

This prepared response to a planning application sets out the policies and guidance referred to, an application summary, planning history and any material considerations.

## Consultee Comments for Planning Application DC/22/2080/CLE

The Parish Council has referenced the following where relevant:

- [National Planning Policy Framework \[NPPF\]](#)
- [Core Strategy \(2010\) Former SEBC area \[CS\]](#)
- [Rural Vision 2031 \(2014\) Rural \[RV\]](#)
- [Joint Development Management Policies Document \(2015\) \[DM\]](#)

The Parish Council does not currently have a made Neighbourhood Plan, but is in the process of preparing one.

### Application Summary – West Suffolk Council

**Application No:** [DC/22/2080/CLE](#)

**Address:** Crows Cottage Malting End Wickhambrook Suffolk CB8 8QA

**Proposal:** Application for lawful development certificate for existing use or development - Use of first floor of existing garage outbuilding as separate dwelling

This is an application from Hutchinsons made on behalf of Mrs J Walker for a certificate of lawful development (use of first floor of existing garage outbuilding as a separate dwelling). Location plan and planning statement, are attached as Appendix A. Full details of the application can be found at:

[DC/22/2080/CLE | Application for Lawful Development Certificate | Crows Cottage, Malting End](#)

The applicant has described the reason for Lawful Development Certificate as:

An existing use – C3 - Dwellinghouses

The use as a single dwelling house having begun more than four years before the date of the application – namely a one bedroom flat/maisonette.



The applicant states that the garage cannot be seen from the road.

The accommodation has been let since 2002 as a studio flat independent from the main dwelling and is separately rated for the purpose of council tax.

The following documents were submitted with the application:

- Evidence to verify application
- Planning Statement
- Location plan

A summary of planning history is attached as Appendix B

No comments have yet been lodged against this application, nor constraints identified.

The following matters are relevant and should be considered with respect to the application:

1. **Settlement Hierarchy and Identity:** The proposed site is not within the published settlement boundary of Wickhambrook [RV3 – Housing Settlement Boundaries], but in designated countryside [CS4 – Settlement Hierarchy & Identity, DM5 – Development in the Countryside]. It is acknowledged that the proposal may be described as small scale residential development [DM5] and has been in residential use since 2002 when planning permission was granted for “continued use of attic space over garage as residential accommodation and extended roof and balcony (revised scheme).” (Ref No SE/02/3117/P

**Action:**

**The Parish Council is asked to consider the application above.**

# HUTCHINSONS

Planning & Development Consultants

## PLANNING STATEMENT

**Application for Lawful Development Certificate**

**Relating to**

**Use of first floor flat as separate dwelling**

**At**

**Crow Cottage, Malting End, Wickhambrook,**

**Newmarket**

**For**

**Mrs J Walker**

**November 2022**

HUTCHINSONS

15 Castle Gardens, Kimbolton, Cambridgeshire. PE28 0JE

Tel: 01480 861469

## **1 INTRODUCTION**

- 1.1 The application requests the issue of a Lawful Development Certificate in respect of the use of a first floor flat at Crow Cottage, Malting End, Wickenbrook, Newmarket, CB8 8QA as a separate dwelling unit.
- 1.2 This statement comprises: a brief description of the site and surroundings; the relevant planning history; our planning analysis; and our conclusions.
- 1.3 The statement is accompanied by a statutory declaration on behalf of Mrs J Walker, who owns the property with her husband, together with Crow Cottage, the main dwelling in the complex, where she resides.

## **2 THE SITE AND SURROUNDINGS**

- 2.1 The site is located in the rural village of Wickhambrook, which is about 10 miles south-west of Bury St Edmunds.
- 2.2 The flat is located within the residential curtilage of Crow Cottage and comprises the first floor of an existing outbuilding used at ground floor level for the parking of vehicles.
- 2.3 The accommodation at first floor level comprises a lounge/dining room, kitchen, bathroom and bedroom, and is served by its own independent staircase.

### **3 RELEVANT PLANNING HISTORY**

- 3.1 In October 2002 planning permission was granted for “*continued use of attic space over garage as residential accommodation and extended roof and balcony (revised scheme).*” (Ref No SE/02/3117/P).
- 3.2 Two conditions were imposed on the permission: the first requiring the alterations to the roof to be begun not later than 5 years from the date of permission; and the second that the roofing tiles match those on the existing building in type, colour and profile.

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## 4 PLANNING ANALYSIS

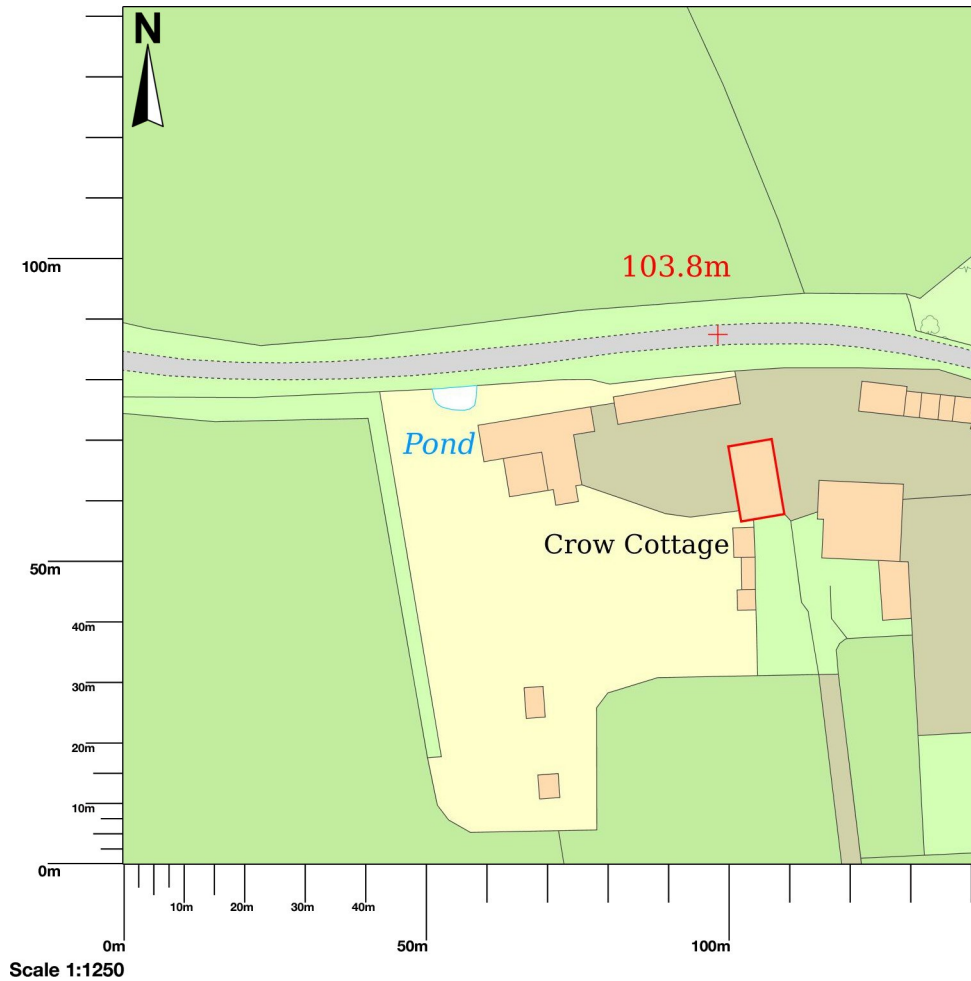
- 4.1 A certificate of lawful use may be claimed where an applicant can demonstrate the requisite period of continuous use in breach of planning control.
- 4.2 In some cases the requisite period is 10 years and in other cases 4 years. Section 171B(2) of the Town and Country Planning Act 1990 states: “*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.*”
- 4.3 The planning permission of October 2002 (Ref No SE/02/3117/P) provided the basis for the use of the space above the garage as “*residential accommodation*” and whilst that permission contained no clear indication that a separate dwellinghouse unit was being permitted, neither did it contain any condition outlining that it should only be used as ancillary to the main dwelling at Crow Cottage.
- 4.4 Whilst it is a fact that the planning permission did not specifically purport to create an additional dwelling unit, the lack of any limiting condition about the residential accommodation could be argued to demonstrate that its use as a separate dwelling unit was permitted by the unconditional grant of that planning permission.
- 4.5 However, even if it is accepted that it was not the Council’s intention to create a separate dwelling unit, the breach of planning control is longstanding, having commenced in 2002 and is now well in excess of the four year period required by s171B(2) of the Town and Country Planning Act 1990.
- 4.6 The statutory declaration of Mrs J Walker is quite clear confirmation that the flat has been lived in independently of the main dwelling for many years.
- 4.7 There is in this case no question of deliberate concealment of the use by the applicant and it is therefore not open to the Council to apply for an enforcement order, because the normal time limits have expired.
- 4.8 Indeed, the applicant has taken no positive steps to conceal any unauthorised development and has, as a matter of fact, paid separate Council tax for the flat for a number of years, as verified by the Council tax bill appended to the statutory declaration.

## **5 CONCLUSIONS**

- 5.1 It is arguable that the planning permission of October 2002 authorised the separate residential occupation of the flat, because it contained no condition indicating the residential accommodation could only be occupied as part of the main dwelling and not as a separate dwelling unit.
- 5.2 However, even if a breach has taken place the use has continued well beyond the four years required by s171B of the Town and Country Planning Act 1990 and no deliberate concealment has been undertaken by the applicant.
- 5.3 In the circumstances, it is considered that on the balance of probabilities the issue of a Lawful Development Certificate is fully justified in this case.



## Crows Cottage, Malting End, Wickhambrook, Newmarket, CB8 8QA



- [Application for lawful development certificate for existing use or development - Use of first floor of existing garage outbuilding as separate dwelling](#) 

Crows Cottage Malting End Wickhambrook Suffolk CB8 8QA

Ref. No: DC/22/2080/CLE | Received: Thu 01 Dec 2022 | Validated: Thu 01 Dec 2022 | Status: Pending Consideration

- [Householder Planning Application - Single storey rear extension \(following removal of existing conservatory\)](#)

Crows Cottage Malting End Wickhambrook Newmarket Suffolk CB8 8QA

Ref. No: DC/20/0022/HH | Received: Fri 03 Jan 2020 | Validated: Fri 03 Jan 2020 | Status: Decided

- [Planning Application - Erection of two storey rear extension \(resubmission of SE/09/0996\)](#)

Crows Cottage Malting End Wickhambrook Newmarket Suffolk CB8 8QA

Ref. No: SE/13/0867/HH | Received: Mon 15 Jul 2013 | Validated: Mon 15 Jul 2013 | Status: Decided

- [Application to discharge condition 2 \(External materials\)](#)

Crows Cottage Malting End Wickhambrook Newmarket Suffolk CB8 8QA

Ref. No: DCON(A)/12/0201 | Received: Thu 26 Apr 2012 | Validated: Thu 26 Apr 2012 | Status: Decided

- [Planning Application - Erection of single storey extension](#)

Crows Cottage Malting End Wickhambrook Newmarket Suffolk CB8 8QA

Ref. No: SE/12/0201/HH | Received: Mon 13 Feb 2012 | Validated: Mon 13 Feb 2012 | Status: Decided

- [Planning Application - Erection of single storey extension to north elevation](#)

Crows Cottage Malting End Wickhambrook Newmarket CB8 8QA

Ref. No: SE/10/0065 | Received: Tue 19 Jan 2010 | Validated: Tue 19 Jan 2010 | Status: Decided

- [Planning Application - Erection of two storey rear extension \(resubmission\)](#)

Crows Cottage Malting End Wickhambrook Newmarket CB8 8QA

Ref. No: SE/09/0996 | Received: Fri 14 Aug 2009 | Validated: Fri 14 Aug 2009 | Status: Decided

- [Planning Application - Erection of two storey side extension](#)

Crows Cottage Malting End Wickhambrook Newmarket CB8 8QA

Ref. No: SE/08/1581 | Received: Mon 17 Nov 2008 | Validated: Mon 17 Nov 2008 | Status: Decided

- [Planning Application - Erection of single storey extension to north elevation](#)

Crows Cottage Malting End Wickhambrook Newmarket CB8 8QA

Ref. No: SE/07/0494 | Received: Mon 26 Mar 2007 | Validated: Mon 26 Mar 2007 | Status: Appeal decided

- [Planning Application - Erection of extension to rear elevation \(revised scheme\)](#)

Crows Cottage Malting End Wickhambrook Newmarket Suffolk CB8 8QA

Ref. No: SE/06/2435 | Received: Tue 19 Sep 2006 | Validated: Tue 19 Sep 2006 | Status: Decided