

DELEGATED DECISION REPORT

APPLICATION NUMBER

211971

White Oak Barn, White Oak Cottage, Great Oak, Eardisley, Hereford, HR3 6LU

CASE OFFICER: Mr Adam Lewis

Relevant Development Plan Policies: **Town and Country Planning Act 1990**
Section 191
Section 171B

Planning Practice Guidance

Relevant Site History: **DCH980560/F** - Proposed conversion of barn to provide one-bedroom annexe for dependent relative – Approved 1999
DCH980563/L - Conversion of barn to provide one-bedroom annexe for dependent relative – Listed Building Consent – Approved 1999

PLANNING OFFICER'S APPRAISAL:

Site description and proposal:

The application relates to a site in the countryside approximately 1km to the north west of Eardisley, forming part of a cluster of houses known as Great Oak. White Oak Cottage is found to the north of the highway and is a timber framed cottage listed at Grade II. To the west of the house there is a former stone barn that has been converted to residential use, to which this application relates.

Planning permission and listed building consent was granted for the conversion of the barn to a single bedroom annexe for a dependent relative in 1999. Under the planning permission DCH980560/F, the following condition was imposed;

3. The annexe hereby approved shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as White Oak Cottage.

Reason: The creation of a separate dwelling here would be contrary to the development plan.

The current application seeks a Certificate of Lawfulness in line with the provisions set out at Section 191 of the Town and Country Planning Act (1990). The application reports that the barn has been occupied as a separate residential dwelling in breach of the condition for a

period in excess of 10 years. A certificate is therefore sought to confirm that the breach of control and use of the building is lawful as sufficient time has now passed for to be immune from enforcement action in accordance with Section 171B of the Town and Country Planning Act 1990.

Appraisal:

The CLEUD system places the onus upon the applicant to provide sufficient information to support their application and demonstrate 'on the balance of probabilities' that the use in question has subsisted for the requisite period. Where this use relates to the breach of a condition, as is the case here, that period is 10 years. The Planning Practice Guidance states that in the case of applications relating to an existing use, there should be no good reason for a LPA to refuse an application unless it has evidence which contradicts the applicant's version of events. This guidance is however offered with the caveat that, in the first instance, the applicants' evidence alone should be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability (Paragraph: 007 Reference ID: 17c-007-20140306).

Permission for the conversion of the barn and use as an ancillary access was granted in 1999. The following condition was attached to the permission;

3. The annexe hereby approved shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as White Oak Cottage.

Reason: The creation of a separate dwelling here would be contrary to the development plan.

The Applicant's submission seeks to demonstrate that the barn has been occupied as a separate dwelling in breach of the condition above for a period exceeding 10 years, with that breach continuing at the time of the application. It is therefore contended that the breach is now lawful in the sense that the time in which any enforcement action could be taken against it has passed in accordance with Section 171B of the Planning Act 1990. The application sets out a body of evidence, summarised as follows;

- Planning Statement – setting out the legal framework and contextualising evidence.
- Sworn Affidavits from owner of the property and a former tenant. The former confirms that the building has been occupied as a separate dwelling from 2005, with one long term tenancy between 2005 and 2016 followed by a series of short-hold tenancies from 2016 until the present day. The latter is from the long term tenant confirming occupation between October 2005 and September 2016.
- Bank Statement from B Waterlow, confirming payment of rent in 2005 and in 2016.
- A letter from McCartney's LLP. The letter confirms that McCartney's have acted as the letting agent for the property since 2017 until present. It advises that the most recent tenancy started on 1st May 2018 and that this is still ongoing as of 14th July 2021.
- Correspondence from Herefordshire Council's Council Tax team confirming the Barn has been registered as a separate property for Council Tax since October 2005

The assessment of whether a Certificate of Lawfulness can be granted has been made based on the evidence above. The evidence supplied is convincing and sets out a detailed timeline detailing how the barn has been occupied across the relevant period. The LPA has no evidence which contradicts this version of events and, as such, it is considered that the submission is sufficient to pass the 'balance of probabilities tests'. It is probable on the basis of the evidence that the barn has been occupied as separate dwelling in breach of the use restrictions imposed by condition of the original permission for a period in excess of 10 years and that breach persists at the present time. The period in which enforcement action could be taken has now expired and accordingly a certificate can be granted in accordance with Section 191 of the Town and Country Planning Act (1990).

RECOMMENDATION: GRANT LAWFUL DEVELOPMENT CERTIFICATE

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL hereby certify that on 26th July 2021, the use described in the First Schedule to this Certificate in respect of the land specified in the Second Schedule to this Certificate and edged red on the plan attached, was lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

Having regard to Section 191 of the Town and Country Planning Act (1990), it is considered that sufficient evidence has been provided to demonstrate on the balance of probabilities that the property known as White Oak Barn, White Oak Cottage, Great Oak, Eardisley, Herefordshire, HR3 6LU has been occupied as an independent residential dwelling in continuous breach of the restrictions imposed by Condition 3 of planning permission DCH980560/F for a period in excess of 10 years. It is thereby immune from enforcement action and considered lawful in accordance with Section 191 (B) of the Town and Country Planning Act (1990),

FIRST SCHEDULE:


Certificate of lawfulness for existing use of barn as a separate C3 dwelling.

SECOND SCHEDULE:

White Oak Barn, White Oak Cottage, Great Oak, Eardisley, Herefordshire, HR3 6LU

Informatives

It is highlighted that this certificate relates to the use of the building and land only. It does not confirm lawfulness of any operational development or works to the curtilage listed building which may have been carried out to facilitate that use.

Signed:  Dated: 26TH July 2021

TEAM LEADER'S COMMENTS:**DECISION:****PERMIT** ☒**REFUSE** ☐

Signed:

AB.

..... Dated: 27/7/2021

Is any redaction required before publication? No