

**WELWYN HATFIELD BOROUGH COUNCIL
EXECUTIVE DIRECTOR - PLANNING, PUBLIC PROTECTION AND GOVERNANCE**

DELEGATED APPLICATION

Application No: 6/2022/0187/LAWE
Location: 51 Kentish Lane Brookmans Park AL9 6NG
Proposal: Certificate of lawfulness for existing outbuilding
Officer: Mr David Elmore

Recommendation: Granted

6/2022/0187/LAWE

Context	
Application Description	Certificate of Lawfulness for existing outbuilding.
Relevant Planning History	<p>Application Number: 6/2021/1021/HOUSE Decision: Refused Decision Date: 02 July 2021 Proposal: Erection of an outbuilding with external verandah for ancillary use in connection with the main dwelling house(retrospective)</p> <p>Application Number: 6/2020/3010/LAWE Decision: Refused Decision Date: 11 January 2021 Proposal: Certificate of lawfulness for the existing outbuilding</p> <p>Application Number: S6/2003/1434/FP Decision: Withdrawn Decision Date: 06 November 2003 Proposal: Erection of single storey garden store</p>
<p>The main issues are:</p> <p>Whether the applicant can demonstrate, on the balance of probabilities, that the building has become lawful under the terms of Section 171B of the Town and Country Planning Act 1990 (as amended).</p>	
Discussion	
<p><u>The relevant period for immunity from enforcement</u></p> <p>The outbuilding is incidental to the main dwellinghouse and therefore needs to have been in place for a period of four years to be lawful by virtue of time.</p> <p>Section 171B(1) states:</p> <p><i>“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</i></p>	

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.”

Evidence submitted

- Site Location Plan and Existing Plans. Ref – TDC068/CLE/100;
- Covering Letter;
- Application Forms and Notices;
- Schedule of Photographs taken by the Applicant;
- Third Party Aerial Photographs from GetMapping;
- GetMapping Order Confirmation;
- Letter confirming date of Aerial Photograph taken in 2005 from GetMapping;
- Land Registry Document (with highlights) confirming the date of purchase of additional garden land on 9th July 2007; and
- Historic correspondence with the Council’s Enforcement Officer dated 12th December 2007

Appraisal of the evidence

The onus of proof in a lawful development certificate application is firmly on the applicant and the Courts have held that the relevant test of the evidence on such matters is “the balance of probability”. Moreover, the Court has held (see *F.W. Gabbittas v SSE and Newham LBC* [1985] J.P.L. 630) that the applicant's own evidence does not need to be corroborated by “independent” evidence in order to be accepted. If the local planning authority has no evidence itself, nor from any 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”. The Planning Practice Guidance reiterates that this is the approach to be taken by local planning authorities when determining certificate of lawfulness applications.

It is noted that a large side extension to the subject outbuilding took place in 2020. The application form for application reference 6/2020/3010/LAWE states that this extension was substantially completed on 18 October 2020.

The evidence submitted in this application, when considered together, is sufficiently precise and unambiguous to prove on the balance of probability that the subject outbuilding has been in place for a period in excess of 4 years from the date of this application, and that the 4 year time period was exceeded prior to the side extension being added to the subject outbuilding. Accordingly, a certificate of lawfulness is justified.

Other matters

Comments from North Mymms Parish Council (NMPC)

NMPC have objected to this application on the grounds of harm to the Green Belt (and no very special circumstances) and that, if a Certificate of Lawfulness is granted, this will give credence to further applications for the proposal contained in 6/2021/1021/HOUSE.

Impact on the Green Belt is not relevant to the assessment of the lawfulness of the subject outbuilding. Also, any future application which includes the subject outbuilding as part of its submission/justification, must be considered on its own merits.

Conclusion

The applicant has demonstrated, on the balance of probabilities, that the subject

outbuilding is lawful under Section 171B(1) of the Town and Country Planning Act 1990, as amended. A certificate of lawfulness is therefore granted.

Conditions:

1. The applicant has demonstrated, on the balance of probability, that on the date of the Lawful Development Certificate application, the outbuilding, as shown on submitted drawing numbers TDC068/CLE/100 and TDC068/CLE/001, is lawful for planning purposes as it has been in place in excess of four years beginning with the date on which the operations were substantially completed.

DRAWING NUMBERS

2. The development/works shall not be started and completed other than in accordance with the approved plans and details:

Plan Number	Revision Number	Details	Received Date
TDC068/CLE/100		Existing Plans and Elevations	27 January 2022
TDC068/CLE/001		Site Location Plan and Existing Site Plan	27 January 2022

REASON: To ensure that the development is carried out in accordance with the approved plans and details.

Determined By:

Mr Derek Lawrence
12 May 2022