

1 October 2024

FAO Mark Croucher and Cameron Young
via email

Dear Sirs,

Re: The Lodge, 178 Bearwood Road, Barkham, RG41 4SH Certificate of Lawfulness for Incidental Residential Use of Land

This letter accompanies a re-submitted Certificate of Lawfulness (S191) application for the incidental residential use of land and septic tank associated with The Lodge. The same planning statement and evidence has been submitted to support the application (with no changes).

The previous application (240935) was refused on 10/06/2024 on the grounds that insufficient information had been provided in relation to demonstrating a material change of use had occurred in excess of 10 years. However, the septic tank was considered to be lawful.

This letter seeks to clarify a number of matters incorrectly assessed in the previous Officer Report and address matters raised following your further visit to the site on 17/09/2024 in the following order:

- Amended Application and Correct Procedure;
- Substantive Evidence and Use of Land;
- Lawful Use of Land as C3 prior to The Lodge

Amended Application and Correct Procedure

Firstly, a revised red line boundary has been provided to show a smaller area of land. Notwithstanding it is emphasised that the same evidence as the previous submission has been provided which demonstrates the use of the land as the incidental residential land associated with The Lodge. If this is still not satisfactory then to avoid a similar situation, I would remind the LPA of their powers under S191(4) of the TCPA which states:

*"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"*

This was the approach the LPA took for the original certificate for the dwelling but was not applied in the decision of 240935. Amending a Certificate does not preclude the presence of a wider planning unit just confirms what the LPA agrees is lawful.

It is requested in this submission should the LPA have any concerns regarding the lawful use of the site that they allow the applicant a chance to respond and or agree an alternative red line and/or description to ensure a favourable outcome.

Substantive Evidence and Use of Land

As previously stated, the same evidence has been submitted. On the recent site visit discussion was held regarding the south orchard and hazel grove, the wooded areas of the site and the areas covered by TPOs.

The LPAs only basis for stating this area was not in a residential use was via the presence of the trees. However, this area is used recreationally via the applicant and their family. A TPO nor trees denote a use of land in themselves, and this was clearly weighed against the previous submission without considering the other evidence and use of land.

The use of land was evidenced in the Statutory Declaration of the applicant and Enclosures 2 and 3 only highlighting part of the wooded and orchard areas which they use (and not its entirety). The declaration was clear and unambiguous that the highlighted areas in the enclosure have been used as the garden of The Lodge. I understand they also confirmed on the site visit they harvest fruit from the orchard and brambles, they harvest wood from the hazel grove and coppice these trees, and that their daughter would build dens and play hide and seek in the wooded areas – these are activities associated with a residential use and would not be available to view via aerial imagery.

The evidence is clear that the use has existed in excess of 10 years, and this alone should suffice to grant the re-submitted application.

Lawful Use of Land as C3 prior to The Lodge

Finally, it should be noted that a significant amount of evidence was provided in the previous submission (and the current submission) to demonstrate the entirety of the plot (prior to The Lodge and The Lake House) was in a lawful C3 use (incidental to the main dwelling). The Officer Report provides no assessment in relation to this consideration.

Paragraphs 2.7 and 2.8 of the Certificate Statement outlines that the LPA should also be aware that the use of the land as a garden to a different lawful dwelling **would not constitute a material change of use** and therefore the use of the land by The Lodge would be lawful.

Significant information including historical photos and statutory declarations have been provided to verify the lawful planning unit associated with the original dwelling of no.178 Bearwood Road. Therefore, a Certificate of Lawfulness can also be granted via this consideration.

I trust the above is helpful to avoid the refusal of this re-submitted application and will be in touch following the expiry of the consultation period.

Yours sincerely,



Will Hossack BSc MSc

Principal Planner | ET Planning

200 Dukes Ride Crowthorne RG45 6DS

will.hossack@etplanning.co.uk 01344 508048