

## **SUPPORTING STATEMENT**

HIGHWOOD  
BATTS CORNER  
DOCKENFIELD  
FARNHAM  
GU10 4EY

CERTIFICATE OF LAWFULNESS UNDER S.192 OF THE TOWN &  
COUNTRY PLANNING ACT FOR THE USE OF AN EXISTING  
OUTBUILDING BUILDING AS ANCILLARY RESIDENTIAL  
ACCOMMODATION

Application submitted on behalf of:

Mr and Mrs Stewart

**August 2021**

## **1. INTRODUCTION**

- 1.1 This application is made under Section 192 of the Town and Country Planning Act 1990 for a Certificate of Lawfulness for the proposed use of an existing domestic outbuilding as ancillary residential accommodation at Highwood, Dockenfield.
- 1.2 The site lies to the west of the village of Dockenfield. The building is sited within the residential curtilage of Highwood and is current being used as storage in association with the dwelling. The outbuilding has been in existence for many years.
- 1.3 This application seeks confirmation from the Council that the use of the outbuilding for ancillary habitable purposes (that is, as self-contained habitable accommodation) does not constitute development and is lawful.
- 1.4 No significant development or extensions are proposed to the building, only insertion of windows and doors. As the proposed use would be ancillary to main dwelling, it is contended that this proposal is not development, and therefore planning permission is not required for the proposed use. This is further explained in Section 5 below.

## 2. THE APPLICATION SITE AND BUILDINGS

2.1 The site is located within the South Downs National Park. The property comprises a substantial detached dwelling, an outbuilding which is the subject of this application, and a tennis court. The property is located to the east of Boundary Road and to the north of Dockenfield Street. The area is rural-residential in character.

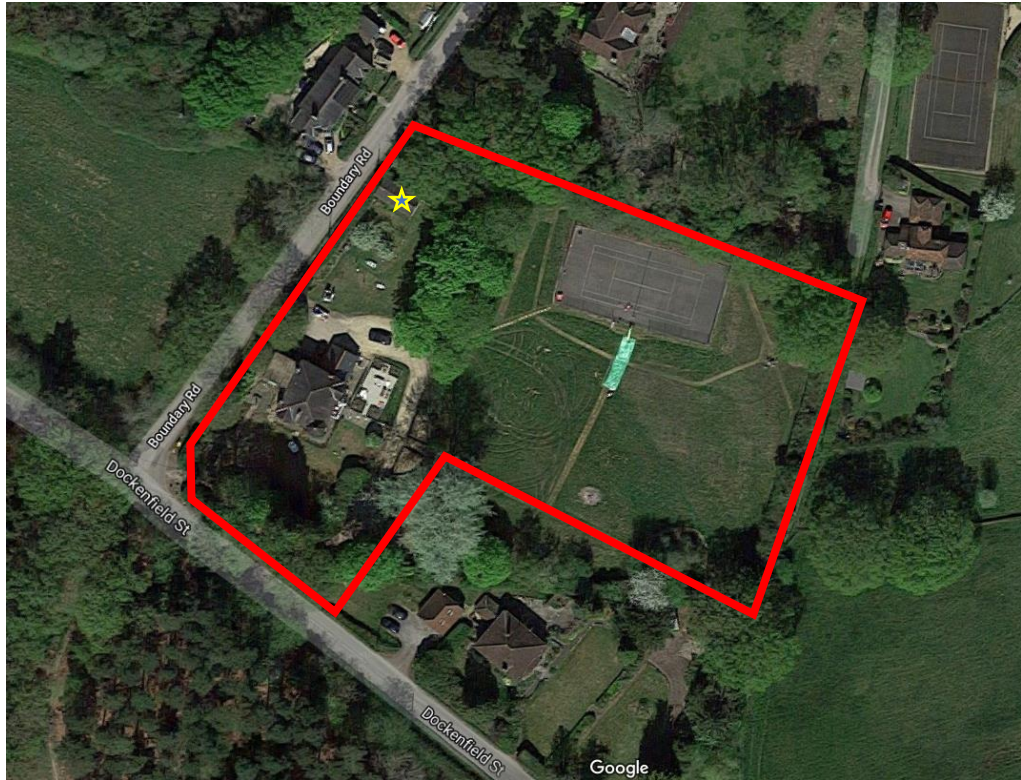
2.2 The location of the property is depicted in the mapping extract below:



*Location of property (marked with red circle) Source: Hampshire Planning Applications Map*

2.3 The building, to which this application relates, is situated to the north of the dwelling house, within its curtilage. Residential gardens associated with the dwelling surround the building and extend to the south, east and north. There are a number of mature trees within the residential curtilage.

2.4 The aerial photograph below shows the site boundaries and the subject building.

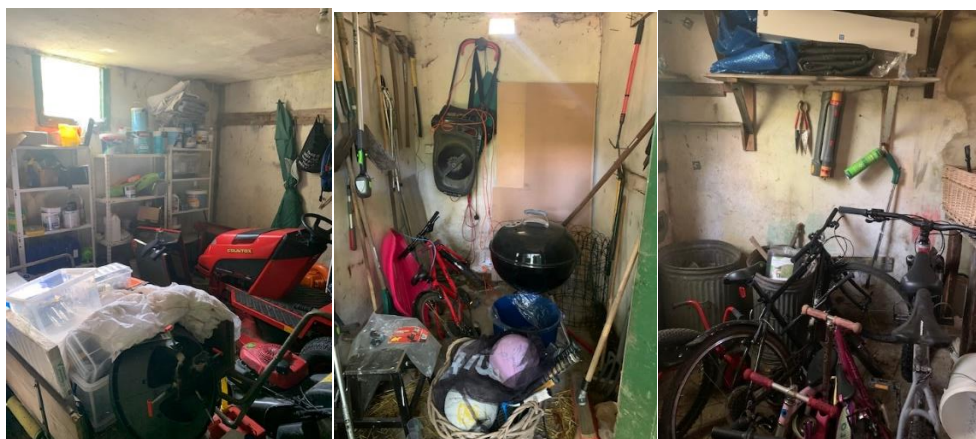


*Aerial photograph showing location of site in the wider setting (outbuilding indicated with a star)*

- 2.5 The existing building is comprised of cream rendered brick façade with dark roof tiles and windows/doors on all sides. The building is single storey with a pitched roof containing a loft space.
- 2.6 The building is rectangular in shape, measuring 9m long, 4.5m wide and 5m in height with a pitched roof.
- 2.7 The external appearance of the outbuilding is as shown in the photograph below.

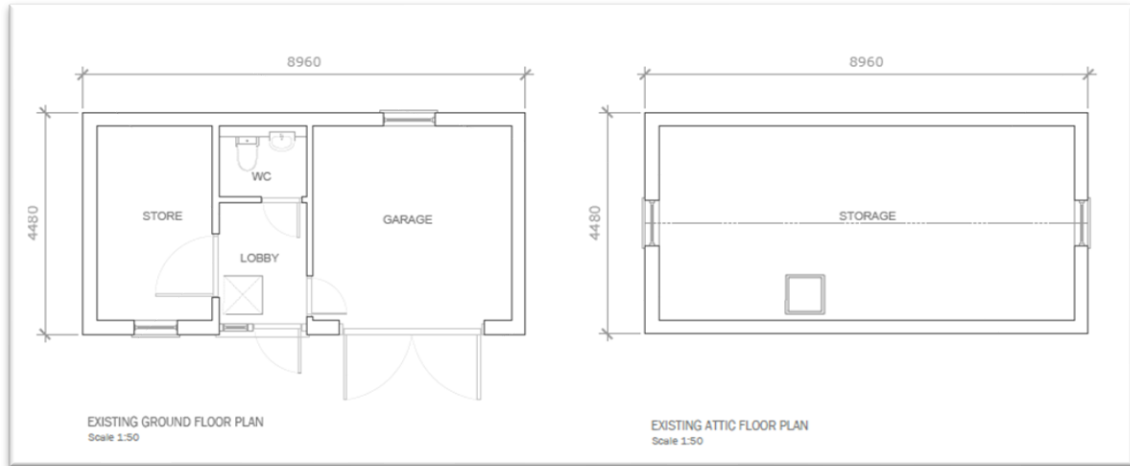


2.8 The building is currently used for domestic storage purposes in conjunction with the main dwelling as shown in the internal photos below.



2.9 The building demonstrates a clear connection to the main dwelling based on its siting, design and use.

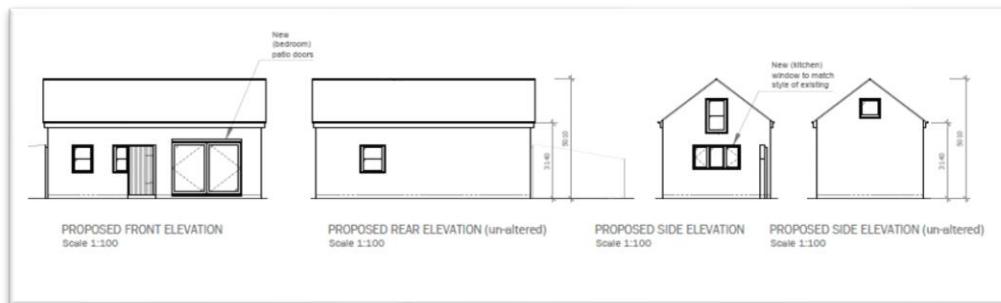
2.10 A floor plan of the existing layout is provided below. The part of the building closest to the street was formerly used for vehicle parking. Adjacent to the building are gates providing access to the Boundary Road. The remainder of the ground floor and attic are used for storage purposes.



*Existing floor plan*

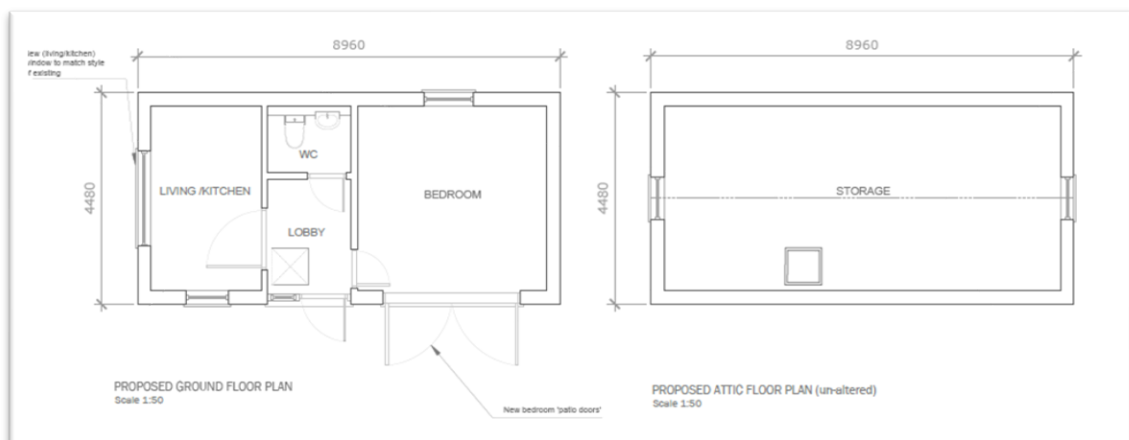
### 3. APPLICATION PROPOSAL

- 3.1 This application seeks confirmation that the proposed use of the existing outbuilding for habitable residential purposes, can be considered to be ‘ancillary’ residential, to the main residential dwelling, Highwood, such that a material change of use would not occur.
- 3.2 Very limited external alterations are proposed to facilitate the use for habitable residential purposes other than the replacement of the existing double doors and addition of a window. The building will make use of other existing openings for access, light and ventilation.



*Proposed elevations*

- 3.3 Internally, the main internal layout will be retained in terms of rooms, with a bedroom, toilet and kitchen/living space. The upper level will provide a store area. The plan below depicts the proposed layout of the outbuilding:



*Proposed ground floor plan*

#### **4. PLANNING CONSIDERATIONS**

- 4.1 Planning policies are not relevant in the context of Lawful Development Certificates as the purpose is to determine whether the proposed use of the building is lawful for planning purposes under S.192 of the Town and Country Planning Act 1990.
- 4.2 For the purposes of this Act and relevant to this proposal, uses and operations are lawful at any time if no enforcement action has been taken because the use or operation which occurred involved development or required planning permission.
- 4.3 Based on the facts of the case and relevant planning law, it is contended that the intended use would be lawful and no planning permission is required as it would not involve 'development'. That is to say the use for residential purposes can occur without needing any internal or external works for which planning permission would be required. This point is explained below.

##### Relevant planning legislation

- 4.5 Section 55(1) of the Town and Country Act 1990 sets out the definition of development as:

*“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.*

- 4.6 The Act at S.55(2) goes on to identify specific operations or uses of land that shall not be taken to involve the development of land. Of relevance to this proposal are;

*(a) the carrying out for the maintenance, improvement or other alteration of any building of works which—*

*(i) affect only the interior of the building, or*

*(ii) do not materially affect the external appearance of the building*

*(d) the use of any buildings or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such.*



The facts of the case

- 4.8 The definition of development in S.55(1) of the Town and Country Planning Act 1990 and its exclusions to development are considered in order below:

**Operational development**

- 4.9 The first part of the definition relates to operational development, i.e.

*“the carrying out of building, engineering, mining or other operations in, on, over or under land...”*

- 4.10 No building operations are proposed to facilitate the conversion of this building to allow for habitable use. The works required to bring the building up to the standards required for the proposed use, that is as habitable accommodation, would only affect the interior of the building. No external alterations to the building are proposed, other than alterations to openings and general maintenance and repair to the building fabric, and these, being on a ‘like for like’ basis, would not materially affect the external appearance of the building.

- 4.11 S.55(2)(a) specifically states that works of maintenance, improvement or other alteration of any building which affect only the interior of the building or do not materially affect the external appearance of the building, are not development of land.

- 4.12 As the conversion of this building only requires internal works, maintenance and alterations to openings that would not materially affect the external appearance of the building, no operational development is proposed and therefore planning permission is not required.

- 4.13 **Material change of use**

- 4.14 The second part of the definition of development is:

*“...the making of any material change in the use of any buildings or other land”*

4.15 No material change of use is proposed under this application. The existing use of the site is residential (Use Class C3) with the outbuilding currently used as storage 'incidental' to the main dwelling.

4.16 The proposed use of the building would be as self-contained habitable accommodation in association with the main residential use, that is as an annex, therefore **ancillary**, to the established C3 use.

4.17 The use of an existing outbuilding for ancillary residential accommodation does not require planning permission provided it complies with s.55(2)(d). This provides that:

*“the use of any buildings or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such.”*

4.16 The term “**incidental**” for the purposes of s.55 is not defined within planning legislation. However, case law has established that the use of an outbuilding for habitable purposes within the curtilage of a dwelling house does not amount to the creation of a separate planning unit and therefore does not require planning permission.

4.20 In this case, the use is incidental, no change of use would take place and no new planning unit would be formed. This is on the basis that:

- The outbuilding is clearly in the curtilage of the dwelling, given its location to the immediate south of the house, bordering the garden and access.
- It would be in the same ownership as Highwood.
- It would be used to accommodate guest and the family members of the main dwelling.
- The building has a close physical relationship to the main house.
- The outbuilding would share the access and parking.
- The outbuilding would share the garden, with no subdivision of the curtilage.

4.12 The use of the building would therefore be functionally and physically related to the main dwelling and would be subordinate to it. The proposal would not amount to the creation of a separate planning unit. As such the proposal is not development, as set out in S.55(2)(d). This should inform the decision taken by the Council to grant the Certificate of Lawfulness.

**5. SUMMARY AND CONCLUSION**

- 5.1 This application has demonstrated that, on the basis of the relevant planning law, the facts of the case, the use of the existing outbuilding as ancillary residential does not amount to operational development or to a material change of use. As the use would be incidental to the dwelling house, no new planning unit would be formed. Various certificates to use outbuildings for ancillary residential have been granted on the same basis.
- 5.2 The proposed use of the building would not constitute development for the purposes of section 55 of the Town and Country Planning Act 1990 as such would not require planning permission.
- 5.2 It is thus submitted that a Certificate of Lawfulness should be issued.