

## ENFORCEMENT OF PLANNING CONTROL

Rear of Little Buckhurst Barn, Hever Lane, Hever, TN8 7ET

### ITEM FOR DECISION

#### RECOMMENDATION:

That authority is given to conclude the matter as non-expedient for planning reasons relating to local policies and the NPPF, and that enforcement action is not taken in this instance.

**FOR THE FOLLOWING REASONS:** That the change of use of the converted stables to a residential property is compliant with planning policies and that the works have not resulted in any actual planning harm

- 1 The Council's enforcement team received a complaint in early 2019 that a former stable building to the rear of Little Buckhurst Barn had been converted to a residential dwelling.
- 2 Following enforcement investigations, the owners submitted an existing Lawful Development Certificate seeking to demonstrate that the stable building had been converted to a dwelling for more than four years. The Lawful Development Certificate 19/01445/LDCEX was reported to Development Control Committee in December 2019 and the application was refused on the 19 December 2019. The Council was not satisfied on the evidence submitted and 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 was not deemed to be immune from enforcement action. This was not a planning judgement of the acceptability of the scheme, just a decision on whether or not four years of continuous residential use had occurred.
- 3 The owners submitted a second Lawful Development Certificate 20/00847/LDCEX, where they provided additional information to support their claim of four continuous years of use. The application was again refused at the Development Control Committee on the 24 June 2020, for similar reasons to the previous refusal. I would again emphasize that this was not a planning judgement of the acceptability of the scheme, just a decision on whether or not four years of continuous residential use had occurred. The owners appealed the refusal of the Development Certificate 20/00847/LDCEX on 21 August 2020. Unfortunately, the appeal process took a far longer than expected. The Planning Inspectorate finally reached a decision on this existing LDC case on the 7 April 2022 with the appeal being dismissed.
- 4 The Inspector found that although the building appears to have been converted to residential in 2014, there has been no continuous use of the

building for more than 4 years to deem the matter as immune from enforcement action. It was found that a lack of evidence had been put forward prior to 2017 when a previous tenant left the property due to damage caused. Continuous residential use of the building could only be proven from August 2018 onwards.

- 5 Whether or not to take Enforcement Action
- 6 The use of the building would become immune from enforcement action from August 2022 if no action is taken and therefore the Council needs to decide whether it is expedient to take enforcement action.
- 7 The Sevenoaks Enforcement Plan sets that that “there will be occasions where the breach of planning control does not have a harmful impact that would justify taking any enforcement action.” In this instance, there is a clear breach of planning control through the creation of a residential unit without planning permission and the owners have been unable to regularise as immune from enforcement action. However, the test for serving an Enforcement Notice and taking action has to be basis that there is significant harm caused by the development in question.
- 8 Although it has been determined that the matter is not immune from enforcement action over a period of time, the matter has never been assessed as a full planning application and against planning policy. This a key factor that needs to be taken on board when deciding if enforcement action is the correct route to take.
- 9 In this case we have had to decide whether to continue the investigation or whether to view the matter as non-expedient, based on a judgement on the planning issues of the case, relating to relevant planning policies, material planning considerations, the likelihood of planning permission being granted and the possibility of planning permission granted on appeal.
- 10 Planning assessment
- 11 The site lies within the green belt and under paragraph 150 of the National Planning Policy Framework allows for the re-use of buildings provided that the buildings are of permanent and substantial construction. Policy GB7 of the Sevenoaks Allocations and Development Management Plan also allows for such change of use subject to meeting certain criteria. The policy also allows for extensions as part of conversion works, so long as they are no disproportionate to the size of the original dwelling.
- 12 From the supporting documents with the two LDCEX applications, there has been no dispute that the stable buildings were converted and enlarged in 2014 to create a residential property. The converted stable building still stands on site today and the actual building operations associated conversion are immune from enforcement action, as four years has passed. The issue of the LDCEX applications has always been whether or not the owners could show four continuous years of use of the converted stables. No planning application has ever been submitted to find out whether or not the works were acceptable from a planning prospective.

- 13 The proposed re-use of the stable buildings as residential does not materially greater impact upon the openness of the green belt than the previous stable buildings. The property has a relatively modest garden area and does not extend the extent of developed areas from the former use. The stable conversion has been sympathetically carried out and is in-keeping with the existing character of the area, with timber weatherboarding walls and profiled metal roof.
- 15 Normally with proposed change of use applications, we would seek a structural survey to show that a building is capable of conversion without major or complete reconstruction that would detract from their original character. Clearly, this is not applicable in this instance, as the building was converted some 8 years ago and clearly capable of being used today as a residential use. Therefore, the continued residential use of the converted stable building is acceptable in local planning policies and national guidance.
- 16 It is our view that should a retrospective planning application be submitted the change of use to residential use would be found acceptable. Equally, if an Enforcement Notice was served and the owners appealed against ground a) i.e. that planning permission should be granted for the development, they would succeed and the Enforcement Notice would be quashed by the Planning Inspectorate.
- 17 I appreciate that this is an unusual situation, whereby two LDECX's applications have been refused, an appeal recently dismissed and the officers are not seeking to proceed enforcement action. However there are two distinct and different tests and thresholds at play here as detailed above. This is a case where there is a clear breach of planning control, but which does not result in any actual harm, as the works policy compliant. The Council would be acting unreasonably if it served an Enforcement Notice against works were found to be acceptable.
- 18 It is also worth noting that should the committee choose not to authorise the non-expedient route and ask that enforcement action to be taken, it is very likely that there will be an enforcement appeal would be lost and costs awarded against Council to unreasonably serving an Enforcement Notice for works that are not causing any harmful and acceptable in planning terms.
- 19 Therefore I recommend that residential use of the converted stable building be treated as non-expedient and that no enforcement action be taken.

Contact Officer(s): Tom Fry 01732 227000

**Richard Morris**  
**Chief Planning Officer**



## Site Plan

Scale 1:1,250

Date 02/10/2019



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Ordnance Survey 100019428.

## **Appendices**

Committee Report for 19/01445/LDCEX dated 18 December 2019

Committee Report for 20/00847/LDCEX dated 23 July 2020

Appeal Decision for 20/00847/LDCEX dated the 7 April 2022

4.1 Date expired 19 August 2019  
19/01445/LDCEX

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"><li>• He and his partner, Mrs Isabel Fox purchased Little Buckhurst Barn in 2012.</li><li>• 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.</li></ul> |

- 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 20<sup>th</sup> September 2014 and invoice date of 27<sup>th</sup> October 2014.

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

**Exhibit E:** Invoice from ERS Maintenance and Refurbishments dated 8<sup>th</sup> December 2014 for supplying and fitting kitchen.

**Exhibit F:** Invoice from Jelly Plumbing dated 20<sup>th</sup> 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 15<sup>th</sup> January 2014.

**Exhibit K:** Confirmation Letter and Insurance Schedule from NFU Mutual Insurance dated 12<sup>th</sup> December 2017.

**Exhibit L:** Final Tenants report confirming occupation dates of Lord Marcus Winter at Little Buckhurst Barn (main dwelling) from 7<sup>th</sup> 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 1<sup>st</sup> July 2015 and 23<sup>rd</sup> February 2016.

|  |   |
|--|---|
|  | <p><b>Exhibit 0:</b> Letter from Sky TV confirming arrangement for Sky to be installed in the building in question for March 2016.</p> <p>Electricity Bills from EDF covering a period from 16<sup>th</sup> 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).</p> |
| Covering Letter/Statement<br><br>Dated 14 May 2019 | <ul style="list-style-type: none"> <li>• Sets out the background to the site and a summary of evidence submitted.</li> <li>• States the applicant converted the building in 2014 and has resided in it since January 2015.</li> <li>• Sets out the planning law considerations for determining this application.</li> </ul>   |

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)<br>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> |

**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.

**Appendix 2:** Letter from Eden Lettings and Sales with a date of 7 July 2015. Applicant states tenanted by Lord Winter who was evicted in 2017 and left property in a state of disrepair and uninhabitable.

**Appendix 3:** In August 2017 an application was made to Sevenoaks Council Tax department for an 'Uninhabitable Property Application'.

**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.

**Appendix 5:** September 2018 - Present. Little Buckhurst Barn tenanted by Peter Hendry on Assured Shorthold Tenancy.

The SPS also states the following;

- 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 been 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 | 2012 - No track has been created but access from Hever Lane and gate is in place.<br><br>2015/2016- New roof to building, rear patio area, parking and turning area for cars and access track are all visible. |

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 12<sup>th</sup> 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 affect, 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

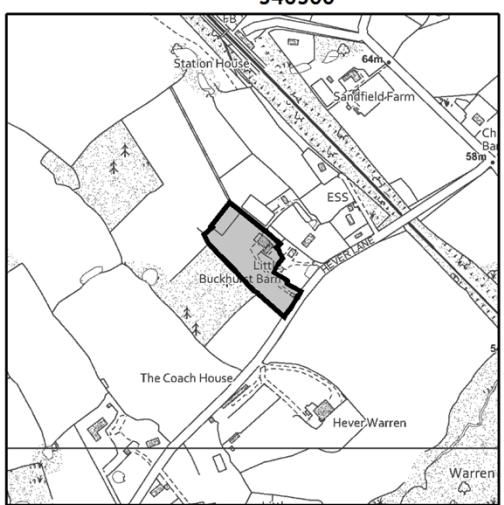
Extension: 01732 227000

**Richard Morris**

**Chief Planning Officer**

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

  
**Sevenoaks**  
DISTRICT COUNCIL  
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Ordnance Survey 100019428.

BLOCK PLAN



4.3 Date expired 15 May 2020  
20/00847/LDCEX

Proposal: Use of the building as a dwellinghouse.

Location: Land Rear Of Little Buckhurst Barn, Hever Lane,  
Hever 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 planning permission be GRANTED subject to the following conditions:

Evidence has been submitted which demonstrates, on the balance of probability, 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 which results in it not being widely visible from the public realm.
- 4 This building is known on the Council's records as Land rear of Little Buckhurst Barn. The applicant's Planning Statement confirms that the applicant refers to the building as "Little Buckhurst Stables".

**Description of proposal**

- 5 The Lawful Development Certificate seeks confirmation that the building known as Land rear of Little Buckhurst Barn has been used as a dwellinghouse for a continuous period of at least 4 years.
- 6 This application is a resubmission of the refused application 19/01445/LDCEX. This application includes additional evidence from the applicant which did not form part of the earlier application.

### **Relevant planning history**

- 7 Relating to the building in question (Land rear of Little Buckhurst Barn):
  - 8 SW/5/55/6577 - Lean to extension to existing shed. GRANT
  - 9 19/01445/LDCEX - Use of the building as a dwelling house. REFUSED at planning committee on 18 December 2019 as Members considered that insufficient evidence had been submitted to demonstrate, on the balance of probabilities, that the building had been used as a dwelling for a continuous period of four years.
- 10 Relating to the main dwelling (Little Buckhurst Barn):
  - 11 93/00806/HIST - Renewal of planning permission SE/89/0263 to convert redundant barn to dwelling. GRANT
  - 12 01/01063/CONVAR - Proposed conversion of garage to ancillary accommodation (revised scheme). GRANT
  - 13 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**

- 14 Town and Country Planning Act 1990 (as amended)  
NPPG

### **Constraints**

- 15 The site lies within the following constraints
  - High Weald Area of Outstanding Natural Beauty
  - Metropolitan Green Belt

### **Consultations**

- 16 Hever Parish Council:
- 17 Object to this application and have made the following comments;

- 18 "We repeat the comments made on the previous application. There is a consensus from a number of local residents 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.
- 19 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.
- 20 We note the absence of council tax, electoral roll or vehicle registration documents".

### **Representations**

- 21 We received the following comments
- 1 letter neither supporting nor objecting.
  - 6 sworn Statutory Declarations setting out evidence in objection.
  - 1 objection from Hever Residents Association stating that there is still insufficient evidence.

### **Chief Planning Officer's appraisal**

- 22 Background to Lawful Development Certificates:
- 23 The Government's Planning Practice states that when considering an application for a lawful development certificate: "A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process."
- 24 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:
- 25 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.

- 26 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:
- 27 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.
- 28 With regard to the degree of information to be submitted in support of such applications, the NPPF Planning Practice Guide explains that:
- “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.”
- 29 Therefore in this case the Local Planning Authority are required to assess whether, on the balance of probability, there is sufficient evidence to demonstrate that the building in question has existed as a dwelling house for a period of 4 years since the date of this application (since 20.03.2016).

## Background

- 30 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.
- 31 Land registry documents obtained by the Local Planning Authority show that Little Buckhurst (the neighbouring property to the east), 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).
- 32 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 ‘the existing shed’ to be the building in question for this application.
- 33 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.

### Evidence Available

34 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"><li>• He and his partner, Mrs Isabel Fox purchased Little Buckhurst Barn in 2012.</li><li>• 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.</li><li>• In 2014 work began on the conversion of the storage and office building and it was completed in December 2014.</li><li>• Southern Water updates their records to include Little Buckhurst Stables in August 2015.</li></ul> <p>The applicant has submitted 15 exhibits to accompany the statutory declaration.</p> <p><b>Exhibit A:</b> Site location plan identifying the building and adjacent stables.</p> <p><b>Exhibit B:</b> Floorplans of the internal layout of the building.</p> <p><b>Exhibit C:</b> Invoice from Project Aluminium showing an order date of 20<sup>th</sup> September 2014 and invoice date of 27<sup>th</sup> October 2014.</p> <p><b>Exhibit D:</b> Photograph of windows and doors invoiced for by Project Aluminium.</p> <p><b>Exhibit E:</b> Invoice from ERS Maintenance and Refurbishments dated 8<sup>th</sup> December 2014 for supplying and fitting kitchen.</p> |

**Exhibit F:** Invoice from Jelly Plumbing dated 20<sup>th</sup> 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 15<sup>th</sup> January 2014.

**Exhibit K:** Confirmation Letter and Insurance Schedule from NFU Mutual Insurance dated 12<sup>th</sup> December 2017.

**Exhibit L:** Final Tenants report confirming occupation dates of Lord Marcus Winter at Little Buckhurst Barn (main dwelling) from 7<sup>th</sup> 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 1<sup>st</sup> July 2015 and 23<sup>rd</sup> 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 16<sup>th</sup> 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).  |
| Statutory Declaration signed by Mrs Rosemary Fox (mother in law to applicant)  | <p>States the following:</p> <ul style="list-style-type: none"> <li>• Confirms that her daughter Mrs Isabel Fox and her son in law Russell Barnett and granddaughter Tiggy Barnett born November 2016 have lived in the building behind Little Buckhurst Barn since the start of 2015.</li> <li>• States that her daughter Mrs Isabel Fox moved out of her house in 1996 and only moved back in 2012/2013 for a short time due to illness. She then moved to Little Buckhurst Barn in 2013 and then moved to their family home since 2015 which is Little Buckhurst Stables located at the rear of Little Buckhurst Barn.</li> <li>• That since her granddaughter Tiggy has been born she has looked after her most Fridays at the family home behind Little Buckhurst Barn.</li> <li>• That they are frequently at Little Buckhurst Stables with the family for parties and celebrations and spent Christmas day 2018 there.</li> </ul>  |
| Statutory Declaration signed by Mrs Isabel Fox wife of applicant Mr R Barnett. | <p>States the following:</p> <ul style="list-style-type: none"> <li>• That she along with her husband purchased Little Buckhurst Barn in 2011 and have lived in the building located at the rear of Little Buckhurst Barn since 2015.</li> <li>• That they moved from the main house Little Buckhurst Barn into the converted stable building to the rear in 2015.</li> <li>• That since 2013 she has commuted into London for work and has used local facilities in and around Hever such as dentists in Oxted, hairdressers in Westerham, the doctors in Edenbridge and Pembury Hospital for an operation in 2015.</li> <li>• That during her pregnancy all hospital and doctors' appointments were local at Pembury and Edenbridge.</li> <li>• Includes an image of a personal child health record, medical records, birth certificate, and certificate of baptism for her daughter Tiggy this is however all addressed to Mrs Isabel Fox at Little Buckhurst Barn.</li> </ul> |

|  |   |
|--|---|
|  | <ul style="list-style-type: none"> <li>• Includes an image of an email from their hired nanny Alix Geer nee. Lancey. The email explains that she was employed through a company called Pure Nannies to look after Tiggy Barnett (daughter of Mrs Isabel Fox and Russell Barnett). The email, states that she was employed from 8 March 2017 until present to care and supervise Tiggy at the family home which she confirms was Little Buckhurst Barn Stables. She also confirms that on occasion she would stay at the property overnight whilst the parents were away. A number of photographs of Tiggy and the nanny (Alix Geer nee. Lancey) and the family in and around the property and land are also included.</li> <li>• All the vehicles the applicants have used are indeed registered to Little Buckhurst Barn but are parked outside the stables where they have lived since 2015 and this is clearly visible from Hever Lane.</li> <li>• They have a cleaner every week (Mel Crawford) although no documents on this are submitted.</li> <li>• A variety of documents are in her possession with the address on them which include a P45, payslip, mortgages, pension plans, DBS checks, and investment funds from 2013 to present. Although following attempted frauds it is stated that post was re-directed to the main house.</li> </ul> |
| Statutory Declaration signed by Ms Belinda St John - Slater. | <p>States the following:</p> <ul style="list-style-type: none"> <li>• Both Isabel Fox and Russell Barnett moved into the barn at the rear of Little Buckhurst Barn in January 2015.</li> <li>• Has visited them and their daughter Tiggy on numerous occasions for coffee mornings, barbeques and dinner parties.</li> </ul>  |
| Covering Letter/Statement<br><br>Dated 14 May 2019           | <ul style="list-style-type: none"> <li>• Sets out the background to the site and a summary of evidence submitted.</li> <li>• States the applicant converted the building in 2014 and has resided in it since January 2015.</li> <li>• Sets out the planning law considerations for determining this application.</li> </ul>   |

35 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)<br>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 seeks to demonstrate 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><b>Appendix 1:</b> 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><b>Appendix 2:</b> Letter from Eden Lettings and Sales with a date of 7 July 2015. Applicant states tenanted by Lord Winter who was evicted in 2017 and left property in a state of disrepair and uninhabitable.</p> <p><b>Appendix 3:</b> In August 2017 an application was made to Sevenoaks Council Tax department for an 'Uninhabitable Property Application'.</p> <p><b>Appendix 4:</b> 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><b>Appendix 5:</b> 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"><li>• 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.</li></ul> |

|  |  |
|--|--|
|  | <ul style="list-style-type: none"> <li>States the applicant owns a London property but has either been 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.</li> </ul> |
|--|--|

36 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 - It can be seen that no track has been created to the building, 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. Cars can be seen parked outside the building.</p> |

**Analysis of the Evidence**

- 37 One of the applicants' (Mr R Barnett) Statutory Declaration provides significant weight in consideration as it is a legal declaration. This was previously submitted for the application considered and refused at committee in December 2019. 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's 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.
- 38 A Statutory Declaration has also now been provided by Mrs Isabel Fox (the wife of Mr R Barnett) and this again provides significant weight in consideration as it is a legal declaration. This declaration was not submitted for the previous

application. This declaration sets out some of the background of the site and states that Mrs I Fox resided in the property since January 2015 with her partner Mr R Barnett. The declaration also includes as detailed above a series of photographs and images of documents to endorse the declaration. This includes details of the birth of the applicants' daughter, Tiggy, including details of her baptism at Chiddingstone Church in 2017, and confirmation from their nanny that she was permanently employed between 2017 and the present day to look after Tiggy at the building located to the rear of Little Buckhurst Barn. This further reinforces the evidence already provided which demonstrates that the applicants were living at the building for the required period.

- 39 A Statutory Declaration has also been provided by Mrs Rosemary Fox the mother of Mrs Isabel Fox which again provides significant weight in consideration as it is a legal declaration. This declaration was not submitted for the previous application. The declaration as detailed above confirms that the applicants were living in the building behind Little Buckhurst Barn since January 2015.
- 40 Another Statutory Declaration has also been provided by Ms Belinda St John - Slater, which again provides significant weight in consideration as it is a legal declaration. The declaration as detailed above confirms that the applicants were living in the building behind Little Buckhurst Barn since January 2015.
- 41 Since 'Little Buckhurst Stables' did not have an address on record, all important documents such as car registrations, insurance, tax returns, payslips etc. were all registered to 'Little Buckhurst Barn'. As was established in the previous application, the applicants were not living in Little Buckhurst Barn itself and this was proven with the tenancy agreement and other information provided to the Council as part of the Supplementary Planning Statement. While these documents would be helpful in proving the use of the building, it is not a pre-requisite for a residential use and does not mean that the building in question did not have a residential use.
- 42 The conduction of a site visit and the evidence provided by the applicant in exhibits A, B, C, D, E, F, G and I, clearly demonstrate the 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.
- 43 The Council's 2012 aerial photography shows that no building works had commenced at that time, although an access had been created from Hever Lane and a gate insitu. Aerial photography taken in August 2016 clearly shows a separate access and track, car parking and turning area (with cars parked), private amenity space and a new roof. 2018 aerial photography is consistent with this and clearly shows a residential use of the site. The 2016 and 2018 aerial photography supports the applicants claim and shows a residential use of the site, and as such can be given substantial weight.
- 44 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, and

provide less weight alone, they are consistent with the statements within the statutory declarations provided and as such, hold moderate weight.

- 45 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.
- 46 Exhibit M shows a returned application form in September 2015 to Sevenoaks District Council Street Naming and Numbering. This sought to place the building on the register naming it ‘Little Buckhurst Stables’. This was returned in the absence of planning and building control references. This shows intent to use the building as a residential property. Exhibit K is a contents insurance policy 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). These exhibits are consistent with each other and with the statements made within the declaration.
- 47 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.
- 48 Analysis of evidence submitted by the applicant in the form of the Supplementary Planning Statement (“SPS”):
- 49 The SPS states that Lord Winter occupied the property from July 2015 for 2 years. Appendix 2 refers to “Little Buckhurst” and 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.
- 50 The rest of the evidence within the SPS attempts to demonstrate that the applicants were not residing at Little Buckhurst Barn, suggesting by implication that they were instead residing at the building in question.
- 51 Appendix 1, 3 and 4 shows correspondence with Sevenoaks Council Tax relating to Little Buckhurst Barn (not the application site) 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.

- 52 The further evidence submitted does not definitively demonstrate that the applicants were residing in Little Buckhurst Stables, but it does suggest 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.

### **Objections and Evidence Received During the Application**

- 53 It is noted that 6 Statutory Declarations have been provided by the public, all of which dispute the claims made by the applicants. Consideration of the significance and weight to be attributed to these is considered below:
- 54 A Statutory Declaration has been submitted by Ms Jane Rosam which states that on an unspecified date shortly after the existing tenants of Little Buckhurst Barn left the property she spoke to the applicant Mr Russell Barnett whom she had difficulty meeting as he had to come from London to see her. Whilst this is a Statutory Declaration, it holds limited weight in this case as the dates are not specified. It also does not provide enough evidence that the building located at the rear Of Little Buckhurst Barn was not being used as a separate residential dwelling.
- 55 A Statutory Declaration has been submitted by Mr N Burke and Dr J Burke. This states that they have not met the applicant's at their property and that when they had concerns about the existing tenants in the main house at Little Buckhurst Barn in 2017 the applicants were not available to resolve the issue. It states that they received a request in January 2018 to install a broadband antenna onto their house to assist with a broadband connection to the stables. Again, whilst this is a Statutory Declaration, it holds limited weight in this case as it does not prove beyond reasonable doubt that the building located at the rear Of Little Buckhurst Barn was not being used as a separate residential dwelling.
- 56 A Statutory Declaration has been submitted by Dr N A Brummitt and Dr A C Araujo. This states that they moved to their address in April 2012 and had no knowledge or contact with the applicants whom claim to have been in residence. They state that they met the applicants in July 2018 at Hever Golf Club at a party and that the applicant Mr R Barnett stated that he wouldn't be seen at the property as he lived in London and only occasionally came to use the property for business purposes. They also explain that they had never seen them at Hever Railway station in the morning or evening commuting from the application property. They also reference anti-social behaviour from existing tenants at Little Buckhurst Barn and having problems being able to arrange to meet or contact the owners of the property (the applicants) as they did not live in the area. They state that they have only recently seen them in partial residence since 2019. Whilst this is a Statutory Declaration, and provides evidence that at certain time periods the applicants may have been in London and not necessarily contactable, it holds limited weight in this case as it does not prove beyond reasonable doubt that the building located at the rear Of Little Buckhurst Barn was not being used as a separate residential dwelling by the applicants.

- 57 Mr D M and Mrs W S Shapland have submitted a Statutory Declaration which states that they live directly next door to the application site and met the applicants in early 2012. They claim that they spoke to the applicants at the time and were advised by them that they would be moving back to London. They also state that the applicant Mr Russell Barnett started building works at the stables in late 2014 and he spoke to them at this time to explain that he was doing building work to use the building as an office and storage space. They also state that they did hear Mr Barnett ‘occasionally’ at the property ‘when he would cut the grass or ride his quadbike on the land’. The go on to explain that Little Buckhurst Barn (the main house) was rented out to tenants Marcus Winter and Mark Carter in the middle of 2015 whom they did meet. They explain that they had some concerns about their animals roaming around and had to contact the applicant Mr Barnett to discuss this matter. They state that they had trouble meeting them as they had to come from London. They then state that in 2017 the tenants moved out and that the applicants were then seen more frequently at Little Buckhurst Barn. They also state that if the applicants had been living in the area they would have realised that the tenants were not looking after the property and causing issues. This does to some extent corroborate the applicant’s evidence that the main house at Little Buckhurst Barn was indeed being rented out to tenants and was subject to significant damage and needed complete refurbishment. It does not however demonstrate beyond reasonable doubt that the building located at the rear Of Little Buckhurst Barn was not being used as a separate residential dwelling by the applicants during this time even if they were commuting or spending some time in London.
- 58 A Statutory Declaration has been submitted by Mr and Mrs W Cowell. This states that they saw no evidence of anyone living in the stables before 2019. They also reference a party at Hever Golf Club in 2018 in the same manner as the Statutory Declaration submitted by Dr N A Brummitt and Dr A C Araujo. They state that at this party the applicant Mr Barnett stated he was living in London and that his wife Isabel Fox was living at her parents’ house in Edenbridge. They also make similar reference to tenants at Little Buckhurst Barn and anti-social behaviour as stated in other Declarations. They also state that they have never seen the applicants commuting into London for work. Reference is made to a company named Domus Innovation whom undertook work to the kitchen at Little Buckhurst Stables and changes to the correspondence address for the applicant Mr Russell Barnett to an address in London.
- 59 A Statutory Declaration has been submitted by Mr John Adkins, Chair of Hever Residents Association. This explains that he visited the site on 29 July 2019 to discuss the application with the applicants. Mr Adkins states that he questioned them about the comments mad at the party at Hever Golf Club in 2018 and that they admitted to telling a ‘silly lie’ The Declaration states that this type of behaviour demonstrates a ‘willingness of the applicants to be untruthful.’
- 60 With regards to the Declarations made by Mr and Mrs Cowell and John Adkins, whilst the applicants may or may not have owned a property in London and may have made verbal statements in 2018, it does not provide any further detailed evidence that the building at the rear of Little Buckhurst Barn was not an established residential use and the sworn Statutory Declarations do not provide any proof of this beyond reasonable doubt.

- 61 Further evidence has been submitted by the applicants in response to the above which contradict the claims made. They have submitted property details which appear to indicate that the last sale of the London property on a Right Move website sold prices list was in 2012.
- 62 The applicants also explain that Domus Innovation is a company which Mr R Barnett the applicant owns and it does not state that a kitchen was installed in January 2015. It does make reference to over 20 years in experience. The company known as Houzz referenced by Mr and Mrs Cowell showcases projects and states that the barn project was completed in 2015 which would correspond with the applicant's claims.
- 63 They provide details to explain that Domus Innovation was registered to 36a Cheyne Court and the applicants explain that this is simply because they could collect mail from the concierge and required a central London bank branch to promote the business at clientele around the area.
- 64 The applicants explain that 36a Cheyne Court was rented through Foxton's estate agents to Tara Harandi Zadeh and that Domus Innovation opened an account with Houzz in 2016 and various projects were uploaded to the site after that date. They explain that Elliott Stannard fitted phase 2 of their larger kitchen in December 2015 - February 2016 as shown on his work album. The applicants state that a kitchen was installed in 2014, 2015, 2016 and according to Domus Innovations own Facebook page 2017. This, the applicants explain is due to various applications and sites stating dates of pictures uploaded and not the date a specific picture was taken.

## Conclusion

- 65 The relevant test is on the balance of probability and the local planning authority has no substantive evidence to contradict that produced by the applicants. In light of the evidence submitted, it is probable 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.

## Recommendation

- 66 It is therefore recommended that this application is GRANTED.
- 67 It is however recommended that the lawful development certificate confirms only that the building has been used for residential purposes, and not for the wider land surrounding the building, to ensure the certificate is adequately precise.

## Background papers

Site and block plan

Contact Officer(s): Mark Mirams : 01732 227000

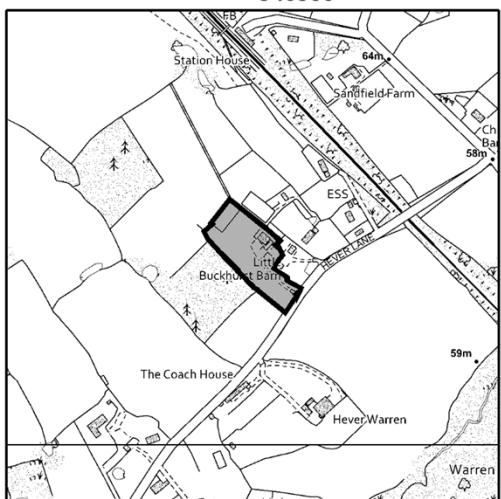
**Richard Morris**  
**Chief Planning Officer**

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=Q7I4EOBKMJL00>



## Site Plan

Scale 1:1,250

Date 01/07/2020



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Ordnance Survey 100019428.

BLOCK PLAN





## Appeal Decision

Site visit made on 25 January 2022

**by Timothy C King BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 07 April 2022**

**Appeal Ref: APP/G2245/X/20/3258138**

**Little Buckhurst Barn, Hever Lane, Hever, Edenbridge TN8 7ET**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development ("LDC").
- The appeal is made by Russell Barnett & Isobel Fox against the decision of Sevenoaks District Council.
- The application Ref 20/00847/LDCEX is dated 19 March 2020
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is applied for is described as '*Use of the building as a dwellinghouse*'.

### Decision

1. The appeal is dismissed.

### Background

2. S171B(2) of the 1990 Act as amended says that where there has been a breach of planning control involving 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.
3. On this basis the appellant must successfully demonstrate, on the balance of probability, that the breach of control commenced four years before, ie prior to 19 March 2016 ("*the material date*") and has continued since.
4. Although the address on the application form states 'Little Buckhurst Barn', a dwelling which the appellants bought in 2012, the actual building at issue is one known as 'Little Buckhurst Stables', a detached converted stable block that has been significantly extended and altered to facilitate a residential use. This detached building sits some distance to the rear of the former, and once part of the same planning unit it has now been effectively severed from the main dwelling's site by wooden fencing and a small gate.
5. The building is single storey, but with some limited roofspace accommodation, and now accommodates two bedrooms (one with an en suite shower room, a large kitchen/dining room, a snug, and a 'family bathroom'. The building has its own independent vehicular access leading from Hever Lane, and the location plan's red line rings what might be considered the dwelling's curtilage.
6. In an appeal under s195 of the Act against the refusal of a LDC the burden of proof is upon the appellant. With the test of the evidence being on the balance of

probability the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law.

### **Main Issue**

7. The main issue in this appeal is whether, on the balance of probability, the use was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990. Accordingly, it must be assessed whether, as a matter of fact and degree, the building has been in used as a single dwellinghouse during the relevant four year period prior to the submission of the LDC application.

### **Reasons**

8. In this particular instance the Council has refused to grant a LDC because it considers that the appellant has not, on the evidence advanced, sufficiently demonstrated that the building located on land to the rear of Little Buckhurst Barn (LBB) has been used as a separate residential dwelling for more than the requisite four years.
9. In planning terms a dwelling or dwellinghouse is defined as a self-contained building or part of a building used as residential accommodation, and usually housing a single household. In the case of *Gravesham BC v SSE & O'Brien* [1982] it was held that the distinctive characteristic of a dwellinghouse was its ability, to afford to those who used it, the facilities required for day to day private domestic existence. Here it is clear that the building contains all such facilities.
10. It is generally accepted that works began on the conversion and alteration of the building during 2014, with evidence adduced to this effect including receipts for kitchen installation and details of plumbing/heating facilities. In their Statutory Declarations (SDs) the appellants say that these works were completed in December 2014, and they claim that they subsequently moved from Little Buckhurst Barn into the converted building to the rear in January 2015. These dates are corroborated by other persons, including Isobel Fox's mother, Mrs Rosemary Fox, who have provided supporting evidence.
11. Mr & Mrs Shapland live close by in the dwelling, 'Little Buckhurst', which sits adjacent to LBB, and have since 2008. They have submitted a SD which provides a chronological account of relevant events surrounding Little Buckhurst Barn and Little Buckhurst Stables (LBS). The SD says that the appellants took ownership of LBB in 2012 and they lived there for a while but, prior to the works to the stables commencing in 2014, they apparently told the Shaplards that, due to the lengthy commute, they would be moving back to their property in London. Referring to the 2014 works, they say that Mr Barnett would return from time to time, with him indicating to the Shaplards that he was improving the stables as, with space for both work and storage, he could operate his building development business from there. They make reference to the old concrete and metal exterior being reclad with timber and then painted black, which I noted at my site visit.
12. The Shaplards say that, in the middle of 2015, the LBB dwelling was rented out to someone who appears not to have been the most neighbourly of tenants, yet the appellants were seemingly not present to oversee this tenure. The tenant

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apparently caused damage to the dwelling and, in late 2017, after he had vacated

the premises, the Shaplands allege that the appellants showed them the extent of the damage caused. In fact, the appellants refer to this matter in their Supplementary Planning Statement, where it is indicated that the said tenant took occupation in July 2015 and was evicted in July 2017 leaving the property in a state of disrepair. The Shaplands then go on to indicate that sometime in 2018 the appellants did appear to be present more and it was assumed they had come to live at the premises, full time.

13. Turning to continuity, in the judgement of *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226 it was held that a use can only become lawful if it continues throughout the relevant immunity period, such that the Council could have taken enforcement action at any time. This was subsequently applied in *Swale BC v FSS & Lee* [2005] EWCA Civ 1568 where it was held that there is a difference between an established dwelling, when an occupier does not have to be continuously or even regularly present in order for the building to remain in use as a dwelling, and where there is no established use. Accordingly, to be immune from enforcement action under s171B(2), the use of a building as a dwellinghouse must be affirmatively established throughout the four year period.
14. Correspondence from Sutton and East Surrey Water indicates that a water connection with the building was made in 2015, EDF energy confirm an electricity connection, and also a Sky television installation was made in March 2016. A letter has also been produced from MHX computer systems which says that Ms Fox's "*home office, located in a converted barn at the back of the premises behind the stable block*" was visited in September 2016, with a view to a reconfiguration during her maternity leave.
15. Isobel Fox's personal SD confirms that her daughter, Tiggy, was born in late 2016, and a baptism certificate provided shows she was christened locally in August 2017. Medical records, and other documentation relating to Tiggy are addressed to Ms Fox at LBB. Her SD, dated 19 February 2020, also states "*We continue to see our neighbours as infrequently as when we lived in the thatched barn*"; the thatched barn presumably referring to LBB. Whether or not this was an attempt to rebut a comment in the SD of Dr N A Brummittt and Dr A C Araujo whereby it is said "*I do not recall ever having seen either of them at Hever Station taking the train into London in the morning or returning in the evening*" is not clear. However, I give less weight to such recollections and, likewise, an alleged conversation at the local golf club which amounts to only hearsay, whereas the comprehensive account provided by the Shaplands, given their proximity to the building at issue, I have afforded significant weight.
16. The jigsaw appears to have been completed by Peter Hendry, who took the tenancy of LBB in August 2018, and confirms that the appellants lived next door at LBS throughout this time. This would show that the manner of occupation had by this time materially changed.
17. Although the appellants state in paragraph 12 of their SD, dated 9 May 2019, that we have resided continuously at Little Buckhurst Stables since January 2015, I am not convinced from the evidence provided that this was the case. There is a comparative lack of detail in the appellants' evidence from this particular date up until August 2018, when Mr Hendry took occupation of LBB, and this would tend

to be corroborated by the Shaplands. The damage seemingly done by the tenant

to LBB, discovered in 2017, strongly suggests that the appellants were not residing at the dwelling, at least certainly not to any significant degree, otherwise the tenant's behaviour would have surely been discovered sooner. Although the appellants in their Supplementary Planning Statement make brief reference to the eviction and the resultant damage which left the property "*completely uninhabitable*" they do not indicate why they were left unaware as to the tenant mistreating the property. However, in contrast, the Shaplands' SD would tend to throw some light on this matter.

18. In the circumstances it seems credible that if the appellants had been residing at LBS during the two years between July 2015 and early summer 2017 they would have been in a position to have guarded against the internal damage done to LBB which the appellants say was to such an extent that an approach was made to the Council regarding Council tax liability due to the dwelling's internal condition.
19. Too much emphasis appears to have been placed on the fact that conversion works took place in 2014 – although it is not readily apparent from the evidence when all the facilitating works and fittings were completed - with the assertion that the building's residential use commenced in January 2015. There is also little account by the appellants of how, and to what extent, the building was used up to and beyond the material date, which is crucial to this appeal. Further, the statements in support of the appellants claims would appear to be too consistent, whereas one would normally expect varying gaps in the memories of witnesses.
20. On the basis of the evidence adduced I conclude that a breach of planning control has occurred, namely the unauthorised use of the building for residential purposes. However, the fitting out of a building for an intended residential use is different to that of the actual use being seen to have begun. In this particular instance, whilst it is clear that a whole series of works were carried out to the former stables building in 2014, it is not obvious as to when exactly these were finished with a sufficient degree of continuity of use reached to warrant a settled residential occupation.
21. Instead, taking all the evidence together, both in support of the proposal and that which counts against it, the picture given, at least until early summer 2017 just prior to the LBB's tenant eviction, is one of a casual use which, certainly by the time that Peter Hendry took occupation of LBB in August 2018, had evolved to such a degree that a material change of use had by then taken place. Accordingly, I find that, on the balance of probabilities, the said breach had not, by 19 March 2020, acquired immunity from enforcement action.
22. For the reasons given above I conclude, on the evidence available, that the use was not lawful on 19 March 2016, within the meaning of section 191(2) of the Town and Country Planning Act 1990.
23. Accordingly, I will exercise my powers under section 195(3) of the Act as amended.

*Timothy C King*

