DELEGATED REPORT

Application Reference:	PL/2023/07726
Application Type:	Certificate of Lawful Development: Existing Use
Site Address:	Mill Cottage, 125 Westbrook, Chippenham, SN15 2EE
Proposal:	Construction of an ancillary residential building known as the Pond Building located to east of Chittoe Mill

APPLICATION DETAILS

This application seeks a Lawful Development Certificate pursuant to Section 171B (1) and (2) and 191 (1) (a) and (b) of the Town and Country Planning Act ("the 1990 Act") for building works associated with the construction of an ancillary residential building known as the Pond Building.

In October 2013, the Pond Building, the subject of this application, was granted planning permission for the erection of a summerhouse and occasional ancillary annexe under approval ref, 13/03522/FUL. During the construction work the applicants agreed modifications and design changes to the building and consequently, it was not built in accordance with the approved drawings. The application claims that the building (known as 'The Pond Building') was erected in 2014 and completed in 2015, more than four years before the date of this application and without any enforcement action being taken during that period against the use of the land/building.

SITE DESCRIPTION/CONTEXT

The Pond Building was originally erected as a summerhouse and occasional annex following grant of planning permission in 2013 (ref. 13/03522/FUL) and is subject to a condition restricting the occupancy to purposes ancillary to the residential use of the main dwelling, Mill Cottage. The building is constructed in wood and clad in timber, with a shingle roof with a covered veranda to the front.

On the same site is situated Chittoe Mill, an historic three-storey stone building, with natural slate roof, renovated and restored in the 2000s. Chittoe Mill was previously granted permission in 2005 (ref. K/38526) for the change of use and restoration of the mill also for use as ancillary accommodation associated with Mill Cottage.

The two buildings are located some 600m to the south of Westbrook, a small hamlet that lies around 0.6 miles to the north of Bromham defined as a 'large village' in the Wiltshire Core Strategy (WCS). Being located outside of a defined settlement boundary the site is considered to be within open countryside for the purposes of the Wiltshire Core Strategy (WCS).

Mill Cottage is located along a track that runs northwards off the A3102 with Chittoe Mill and the Pond Building situated some distance further along the track close to the mill stream and pond. The land

associated with Mill Cottage extends to some five acres.

PLANNING HISTORY

The following list is not exhaustive of all the planning history on the wider site however it provides a summary of permissions relevant to the Pond Building:

- PL/2023/02388 - Change of use of existing ancillary residential buildings to dual uses as ancillary residential accommodation and holiday accommodation (retrospective) – Approved with conditions 12/09/2023

- 13/03522/FUL - Summerhouse and occasional annex – Approved with conditions 31/10/2013

- K/34511 - Restoration of existing mill pond – Approved with conditions 08/08/1997

POLICIES

Town and Country Planning Act 1990 as amended ("the 1990 Act")

LEGAL ISSUES

Section 191 allows a person to make a formal application for a certificate of lawful existing use ("CLE") to determine whether an unauthorised development has become lawful through the passage of time and can be continued without the need for planning permission. Obtaining a CLE has the effect of proving that the development is lawful and protecting the development from enforcement action on that basis. The onus is on the applicant to prove the case by supplying sufficient clear and precise evidence to satisfy the Authority that a CLE should be issued. The test to be applied to that evidence is the 'balance of probability'.

In accordance with the legislation, the application must be assessed purely on the evidence provided and the planning considerations of the development are not taken into account.

RELEVANT TIME LIMIT

Taking into consideration the relevant time period for enforcement action in respect of breaches of planning control; Section 171 B of the 1990 Act specifies these time-limits as follows:

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

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

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

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

(4) The preceding subsections do not prevent -
(a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or
(b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

As is confirmed above, the relevant time limits in this case are set out in (1) regarding the building works.

CONSULTATION

Bromham Parish Council: No comments received.

Ecology Officer: No Objections subject to conditions

There are no alterations proposed to the buildings. It should be noted this site is in an area of high ecological sensitivity with Annex II bats recorded in this area. Consequentially any increase in light, noise and other pollution such as smoke from outdoor fire pits can have significant impacts on the foraging, roosting and commuting behaviour of sensitive protected species such as but not limited to bats.

Highways Officer: No Objection

I refer to the above planning application for the certificate of lawfulness for an existing ancillary residential building. The building had planning permission albeit the built structure did not conform to the approved plans within the application. Therefore, I believe the principle of access has been accepted over the private tracks, Brown Tracks and PROW network. There were no plans to alter the access with the public highway. With regard to highways capacity and safety, I do not consider that the proposed retention of the building for the previously permitted use to be of detriment and would not wish to raise an objection.

Drainage Officer: No comments received.

REPRESENTATIONS

No further comments received.

THE EVIDENCE SUBMITTED IN SUPPORT OF THE APPLICATION

The following evidence has been submitted:

1. Application Form
2. Location Plan
3. Site Plan
4. Site Notice Photos from applicant
5. Supporting Statement (RCC Town Planning, dated Sept 2023)
6. Appendix 1 - Google Earth Aerial Photographs - Pond Building.pdf
7. Appendix 2 - Pond Building Application No 13/03522/FUL.pdf
8. Appendix 3 - Pond House Plans and Elevations as built .pdf
9. Appendix 4 - Hut receipts and invoices.pdf
10. Mark Fletcher Affidavit 11 Sept.pdf
11. Angus Campbell Signed Affidavit_2023-09-01_154227.pdf
12. Mark Fletcher Photographic Exhibits - Pond Building.pdf

CONSIDERATION OF EVIDENCE

The applicant seeks a Lawful Development Certificate on the grounds of the building works having been substantially completed more than four years ago. For a certificate of lawfulness to be issued the applicant is required to provide sufficient evidence to demonstrate that is the case, on the balance of probabilities.

It is on Council record that planning permission was obtained for the Pond Building in 2013 (via ref. 13/03522/FUL). Sworn affidavits have been submitted by the owner of the property, Mr. Mark Fletcher, as well as the builder, Mr Angus Campbell, who states that he commenced the build in 2014, completing the main build by 2015, in between other jobs. Dated photographs, as well as copies of invoices and receipts, have been submitted by the applicant as well as google earth imagery to provide evidence of the build taking place over the stated timeframe.

The Supporting Statement sets out that during the build various modifications were made to the design. It is apparent that these included two additional dormer windows to the second floor. That meant it was eventually not built strictly in accordance with the plans that were approved under application 13/03522/FUL.

A retrospective change of use application was approved this year (ref. PL/2023/02388) to regularise the use of the Pond Building for dual uses as both ancillary residential accommodation and holiday accommodation given that the Pond Building has been let out for private tourism use for some time. As part of this application, the as-built drawings for the Pond Building were submitted and it was informally acknowledged by the Council's Enforcement Team that the building works were now likely to be lawful given the observed evidence that the building had been in place for at least four years prior without enforcement action having been taken. Conditions are attached to permission PL/2023/02388 which will apply to control the ongoing use of this building.

On the balance of probabilities and taking in to account all of the submitted evidence, it is considered that the Pond Building construction was completed more than four years ago. There is no third-party evidence that has been submitted which disputes any of the evidence submitted demonstrating that the

Pond Building was built in 2014, completed in 2015 and then fully completed by 2017. The Council is therefore satisfied, that on the balance of probabilities, the requirements of Section 171B (1) of the 1990 Act are satisfied. There is no evidence to suggest that this is not the case or that would lead to question this declaration or assessment.

CONCLUSION

Wiltshire Council hereby certify that on 11th September 2023 the operations described in the First Schedule to this Certificate in respect of the land specified in the Second Schedule to this Certificate and edged red on the plan attached to this certificate would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended) for the following reasons:

Taking into consideration the evidence put forward by the applicant in support of their application and weighing this against any available contrary evidence held by or submitted to the Council; it is considered the applicant has adequately demonstrated, clearly and precisely on the balance of probabilities that the Pond Building was erected in excess of four years ago. As such in accordance with Section 171 B (1) of the Town and Country Planning Act 1990, the time limit for taking enforcement action had expired.

SCHEDULE 1: Pond House - Existing Plans, Chittoe Mill 2301-8 Issue, dated August 23
SCHEDULE 2: Amended Location Plan – Pond Building, Chittoe Mill