

None

Representations

One giving the following information: Building was originally a double garage and was converted by Mr David Tranter for his parents to live in a number of years ago. With the shortage of parking in the lane and tenants having 2 cars trees have been cut down and an area cleared for parking on land that is believed to be common land. No objection to the continued tenancy but believe the land used for car parking is common land and should be restored since Galamina has plenty of land that could be used instead.

4. Summary of Issues

The key issue in this case is:-

4.1.1. Whether a breach of planning control relating to the occupation of the building as an independent dwelling took place more than four years prior to the date this application was made which is immune from enforcement action.

4.2. In support of this application the following evidence has been provided by the applicant:

4.2.1. Statutory declaration of Ms Hodges (applicant and owner)

4.2.2. Copies of two tenancy agreements.

4.2.3. Copies of Land Registry documents showing Ms Hodges to be the owner of the property.

4.3. The statutory declarations provide the following information. In her declaration Ms Hodges states that:

4.3.1. She moved into Galamina in about February 2004. Initially she rented the property, but subsequently bought it on 9 May 2006.

4.3.2. Between 2005 and 2008 "The Stables" were occupied by Andreas Perez.

4.3.3. Between 2008 and September 2009 "The Stables" were occupied by two further tenants. One was called Tracey, she cannot recall the name of the other

4.4. The tenancy agreements confirm that

4.4.1. Julian John Ivan signed a tenancy agreement on 16 September 2009 for 6 months, to rent the property for £500 per month.

4.4.2. Lacey Emptage and Chris Harris entered into an agreement to rent the property for £540 per month on 24 November 2010 for a fixed term of 3 months. The agreement states that if the tenants remain after the tenancy has expired a statutory periodic tenancy shall arise on a weekly basis. The landlord can recover the property if the tenancy has come to an end and the landlord has given 2 months

notice and at least 6 months have passed from the date of the agreement.

- 4.5. At the time of a site visit to the property on 4 May 2012 "The Stables" were unoccupied. Ms Hodges advised that the tenants had recently left, and that her intentions are to refurbish the property for her son to live in when he finishes university later this year.
- 4.6. Ms Hodges also advised during that visit that when she first moved to Galamina as a tenant "The Stables was occupied by the au pair to the owner.
- 4.7. Further information was sought about the occupation of the property from the applicant's agent, in an e-mail dated 11 May 2012. The initial response to that e-mail gives the following information:
 - 4.7.1. Lacey Emptage and Chris Harris vacated the premises on the weekend ending 29 April 2012.
 - 4.7.2. Tenants have exclusive access to a parking area accessed via the concrete drive that leads to the yard at the rear of Galamina.
 - 4.7.3. The areas to the east, north and west of the building, bounded by the brick walls, have been exclusively used by the occupants of "The Stables".
 - 4.7.4. Utilities are via Galamina and are not billed separately. The occupants were responsible for obtaining their own TV licence.
- 4.8. The full response from the applicant's agent, by e-mail dated 17 May, gives the following information:
 - 4.8.1. The "tenants" who occupied the building between 2008 and September 2009 were employed by Ms Hodges on the basis that they were given the accommodation to live in, in exchange for housekeeping / cleaning duties at Galamina. The posts were advertised in The Lady magazine, but Ms Hodges is unable to provide copies of the adverts.
 - 4.8.2. Both periods of tenure for the "housekeepers" were brief as the arrangement was not very successful, with neither lady being very reliable.
 - 4.8.3. No family lived in "The Stables" during this period 2008 – 2009.
 - 4.8.4. Ms Hodges cannot be more specific about the dates Andreas Perez occupied "The Stables" but has provided contact details for him. He worked for Ms Hodges helping with the horses, and his girlfriend (now his wife) Miranda Kevern, who did not work for Ms Hodges, lived there with him. Andreas Perez was Ms Hodges tenant / employee through all this time (even though she was a tenant herself until 2006).
 - 4.8.5. When Ms Hodges first moved to Galamina she was the tenant of Eric Wastlund, the then owner (who has now returned to Sweden). She does not have a name for the au pair who was living in "The Stables" when she moved in to Galamina. She believes the au pair left in Summer 2004.
 - 4.8.6. The au pair did not work for Ms Hodges. The au pair was then working as a waitress at Danesfield House. She does not know if the au pair paid rent to Mr

Wastlund.

- 4.9. More information was again sought from the agent on 23 May. His reply in an e-mail dated 11 June 2012 he gives the following information:
- 4.9.1. Neither housekeeper occupied the property for more than 6 months. Their periods of employment were estimated at 3-6 months.
 - 4.9.2. The housekeepers lived independently of the family, and did not share any facilities in the main house or the use of the main garden.
 - 4.9.3. The property was not occupied by family members or guests when not occupied by the housekeepers.
 - 4.9.4. The tenants have not used an area within the residential curtilage to park – they use the concrete drive to the rear of the house leading to the equestrian yard. A plan has been provided which identifies the area in question.
 - 4.9.5. In the e-mail accompanying the parking plan, also dated 11 June, the agent confirms that “The Stables” has a separate oil tank to the house and that tenants were responsible for their own heating.
 - 4.9.6. A plan showing a red edge around “The Stables and its garden area has been provided.
 - 4.9.7. The applicant / agent are trying to obtain a statutory declaration from Mr Perez.
- 4.10. Evidence from the Council’s Council Tax records confirms that Galamina is in Band H and there is no separate record for “The Stables”.
- 4.11. There is no record of anyone being registered to vote at Galamina or The Stables since 2004, when two voters are recorded.
- 4.12. The only relevant planning history is the original planning permission for the garage. The microfiche of the plans for that permission is almost illegible, but it was possible to discern that it relates to the building referred to now as “The Stables”. The condition on that permission restricting its use requires it to be used in connection with and incidental to the occupation of Galamina as a private dwelling. It does not require the retention of the building for parking of vehicles. It prevents commercial, industrial or business use. The condition would not preclude use for residential purposes incidental to the occupation of Galamina.
- 4.13. The additional information sought from the applicant was requested to try and establish whether the residential occupation of the building has been as an independent unit or has been ancillary to the occupation of the house, and to establish whether the building has been occupied as an independent dwelling for a continuous four year period immediately prior to the making of the application.
- 4.14. An inspection of the property confirms that it could be occupied as an independent dwelling. The building is of brick construction under a tiled roof. Externally it retains a double garage door but this is cosmetic, not functional, as the wall behind is solid. The building has a small extension at its north end which is partly timber clad. The building has three doors and a number of windows to the ground floor, with rooflights in the rear

elevation which provide light to the first floor. On the ground floor there is a large living area. The boiler is situated in a cupboard on the east side of the building close to the kitchen. There is a separate kitchen which contains a cooker, microwave, dishwasher, washing machine and fridge and there is a kitchen sink. Access to first floor is via slatted wooden staircase from the lounge. A bedroom and bathroom are at first floor level within the roofspace.

4.15. From the submitted evidence the chronology of the occupation / use of the stables appears to be as follows:

- Pre 1999 – occupied as “granny annexe” by the then owners parents (Mr Tranter)
- ?1999 – 2004 – occupied by the au pair to the then owner, Mr Wastlund.
- 2004 – au pair left in summer, prior to which she was working at Danesfield House and had no connection with Galamina.
- 2005 – 2008 – occupied by Andreas Perez and his girlfriend. He was employed by Ms Hodges to look after her horses.
- 2008 – 2009 – two brief periods of occupation, of approximately 3-6 months each, by “housekeepers” who worked for Ms Hodges at Galamina.
- 16 September 2009 – John Julian Ivan signs 6 month shorthold tenancy.
- 24 November 2010 - Lacey Emptage and Chris Harris entered into an agreement to rent the property for a fixed term of 3 months. Vacated the property on 29 April 2012.

4.16. It would appear that the property known as “The Stables” was converted to residential use more than four years ago and prior to Ms Hodges first coming to live at the property in 2004. It would appear that it was at that time occupied by someone employed at the main dwelling. Since that time it has been variously occupied by someone working at Danesfield House, having no connection with Ms Hodges who was the tenant of the main house, then by someone employed by Ms Hodges in connection with the adjacent equestrian use, then for short periods by housekeeping staff, then by two tenants on a commercial basis.

4.17. This has included occupation as an independent dwelling as evidenced by the shorthold tenancy agreements, however these do not cover all of the relevant four year period. Immediately prior to these tenancies it was briefly occupied on a “house for duty” basis by staff employed at Galamina. Before this it was occupied by someone employed to care for the owner’s horses.

4.18. For the purposes of determining whether the building has been occupied as an independent dwelling continuously for 4 years prior to the application being made, the period between April 2008 and September 2009 is most critical. The applicant describes the period of tenure for the “house keepers” as “brief” and estimates that each housekeeper was there for between 3 and 6 months. This suggests occupation has not been continuous, however the building was not used for any other purpose whilst vacant and was not used by family or friends as guest accommodation.

- 4.19. The occupation of staff employed at Galamina could be considered ancillary to Galamina, however some case law also indicates that, where staff live entirely independently and their only connection to the main house is their employment, their occupation is not ancillary, it creates a separate unit. It is considered that the evidence submitted, of independent occupation by Mr Perez, two house keepers and two sets of tenants between 2008 and 2012 has demonstrated four years continuous occupation as an independent dwelling. As such a certificate can be granted for the use of the building and the associated external areas shown on the red edged plan submitted on 11 June, as a separate dwelling.
- 4.20. The alternative is to consider whether the property has been used for residential purposes ancillary to Galamina in breach of condition 2 of the permission for the garage continuously for more than 10 years (that condition only allowing for incidental, not ancillary use). Use by elderly parents as an annexe or for staff employed at the house accommodation could be considered to be ancillary to the occupation of Galamina, but would go beyond the definition of "incidental" which is the requirement of Condition 2 of the permission for the building. It is clear that the condition has been breached for more than 10 years prior to the making of the application, however that nature of that breach has changed over time. Whilst originally it was occupied as ancillary accommodation more recently it has been occupied as independent accommodation. It is therefore possible to certify that the condition has been in breach for 10 years.

Recommendation

- 4.21. That a certificate be granted for the use of the former garage building, known as "The Stables" as an independent dwelling.

Recommendation Agreed:

<p>Principal Planning Officer</p> <p>Date:</p>	<p>DC Team Leader</p> <p><i>C Power</i></p> <p>Date: <i>18/6/12</i></p>	<p>Head of Development Control</p> <p>Date:</p>
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