

**APPLICATION FOR A CERTIFICATE OF LAWFUL EXISTING USE
UNDER S191 TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)
BY MR POTBURY AND MS NEWMAN IN RESPECT OF
ORCHARD HOUSE, COMBE RALEIGH, DEVON EX14 4TN**

Introduction

1. This is an application for a certificate of lawful existing use under Section 191 of the Town and Country Planning Act 1990 (as amended) in respect of the lawful existing use of Orchard House, Combe Raleigh Devon EX14 4TN (the “**Property**”) as a single dwellinghouse.
2. The “Application Land” is shown on “Plan 1” edged red and comprises the footprint and curtilage of the Property.

Summary

3. In a nutshell, the Applicant’s case is that:-
 - a. The Property has been used as a single dwellinghouse since April 2011 in breach of condition 3 of Planning Permission 053-3305-FUL
 - b. The breach of condition has been continuous; and
 - c. There has been no subsequent abandonment or material change of use;
 - d. Therefore, it is not possible to enforce against the use and development described; and
 - e. A certificate of lawful existing use and development must be issued.
4. The case for issuing a certificate is demonstrated in more detail below, with reference to the facts (including the historical and current use and development), the relevant law and policy, and the application of that relevant law and policy to those facts.
5. In addition to this application statement, the application is supported by two statutory declarations by the Applicants who live in the Property, and documentary evidence including documents produced by the valuation office and Council. Submitted plans indicate the extent of the Application Land and interior layout of the Property and Main House showing the accommodation and the interior doors which were blocked off when the two dwellinghouses were separated.

Facts

6. In order to provide witness and documentary evidence to support this Application, the Applicants and their agent have discussed the history of the application site and consulted documentary evidence of use.
7. **Statutory Declarations** - The Applicants have given evidence in the form of Statutory Declarations.

8. **Documentary Evidence** - Furthermore documentary evidence has been provided in the form of contemporaneous correspondence from the Council's own valuation and council tax records.

Site History

Historic use

9. It is believed that the Main House was built before 1 July 1948, before it was necessary to obtain planning permission, and used as a farmhouse for the Potbury family. Mr Potbury's Statutory Declaration indicates that he lived in the house as a child from the 1970s onwards when it was part of the family farm. Planning permission was granted for a two storey kitchen and bedroom extension in 1980 which extended the Main House from three to four bedrooms.

Use by the Applicants

Recent developments – 2005 onwards

10. The Applicants' Statutory Declarations state that Mr Potbury's late brother Andrew developed a progressive illness and as a result of this his father, Roger Potbury, applied for planning permission to build the Property as an annex to the Main House.
11. Planning permission was granted for "*erection of a two storey extension to provide annex accommodation*".
12. Condition 3 of the permission states "*the extension hereby permitted shall not be occupied at any time other than for the purposes ancillary to the residential use of the dwelling known as Tower View Farm*". The reason given for the condition was "*the building is unsuitable for an independent residential occupation*".
13. The Property was built and occupied in accordance with the planning permission until the late Andrew Potbury married and consequently no longer needed his family to provide care as his wife became his carer. Andrew and his wife lived in the Main House, and later moved away and rented out the Main House to tenants.

Recent developments – 2011 onwards

14. The valuation document (Exhibits SRP3 and RLAN3) demonstrates that by April 2011 the Main House and the Property were valued separately for Council Tax. The Council Tax records (Exhibits SRP4 and RLAN4) demonstrate that Council Tax was payable on each property as a separate dwellinghouse from 31 March 2011 to date. The Applicants' Statutory Declarations indicate that the connecting doors between the Property and the Main House were blocked up permanently from April 2011 onwards.

Relevant Law and Policy

15. The determination of a certificate of lawfulness is a matter of law and fact.
16. A certificate must be issued where successful enforcement action would not be possible against the use or development described.
17. The legislation which determines whether the existing use and development of the Property is lawful is the Town and Country Planning Act 1990 (as Amended) (the “**1990 Act**”).
18. Section 191(2) of the 1990 Act states:-

“(2) For the purposes of this Act uses and operations are lawful at any time if—

(a) 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

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.”
19. Section 171B(2) of the 1990 Act states:-

(1) 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.”
20. This means that any building for which the use changes to that of a single dwellinghouse becomes immune from planning enforcement four years after that change of use.
21. Section 171B(3) of the 1990 Act states:-

(2) “In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.”
22. This means that any other breach of planning control, including any other change of use, becomes immune from planning enforcement ten years after that change of use.

Applying the Relevant Law and Policy to the Facts

23. The current use of the Property is lawful as it satisfies all of the requirements of the law as set out in the legislation and case law referred to above.
24. The Property was built and used as an annex to the Main House in accordance with Planning Permission reference 053-3305-FUL.
25. The Property was then used as a single dwellinghouse since April 2011 in breach of condition 3 of Planning Permission 053-3305-FUL. The breach of condition has been continuous to the date of the application; and there has been no subsequent abandonment or material change of use;
26. Therefore, it is not possible to enforce against the use and development described; and a certificate of lawful existing use and development must be issued.

Conclusion

In conclusion, the LPA must apply the law to the facts and issue the Certificate of Lawfulness in the terms applied for.

The Applicant therefore respectfully requests that the LPA issue a Certificate of Lawfulness in the following terms:-

“Single Dwellinghouse”

If the LPA has any comments or queries, or requires any further information or clarification of any legal or factual point, please contact the Applicant’s agent in the first instance.

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