

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	242048
Site Address:	Brookfield Farm, Old Wokingham Road, Crowthorne, Wokingham, RG40 3BU
Expiry Date:	15 October 2024
Site Visit Date:	07.11.2024 and 13.03.2023
Proposal: Application for a certificate of existing lawful development for the erection of 1 no. buildings substantially completed for in excess of 4 years	

PLANNING HISTORY		
Application No.	Description	Decision & Date
F/1996/64650	Proposed Extension Of Access Road	Approved: 06.01.1997
F/1996/64104	Proposed Change Of Use Of Agricultural Buildings To Shop Use (A1) (Retrospective)	Refused: 28.10.1996
A/1996/64153	Proposed Erection Of Two Signs (Retrospective)	Refused: 28.10.1996
F/1999/69174	Proposed Erection Of Building For Agricultural Use (Ostrich Breeding)	Approved: 07.04.1999
F/1999/0185	Proposed erection of building for agricultural use (Amendment to consent 99/69174/F) and extension of existing building (retrospective).	Approve: 01.02.2000
F/2004/3331	Proposed single storey extension to dwelling and replacement porch.	Approved: 11.03.2005
F/2004/0954	Proposed erection of an agricultural workers dwelling.	Refused: 26.11.2004
F/2004/2362	Proposed change of use of part of agricultural building to farm shop (A1) and food preparation area.	Refused: 26.11.2004
F/2009/2088	Proposed creation of new access to Brookfield Farm from Old Wokingham Road and closure of existing access.	Approved: 19.01.2010
CLE/2012/1815	Application for a certificate of lawful existing use of southern end of barn as a self-contained residential unit	Approved: 10.12.2012

203536	Application for a certificate of existing lawful development for the existing development comprising of the laying of hardstanding, erection of a building and earthworks bund.	Approved: 17.03.2021
240222	Application for a certificate of existing lawful development for the erection of an additional building and hardstanding substantially completed for in excess of 4 years.	Refused: 26 March 2024
240221	Application for a certificate of existing lawful development for the use of an additional yard for open B8 storage comprising the storage of inert soils, building materials and the parking and storage of vehicles for more than 10 years.	Refused: 26 March 2024
232773	Application for a certificate of existing lawful development for the use of the land for the storage of cars; vans; 2 axel lorries and vehicles; building materials; shipping containers; and trailers.	Approved: 22 May 2024
232786	Application for a certificate of existing lawful development for the erection of 1 no. buildings substantially completed for in excess of 4 years (amended description)	Approved: 23 July 2024
232799	Application for a certificate of existing lawful development for the use of 2 no. buildings as 2 separate dwellings for in excess of 4 years (amended description).	Approved: 29.07.2024

INFORMATION PROVIDED

By the applicant:

- Written statement
- Statutory Declaration
- Photographs
- Tenancy agreement
- Third Party Letter

By the Council:

- Council Tax Records
- Electoral register
- Photographs
- Site Visit

By third parties:

- None

APPRAISAL

Procedural:

The description of development was altered following feedback from the applicant's agent that the immunity being sought was for the use of the building as a dwelling for a continuous period of 4 years. The certificate had been previously registered to determine the lawfulness of the erection of the building only, in excess of 4 years only.

Whilst the Location Plan shows three buildings on the site outlined in red, the submission is intended to establish the lawfulness of the building furthest to the east, referred to as "The Chalet". The two buildings to the west were assessed as part of a previous lawful development certificate ref: 232799.

Assessment:

The application is for a Certificate of Lawful Existing Use to regularise for the use of the building known as "The Chalet" as a single dwelling. In determining a Certificate of Lawful Existing Use a Local Planning Authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. Lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required. In the case of this Certificate, it must be demonstrated that the use has been on-going continuously for at least four years. Planning merits are not relevant at any stage in the process however evidence from third parties, including neighbours, can be obtained should the Local Planning Authority consider it necessary to do so.

The National Planning Policy Guidance (NPPG) sets out that the onus of proof is on the applicant, not the Local Planning Authority in submitting a Certificate of Lawfulness. However, the NPPG also states that *"if Local Planning Authorities have no evidence of their own to contradict or undermine the applicant's version of events, there is no good reason to refuse the application provided that the applicant's evidence is clear and unambiguous to justify the grant of a certificate"*.

The lawful development certificate is to establish that the building has been used for a continuous period of up to 4 years as a residential dwelling.

A previous Lawful Development Certificate ref: 232799 was submitted for this building but was taken out of the redline because a site visit carried out on 13.03.2023, showed the building as unoccupied – see photo below.



The occupants of the building have been described in the supporting documents as:

Emmanuel Briandett 2012 – Aug 2018
Jordon Southall. Aug 2018 – Sept 2022
Thomas Donker Sept 2022 - Aug 2023
Ibekwe Ezekem Aug 2023 – Present

A written statement (unsigned) has been submitted from the alleged tenant of the building at the time it was observed as unoccupied on 13th March 2023. This states that the photo was taken whilst redecorating and refurbishing works were being carried out. There was however no indication of such works being carried out at the time of the site visit and in the photograph above. The building was unoccupied on this date.

The unsigned document from Mr Donker states *“my rent was paid inclusive of bills. I would have been in the electoral register having registered myself at the property”*. Electoral Services have confirmed that only one property on the site (the main barn) was on the electoral role and this is not “The Chalet”. It was also confirmed that Mr Donker was not on the electoral register for the site.

A photograph of a tenancy agreement has been submitted but there is no date for when this was signed.

An email in October 2024 from the Council Tax Team advised that the building had only just been registered for council tax – it was not registered prior to this.

A further site visit was carried out on 7th November 2024. The occupant of the building did not want to give his name but from the information within the statutory declarations Ibekwe Ezekem was listed as the individual occupying the building. When asked when he moved into the building, the individual replied January 2024. The occupant was clear and unambiguous about the moving-in date. This leaves a gap of 4-5 months between the previous occupant's tenancy ceasing and the current occupant, whether they identify as Mr Ezekem or not, occupying the building.

No other utility bills or evidence has been provided to demonstrate continuous occupation of the building. At the time of the March 2023 site visit, the local planning authority would not have been able to take enforcement proceedings in respect of the breach because no breach was taking place. Therefore, in light of the above and without any evidence to confirm otherwise, on the balance of probability, it has not been demonstrated that the building has been continuously occupied for 4 years at the date of submission. There is also an appreciable gap between Ezekem moving into the building and the previous tenant.

A letter from Mr Louis R Amakye has been submitted which states that Mr Donkor has lived at the farm. However, it does not specifically refer to the Chalet building. Mr Donkor has been described as living within other buildings on the site and has also been observed in the main farmhouse. The weight that can be given to this anecdotal information is limited and does not affect the above position.

The Public Sector Equality Duty (Equality Act 2010):

In determining this application the Council is required to have due regard to its obligations under the Equality Act 2010. The key equalities protected characteristics include age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief. There is no indication or evidence (including from consultation on the application) that persons with protected characteristics as identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular planning application and there would be no significant adverse impacts as a result of the development.

Conclusion:

The building was not occupied during a site visit on 13.03.2023. There are also several key discrepancies within the information submitted. The current occupier of the building advised that they did not move in until January 2024 when asked on site and this does not correlate within the information submitted and leaves a significant unoccupied gap. There is no Electoral Services record of Mr Donkor living in the building, contrary to what has been stated, and the building was not on the electoral register.

The Planning Practice Guidance states, *'an application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. This does not preclude another application being submitted later on, if more information can be produced.'* The information submitted is not precise and there is contradictory evidence regard the dates occupants were living

in the building resulting in large gaps in the occupation where the council would not have been able to take enforcement action.

RECOMMENDATION

The relevant test for Lawful Use is the 'balance of probability'. Based on the evidence provided and the Local Planning Authority's own information, it has not been demonstrated that, the use of the building as a dwelling has been occurring for a consecutive/continuous period of four years. The evidence provided is imprecise and is contradicted by other information obtained. A site visit showed the building as unoccupied in March 2023. The current occupier of the building told the council he moved in January 2024 which does not match the information submitted and results in a significant gap from the previous tenant. There is also contradictory information provided on the alleged previous occupier of the building (Mr T Donker) being registered for council tax at the building. It is therefore considered that the application of a certificate of existing lawful use should be refused.

Date:	11 October 2024
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Earliest date for decision:	14 September 2024
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Recommendation agreed by: (Authorised Officer)	
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BJC

Date:	19.12.24
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