

SECTION 78 APPEAL AGAINST NON-DETERMINATION

STUDIO AT WATERCRESS BEDS, SPRINGWELL LANE, HAREFIELD, RICKMANSWORTH WD3 8UX

APPLICATION FOR CERTIFICATE OF LAWFULNESS

Local Authority Reference - LB Hillingdon 74576/APP/2019/435

1. INTRODUCTION

1.1 The application is for a Certificate of Lawfulness for the use of the existing studio at Watercress Beds, Springwell Lane as a residential unit for holiday / short-term let.

1.2 The plans subject to the appeal are:

- Location Plan
- W-750-001 Watercress Beds Plan
- W-750-002 Block Plan
- W-750-003 Elevations
- W-750-004 Floorplan

1.3 The application was submitted on 5th February 2019 and validated on 13th February 2019. It has not been determined. This appeal is against the non-determination of the application.

2. DESCRIPTION OF THE SITE AND SURROUNDINGS

2.1 Watercress Beds is a former garden nursery site located in the Green Belt to the south-west of Rickmansworth. It is bordered by Springwell

Lake to the west, and the River Colne to the east and south. The site is accessed via a private drive leading off Springwell Lane to the north.

- 2.2 The building which is the subject of this application was formerly the garage to the main house on the site.

3 RELEVANT PLANNING HISTORY

- 3.1 Relevant planning history is shown in the table below.
- 3.2 The wider site gained planning permission in August 1990 for “change of use of watercress beds to garden nursery; erection of associated shop and office building; erection of a bungalow and ancillary parking.” The documents relating to this application are included at Appendix 1. The approved drawings show the bungalow which is the subject of this application as “garage”.
- 3.3 In 2009, an application was submitted for “Relocation and part change of use of previously approved nursery building for part use as Class A3 Cafe with patio and seating area”. No decision was ever made regarding this application. However, the Site Layout plan submitted with this application (included at Appendix 2) shows the building in situ, again marked as “garage”.

Table 1: Planning history

Reference	Proposal	Decision	Date
24597/APP/2019/263	Residential dwelling (Application for a Lawful Development Certificate for an Existing use)	Undetermined (at appeal)	-

24597/APP/2018/2452	Installation of a biomass boiler and wood chip fuel store within an existing building	Undetermined (at appeal)	-
24597/APP/2018/2373	Change of use of site to a camping site (Use Class D2), alteration of existing building to provide visitors' centre, erection of seven camping pods, associated landscaping and car parking with 18 spaces.	Undetermined	-
24597/APP/2017/158	Installation of a biomass boiler and a lean-to housing to existing workshop.	Withdrawn	16-01-17
24597/APP/2017/109	Retention of a 3 Bedroom Chalet Style House as Residential Use from Ancillary Offices for a Garden Centre.	Refused	11-01-17
24597/APP/2013/3101	Change of use to residential (Prior Approval)	Refused	05-12-13
24597/APP/2009/2187	Relocation and part change of use of previously approved nursery building for part use as Class A3 Cafe with patio and seating area	Undecided	08-10-09
24597/APP/2006/1877	Erection of a three-bedroom detached dwellinghouse and a single-storey detached building for use as an office (Class B1)	Withdrawn	26-06-06
24597/APP/2006/1878	Erection of a three-bedroom detached dwellinghouse and a single-storey detached building for use as an office (Class B1) (duplicate application)	Withdrawn	26-06-06
24597/APP/2001/220	Residential development comprising of two detached dwellinghouses with attached double garages	No further action	30-01-01

24597/APP/2000/2079	Residential development comprising ten two-bedroom flats and five three-bedroom flats.	Refused	11-09-00
24597/D/92/1550	Details of materials, surface water disposal and storage, land filling, access arrangements, landscaping and boundary fencing in compliance with conditions 2,3,4,6,8,9 and 10 of planning permission ref. 24597A/89/1968 dated 7.8.90; Change of use of watercress beds to garden nursery; erection of associated shop and office building; erection of a bungalow and ancillary parking	Approved	10-09-92
24597A/89/1968	Change of use of watercress beds to garden nursery; erection of associated shop and office building with parking for 28 vehicles; erection of a 4 bedroom bungalow	Approved	08-08-90

4. STATEMENT OF CASE

Grounds on which the Certificate of Lawfulness is sought

- 4.1 Section 171B of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, states that:

“171B Time limits.

(2) Where there has been a breach of planning control consisting in 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.”

- 4.2 Section 191 of The Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, provides that any person may apply to the local planning authority to ascertain whether an existing use of a building or land is lawful.
- 4.3 Subsection 4 of section 191 of the Town and Country Planning Act 1990 establishes that if “the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect”.
- 4.4 Subsection 2 of section 191 of the Town and Country Planning Act 1990 clarifies that for the purpose of the Act a use shall be considered to be lawful at any time if:
- 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
 - They do not constitute a contravention of any of the requirements of any enforcement notice then in force.
- 4.5 The following section sets out evidence that establishes that the building has been in residential use continuously for more than four years.

4.6 No enforcement notice is currently in force.

Supporting evidence

3.7 The building has been in residential use since June 2014. The first occupant was Miss Riches, who stayed at the property from September 2014 until December 2014.

3.8 From January 2015 until June 2015, the applicant's son Bradley Travers, who has disabilities, stayed in the studio for long weekends as trials, with a view to moving into the studio permanently if these trials worked for both Bradley and his parents. Bradley has epilepsy, cerebral palsy and hydrocephalus. If in the future Bradley needs to move into the studio permanently, this will be an option for him.

3.9 The property was let as holiday / short-term accommodation through AirBnB and Booking.com from June 2015 to August 2017.

3.10 From August 2017, the applicant's brother Stephen Travers lived in the studio pending a double lung transplant at Harefield Hospital. He lived there until June 2018 then because of his health he moved home for full-time care from his partner. From June 2018 until the present time he has stayed in the property for at least 2-3 nights a week in order to attend hospital appointments; this will be ongoing for the next two years.

3.11 The following evidence was provided in support of the Certificate of Lawfulness application:

- Ofgem biomass boiler installation documentation (page 6 shows that a separate meter was installed for the studio)

- Emails confirming Miss Riches stay
- Large purchase receipts prior to Miss Riches moving in
- Air BnB confirmation receipts
- Booking.com details
- Letter addressed to Stephen Travers at Watercress Beds
- September 2017
- Letter from appellant regarding Bradley Travers

Pro-active decision making

4.12 Para. 38. Of the NPPF states that “Local planning authorities should approach decisions on proposed development in a positive and creative way”.

4.13 Para. 47 states that “Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing”.

4.15 The application has been with the Council since 5th February 2019 and there has been no request for an extension of time; this does not constitute positive planning.

5. CONCLUSION

5.1 There is clear evidence to demonstrate that the Studio at Watercress Beds has been continuously occupied as a residential unit for holiday / short-term let for more than four years.

5.2 No enforcement notice is currently in force.

- 5.3 The application has been with the Council since 5th February 2019. The Council should have determined the application without delay.
- 5.4 Having regard to the evidence supplied in support of this application, the Inspector is respectfully requested to allow the appeal and grant a Certificate of Lawfulness.