

Application for a Certificate of Lawfulness:

Seagrave Stables, Vernon Hill, Bishops Waltham, SO32 1FH

The Council has received an application for a Certificate of Lawfulness from an agent acting on behalf of applicant who is the owner of Seagrave Stables. The application gives the existing building works and use as *'development of a dwelling occupied continuously in excess of 4 years'*.

Full details of the application can be accessed via the South Downs National Park website under planning reference SDNP/20/03207/LDE.

Documentation Submitted:-

The following evidence was provided in support of the application at the date of submission:

1. Covering letter (undated).
2. Application form dated 31st August 2020.
3. Location plan.
4. Signed statement of applicant dated 25th July 2020.
5. Signed statement of joint owner of Seagrave Stables dated 25th July 2020.
6. Signed statement of the previous owner of Seagrave Stables dated 25th July 2020 exhibiting two plans.

The following evidence was submitted on 9th October 2020:-

7. Six plans taken from various planning applications for work at the site where Seagrave Stables is situated illustrating the difference in position of the dwelling in comparison to the original approved plans.

Representations:-

The Council has received the following representation:

1. Consultation reply from the Parish Council dated 26th August 2020 (no comment)

The Law:-

The Town and Country Planning Act 1990:

Under Section 191 (1) of the Town and Country Planning Act 1990 ('the Act') if any person wishes to ascertain whether

- (a) any existing use of buildings or other land is lawful;
- (b) any operations which have been carried out in, on, over or under land are lawful
- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

they must submit an application to the Local Planning Authority.

Under Section 191 (2), uses and operations are lawful at any time if,

- (a) no enforcement action may then 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 55 of the Act gives the meaning of 'development':

- (1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
- (1A) For the purposes of this Act "building operations" includes—
 - (a) demolition of buildings;
 - (b) rebuilding;
 - (c) structural alterations of or additions to buildings; and
 - (d) other operations normally undertaken by a person carrying on business as a builder.

With reference to time limits for the taking of enforcement action, Section 171B of the Act states:

- (1) 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 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 ...

NB I cannot find any record of an Enforcement Notice being served.

Guidance Note:-

Paragraph 005 17c-005-20140306 of the National Planning Guidance (NPPG) states:

'in the case of applications for existing use, if a local planning authority has no evidence itself, nor any 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'.

The burden of proof regarding decisive matters of fact rest with the applicant and the relevant standard is the balance of probabilities.

Relevant Planning History:-

- **97/01370/FUL- W12337/03-** Detached 2 bed dwelling at Seagrave Stables-
 - 19.11.1997- Permission granted
 - Condition includes restriction of occupation of dwelling to a surgical class 1 farrier or person solely or mainly working, or last working, in the locality in agriculture or in forestry or a widow or widower of such a person, and to any resident dependants.

- 27.04.1998- complied with planning conditions- 3 roof tiles, facing brick, 4-landscaping (drawing received 19.03.1998.
- 19.05.1998- amendment widening two windows to north elevation and enclosure of proposed porch to rear of property approved.
- 16.07.1998- amendment approved to omit hipped roof to single storey element replaced by formation of brick gable wall.

Building Control

- 97/01212/OLD- House- completion 22.11.01- no docs available on Idox

Submitted Evidence:

The application provides that planning permission was granted for a detached two bed dwelling on 19th November 1997. Amendments to this permission were approved in May and July of 1998 and the building was completed and occupied as a dwellinghouse in October 1999 (and has remained occupied as such since this date). The property has been registered for Council tax since this time.

While looking into redeveloping the stable yard on site a surveyor was employed to survey the land. Upon doing this it was brought to the applicant and the occupier's attention that the dwellinghouse was not actually built in accordance with the approved plans, specifically, the dwellinghouse is sited 7 metres to the North and 6 metres to the West from the approved plans.

Analysis:

As detailed above, the application provides that the dwellinghouse was built not in accordance with the approved plans, specifically, the dwelling is sited 7 metres to the North and 6 metres to the West from the approved plans. Such a distance cannot be considered to be 'de minimis' and therefore would be unauthorised development. The relevant time period for enforcement for such matters is 4 years beginning from the date on which the building operations were completed.

The difference in position is illustrated on the various plans available in the planning history for the site. The approved plan for the dwellinghouse shows the proposed dwelling to be a significant distance from the east elevation of the existing stable. However, the plans taken from a planning application for a car port (approved in November 2006 under reference 06/02848/FUL, W12337/04) and one for equestrian use of the stables (approved in May 2011 under reference 11/00034/FUL, W12337/07) show the west elevation of the dwellinghouse to be **in line** with the east elevation of the existing stable.

Further, aerial photography is available on the Council's mapping system, the earliest dating back to 2000, the year after the building work was completed. There is also photography available for the years 2007, 2013 and 'latest available'. All show the west elevation of the dwellinghouse to be in line with the east elevation of the existing stable.

There are some changes to the dwellinghouse visible on the aerial photography to the east elevation. I queried this with the applicant (it looked to relate to the car port but there were additional changes I could not find a record of on the Council's planning system) and it was confirmed that the changes relate to the permitted car port, extension to the car port and a

log store being added on the north end of the dwelling. I am not aware of these forming part of the application.

Finally, the grounds for the application have been described as 'the use as a single dwellinghouse began more than 4 years before the date of the application'. However, having discussed this with the Public Law Manager it was agreed that it is not necessary to consider the 4 year rule in this respect given that the submitted evidence appears clear and concise to consider that it was clearly built and used as a dwellinghouse. The property was registered for Council Tax immediately, there is no planning or enforcement history to suggest there was any change of use and the photographs available on the Council's mapping system support the assertion that it was always occupied as a dwellinghouse.

Conclusion:

I have no reason to doubt the information provided by the applicant and am satisfied that the building operation was unauthorised development due to the significant deviation from the plans for which planning permission was granted for the dwellinghouse in 1999. Further I am satisfied that the building operation was substantially completed over 4 years prior to the date of this application (namely in excess of 20 years) and that the building was occupied as a single dwellinghouse from the date of completion of the building works. Therefore no enforcement action can be taken and the operation is lawful.

I am therefore issuing a Certificate of Lawfulness.

Joanne Marande
Public Law Lawyer
For the Service Lead: Legal

9th December 2020.