
Site Address:	Stable Cottage, Westbourne Road, Emsworth, PO10 7RN		
Proposal:	Certificate of lawfulness application relating to existing use as a residential dwelling.		
Application Type:	Certificate of Lawfulness		
Application No:	APP/22/00311	Expiry Date:	15/06/2022
Applicant:	B E Edgell, P M Godfrey and P D Edgell		
Agent:	Mr C Clements	Case Officer:	Lewis Ford
	Downland Design Ltd		
Ward:	Emsworth		

Recommendation: **GRANT A CERTIFICATE OF LAWFUL USE**

1 Site Description

The application site is Stable Cottage, hereon referred to as "the Property".

The Property is adjacent to the north-west of Bourne Bridge House. The Property and Bourne Bridge House are both accessed via the Wren Centre off the north side of Westbourne Road in north-east Emsworth. It is understood that both units have a right of access through the Wren Centre from Westbourne Road. The Property was previously part of the Hampshire Farm Estate before the Estate was divided up and redeveloped for residential, employment and open space uses. It is believed that the Property may have been previously let to an agricultural worker at Hampshire Farm in, and/or prior to, 1991.

The Property is a 2-storey detached building and includes pebbledash rendered walls, traditional roof tiles, and UPVC doors and windows. The property comprises a front porch (with its own front door), lounge, kitchen, and sunroom / conservatory at ground floor, along with 2no bedrooms and 1no. bathroom at first floor. The eastern front and northern side elevations face several employment units, whilst the western rear elevation includes a rear garden (with space at the far western rear for 2no. vehicle parking spaces) comprising a depth and width of approximately 15m and 9m respectively.

The Property was previously included in the Red Line for Planning Permission reference 91/56064 which was granted on 10 October 1991 for the continuation of, and proposed mixed uses of, existing buildings for general industrial, light industrial, storage, retail, and office purposes, along with alterations to vehicular access. Interestingly, the lawful use of the Property is not explicitly stated in the Decision Notice (DN) for Planning Permission reference 91/56064, and nor does the DN mention residential use. It is understood that the landowner has been renting the Property to tenants as a residential dwellinghouse since 2002 and now wishes to sell the property as a standalone residential dwellinghouse on the open market. The Council was approached by a Solicitor of a potential buyer in March 2022 about the lawful use of the Property. In the absence of information and/or a specific Planning Permission, the Council could not confirm at the time that the lawful use of the Property was for a standalone Class C3 residential dwellinghouse.

2 Planning History

21949/1 – PERM in Sep 1972 for extension to existing silo from 40ft to 69ft.
91/56054 – PERM in Oct 1991 for continuation of, and proposed mixed uses of, existing buildings for general industrial, light industrial, storage, retail and office purposes and alterations to vehicular access.
GEN/22/00138 - Planning enquiry in Feb 2022 re Planning History.
GEN/22/00159 - Planning enquiry in Feb 2002 re Planning History.
GEN/22/00221 - Planning enquiry in Mar 2022 about whether it can be used purely for residential purposes.
GEN/22/00327 - Planning enquiry in Apr 2022 re Planning History.

3 Proposal

Certificate of lawfulness application relating to existing use as a residential dwelling.

4 Policy Considerations

National Planning Policy Framework (NPPF)
National Planning Practice Guidance (NPPG)
Town and Country Planning Act 1990
Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

Listed Building Grade: Not applicable.
Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Not applicable.

6 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 14

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 1

Comment	Officer Comment
With reference to the letter received regarding Stable Cottage, (redacted) previously rented but now to be sold. I purchased (redacted) 3 years ago. Both properties are situated in the Wren Centre a complex of many units with various trades. I understand the person who owns the Wren Centre (redacted) and the maintenance of the centre is in the hands of Vail Williams. As discussed, there are a few issues, and it would be an opportunity to clarify some details. There used to be a reception unit, but this is no longer in place and, as far as I am aware, no-one on site is overall in charge. Both properties have 'access rights' to reach their parking areas at the rear of the houses. Occasionally this can be a problem, the Wren Centre is a working area and large, medium, and small lorries deliver/collect. They have always moved if I needed to drive in or out but if they are loading or unloading there can be a delay. The area is quite small (the plan showing the right of access) so if several vehicles are there it can become quite congested. There are often skips in the Centre and there have been several skips outside the front entrance of Stable Cottage. I do hope they could be re-sited when the property is sold - they also take up quite a bit of valuable space. I am however aware that we cannot park in the area and only have 'right of access'. When I moved, I was told verbally that there were standard working hours for the Wren Centre that people should adhere to. However, people do work at various times but so far, I have not found this a problem. I understand Vail Williams are trying to improve the security of the centre? additional lighting and cameras? I have only heard this from some of the people working in the units, but they were concerned when a van was stolen from the centre	The comment supports the submitted information that the Property has vehicular access rights through the Wren Centre and has previously been rented to tenants as a Class C3 dwellinghouse. The issues and queries raised should be directed to the managers at the Wren Centre. Information about how to contact the Wren Centre can be found on the following webpage: http://www.wrencentre.co.uk/contact Alternatively, the Wren Centre Managers can be contacted via telephone (01243 373803), email (office@wrencetnre.co.uk) and post (The Wren Centre, Westbourne Road, Emsworth, Hampshire, PO10 7SU).

7 Planning Considerations

- 7.1 The application is made under Section 191 of the Town and Country Planning Act 1990 (as amended) and relates to the existing lawful use of the Property. In this instance, it is claimed that the Property has been let out to third party tenants (who had no connection to the Wren Centre) as a **Class C3 Dwellinghouse** since August 2002.
- 7.2 As part of this application, regard cannot be given to any objections to this application on planning grounds, nor can planning conditions be imposed if a Certificate is granted. However, in accordance with the advice in the National Planning Practice Guidance (NPPG), the Certificate should state the precise details of the use and any limitations on that use. The NPPG further advises that the Applicant is responsible for providing sufficient information to support the application and that the relevant test for determining the application is on the “balance of probabilities”. Finally, the NPPG states 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".

- 7.3 The Applicant must demonstrate that the Property has been used as standalone C3 residential dwellinghouse for 4 years or more – see *First Secretary of State v Arun District Council and another [2006] EWCA Civ 1172*. The relevant 4-year period for the current application relates to 20 April 2018 to 20 April 2022 (validation date).

8 Submitted Evidence

- 8.1 The Applicant Form states that *“the use as a single dwellinghouse began more than four years before the date of this application”*. The Applicant and Agent have stated that Stable Cottage has been used as a dwellinghouse since 01 January 1900 and that:

“Stable Cottage has been used as a dwelling for over 100 years, appearing on OS plan 1908 with its own curtilage. It has inadvertently been included in planning applications for the Wren Centre because the Wren Centre and Stable Cottage had the same owner”.

- 8.2 The evidence submitted in support of the application is as follows:

Drg No: 2215-01.1 – Location Plan & Block Plan.

Drg No: 2215-01.2 – Existing Ground Floor Plan.

Drg No. 2215-01.3 – Existing First Floor Plan.

Drg No: 2215-01.4 – Existing Roof Plan.

Drg No: 2215-01.5 – Car Parking Plan.

Drg No: 2215-01.6 – Existing Elevations Plan.

General Affidavit from the Landowner.

General Affidavit from previous Tenant (22/11/14 to 17/12/17).

List of Stable Cottage Tenants (13/08/02 to Present).

Letter from the Lettings Agent.

Plan showing Right of Access.

8.3 The affidavit from the current landowner states that:

"Stable Cottage has always been a residential building let to third parties, none of whom had any connection with the Wren Centre or vice versa. The business of the Wren Centre is to let out small commercial units (converted from farm buildings, i.e., the dairy, cow sheds, chicken sheds and barns etc.) to individual businesses and has absolutely no connection to Stable Cottage. Specifically, there is no business relationship between Stable Cottage and the Wren Centre. They are entirely separate entities".

9 Assessment of Evidence

9.1 The affidavit from a previous tenant – who resided in the Property from November 2014 to December 2017 – supports the affidavit from the current landowner and states that they were employed elsewhere and had no connection with the Wren Centre. The letter submitted from the Lettings Agent confirms that they managed the tenancy of the property on behalf of the current landowner from February 2018 to July 2021 and that, during this time, the tenant also had no connection to the Wren Centre.

9.2 The **Council's Council Tax Team** has reviewed the submitted list of Stable Cottage tenants from August 2022. The Team confirmed in writing on 30 May 2022 that the dates and tenants submitted are correct as per the Council Tax System from 01 April 2005 – the furthest the System goes back.

9.3 The **Council's Legal Team** has reviewed the validity and sufficiency of the evidence provided in support of the Certificate. The Team has advised that:

There are two validly made affidavits in support of the application for a Certificate in respect of Stable Cottage, Westbourne Road, Emsworth, PO10 7RN (the Property).

The affidavit from the landowner states that:

- *The Applicant has been a joint owner of the Property since 2000, which has been tenanted throughout.*
- *The Property is not associated with the Wren Centre which is owned by another family member.*

The affidavit from the previous tenant states that:

- *They were a tenant of the Property between 22 November 2014 and 17 December 2017 and did not have any association with the Wren Centre.*

There is chronology of the various tenancies relating to the Property from 13 August 2002 to date. The previous tenant (see above) is included in the chronology. Council Tax have confirmed that their records, which date back to 01 April 2005, accord with the tenancy information provided by the Applicant.

The supporting information corroborates the accounts given in the affidavits that the Property has been in use as a single dwellinghouse from at least 01 April 2005. The limitation period to bring enforcement action has of course long since expired. The planning history with reference 91/56054 does not appear to contradict the affidavits and other supporting evidence.

The Applicant's evidence alone is, in my view, sufficiently precise and unambiguous and there is no good reason to refuse the application. This, therefore, justifies the grant of a Certificate on the balance of probability.

- 9.4 In light of the submitted evidence and the review from the Council's Council Tax and Legal Teams, there appears to be no reason to doubt the submitted evidence. In addition, no contrary evidence has been submitted as a result of the neighbourhood notification / public consultation process. Therefore, on the balance of probabilities, it is considered that the Property has been used as a Class C3 residential dwellinghouse since, at least, 01 April 2005 (i.e., more than 4 years).

10 Conclusion

- 10.1 It is considered in this case, on the balance of probability, that the Property has been occupied as a standalone Class C3 residential dwellinghouse with no connection to the Wren Centre for the relevant 4-year period. As such, a Lawful Development Certificate can be issued.
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9 RECOMMENDATION:

That the Head of Planning be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/22/00311.

Information for decision notice

Havant Borough Council, as Local Planning Authority, certifies that on 20 April 2022, the use described in the First Schedule to this Certificate in respect of the land described in the Second Schedule was lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended) for the following reason:

The Local Planning Authority has considered evidence and information submitted by the Applicant and the planning history of the site. It appears to the Local Planning Authority on the balance of probability that the use described in the First and Second Schedules have taken place for a continuous period of at least 4 years up to the date of the current application.

FIRST SCHEDULE:

This certificate relates to the following development:

The existing use as Class C3 residential dwellinghouse as described in the written particulars, plans and other documents submitted to support the application as follows:

Drg No: 2215-01.1 – Location Plan & Block Plan.

Drg No: 2215-01.2 – Existing Ground Floor Plan.

Drg No. 2215-01.3 – Existing First Floor Plan.

Drg No: 2215-01.4 – Existing Roof Plan.

Drg No: 2215-01.5 – Car Parking Plan.

Drg No: 2215-01.6 – Existing Elevations Plan.

General Affidavit from the Landowner.

General Affidavit from previous Tenant (22/11/14 to 17/12/17).

List of Stable Cottage Tenants (13/08/02 to Present).

Letter from the Lettings Agent.

Plan showing Right of Access

SECOND SCHEDULE:

This certificate relates to land at Stable Cottage, Westbourne Road, Emsworth, PO10 7RN as shown edged red of the submitted Location Plan & Block Plan (Drg No: 2215-01.1) received on 20 April 2022.

OTHER IMPORTANT INFORMATION:

- (1) This Certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended). It does not relate to any other application that may be required under any other part of the Town and Country Planning Act, the Building Regulations or under any other Act, Regulation, Byelaw or Order where the Council's approval may be needed. For further guidance as to the need for consent under the Building Regulations please phone 023 9244 6571.
- (2) It certifies that the development specified in the First Schedule taking place on land described in the Second Schedule was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended) on the specified date and thus was not liable to enforcement action under part 7 of the 1990 Act on that date.
- (3) The certificate only applies to the extent of the development specified in the First Schedule taking place on land described in the Second Schedule and identified on the attached plan. Any development which is materially different from that described or which relates to other land may render the owner/occupier liable to enforcement action under section 172 of the 1990 Act.
- (4) Your attention is drawn to the attached information regarding your right to appeal to the Department for Transport Local Government and the Regions, if you are aggrieved by the Council's decision.