

APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR EXISTING USE OR DEVELOPMENT

APPLICATION REFERENCE:	PL/2025/07127
APPLICATION TYPE:	Lawful development: Existing use
SITE ADDRESS:	1-3 The Byers, 84 Westbrook, Bromham, SN15 2EE
DEVELOPMENT DESCRIPTION:	Self contained holiday cottages x 3
RECOMMENDATION:	Refuse

SITE DESCRIPTION AND PROPOSAL

The application relates to a detached outbuilding known as The Byers, located within the open countryside. The site is located on the south east of Westbrook Road. There are a number of buildings in the surrounding vicinity which were once used in association with the former Westbrook Farm.

Planning permission was granted in 1987 for the conversion of the building into 4no. Holiday let units (ref: K/86/0690). The permission was subject to both an occupancy limitation secured via condition and a s.52 legal agreement.

This application is for a Certificate of Lawfulness for an Existing Use or Development (CLUED) under Section 191 of the Town and Country Planning Act 1990 (as amended). The applicant seeks to establish the lawfulness of the use of the Byre for three self-contained holiday cottages.

It is stated that the use has taken place at the site since 1 January 1987. Whilst the Planning Statement contains conflicting statements, the applicant has since clarified their position in additional correspondence confirming the claim is that planning permission K/86/0690 was not implemented, and that the building was converted into three holiday cottages without permission, that they have now become lawful through the passage of time and that they are free from any control by condition or legal agreement. By demonstrating that the original planning permission was not implemented, the applicant claims that occupation of the development is uncontrolled by the legal agreement and planning condition associated with it.

A separate application has been made to discharge the s.52 agreement (ref: K/86/0690). It is also relevant that an earlier application to vary condition 1 of the planning permission was withdrawn in May 2025 (ref: PL/2024/10608). The applicant has also since submitted a planning application for the 'Change of use from holiday cottages into three one-bedroom cottages (residential use)' (ref: PL/2025/09713).

RELEVANT LEGISLATION AND CONSIDERATIONS

The statutory framework governing Certificates of Lawfulness for Existing Use or Development (CLUED) is primarily set out in Section 191(2) of the Town and Country Planning Act 1990 (as amended). This section establishes that "lawful development" refers to development against

which no enforcement action may be taken and where no enforcement notice is in force, or development for which planning permission is not required.

Section 191(4) of the Town and Country Planning Act 1990 (as amended) further stipulates that a Local Planning Authority (LPA) shall issue a Certificate of Lawfulness upon request, provided that, on the balance of probabilities, the LPA is satisfied that the existing development or use described in the application is lawful. The time limits for taking enforcement action are set out in s171B of the Act.

The Planning Practice Guidance (PPG) on [Lawful development certificates](#) clarifies that the burden of proof lies with the applicant. It is the applicant's responsibility to provide sufficiently clear, precise, and unambiguous evidence to demonstrate the lawfulness of the existing development or use.

It is important to note that when determining a CLUED application, the LPA must focus solely on whether, based on the facts and applicable planning law, the specific use or development is lawful. Planning merits or considerations relating to the quality or suitability of the development are not relevant.

ASSESSMENT

The applicant contends that the planning permission K/86/0690 has not been implemented and that the application outbuilding has been in continuous use and operated as three holiday cottages for a period exceeding ten years prior to the date of this application.

Evidence Submitted by the Applicant

The applicant has submitted the following evidence to support the application:

- Planning Statement prepared by Planning & Land Partnership confirming the history of the site, providing online advertisements and business insurance details to confirm the existence of the three holiday cottages.
- Floor Plans (dwg no: 24 – 1035/001) to confirm the existing layout.
- Elevations (dwg no: 24 – 1035/003) to confirm the existing elevations.
- Location Plan to confirm the location of the application building.

Review of Applicant's evidence

The submitted Planning Statement displays a number of internet search results for online advertisements for the holiday cottages. These websites however are no longer available to view as the current site owner is no longer advertising the use of the building for holiday let purposes. What can be ascertained from these extracts is that a holiday use at the address has been in existence, however, these do not confirm the length of time or the number of holiday let units.

The Planning Statement also contains a number of statements setting out the basis for which the certificate is applied.

1.2 In 1986 the then owners applied for planning permission to change the use from a detached barn outbuilding into 4 no' holiday cottages. This consent was never implemented as per the approved plans and approved description. Instead, the then owners converted the barn into three, slightly more spacious holiday cottages...

1.3 ...technically the three holiday cottages known as the Byers do not have an accurate planning consent...

1.4...a section 52 is mentioned within the approval documents, and we understand was signed by the then owners, however that related to the 4-unit scheme which was never implemented

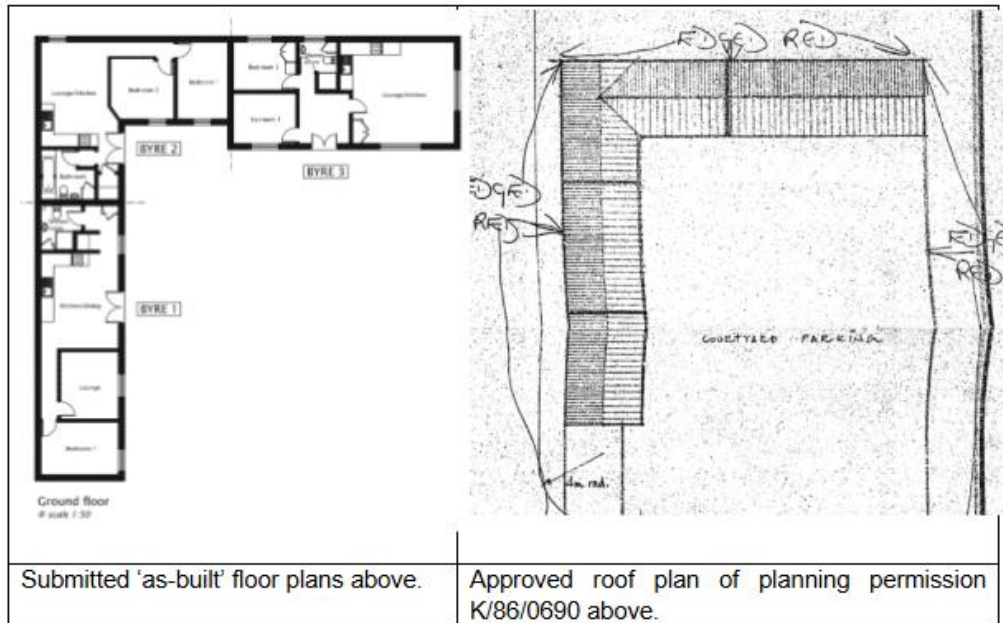
1.5 The purpose of this application to the LPA now is to ensure that the barn has the necessary planning consent relating to the three holiday cottages that were created...

2.3 The holiday cottages were built in a configuration of three by the original applicant and not by the current owners...

3.2 The original applicant sometime after the approval notice was issued in either 1986 or 1987 chose to take it upon themselves to create three slightly larger holiday cottages rather than the four holiday cottage configuration that was approved.

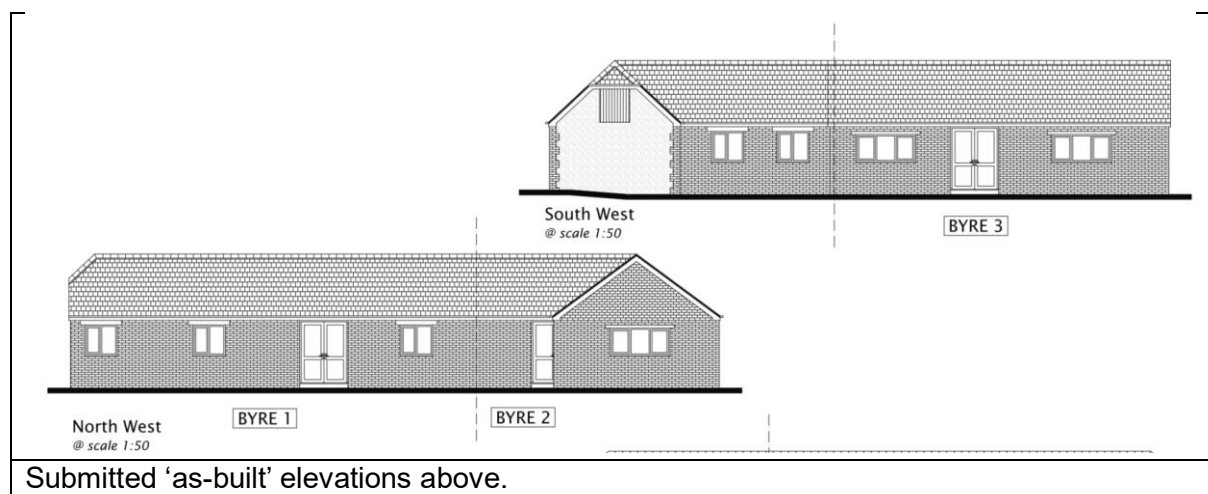
3.3 We do not believe the elevations changed in any way from the approval, however an opening position may have changed, but given the historic nature of this conversion, some 40 years ago, we cannot be sure.

Officers have obtained the approved roof plans of the planning permission K/86/0690 (see plan extract in the table below) which illustrates the layout of the approved four units conversion of the application building. The adjacent floor plans, submitted by the Applicant, show the arrangement in place when the Applicant took over ownership of the property in August 2025. The LPA must consider whether this is so fundamentally different to the approved scheme as to present an entirely new development, that would have been unauthorised at the time it was substantially completed.



The submitted plans do not provide evidence that this was the scheme implemented following the 1987 grant of planning permission. There is no evidence to demonstrate that only three were created at the time. Even if there were only three from the start, there is no evidence to demonstrate whether it was three units out of four with the fourth 'unit' remaining unused/unconverted or, as the applicant claims, that two units to the south as shown in the plans were in fact amalgamated into one larger unit from the start. In any event, planning permission was granted to four individual C3 units of accommodation (four planning units), albeit with control of occupation as holiday accommodation. Even if there is some ambiguity as to how one larger unit in the place of two came to exist as laid out in the plans provided, it remains the case that the other two units comprising the permission were still created in pursuit of the permission that was granted thereby validly implementing the permission.

Officers have also assessed the external appearance of the as-built elevations against the approved elevations of planning permission K/86/0690. Unfortunately, the planning permission only contains a three-dimensional (3D) drawing of the converted barn and not detailed elevation drawings.





Approved 3D elevations of planning permission K/86/0690 above.

When comparing the existing building to the 3D drawing, it is apparent that the fenestration design does differ though several windows do appear to be in the same locations generally. It is noted that the external half-wall feature has been constructed in accordance with the approved plans above. It is considered unlikely that the scheme as build was such a significant departure from the approved details that an average observer would perceive the development as being fundamentally different from what was approved.

Other evidence available to the Council

Officers have confirmed with the Council's Revenues and Benefits team that the submitted business insurance documentation corroborates the fact that business rates have been paid on holiday accommodation with a site address registered as 1-3 The Byers since the earliest available records in 1990. The address does imply that only three units are present since 1990 though provides no insight as to whether this is 'three out of four', with one vacant part of the building being put to no use or some other use, or whether 1-3 refers to three units occupying the whole building as is claimed.

SUMMARY & CONCLUSION

On consideration of the above, the LPA considers the works undertaken to the building were in response to the planning permission. Whilst there may be minor deviation between how the building appears now and the approval (only the 3D drawing is available to compare), the Council considers that there is a level of commonality which would have rendered the scheme clearly recognisable externally as implementation of the planning permission.

Turning to the quantity question, the planning permission granted four self-contained C3 units – whilst the occupancy was restricted by condition and legal agreement, the permission comprised of four 'planning units'. In the first instance, other than the Applicant's claim that only three were created by former owners at the time, there is no evidence to demonstrate this to be the case. Furthermore, there is no evidence that if only three were implemented that the fourth part of the application building simply remained unconverted. In any event, there is no evidence that the remaining units, now referred to as BYRE 2 and BYRE 3, were not implemented in accordance with the approved plans. Accordingly, these could constitute as

two individual planning units falling within the scope of the permission and have been lawfully implemented.

It is relevant to note that in March 2025, the Applicant submitted an application (ref: PL/2024/10608) to vary condition 1 of the permission to refer to three units instead of four, and a further application (ref: PL/2025/09713) to change the use of the holiday lets into three separate dwellings. Submission of these applications suggests an understanding that the original permission was implemented.

The responsibility is on the Applicant to provide sufficient and unambiguous evidence to support their case. In this case such evidence has not been provided and is not available to the LPA from other sources. The assessment can only rely on current evidence submitted and that which is otherwise available to the LPA. Based on the above, there are apparent gaps in the evidence or contradictions to the Applicant's argument, therefore, the Applicant has failed to provide sufficient evidence to demonstrate, on the balance of probabilities, that the planning permission K/86/0690 was never implemented. As such, it is considered that the planning conditions and s.52 agreement relating to planning permission K/86/0690 remain effective and enforceable.

The LPA does not dispute that the development has operated as holiday accommodation for a considerable period and that this use of the building is lawful. It is possible that only three of the four were implemented at the time and that this would remain entirely consistent with the permission which was granted. Based on the evidence available at this time, it cannot be agreed that the permission was not validly implemented such that the conditions and s.52 legal agreement have no effect.

PPG is clear that the terms of a certificate must be precise to ensure there is no room for doubt about what is lawful at a particular date. Unfortunately, there remains a significant level of ambiguity and lack of evidence around the version of events in this case. However, in light of the areas of agreement, the LPA suggested altering the terms of the certificate to recognise that the building could be used lawfully for three holiday cottages but whilst also making it clear that their use is pursuant to, and as implemented under, the original permission K/086/0690. The Applicant declined to accept a changed description and as a result the certificate is determined based on the terms set out in the application and correspondence. Accordingly, the application is recommended for refusal.

The applicant has failed to provide sufficient evidence to demonstrate, on the balance of probabilities, that the whole development is lawful *and* without control by conditions and the legal agreement associated with planning permission K/86/0690. A Lawful Development Certificate cannot be granted on this basis.

RECOMMENDATION

It is recommended that the Certificate of Lawfulness be refused for the following reason:

The applicant has failed to provide sufficient evidence to demonstrate, on the balance of probabilities, that the whole development is lawful *and* without control by conditions and the legal agreement associated with planning permission K/86/0690. A Lawful Development Certificate cannot be granted on this basis.