LETTER DATED 24TH JULY 1985 AND ACCOMPANYING PLAN NO. 545/85/1A).
85/0127/SH - Outline application for the erection of a farmhouse.

PROPOSAL

This is an application for a resubmission of the previously refused Certificate of existing Lawfulness Y16/0509/SH for the use of the building as a dwellinghouse under Section 191 of the Town and Country Planning Act 1990.

The applicant claims that the building has been in use as a dwellinghouse since December 2010 until present day and therefore is immune from enforcement proceedings.

The applicant has submitted new evidence in the form of a legal affidavit together with house insurance

BACKGROUND INFORMATION

It is worth evaluating the planning history and back ground of this site before any appraisal is made.

The site originally was a poultry farm comprising of various poultry houses and egg stores. Planning permission was granted in 1985 for the erection of a farm house under reference numbers 85/0127/SH and 85/0608/SH.

Subsequently in 1988 a tourism use was introduced whereby planning permission was granted for the construction of a tea room and conversion of one of the poultry sheds to a museum as well as a craft workshop under planning references 88/1221/SH and 88/1882/SH.

Then, later on in 1991 residential development was approved for residential development at the front of the site, for 2 houses. It is understood that one out of the two houses has been built known as Appleby lodge.

The tea room, museum and craft workshop have all now closed and ceased operating, the land sold off separately and the farm house no longer has the agricultural occupancy tie

condition through the granting of a lawful development certificate by the Local Planning Authority.

As such all agricultural activity and tourism has ceased on the land and the site has been divided and sold.

Most recently in 2011, an application was refused for the change of use of the tea room to a single dwelling house (Y11/0087/SH). This was refused on the basis of the rural location outside of any settlement boundary and its proximity to the building yard adjacent and harm to amenities.

APPRAISAL

This application follows on from a recently refused certificate of existing lawful development reference Y16/0509/SH and is a resubmission. Y16/0509/SH was refused on a lack of sufficient evidence to prove a continuous 4 year use.

This application has been assessed against S.191 and 171B(2) of the Town and Country Planning Act and the National Planning Policy Guidance.

For the purposes of this application, to gain immunity from enforcement, under the 1990 Act, the application needs to prove a continuous use as a dwelling for 4 years.

Section 171B(2) of the 1990 Act states,

"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 four years beginning with the date of the breach".

Assessment of evidence

The applicant claims to have resided at the property since December 2010 to present day.

The application is accompanied by primary evidence in the form of a sworn affidavit, together with and secondary evidence in the form of home insurance details, TV license details, electricity bills and calor gas receipts.

Primary Evidence

Of key importance is the submitted sworn legal affidavit. This states that a Mr Roy Sayer has confirmed that he has known the applicant for 50 years and that Mr and Mrs Chiverrell have occupied the property and lived there since December 2010. The Affidavit has been provided by Worthington Solicitors on the 10.10.2016. This is considered to be primary evidence covering the four year period which is precise and clear. This independently proves the four year period.

Secondary Evidence

Similar to the affidavit a second form of evidence (proof of identity and residence) has also been provided by a Megan Rose Ladd, stating that Mr and Mrs Chiverrell have resided at the site address since 23.12.2010. However, this does not appear to be a legitimate affidavit and more of a signed statement and cannot therefore be used as primary evidence but still provides some information and good secondary evidence.

Electricity bills. These have been provided covering a period of between 21st December 2010 and 31.03.2016. These are helpful pieces of secondary evidence. There are some gaps between the dates of billing and therefore do not show a continuous four year period but nevertheless are helpful in building a case.

Home insurance. Details have been provided to show that home insurance has been taken out by the applicant covering this address since 15.12.2010 to the 15.09.15. This does not solely prove a four year continuous residential use but is considered to be sound and helpful secondary evidence, showing the four year period.

Calor Gas receipts. This shows gas deliveries between 01.12.11 and 01.06.2016. This does not solely prove the residential use and are therefore not particularly useful.

TV Licenses. These provide details showing the licenses for Mr Chiverrell registered at the application site from 01.07.11 until present day. Whilst helpful, they do not solely prove a residential use but is still helpful secondary evidence.

Notices of alteration of rating list. It is unclear what these are and what they prove. They both give descriptions of the site as a restaurant and premises so this is not helpful to the application.

BT bills and phone line installation details. These are not considered to be very helpful. They do not cover the required period.

Internal photographs. These are not helpful and do not prove a four year residential use.

CONCLUSION

The test is "the balance of probability". The NPPG states that without sufficient or precise information, a local planning authority may be justified in refusing a certificate.

Having provided primary evidence in the form of a legitimate sworn affidavit together with supporting secondary evidence it is considered that a four year uninterrupted period has been proven on the balance of probabilities. A certificate can therefore be granted.

RECOMMENDATION

It is recommended that the certificate be granted.

HUMAN RIGHTS

I have also taken into account the human rights issues relevant to this application. In my view, the Assessment section above and the Recommendation represents an appropriate balance between the interests and rights of the applicant (to enjoy his land subject only to reasonable and proportionate controls by a public authority) [and the interests and rights of those potentially affected by the proposal (to respect for private life and the home and peaceful enjoyment of their properties)] and the wider public interest.

Case Officer:

Report and draft decision notice completed and passed to senior officer.

Name: JM LING Position: Senior Planning Officer

Date: 05.12.2016

Report and draft decision notice amended (if appropriate)

Name: Position: Date:

Senior Officer

Report not agreed. Details of further work required as follows:

Name: Position: Date:

Report and draft decision notice agreed and file passed to admin to issue decision.

Name: C Dethier Position: DM Team Leader Date: 21/12/16