



**BARNS FARM LODGE
BARNS FARM
STORRINGTON
PULBOROUGH
WEST SUSSEX
RH20 4AH**

CERTIFICATE OF LAWFULNESS FOR AN EXISTING USE

SUPPORTING STATEMENT FOR:

**Certificate of Lawful Development for existing dwellinghouse
(Use Class C3).**



JANUARY 2024

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APPENDICES

NJA-1	Approved plans and decision notice for (DC/07/1808)
NJA-2	Mr Baldwin's Accountant's covering letter
NJA-3	Evidence of Self Assessment Tax Returns
NJA-4	Utility and Council Tax Bills
NJA-5	Sworn Statement

1.0 INTRODUCTION

1.1 This Certificate of Lawfulness application seeks to regularise the use of the dwelling known as Barns Farm Lodge, as a private residential dwellinghouse, unfettered by restrictive conditions (Use Class C3). This statement and associated evidence demonstrate the dwelling has been lived in for the last 10 years without complying with Condition 1, varied from the original planning permission (DC/07/1808) concerning the occupation of the residents. Therefore, under the provisions of Section 191 of the Town and Country Planning Act (TCPA) 1990 the use is now lawful and is exempt from enforcement action.

1.2 Section 191 of the TCPA 1990 states the following:

(1) If any person wishes to ascertain whether—

(a) any existing use of buildings or other land is lawful;

(b) any operations which have been carried out in, on, over or under land are lawful; or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) 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.

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

(a) the time for taking enforcement action in respect of the failure has then expired; and

(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(4) 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.

1.3 Section 171A of the Town & Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) is of relevance as it states:

'(1) For the purposes of this Act –

(a) carrying out development without the required planning permission; or

(b) failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.'

2.0 SITE DESCRIPTION

- 2.1 The site comprises a single storey residential property located on the east side of Storrington, to the south of Washington Road. Access is gained via Barns Farm Lane which terminates at the adjacent Barns Farm House; the lane also serves a number of other properties and businesses. The property is located on the north western edge of the farm complex associated with Barns Farm. The buildings are set out around a large yard/ hard surfaced area used primarily for parking vehicles. The area around the Barns Farm Lodge is open with no form of enclosure around the curtilage. The site is in a rural setting and is generally characterised by low density development. The property is also within the South Downs National Park.
- 2.2 The property is a bungalow and is well maintained, with horizontal painted timber boarding to the exterior and white fenestration. The front entrance includes an enclosed porch, and a conservatory extension has more recently been constructed on the western elevation.
- 2.3 Set out below are some contextual photographs of Barns Farm Lodge and the immediate surroundings.

Front elevation:



Front/ east elevation:



West elevation:



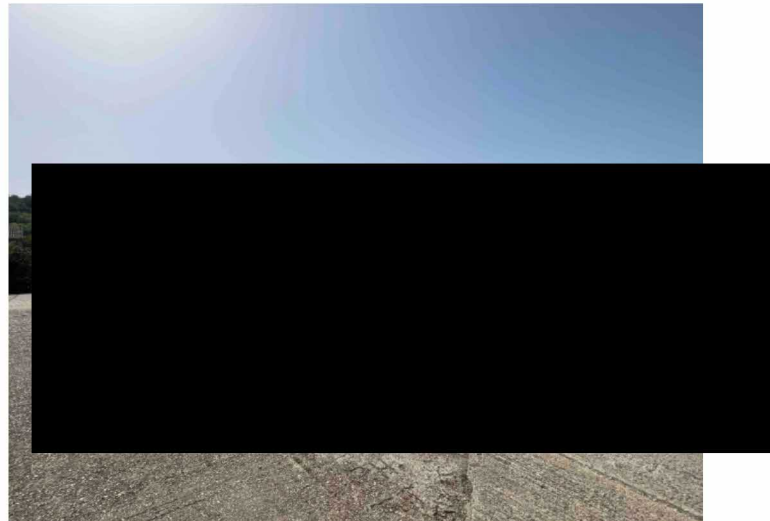
Rear elevation:



In context with adjacent barns:



Nearby Barns Farm House:



3.0 PLANNING HISTORY

3.1 A search of Horsham District Council's on-line planning register establishes the relevant history for the site as follows:

DC/07/1808 – Variation of Condition 1 of planning permission SG/30/94, Change of named occupier from Mrs Darge to Simon Baldwin – Approved.

SG/30/94 – Removal of agricultural occupancy from SG/48/66 – Approved.

SG/11/67 – Erection of bungalow (outline SG/48/66) – Approved.

SG/48/66 – Site for dwelling to be used in conjunction with agricultural use – Approved.

3.2 Planning application DC/07/1808 was approved on 3 September 2007 and was the only condition imposed/ reimposed on the permission. Condition 1 states:

The occupation of the dwelling shall be limited to a person solely employed or retired and last employed in the locality in agriculture as defined in section 336(1) of the Town and Country Planning Act 1990, or in forestry, including any dependants of such a person residing with him or her or a widow or widower of such a person; or the current occupier, Mr Simon Baldwin, a direct relation of J.M and J. Baldwin, who currently occupy the adjacent dwelling Barns Farm.

3.3 This planning permission sought to vary a restrictive condition on an earlier planning permission (SG/30/94) to change the named occupier. A copy of the relevant 2007 planning permission is attached at Appendix NJA1.

3.4 Barns Farm Lodge has been occupied since February 2008 by Mr Martin Baldwin until his death in 2022; the property has been vacant since this time. Mr Baldwin previously occupied Barns Farm House at which time he was employed full time in agriculture. Mr Baldwin sold off the majority of the land associated with the farm on retiring from agriculture. He did however retain a part of the land holding and a number of the barns within the adjacent complex, as well as Barns Farm Lodge.

- 3.5 Following his retirement from agriculture, Mr Baldwin derived his income from the rental income from the retained barns and livery business, the sale of property assets and his pensions.

4.0 EVIDENCE

4.1 The evidence submitted with this Certificate of Lawfulness application comprises a sworn statement from the Applicants Mr Baldwin's two sons (attached to this supporting document as appendices NJA-5), and extensive evidence detailing Mr Martin Baldwin's sources of income over a period of 10 years up until his death in 2022 (between 2012 – 2022), attached at appendices NJA2 and NJA3. In addition, evidence of Mr M Baldwin's occupation of the property over the same period are provided at appendices NJA4.

4.2 A breakdown of the evidence contained in each appendix as per each account year of the 10 year period, starting 2012, as follows:

NJA-2 – 2012 - 2022:

Covering letter from Mr Baldwin's accountant confirming the evidence at Appendix NJA3 as having been used in his Self Assessment Tax Returns during the period. The letter confirms that Mr Tyler was Mr Baldwin's accounting from 2018 – 2022 and evidence for the preceding years had been sought from Mr Baldwin's previous accountant, the late John Lea.

NJA-3 – 2012 – 2022:

Mr Baldwin's Self Assessment Tax Returns.

Evidence of income from three pensions – State and two private.

Income from rentals – barns and livery businesses.

Income from the sale of property.

NJA-4 – 2012 – 2022:

An extensive collection of utility bills (phone, gas and electricity) and council tax records are supplied.

4.3 The evidence before the council demonstrates the dwelling known as Barns Farm Lodge and its curtilage (as edged red on the accompanying OS site plan) have been used as a single private dwelling, where the occupier has not been employed in agriculture or forestry, for in excess of 10 years, with

evidence dating back to 2012. This evidence is confirmed by the sworn statement (appended at NJA-5) from the Applicants.

- 4.4 Following Mr Baldwin's death, his estate has passed to his sons who are seeking to regularise the current lawful use of the dwelling to the private residential dwelling in Use Class C3, unfettered by the occupancy condition.
- 4.5 The extensive evidence provided in full and attached at Appendices NJA2 – NJA4 demonstrates that since 2012, Mr Baldwin, whilst occupying Barns Farm Lodge, has derived his income from various external sources including from use of the retained farm buildings and livery yard, but not from agriculture. As can be seen from the supplied evidence at NJA4, it is clear Mr Baldwin occupied the property as his sole residence continuously during this period. Appendix NJA3 contains Mr Baldwins Tax records dating back to 2012 and confirms his complete income, as compiled and verified by the letter at Appendix NJA2 from Mr Baldwins accountant, Mr Tyler who is a Chartered Accountant.
- 4.6 The evidence supplied demonstrates the continued occupancy of the residential dwelling known as Barns Farm Lodge, in breach of condition 1 of planning permission DC/07/1808, for a period in excess of 10 years.

5.0 PLANNING LEGISLATION AND COMPLIANCE ASSESSMENT

- 5.1 Lawful Development Certificates are based upon sections 191-193 of the Town and Country Planning Act 1990. Section 191 allows a Local Planning Authority to grant a certificate confirming that an existing use is lawful.
- 5.2 Section 191 (2) states that for the purposes of the Act, uses and operations are lawful at any time if ***'no enforcement action may then be taken in respect of them (whether because they did not involve development or planning permission or because the time for taking enforcement action has expired or for any other reason'***.
- 5.3 Section 171B of the 1990 Act specifies time limits for taking enforcement action. If action is not taken within certain time limits the breach of planning control becomes "immune" from planning enforcement action. Under section 171B (3) of the Town and Country Planning Act 1990, as amended, a breach of planning control which does not involve building, engineering, mining or other operations in, on, over or under land and/or does not consist of the change of use of any building to use as a single dwellinghouse without planning permission becomes immune ***"after the end of the period of ten years beginning with the date of the breach"***. The onus is therefore on the Applicant to demonstrate that the dwelling has been occupied in breach of the condition for a period in excess of 10 years.
- 5.4 The Courts have held that the relevant test of evidence submitted with Certificate of Lawfulness application is ***'the balance of probability'***, therefore Applicants are not required to discharge the stricter, criminal burden of proof namely 'beyond reasonable doubt'. The Courts have also held (see FW Gabbitas v SSE and Newham LBC 1985) that the Applicant's own evidence does not need to be corroborated by other evidence in order to be accepted. Accordingly, the extensive evidence, confirmed by the sworn statements submitted by the Applicant, must be accepted as credible and accurate evidence.

- 5.5 Therefore if the Local Planning Authority has no evidence of its own, or from others to contradict or otherwise make the Applicants' version of events less probable, there is no good reason to refuse to issue a Certificate of Lawfulness. This is provided that the Applicants' evidence alone is sufficiently precise and unambiguous to justify the grant of a Certificate **'on the balance of probability'**. Furthermore, the planning merits of the operation, use or activity are not relevant to the purely legal issues which are involved in determining a Certificate of Lawfulness application.
- 5.6 Further guidance is set out in section ID 17c of the online Planning Practice Guidance (PPG). This notes that 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. The Guidance notes that the Applicant is responsible for providing sufficient information to support an application. The evidence must be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability (PPG ID17-006). The Applicants' evidence does not need to be corroborated by independent evidence. However, in practice it is usually helpful for contemporaneous evidence to be provided to corroborate the Applicant's own version of the history of the use (PPG ID17c-006). Paragraph ID17-008 of the PPG makes clear that the planning merits are irrelevant.
- 5.7 The documents provided in support of this application from the applicant (NJA2 to NJA5) confirm that the dwelling has been lived in, in breach of the occupancy condition, continually since at least 2012.
- 5.8 The extensive evidence of income and continuous occupation from 2012 up until his death in 2022, confirms Mr Baldwin's occupation in breach of the restrictive occupation condition for a period of 10 years; the property has been vacant since. It is therefore clearly proven beyond the **'balance of probabilities'** that the unfettered use of Barns Farm Lodge as a residential property has taken place for well in excess of 10 years and that the use is now lawful. Therefore, as stipulated by Section 191 (2), no enforcement action may be taken because the time for taking such action has expired.

6.0 CONCLUSION

- 6.1 In summary, the use of the dwelling in question as an unfettered residential dwelling (Use Class C3) for a period greater than 10 years has been demonstrated and is lawful. These lawful rights accrued after 10 years in at least 2012, based on the submitted supporting information and as far back as 2008. The use continues up to and including the date of this application as the property remains vacant.
- 6.2 Accordingly, the Certificate applied for should be granted for the unfettered residential use of the dwelling at Barn Farm Lodge.