

Catherine Knight

Service Lead – Legal Services (Interim)

Officer Report

Application Reference: SDNP/19/03811/LDE

Property: Allens Cottage, Allens Farm Lane, Exton, Hampshire SO32 3NW

The reasons for GRANTING the application for a Certificate of Lawful Existing Use or Development (CLEUD) under the above application reference are as follows:

Section 191(4) of the Town and Country Planning Act 1990 (as amended) (“the Act”) provides as follows:

- (4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.*

The Council, as local planning authority, was provided with information which, on a balance of probability, satisfactorily demonstrated the lawfulness of the material building operations comprising the single dwelling house described in the application.

The single dwelling house identified in the certificate of lawfulness accompanying this report has been shown, on a balance of probability, to have been substantially completed and occupied as a residential dwelling for more than four years prior to 27th July 2019.

Considered first is the construction of the dwelling. Planning permission was granted for the construction of a single 3 bedroom residential dwelling house on the land, subject to several conditions under Council planning reference W03298/20. One such condition was to carry out the development in accordance with the approved plans and another condition restricted occupation to that of the manager of the stud farm operating on the farm.

Firstly, the dwelling was constructed in breach of the condition requiring development to be carried out in accordance with the approved drawings as it was constructed in a materially different location and of materially different elevations to those which were approved. The Council accepts, as a matter of fact and degree,

that the breaches described above are of a sufficiently material nature to render the development unlawful as a whole. The cases of *Kerrier District Council v Secretary of State for the Environment 1981* and *Copeland Borough Council v Secretary of State and Others 1976* contain the principles of law relevant to the determination in this application and the Council relies on these judgments in the application of the facts in the present case. Therefore, the condition restricting the dwelling to occupation by the stud farm manager did not apply to the unlawful development

No enforcement notice was issued in respect of these breaches of planning control.

The applicant has submitted evidence of the dwelling house being substantially completed on 19 May 2015. This comes in the form of a Final Certificate having been issued under section 51 of the Building Act 1984 by Alan King, an Associate of Assent Building Control Limited. The Council accepts this as evidence that the dwelling was substantially complete on 19 May 2015 and has become immune from enforcement action under s171B(1) of the Act.

The Council investigated the lawfulness of the basement constructed as part of the dwelling in July 2013. No enforcement notice has been issued to date, therefore, on a balance of probability, the construction of the basement is immune from enforcement action under the four year rule.

Therefore, the Council finds that, on a balance of probability, the dwelling house identified in the certificate hereby granted was substantially complete more than four years prior to the date of the application, 27 July 2019.

James Liebetrau

Senior Planning Lawyer

Winchester City Council