



## **PLANNING STATEMENT**

**Submission to Maidstone Borough Council**

**Lawful Development Certificate – Existing Use – Use of outbuilding an  
ancillary accommodation to main dwellinghouse**

**‘The Garage’**

**Plumtree Barn**

**Plumtree Road**

**Headcorn**

**TN27 9PE**

**March 2021**

## **Introduction**

This planning statement sets out the background, context and history of the subject building, to present a case to demonstrate the Lawful Use of the 'The Garage', Plumtree Barn, Plumtree Road, Headcorn as an annex to the main dwellinghouse for a period exceeding four years. The statement supports the submission of an application to the Local Planning Authority.

## **Proposal**

An application is sought for a Certificate of Lawful Development – Existing Use, in accordance with Section 191 B of the Town and Country Planning Act 1990, to be issued by the Local Planning Authority, which seeks to establish that the development on the land is lawful and has taken place continuously for in excess of four years, by virtue of which the time for enforcement action has expired and the development becomes lawful in accordance with 171 B (1) of the Town and Country Planning Act 1990.

The description of development is as follows:

*'Lawful Development Certificate – Existing Use – Use of outbuilding an ancillary accommodation to main dwellinghouse'*

The application is supported by a series of accompanying evidence, in the form of sworn declarations; quotes associated with the conversion of the building, and; photographic evidence. Full details are available within the accompanying Evidenced Schedule

## **Site context & surroundings**

### *Immediate*

The application site is located within a small hamlet to the north-west of Headcorn. There are a handful of dwellings in the immediate vicinity.

The application site consists of the main dwelling, and the garage block subject to this application, which is located approximately 10m to the north of the main dwelling, separated by a small parking area.

## **Planning History**

The relevant Site history is set out as follows:

### Enforcement History

No record of formal enforcement action being taken against the property is available, although it is understood the applicant has been contacted by the Council's Enforcement Team in relation to the conversion of the garage.

### Planning History

00/1737: Conversion of redundant stables and barn to 2 no. residential dwellings (resubmission of MA/00/0772) – APPROVED

00/0772: The conversion of stables and barn to two dwellings, as shown on site plan and dwg nos 1399/P/11, 08, 07, 06, 05, 03, 02 and 01 received on 19.04.00 and as amended by additional documents being 1399/P/13 and 1399/P/12R, 10R, 9R and 4R received on 08.05.00 and 07.07.00 – REFUSED

03/1234: Proposed amendments to garage building approved under planning permission MA/00/1737, as shown on dwg No. 0307/0G1 and one unnumbered site plan at a scale of 1:1250 and block plan at a scale of 1:500 received on 18.06.03 – REFUSED

20/504556/LDCEX - Lawful Development Certificate to establish the existing use of the double storey garage block as a dwelling for over 4 years. - Refused

### **Planning Assessment (Case Presented)**

Section 171 B of the Town and Country Planning Act 1990 specifies time limits for enforcement action by Planning Authorities. In accordance with the provision of 191 B, applications for a Certificate of Lawful Use or Development for existing development - will need to demonstrate, with evidence that the following time limits have passed:

1. in the case of operational development, that the operations were substantially completed at least 4 years ago;
2. in the case of a change of use of a building to a single dwelling house, that the change took place at least 4 years ago;
3. in any other case, such as a change of use or breach of condition of a planning permission, that the change of use or breach of condition occurred at least 10 years ago.

Once these time limits have passed, no enforcement action may be taken in respect of the breach for development management purposes.

There should be no argument from either party that the use of the building is residential, in an ancillary nature to the main dwelling, and therefore the relevant time limit associated with this application is the four year under 191 B (1), as set out above.

Nevertheless, case law suggests that this is not strictly necessary; the judgment in **Uttlesford District Council v Secretary of State** 1989 established that permission is not required to convert a garage in a residential curtilage to an annexe capable of independent

accommodation, provided both it and the existing dwelling remain in the same planning unit.

As such, this application for a Lawful Development Certificate accepts that operational development has taken place, and wishes to regularise that development, but does not accept that the use of the building in the way it has been used required permission.

### **Establishing the Lawfulness of an Existing Use**

Section 191 A of the Town and Country Planning Act 1990 sets out the statutory requirements relating to a Certificate of lawfulness of an existing use or development.

In particular, Section 191 (Part 2) sets out for the purposes of this Act, that the uses and operations are lawful at any time if:

- a) no enforcement action may then be taken in respect of them...because the time for enforcement action has expired or for any other reason;

Section 191 (Part 4) sets out that if an application is made and:

*“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..., they shall issue a certificate to that effect; and in any other case they shall refuse the application.”*

In accordance with the provisions of Section 191 (Part 5) and in supporting the Council to issue a Certificate, this application includes a series of evidence (information) to satisfy the Council of the lawfulness of the use of the Site, and provides the following details:

- a) A Site Plan and Layout Plan – specifying the land to which it relates;
- b) A description of the use;
- c) The evidence that justifies the reasons for positively determining the use; and
- d) The date specified

### **Planning Evidence**

In accordance with the legislation, the onus of proof is on the applicant to demonstrate to the Local Planning Authority that on the balance of probability, there has been a regular, continuous and uninterrupted use of the building as a residential annex for a period of four years.

In order to prepare a comprehensive and thorough case to substantiate the claim made in this application, a number of exhibits and supporting information have been prepared and accompany this application.

Please refer to the accompanying 'Evidence Schedule' Document, which provides a complete list of information and a synopsis of the evidence.

### **Assessment**

Notwithstanding the above assertion in relation to the Uttlesford District Council v Secretary of State case law, the applicant provides the following supporting evidence to substantiate that any operation development associated with the conversion is legal by virtue of passage of time, as it has taken place in excess of four years ago.

#### *Sworn Declarations*

The main property owner and occupier, and his three sons, along with a family friend, have confirmed that the three sons of Mr Gallagher, have occupied the annex with their associated families in turn over a period exceeding four years.

They each confirm that the utility bills for the property remain tied to the main dwelling, and there is no functional separation.

As utility bills have not been separated, and as the building has only ever been occupied by family members, there is no case that the building has become functionally separate from the main dwelling or that a separate planning unit has been formed.

#### *Quotes from 'Comprehensive Carpentry Services'*

Dated May 2014 and September 2015 respectively, these documents provide evidence that the family were quotes for works associated with the garage. Both make reference to work in the 'garage block', and provide a detailed overview of the works which are to be undertaken.

The invoices also help provide a useful explanation of the rooms in the building at the times, including the kitchen, two bedrooms, a bathroom, and a 'lounge' area.

There is no doubt that these quotes are making reference to the garage subject to this application as there are no other garages within the planning unit. Although these are quotes, the definitions of the rooms within the garage block provide clear evidence of the nature of the building internally at that time.

#### *Electrical Inspection*

Notes from the electrical engineer show that the building has electricity installed, although the case is not that this was separated from the main dwelling. Even in 2010, clear reference is made to the 'garage conversion'.

#### *Photos*

The photographic evidence from June 2016 of a kitchen being installed provides further evidence that works subject to the quotes above had taken place outside of the last four years.

Further photographic evidence shows the current appearance of the building, and associated utilities.

## **Conclusion**

The evidence provided herewith in this application presents and confirms the use of the building known as 'The Garage' to an annex in association with the main residence has taken place for in excess of four years and that this use has been regular, continuous and uninterrupted. The operational development associated with this change took place in excess of four years ago.

Further, the judgment in **Uttlesford District Council v Secretary of State** 1989 established that permission is not required to convert a garage in a residential curtilage to an annexe capable of independent accommodation, provided both it and the existing dwelling remain in the same planning unit.

As such, this application for a Lawful Development Certificate accepts that operational development has taken place, and wishes to regularise that development, but does not accept that the use of the building in the way it has been used required permission.

In accordance with the provisions set out in Section 191 B of the Town and Country Planning Act 1990, this application through the presentation of satisfactory and substantial evidence, demonstrates that on the balance of probability, 'The Garage' has been used as a residential annex to the primary residence for in excess of four years.

In light of the evidence and case law on this matter, the submission seeks for the Council to issue a Lawful Development Certificate to establish the formal Existing Use.