

4.1 19/01445/LDCEX Date expired 19 August 2019

Proposal: Use of the building as a dwelling house

Location: Land Rear Of Little Buckhurst Barn, Hever Lane, Hever
Edenbridge KENT TN8 7ET

Ward(s): Cowden & Hever

Item for decision

The application has been referred to the Development Control Committee by Councillor Dickins for the committee to consider whether the evidence available justifies the grant of the Lawful Development Certificate.

RECOMMENDATION: That the Lawful Development Certificate be GRANTED for the following reason:

Evidence has been submitted which demonstrates, on the balance of probabilities, that the building located on land rear of Little Buckhurst barn has been used as a separate residential dwelling for more than 4 years and is therefore immune from enforcement action and lawful, in accordance with Section 191 of the Town and Country Planning Act 1990 (as amended).

Description of site

- 1 The application site comprises a large detached building on the western side of Hever Lane within both the Metropolitan Green Belt and High Weald Area of Outstanding Natural Beauty.
- 2 The building is located to rear of Little Buckhurst Barn, on elevated ground and is accessed via a long track leading from Hever Lane.
- 3 The site is set well back from the public highway and is not widely visible from the public realm.
- 4 According to the documentation submitted this building is the subject of this application and is known as Land rear of Little Buckhurst Barn.

Description of proposal

- 5 The Lawful Development Certificate seeks confirmation that the building known as Land rear of Little Buckhurst Barn has been used a dwellinghouse for a continuous period of at least 4 years.
- 6 This application seeks the confirmation of the building only. No evidence has been submitted to demonstrate that the land surrounding the building is associated garden or has been used a residential for a period of 10 years.

Relevant planning history

- 7 Relating to the building in question (Land rear of Little Buckhurst Barn):
SW/5/55/6577 - Lean to extension to existing shed. GRANT
- 8 Relating to the main dwelling (Little Buckhurst Barn)
93/00806/HIST - Renewal of planning permission SE/89/0263 to convert redundant barn to dwelling. GRANT
- 9 01/01063/CONVAR - Proposed conversion of garage to ancillary accommodation (revised scheme). GRANT
- 10 13/02619/HOUSE - Erection of a single storey rear extension and link extension. Alteration to main dwelling. Part demolition of existing retaining wall and proposed hard landscaping. GRANT

Policies and legislation

- 11 Town and Country Planning Act 1990 (as amended)
- 12 National Planning Policy Guidance

Constraints

- 13 The following constraints apply:
 - High Weald Area of Outstanding Natural Beauty
 - Metropolitan Green Belt

Initial Consultation

Consultations

Hever Parish Council

- 14 Object to this application and have made the following comments;

‘We have been contacted by a number of local residents who also attended the planning meeting. There is a consensus from those locals that the declared facts of *continuous* residence from the date stated in the application are not correct as the applicants did not live there continuously or without interruption. Locals would be prepared to swear an oath to this. This would indicate that the unauthorised use is not immune from planning enforcement.

The Sutton and East Surrey water statement (exhibit N) is a nominal sum and time period of 6 days / £ 2.55 which is not useful evidence. The EDF energy bill (exhibit O) is for both properties (Barn and Stables) *combined* and predicts a usage that will cost £638.10 - which is under that perhaps expected to run 2 properties with continuous residence (2 adults and 1 child

in the stables) plus Barn occupant/s.

We note the absence of council tax, electoral roll or vehicle registration documents’.

Representations

15 The Council received letters relating to the following issues:

- 1 letter neither supporting or objecting,
- 27 letters supporting the applicants claim,
- 2 letters not supporting the applicants claim (this includes a representation from Hever Residents Association).

Reconsultation following receipt of additional statement

Consultations

16 Hever Parish Council -No further comments were received.

Representations

17 1 letter from Hever Residents Association not supporting the applicants claim.

Chief Planning Officer’s appraisal

Principle issues

18 Background to LDC’s:

This application is submitted under s191 of the Town and Country Planning Act 1990, seeking to establish the lawful use of the building as a residential dwelling. Section 191 (2) 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.

- 19 The time limits for taking enforcement action are set out in s171B of the Town and Country Planning Act 1990 and the NPPF Planning Practice Guidance summarises this as follows:

Development becomes immune from enforcement if no action is taken:

- Within four years of substantial completion for a breach of planning control consisting of operational development;
- Within four years for an unauthorised change of use to a single dwellinghouse;
- Within ten years for any other breach of planning control (essentially other changes of use). However, this would also relate to non-compliance with a condition.

- 20 With regard to the degree of information to be submitted in support of such applications, the National Planning Practice Guide explains that;

- 21 In the case of applications for existing use, if a local planning authority has no evidence itself, nor any 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, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."

- 22 The guidance adds that;

"A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is, however, advisable to seek the applicant's agreement to any amendment before issuing the certificate. A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented."

- 23 To ensure that decisions are clear, precision in the terms of any certificate is vital. It is important to note that:

- a certificate for existing use must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a use class. But where it is within a "use class", a certificate must also specify the relevant "class". In all cases, the description needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to therefore spell out the characteristics of the matter so as to define it unambiguously and with precision. This is particularly important for uses which do not fall within any "use class" (i.e. "*sui generis*" use); and

where a certificate is granted for one use on a “planning unit” which is in mixed or composite use, that situation may need to be carefully reflected in the certificate. Failure to do so may result in a loss of control over any subsequent intensification of the certificated use.

Background

- 24 The application seeks confirmation that the building to the rear (north-west) of Little Buckhurst Barn has been used as a self-contained dwellinghouse in its own right. The information submitted for this application correctly identifies the relevant test in this case is a 4 year period.
- 25 Land registry documents obtained by the Local Planning Authority show that Little Buckhurst (the neighbouring property), Little Buckhurst Barn (the main dwelling) and Land Rear of Little Buckhurst Barn (the building in question) were once part of the same title and within the same ownership (known collectively as Little Buckhurst).
- 26 Looking at the planning history for Little Buckhurst, a planning application was granted under reference SW/5/55/6577 for; ‘a lean to extension to existing shed’. The plan for that application identifies this ‘existing shed’ to be in the same location as the building subject to this application.
- 27 For clarity, there are a number of planning applications relating to the main dwelling, Little Buckhurst Barn. Little Buckhurst Barn was once redundant and planning permission was granted for its conversion as you see it today and should not be confused with any works carried out on the building in question, which is subject to this application.
- 28 Summary of evidence submitted by the applicant in support of the application

Evidence Source	Evidence
Statutory Declaration signed by applicant Mr R Barnett.	<p>States the following:</p> <ul style="list-style-type: none"> • He and his partner, Mrs Isabel Fox purchased Little Buckhurst Barn in 2012. • The site contained an adjacent garage building (now converted into an annex) and there was a large storage and office building in the field behind the house, alongside some existing stables. The larger building had power, water, drainage as well as basic kitchen and bathroom facilities.

- In 2014 work began on the conversion of the storage and office building and it was completed in December 2014.
- He and his partner have resided at Little Buckhurst Stables since January 2015.
- Southern Water updates their records to include Little Buckhurst Stables in August 2015.

The applicant has submitted 15 exhibits to accompany the statutory declaration.

Exhibit A: Site location plan identifying the building and adjacent stables.

Exhibit B: Floorplans of the internal layout of the building.

Exhibit C: Invoice from Project Aluminium showing an order date of 20th September 2014 and invoice date of 27th October 2014.

Exhibit D: Photograph of windows and doors invoiced for by Project Aluminium.

Exhibit E: Invoice from ERS Maintenance and Refurbishments dated 8th December 2014 for supplying and fitting kitchen.

Exhibit F: Invoice from Jelly Plumbing dated 20th December 2014 for underfloor heating, bathroom and plumbing works.

Exhibit G: Signed statement from Mr Angus Clifford Baynes confirm that he worked on building renovations at the building in question in 2014. He has also stated that the applicants have resided in the building continuously since January 2015.

Exhibit H: Statements from Mr Peter Hendry (tenant who lives in Little Buckhurst Barn), Jan Biddle (local farmer), Mel Sassa (family friend) and Colin Dixon (family friend) confirm that the applicants have resided in the building since January 2015.

Exhibit I: Statements from builders, Mr Elliot Stannard and Mr Patrick Purcell confirm they have undertaken maintenance work at the property and the applicants have resided in the building since January 2015.

Exhibit J: Letter from N Power addressed to 'Stables and Barn' dated 15th January 2014.

Exhibit K: Confirmation Letter and Insurance Schedule from NFU Mutual Insurance dated 12th December 2017.

Exhibit L: Final Tenants report confirming occupation dates of Lord Marcus Winter at Little Buckhurst Barn (main dwelling) from 7th July 2015 for 12 months.

Exhibit M: Application form submitted to SDC Street Naming and Numbering in September 2015 in order to place the building on the register naming it 'Little Buckhurst Stables'. Cheque and form returned in the absence of planning and building control references.

Exhibit N: Wastewater bills from Sutton and East Surrey Water dated 1st July 2015 and 23rd February 2016.

Exhibit O: Letter from Sky TV confirming arrangement for Sky to be installed in the building in question for March 2016.

Electricity Bills from EDF covering a period from 16th August 2017 - 11 March 2019 addressed with a supply

	address of Little Buckhurst Barn but addressed to Little Buckhurst Barn and Stables (the building in question).
Covering Letter/Statement Dated 14 May 2019	<ul style="list-style-type: none"> • Sets out the background to the site and a summary of evidence submitted. • States the applicant converted the building in 2014 and has resided in it since January 2015. • Sets out the planning law considerations for determining this application.

29 Summary of evidence submitted by the applicant in the form of the Supplementary Planning Statement in support of the application:

Evidence Source	Evidence
Supplementary Planning Statement (SPS) Ref JA/19/90	<p>States the following;</p> <p>The evidence within the SPS does not definitively demonstrate that the applicants were residing at Little Buckhurst Stables, but it can be proven that they were not living at Little Buckhurst Barn throughout the relevant period as the property was either tenanted or being renovated.</p> <p>5 appendices have been submitted to support this claim;</p> <p>Appendix 1: Shows letter from Council Tax claiming 100% discount for unoccupied homes from 1.4.15 - 29.6.15 for Little Buckhurst Barn (main dwelling). Limited to 3 months discount.</p> <p>Appendix 2: Letter from Eden Lettings and Sales with a date of 7 July 2015. Applicant states tenanted by Lord</p>

	<p>Winter who was evicted in 2017 and left property in a state of disrepair and uninhabitable.</p> <p>Appendix 3: In August 2017 an application was made to Sevenoaks Council Tax department for an ‘Uninhabitable Property Application’.</p> <p>Appendix 4: Council Tax letter dated 17.8.17 confirming that a discount for unoccupied and unfurnished homes had been applied which covered the period 16.8.17 - 31.3.18.</p> <p>Appendix 5: September 2018 - Present. Little Buckhurst Barn tenanted by Peter Hendry on Assured Shorthold Tenancy.</p> <p>The SPS also states the following;</p> <ul style="list-style-type: none"> • Highlights the applicant’s daughter was born in 2016 and several visits were made to Little Buckhurst Stables by health visitors prior to her birth. • States the applicant owns a London property but has either being going through remedial works or tenanted. It was tenanted between January 2013 - September 2015. A water leak in 2015 resulted in remedial works until May 2016. It was then tenanted between August 2016 - May 2017 and then from November 2017 to the present day.
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30 Summary of evidence held by the Council

Evidence Source	Evidence

Sevenoaks District Council Tax records	Information obtained on 23 July 2019 shows the building in question was only brought into banding for Council Tax purposes since May 2019.
Sevenoaks District Council Aerial Mapping	<p>2012 - No track has been created but access from Hever Lane and gate is in place.</p> <p>2015/2016- New roof to building, rear patio area, parking and turning area for cars and access track are all visible.</p>

31 Analysis of the Evidence:

The applicant, Mr R Barnett, has submitted a Statutory Declaration. This declaration sets out the background of the site at the time of purchase in 2012, confirms works started on converting the building in question in 2014 and were completed the same year; and that Mr R Barnett and his partner, Mrs I Fox have resided in the property since January 2015. The declaration also sets out the exhibits and endorses these by including them within the declaration.

32 As a legal declaration, this statement can be given significant weight. This is because a false declaration in a Statutory Declaration (even without any oath) would be a criminal offence of perjury (under section 5 of the Perjury Act 1911).

33 While it is noted that Mrs I Fox is named on the title as owning the site, which contains the building subject to this application, the absence of a statutory declaration signed by Mrs I Fox does not reduce the weight given to the declaration provided by Mr R Barnett.

34 A visit to the site and the evidence provided by the applicant in exhibits A, B, C, D, E, F, G and I, clearly demonstrate that building to the rear of Little Buckhurst Barn has been converted into residential accommodation and that on the balance of probability this was substantially completed at the end of

2014. The building is a self-contained, separate building with its own access leading from Hever Lane.

- 35 The Councils 2012 aerial photography does not suggest that building works had commenced at that time, although an access had been created from Hever Lane with a gate in situ. Aerial photographs dating to 2015/2016 indicate a separate access and track, car parking and turning area (with cars parked), private amenity space and a new roof. Aerial photographs dating to 2018 are consistent with this and clearly indicate a residential use of the site. The 2015/16 and 2018 aerial photography supports the applicants claim, and clearly indicate a residential use of the site, and as such can be given substantial weight.
- 36 Seven written statements (exhibits G, H and I) from builders, a local farmer, a tenant of the applicants (who lives at Little Buckhurst Barn) and two family friends have all stated the applicants have resided in the building at the rear of Little Buckhurst Barn since January 2015. While these are not legal declarations, they are consistent with the statements within the statutory declaration and as such, can be attributed moderate weight.
- 37 Correspondence from energy and water suppliers, utility and a Sky installation letter have been provided (exhibit J, N and O). This correspondence is addressed to 'The Stables' (the building subject to this application), 'Little Buckhurst Barn', or 'Little Buckhurst Barn and Stables'. Given that the postal address differs, the supply address is not clear and the electricity and water usage figures are ambiguous, these exhibits hold limited weight.
- 38 Exhibit M shows a returned application form in September 2015 to Sevenoaks District Council Street Naming and Numbering. This shows intent to use the building as a residential property. Exhibit K is a contents insurance policy dated 12th December 2017 for three addresses including 'The Stables'. The document states this the building in question is the applicant's main home. Exhibit L is a final tenants report confirming occupation dates of a tenant at Little Buckhurst Barn (main dwelling), which demonstrate the applicants were not living in this property.
- 39 These exhibits are consistent with each other and with the statements made within the declaration, and as such can be attributed moderate weight.
- 40 Council Tax records show the building land rear of Little Buckhurst Barn was only brought into banding for Council Tax purposes from May 2019. While paying Council Tax is a good way of proving occupation, not paying Council Tax does not prove the building was not occupied; only that Council Tax was not paid. For this reason, I give the absence of Council Tax records, in this instance, limited weight.
- 41 Analysis of evidence submitted by the applicant in the form of the Supplementary Planning Statement (SPS):

The SPS states that Lord Winter occupied the property from July 2015 for 2 years. Appendix 2 only shows the tenancy start date, not the end date. Exhibit L, which was previously submitted, is a final tenants report for Lord

Winter. The start date is consistent with that of Appendix 2, but states the tenancy was for 12 months only. Therefore, there is an inconsistency with the dates that Lord Winter occupied Little Buckhurst Barn and a question over the occupancy of Little Buckhurst Barn from July 2016-2017.

- 42 Appendix 1, 3 and 4 shows correspondence with Sevenoaks Council Tax claiming 100% discount for unoccupied homes from April 2015 - July 2015, an application in August 2017 for an 'Uninhabitable Property Application' and a Council Tax letter confirming a discount for unoccupied and unfurnished homes which covered August 2017 - April 2018. Appendix 5 is a tenancy agreement for Peter Hendry starting September 2018 to the present day.
- 43 The further evidence submitted does not definitively demonstrate that the applicants were residing in Little Buckhurst Stables, but it does provide evidence that two other properties (London property and Little Buckhurst Barn) within the applicants' ownership were tenanted for some of the relevant period; therefore making the argument that they were residing at Little Buckhurst Stables more probable.

Other issues

- 44 Whilst Hever Residents Association have stated that they have received responses from local residents disputing that the applicants have been in continuous residence for a period of four years, these have not been forwarded to the Council and details have not been provided. Furthermore, despite the comments from Hever Parish Council that residents are prepared to contest the applicant's assertions on oath, no further declarations have been provided.
- 45 In the circumstances, I consider only very limited weight can be attached to this evidence.
- 46 Hever Residents Association have stated they consulted 12 residents that are close to the application site. They confirmed 7 responses were received confirming that the applicants have not been in continuous residence for a period of four years or more at the Stables (the building in question) and 1 response (which was initially unclear) but later confirmed the applicants had lived in the Stables continuously for 4 years.
- 47 I have not been provided with names and addresses of these residents and therefore I cannot be certain that I have not already counted them. In the interest of fairness, I have not counted these responses individually and have counted Hever Residents Association's response as one.
- 48 With regard to the comments made by Hever Parish Council, that state locals residents are prepared to swear on oath that the applicants did not live there continuously or without interruption, no statutory declarations have been provided to this effect, so no weight can be attributed to this.

Conclusion

- 49 The relevant test in the determination of this application is whether, on the balance of probability, the evidence available supports the applicants claim that the building has been used as a dwelling for a period of 4 years or more. In my view, the evidence submitted by the applicant, particularly the Statutory Declaration, supports the contention that the building has been used as a dwelling for the relevant period of time.
- 50 The Local Planning Authority has no substantive evidence to contradict that produced by the applicants.
- 51 In light of the evidence available and Government Guidance, it is my conclusion, on the balance of probability, that the building to the rear (north-west) of Little Buckhurst Barn has been used as a dwellinghouse for more than 4 years. As such, the use is immune from enforcement action and has become the established lawful use.

It is therefore recommended that this application is granted.

Background papers

Site and block plan

Contact Officer(s): Rebecca Fellows

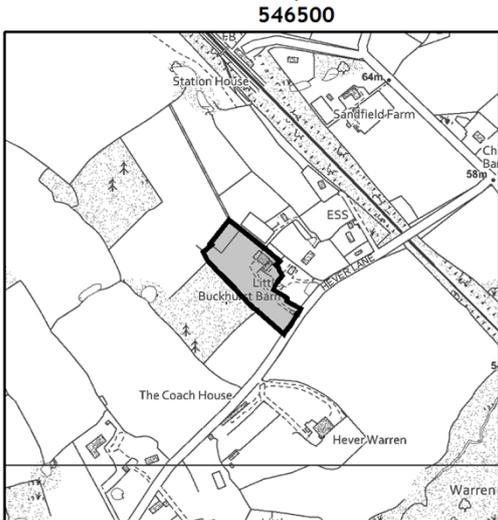
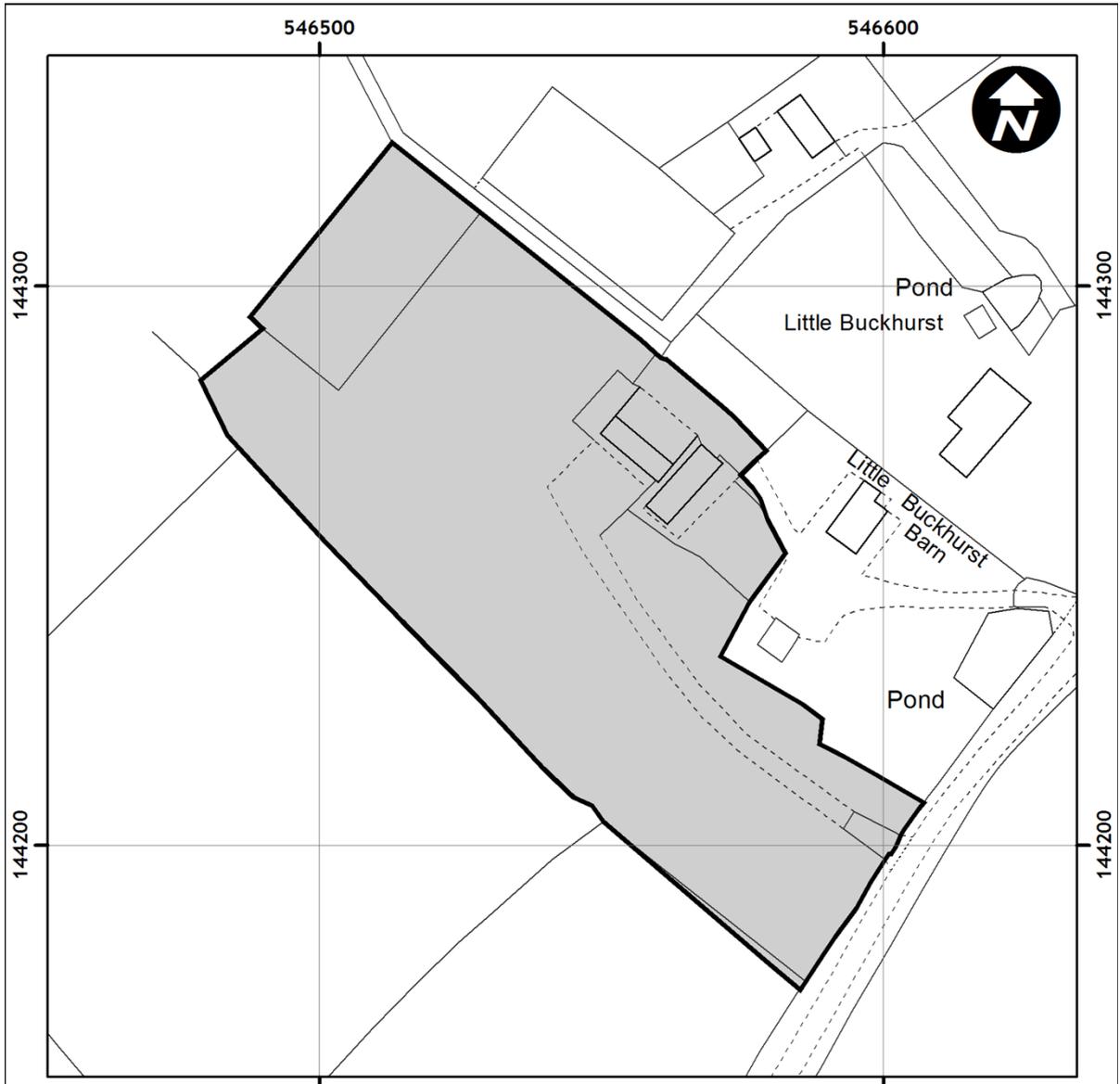
Extension: 01732 227000

Richard Morris

Chief Officer Planning & Regulatory Services

Link to application details: <https://pa.sevenoaks.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

Link to associated documents: <https://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=PRJYYLBKITA00>



Site Plan

Scale 1:1,250
Date 02/10/2019



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Ordnance Survey 100019428.

BLOCK PLAN

