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CHARTERED TOWN PLANNERS

01256 766673 | info@bell-cornwell.co.uk | bell-cornwell.co.uk

The Head of Planning
South Downs National Park Authority
South Downs Centre
North Street
Midhurst
GU29 9DH

Our ref: 10208

20 August 2021

Dear Sir/Madam

Certificate of lawfulness for retention of existing driveway at River Hill, Binsted Road, Binsted, GU34 4PQ

On behalf of our clients, Mr and Mrs Masnaghetti, we submit with this letter an application seeking a certificate of lawfulness for the construction of a driveway at River Hill, Binsted. The following documents are submitted with the application:

- Online application form
- Site location plan showing the extent of the driveway
- Statutory Declaration by Michele Masnaghetti including exhibits
- Current photomontage (appended to this letter)

This letter provides the legal framework for the application and offers additional justification/explanation why the certificate should be granted.

Planning Law

Paragraph 171(B) of the Town and Country Planning Act 1990 (The Act) states that:

- (i) 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.

We have emphasised the important points above. The driveway is an engineering operation on the land.

Paragraph 191(2) of The Act states that uses and operations are "lawful" if no enforcement action may be taken against them, **and** they are not in contravention of any enforcement notice which is in force. There has been no enforcement notice served.



Therefore, given that there is no indication from the planning history that planning permission was sought or granted for the driveway or that its development was restricted by a condition, the period of time for taking enforcement action in respect of this breach of planning control is **4 years** from the date that the breach occurred.

The driveway was constricted and completed in 2015, as explained in the Statutory Declaration. Put another way, since 2015 and up to late 2019, had the Council sought to enforce against the driveway, they could have. After 2019, the opportunity for enforcement has passed and the driveway becomes lawful.

The onus of proof on such an application falls firmly on the applicant. The relevant test of the evidence on such applications is “the balance of probability”. This application aims to prove, beyond all reasonable doubt, that the access drive has been in situ for a continuous period of 4 years, and therefore no enforcement action is possible. The use of the driveway is not a relevant consideration as development is assumed to have the use that it was designed for. It is irrelevant whether the driveway was used for the agricultural, equestrian or residential uses prevalent on the wider River Hill Farm site.

Evidence

Much of the evidence is submitted in the form of the sworn affidavit from the applicant. Whilst not directly relevant to the application, the affidavit covers the period back to 2015 when the works commenced and were completed. This comes through to the present day with specific emphasis on the last 4 years.

The initial ground works were carried out due to the need to link services to the new dwelling from Binsted Road. There was an existing vehicle access and field gate in situ at the time and it made sense to formalise this route to the farm. When the services had been installed, rather than replace the soft landscaping, the land was repaired with hardcore to provide the hard surface which is currently seen on the site. The photographs provided in the Statutory Declaration are deliberately provided in a dated form to specifically pinpoint the moment in time that the driveway was first present on the site.

Should you require any additional information, please do not hesitate in contacting the writer.

Yours faithfully
BELL CORNWELL LLP

NICK COBBOLD
Partner
ncobbold@bell-cornwell.co.uk

enc.
cc. client



