

Officer Report

Application No.	24/0006/FH
Site Address	Belgar Farm, Romney Road, Lydd, Romney Marsh, TN29 9LS
Officer Name	Lizzy Nash
Proposal	Lawful development certificate (existing) for the continued use and conversion of a farm building to two self-contained flats

Recommendation

Report Number	RD-434054
Recommended Decision	Recommended to be Lawful
Recommendation Date	20 March 2024

Report

Site

The proposal site is located within Belgar Farm which is to the North of Lydd and located to the East of Romney Road. Flat 1 and 2 are located within a converted two storey agricultural building with a single storey rear extension. Materially this consists of timber cladding to the rear and side elevation and brick to the front with white uPVC windows and doors. There is a limited amount of open space to the side of the property and parking located to the rear. Set outside of a defined settlement boundary the surrounding area is rural. The site is also within SSSI Impact Risk Zone and Archaeological Notification Area.

History

No relevant history.

Proposal

The application seeks a lawful development certificate (existing) for flat 1 and 2 of the agricultural building and its conversion to two residential dwellings and its continued use as such.

Consultation Responses

Not Required

Representations

Not Required

Publicity

Not Required

Relevant Policies

Not applicable

Appraisal

This application seeks to confirm flat 1 a one bedroom flat on the first floor and flat 2 a two bedroom flat on the ground floor within Belgar Farm is lawful. The following evidence has been submitted to support the application:

Statement as to Lawfulness dated: 20/12/2023 (Received: 02/01/2024)

Rental Income History Schedule (Received: 02/01/2024)

Aerial Views 2007, 2013 and 2021

Sworn Statement of R J Thompson

Builders Invoices dated 29.06.12, 13.07.12, 12.08.12, 12.09.12, 22.10.12, 23.11.12, 14.01.13, 17.05.13,

1874 Rev 01A Site Location and Existing plans & Elevations

The onus of proving the lawfulness of an existing use or development rests with the applicant. The relevant test of the evidence is the 'balance of probability'. The courts have held that an applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate 'on the balance of probability'.

Local Planning Authority Evidence

The NPPG sets out that the applicant is responsible for providing sufficient information to support an application, although a local planning authority may hold further information about the planning status of the land. A local Planning Authority is entitled to canvas evidence if it so wishes before determining an application. If a Local Planning Authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter evidence.

Section 191 of the Town and Country Planning Act 1990 (as amended) sets out the requirements for a certificate of lawfulness of existing use or development. Paragraph 2 states "For the purposes of this Act uses and operations at any time if –(a) no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force".

Section 171B of the Town and Country Planning Act 1990 (as amended) sets out the time limits for enforcement action, in the case of a change of use of any building to a residential dwelling, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

The application includes a builders invoice for repairs to 'building at Belgar Farm' starting in June 2012 and finishing in May 2013. This would pre-date the sated first occupancy of July 2013 and both flats by December of the same year. While there are various repairs stated in the invoice that could be for the two flats it is fairly ambiguous as to whether this corresponds with the flats. Considering this the builders invoice is not considered to be sufficient to demonstrate that a conversion took place.

The supporting information provided by the applicant includes a sworn affidavit in addition to aerial photography of the site in 2007 showing no works, one from 2013 showing the works have been completed and one in 2021 showing the flats once occupied. In addition to the above there has been proof of rent statement submitted this shows various payments for rent spanning from 2013 to 2023. Within the last four years flat 2 has a period of approximately two months between 29/04/2019 and 06/07/2019 to allow for re-decoration and repairs, however it has been fully occupied for the 4 years preceding this. Flat 1 has no rental income for a period of approximately 2 years between March 2021 and October 2023 this is stated to have been due to re-decorating and delays resulting from covid, with another period of no rent between March 2020 and June 2020 however it has been continually occupied between June 2013 and March 2020.

Considering the extended previous periods of rent that exceed 4 years it is considered on the balance of probability that the building was converted more than 4 years ago and has been used as two self contained flats for a period exceeding four years.

The two flats also include all of the necessary functionality of two separate flats with separate access points and parking available to the side and rear of the building. The building appears on the councils own aerial photography as undergoing works prior to 2013 and appears in the subsequent photography in 2015 and 2018. There is no history of council tax being paid by the flats prior to 17th July 2023 for both of the flats. Considering the above the aerial photography seems to support the applicants assertions that the building has been used as flats for more than 4 years.

It is therefore considered that the information submitted is unambiguous and precise enough to demonstrate that, on the balance of probabilities the use of the building as a dwelling has been continuous for an extended period of time and would be immune from enforcement action. It is therefore considered that a certificate should be issued.

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.

Public Sector Equality Duty

In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

It is considered that the application proposals would not conflict with objectives of the Duty.

Duty to cooperate

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), February 2019 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service and, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application. In this instance the application was acceptable as submitted.

Recommendation

In light of the above, it is considered the proposal constitutes lawful development and therefore a certificate of lawfulness (existing) can be granted.

Suggested Informatives (2)

1

The evidence submitted by the applicant, together with evidence from the Council, is sufficiently precise to demonstrate that, without planning permission, the property outlined in red on the submitted site location plan was converted over 4 years ago and has been used as two independent flats, for a continuous period in excess of the four (4) year period. As such, the lawful use has been demonstrated on the balance of probabilities under Section 191 of the Town and Country Planning Act 1990 (as amended).

2

The plans and documents accompanying this application are as follows:

Statement as to Lawfulness 20.12.23 (Received: 02/01/2024)

Rental Income History Schedule (Received: 02/01/2024)

Aerial Views (Received: 02/01/2024)

Sworn Statement of RJT (Received: 02/01/2024)

Invoices (Received: 02/01/2024)

1874 Rev 01A Site Location and Existing plans & Elevations (Received: 25/01/2024)

