

Planning Department  
East Hampshire District Council  
Penns Place  
Petersfield  
GU31 4EX

Our Ref: EH/638/AP  
Your Ref: PP-12593584  
Email: andy@southernplanning.co.uk  
Date: 30 November 2023  
Status: By Planning Portal

Dear Sir/Madam,

**Roughwood, Shaldon Green Road, Shalden, Alton GU34 4DT – Use of land for ancillary residential use**

**Introduction**

Mr and Mrs Noordhoek-Hegt have instructed me to apply for a certificate of lawful use for the use of land for ancillary residential use. The application has been submitted via the planning portal (Ref: PP-12652689).

The following documents comprise the application and have been uploaded onto the planning portal:-

Application Forms  
Site Location Plan  
Statutory Declaration of Mrs J L Noordhoek-Hegt including Exhibits 1 and Existing 2  
Statutory Declaration of Mr R Noordhoek-Hegt  
Letters from the occupiers of Foxes Mead, Withey Cottage x2 and Holly Cottage  
Aerial photographs

This letter sets out the justification for the issuing of the certificate.

Please note that the exact day and month of the breach are unknown and these are nominal. What is known is that the breach occurred in late 2006 see Statutory Declaration of Mrs J L Noordhoek-Hegt.

**The Site**

Roughwood lies on the west side of Shaldon Green Road, just south of the Avenue. It comprises a two storey, brick and tile, 'H' shaped, house and garage. The garden is mostly laid to grass interspersed with a few shrubs. There is a framework of trees which encompass the house and garage. Beyond the trees, to the north and west, the land forming an L shape is given to grass. This land comprises the application site (the Site). Its northern and southern boundaries border residential gardens while the west borders an arable field, separated by a post and rail fence. In the southwest corner is a stile allowing access to this field. The site is flat. There is a garden compost heap on the southern border.

**Southern Planning Practice Ltd**

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Registered in England and Wales No. 3862030

## Planning History

There are four applications relating to the property tabled below: -

Reference	Proposal	Date and Decision
F.39862/FUL	Replacement dwelling with detached garage and demolition of house	13.7.2005 Permission
F.39862/001/FUL	Detached house with garage following demolition of house (alternative to F39862)	3.3 2006 Permission
F.39862/002/FUL	Replacement dwelling and garage (revised scheme to f.39862/001)	18.5.2006 Refused
F.39862/003/FUL	Alteration to previously approved garage	18.7.2015 Permission

The first application was made on behalf of another applicant. The Site was described in the application as a paddock which as part of the proposed landscaping was to be enclosed with sheep fencing. The plans made no reference to any existing fence but the boundary between the garden and paddock is notated on the plans. The second application was made on behalf of the applicants. The plans notate the boundary similarly to the first application. The design statement refers to the Site separately from the garden and there is a picture of the Site, with the garden boundary annotated. The picture shows low-cut grass with the occasional tall weed or group of weeds. It also states that the land is in the same ownership as the applicants. The third application for a further revised scheme was refused. It reveals nothing more about the site. The final application made later used the same base plan as the original consented scheme for the house. It reveals nothing further about the site.

## Planning Law

This application is made under Section 191 of the Town & Country Planning Act 1990 (as amended) "the Act", which enables anyone to apply to the local planning authority for a decision whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land, is lawful for planning purposes.

Section 191(2) of the Act states that:

*For the purposes of this Act 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.*

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The time limits when enforcement action can be taken are specified in Section 171B of the Act.

- (a) any proposed use of buildings or other land; or
- (b) any operations proposed to be carried out in, on, over or under land, would be lawful.

**(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.**

**(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.**

**[(2A) There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).]**

**(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.**

Section 191(4) of the Act provides that if, on an application under the section, the LPA are provided with information satisfying them of the lawfulness, at the time of the application, of the use, operations or other matters described in the application, they shall issue a certificate to that effect.

In the case of *F W Grabbitas v SSE and Newham LBC* [1985] it was held that the applicant's own evidence does not have to be corroborated by 'independent' evidence in order to be accepted. If the LPA has no evidence of their own, or 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.

### **Assessment**

Case law *R (oao Alison Sellars) v Basingstoke & Deane Borough Council* [2013] EWHC 3673 (Admin) establishes that where a material change in use is put forward as the breach of planning control the first step in deciding whether the change of use is or is not a material change is to look at the planning unit concerned.

The original planning unit was defined by the permission for the replacement dwelling F.39862/001/FUL which was implemented. This excluded the Site. However, that is not the end of the matter because the permission will initially define the extent of the unit, but subsequent changes can take place which alter the extent of the planning unit. In this case, the planning unit has been extended to include the Site.

*Burdle V SSE* 1972 3 ALL ER 240, at page 2.44 states that there are three possible situations which can be identified.

First, there may be a single main purpose, to which secondary activities are ancillary or incidental. In that case, the whole unit of occupation is the planning unit.

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Secondly, there may be a variety of activities, which do not have a primary/ancillary relationship with each other.

Thirdly, there may be separate and distinct areas occupied for substantially different and unrelated purposes. In that case, these areas are separate planning units and each is to be considered by itself.

The general rule is that *the unit of occupation is the appropriate planning unit to consider, until or unless a smaller unit which is in separate use, both physically and functionally.*

The breach of planning occurred in 2006 when the fence was removed and the land started being used as a safe garden play area while the house was under construction. So, although the original planning unit had been defined by the residential permission it was never actually confined to the area originally identified on the site location plan.

The removal of the fence (and the lack of any replacement fence since) in 2006 removed the physical separation and a barrier to using the land for residential purposes. This act allowed easy and ready access to the Site as there was no effective impediment to entry. Physically, the Site was clearly, separate from the neighbouring arable field, separated by a post and wire fence. This also applied to the neighbouring residential properties with the Site separated by hedging. But on the east side of the Site, there was no hedge or fence to denote a separate parcel of land. Therefore, together with the original planning unit, the Site forms one identifiable planning unit.

Functionally, the evidence shows that the land had not been used for crops, nor has it been used by grazing animals at any time since the breach occurred. The grass was cut by lawn mower and the cuttings were put in the compost heap.

The 2008 aerial photograph shows the grass within the new planning unit either brown or turning brown through lack of water. It demonstrates that the original planning unit was treated no differently from the Site. The Site is shown maintained. Within the site, to the southwest, there is a round trampoline in situ. To the north, there is a bonfire (which as exhibit 2 of Mrs Noordhoek-Hegt Statutory Declaration reveals have featured in the use of the land for gatherings and parties on the Site.

The 2017 aerials reveal the grass has been left to grow taller to create a managed wildflower meadow with cut paths - there is a grass path around the perimeter of the Site with the land in between crisscrossed with paths. The goalposts are also visible. The 2018, 2020 aerials paint a similar picture.

The extent of the wildflower meadow is has been extended by 2022 to include land in the southern part of the Site. The wildflower meadow cut with paths remains. The cut paths indicate that the Site is being used.

The evidence of Mrs Noordhoek-Hegt ties in with the aerial photographs. The evidence presented has established that since 2006 the land has been used by the household for parties, gatherings, play, dog walking, recreation, leisure, sport and private enjoyment incidental to the residential use of the main house. The activities are typical of any household.

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The land has been managed in a manner appropriate to accommodate the uses. As the children have become older it has allowed the applicants to follow the fashionable garden trend of creating wildflower meadows to enjoy as demonstrated by the cut paths which run around and through them.

The evidence is corroborated by a friend and neighbours who confirm that the Site has been used extensively by the family for recreational pastimes.

Functionally, the Site has been used part and parcel of the residential planning unit.

Therefore, physically and functionally the Site forms part of one residential unit. There are no activities that are primary to the use of the Site. Nor are there separate or distinct areas for substantially different and unrelated activities to the residential use. The activities remain ancillary to the main use.

These activities have been continuous from the date of the breach to the present day which is well over ten years as verified by the evidence presented in the application. Therefore, the use of the Site is lawful. For these reasons, the certificate should be issued.

Yours sincerely



**Andy Partridge, BSc (Hons) Dip UP MRTPI  
Director**

Copy to: Client

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