

Q. SQUARE

Mr Joe Hyman
Q Square Group Ltd
Alverstone
Alexander Lane
Shenfield
Essex
CM15 8QE

Sevenoaks District Council
Planning Department
Argyle Road
Sevenoaks
Kent
TN13 1HG

24th January 2022

Dear Sir / Madam

Re: Certificate of Lawfulness (Existing) application at The Owl Barn, Tickners, Spode Lane, Cowden, Kent, TN8 7HW

On behalf of our client, Mr. Giles Underhill, we are pleased to submit an application for a Certificate of Lawfulness of Existing Use or Development (CLEUD) under section 191 of the Town and Country Planning Act 1990 (as amended) (the Act).

Background

This application for a CLEUD relates to The Owl Barn, Tickners, Spode Lane, Cowden, Kent, TN8 7HW (the Site).

The evidence in support of this application demonstrates that the lawful planning use of the Site as a separate residential dwelling within Class C3 of The Town and Country Planning (Use Classes) Order 1987 (as amended). The use of the building as a separate residential property arose as a result of the original building being demolished and the existing property being constructed and subsequently occupied independently as a dwelling for more than 4 years before the date of this application and the independent Class C3 use has continued to date.

The original building on the site was previously identified for storage use under planning permission 16/00322/FUL.

Section 171B (1) of the Act state that:

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.

Evidence, however, is provided as part of this application to demonstrate that the original building was subsequently demolished, with a new building being constructed and used as an independent dwelling for at least 4 years. On this basis, the construction of the building falls

under Section 171(B) (1) of the Act and is therefore immune from Enforcement action. This evidence is described later in this letter.

Regardless, even if the original building had been converted to residential use, it would have been immune from Enforcement action under Section 171 (B) (2) of the Act which 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.

Circular 10/97 'Enforcing planning control - legislative provisions and procedural requirements' set out the appropriate tests for determining a Certificate of Lawfulness application. Although this circular has now been superseded by the NPPF, the Courts have held that the relevant test of the evidence on such matters is "the balance of probability". If the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

The application building is a detached barn, which comprises of 1no. detached residential dwelling. This residential dwelling is a self-contained unit with its own lockable entrance. The dwelling is not an ancillary building in relation to any of the surrounding neighbouring properties, albeit under the original planning permission for the Site (ref 16/00322/FUL), it was identified as an ancillary storage building to the main dwelling at Tickner – this is explained below.

Lawful Development

Prior to the construction of the existing building, the original building was located in its place and previously comprised of an ancillary storage barn, which serviced the original residential property on the wider Site. A photograph of the original barn building is set out below.



Image 1: Photograph of original building taken on 18th January 2014

In April 2016, planning permission (Ref: 16/00322/FUL) was granted for the following development proposals:

Change of use and conversion of a barn to provide 2no. dwellings, demolition of a piggery and existing garage, erection of a barn providing car parking and storage and the creation of a swimming pool along with other ancillary works.

As part of this application, the original building was proposed to be refurbished, with its use as storage and garages to be retained.

Subsequently, as part of the wider site's redevelopment under the above permission, the original building was demolished and replaced with a self-contained detached residential dwelling in a newly constructed building.



Image 2: Photograph from 2nd September 2015

The external construction works (evidenced in Image 2) were completed by November 2015 and the internal fit out works were completed by the autumn of 2016. Subsequently, the property was leased to a number of residential tenants.

During Q1/Q2 2017, the application building was let informally to a security guard and to various workers who were employed on the construction of the other dwellings. It was first let on an Assured Shorthold Tenancy in July 2017.

The following evidence (attached in the appendices) has been submitted to support this application for a CLEUD:

1. 4no. Assured Shorthold Tenancy Agreements, as defined in Section 19A of the Housing Act 1998, for the period as follows:
 - Tomasz Wozniak – between 31st July 2017 and 30th January 2018;
 - Tracy Victoria Greig - 1st March 2018 and 1st December 2018;
 - Andrew St Pierre - 10th December 2018 and 9th December 2019; and
 - Benjamin Adams and Imogen Birch - 20th February 2021 and 20th August 2021.

Please note that from February 2020 to November 2020 the property was occupied as a separate household by Mr Giles Underhill (the applicant) who had recently separated from his spouse. This is explained further in the accompanying Sworn Statement.

In addition, since August 2021 the property has been let on an informal basis to a relation of the tenant of North Barn who is visiting from abroad and who will either enter into a formal AST in January 2022, or a new tenant will be found.

2. Sworn Statement provided by Mr Giles Underhill.

3. Aerial photograph from 2016 showing the residential property completed and in place.
In conclusion, we consider that the abovementioned documentation clearly demonstrates that the subject property has been in continued Class C3 use for more than 4 years and therefore under Section 171(B)(2) of the Act is now immune from enforcement action. As outlined above, the CLEUD application must be considered on the balance of probabilities. Combined with the additional supporting evidence, we consider that Sevenoaks District Council have sufficient information to approve the CLEUD application.

Yours sincerely



Joe Hyman
07544753973
Joe.hyman@qsquare.co.uk