

Holmes & Hills LLP Solicitors
A12 Commercial Hub | 86 London Road | Marks Tey | Essex | CO6 1ED
T 01376 320456 | F 01376 342156 | DX 3610 Colchester
E mjh@holmes-hills.co.uk

Holmes & Hills

also at

Braintree, Halstead, Sudbury
Tiptree and Coggeshall

04 MAY 2023

Planning Department
Braintree District Council
Causeway House
Bocking End
Braintree
CM7 9HB

Your ref (TBA)
Our ref MJH/MC/HARDING 252479.0002
Date 2 May 2023

Dear Sirs/Mesdames

The Property/Application Site: The Building/Dwelling on Willowbrook Stables, Station Road, Earls Colne, Colchester CO6 2ER
Our Client: Ms Alexandra Harding
Re. Application for a Lawful Development Certificate for an Existing Use or Operation (Section 191 of the Town and Country Planning Act 1990)

On behalf of our client, Ms Alexandra Harding, we have pleasure in submitting an application for a Certificate of Lawfulness.

The application is supported by the Statutory Declaration of Ms Alexandra Harding and accompany Exhibit AH1 which comprises:-

- A site plan of the building on Willowbrook Stables, Station Road, Earls Colne, Colchester CO6 2ER.
- A copy of the Register of Title and registered Title Plan for Willowbrook Stables.
- The documents that comprise the Applicant's first application for a Certificate of Lawfulness in relation to Willowbrook Stables, Station Road, Earls Colne, Colchester CO6 2ER as a whole site – dated 23 June 2022.
- The documents that comprise the Applicant's application for Planning Permission for a "Change of Use (Retrospective) for Mixed Use of Residential Dwellinghouse (Use Class C3) with Ancillary Garden/Amenity Land and Paddocks and Stables" – dated 12 October 2022.
- Various documents (to include bills, invoices, payslips and letters etc.) evidencing the Applicant's continued occupation and residential use of the building since their first application for a Certificate of Lawfulness.

Partners: Mark Cornell, Jason Brady, Rebecca Mason, Steven Hopkins, Carol Toulson, Samuel Bawden, Philip Davies (*non lawyer*), Keeley Livingstone, Michael Harman, Beth Greig
Consultants: David Whipps, Michael Wright

Holmes & Hills LLP is a limited liability partnership registered in England & Wales under Registration Number OC352397. Registered Office A12 Commercial Hub, London Road, Marks Tey, Colchester, CO6 1ED
Authorised and regulated by the Solicitors Regulation Authority - SRA number 534489



8881849 Draft CLEUD Application Supporting Letter 02/05/23

Pursuant to Section 191 of the Town and Country Planning Act 1990 (as amended) the application seeks to confirm as lawful the use of the Building/Dwelling on Willowbrook Stables, Station Road, Earls Colne, Colchester CO6 2ER as a single dwellinghouse within Class C3 of the Town and Country Planning (Use Classes) Order 1987.

Background

The Council will be aware that the Government's Planning Practice Guidance provides advice on dealing with applications of this type. That advice states that *"in case of applications for existing use, if the Local Planning Authority has no evidence itself, nor from others, to contradict or otherwise make the applicants version of events less than probable, there is no good reason to refuse the application, provided that the applicants evidence alone is sufficiently precise and unambiguous to justify the grant of a Certificate on the balance of probability."*

It is acknowledged that the burden of proof is with the Applicant, our client. The standard of proof is, as above the "balance of probability" and is not the more onerous "beyond a reasonable doubt" applied in criminal law proceedings.

As this application concerns the use of a building as a residential dwelling the relevant period for this exercise is four years. In short, therefore, our client needs to demonstrate, on the balance of probabilities, that the use as a dwelling has existed for four years prior to the application and that there has been no material interruption in the claimed use.

Evidence in Support of the Application

On behalf of our client/the Applicant we believe that there is clear evidence that the building has been used a residential dwelling for more than four years as at the date of the application.

Statutory Declaration

Within her statutory declaration Alexandra Harding sets out the relevant history. Namely:-

- She purchased Willowbrook Stables in 2005.
- The building on Willowbrook Stables has been used as a residential dwelling since March 2017.
- To facilitate that residential use the then mobile home has been clad in timber, extended to the rear and with a raised deck. Those works were sufficiently material to confirm the status of the dwelling as a "building" given its size, permanence and degree of attachment to the ground. Namely, the building/dwelling could not be moved without dismantling and its characteristics (to include size etc) meant that it no longer was a "mobile home".
- She made a Certificate of Lawfulness application on 23 June 2022 for the existing use of Willowbrook Stables as a Class C3 residential dwelling.
- Whilst the Council did not grant a Certificate in response to this application the Delegated Officer noted in his report that they considered *"that there is sufficient evidence to prove beyond reasonable doubt that the use of the structure as a dwelling for the past 4 years is lawful. The main body of documentation covers a period over the last 4 years and a site visit confirmed that the set up and the visual appearance of the structure and garden area show day to day occupancy has taken place for some time."*
- She then made an Application for Planning Permission for *"Change of Use (Retrospective) for Mixed Use of Residential Dwellinghouse (Use Class C) with Ancillary Garden/Amenity Land and Paddocks and Stables"* but this application was also refused.
- Now, she is applying for a Certificate of Lawfulness of Existing Use or Development in respect of the residential use of the building only.



Previous Applications

The previous applications made by our client contain documentary evidence as to Ms Harding's use of the building as a residential dwelling, and further evidence is exhibited as part of this application in the form of bills, invoices, letters etc. from March 2022 to April 2023. In short, the new documents confirm that Ms Harding has continued to occupy the dwelling since her first (refused) Certificate of Lawfulness Application.

The Delegated Report for Application No. 22/1695/ELD

The Delegated Report for Application No. 22/1695/ELD accompanied the Decision Notice for the refusal of our client's first Certificate of Lawfulness application. The Delegated Officer noted on page 5 of this report *"that there is sufficient evidence to prove beyond reasonable doubt that the use of the structure as a dwelling for the past 4 years is lawful"*. This is of note, as (as mentioned above) the standard of proof for such an application is on the balance of probabilities and if the Officer has concluded that the residential use of the building meets the more onerous standard of proof beyond a reasonable doubt, there can be no disputing the use of the building as a residential dwelling in excess of 4 years.

The Officer went on to note that *"the main body of documentation covers a period over the last 4 years and a site visit confirmed that the set up and the visual appearance of the structure and garden area show day to day occupancy has taken place for some time"*. Further supporting the current application for a Certificate of Lawfulness in relation to the building/dwelling at Willowbrook Stables

The seminal case of *Secretary of State v Welywn Hatfield BC [2011] UKSC 15* supports our client's/the Applicant's case for a Certificate of Lawfulness limited to the dwelling (i.e. not the garden surrounding it). In *Welywn Hatfield* Lord Mance stated (at paragraph 17) that:

"...once a planning authority has allowed the four-year period for enforcement against the building to pass, principles of fairness and good governance could in appropriate circumstances, preclude it from subsequently taking enforcement steps to render the building useless".

In other words, having assessed that the building in question is lawful (for reason of having existed for more than 4 years without enforcement action) there is no reasonable or rational (i.e. lawful) basis upon which to deny the use of the building as a dwelling (i.e. Use Class C3).

It is, of course, surprising that the Council having found clear evidence of the dwelling being useful then going on to refuse the previous application for a Certificate of Lawfulness based on the use of the ancillary garden not having continued for ten (10) or more years – the Council could have exercised its powers under s191(4) of the 1990 Act to issue a Certificate in a revised form (i.e. limited to the dwelling/building only).

Conclusion

The use of the building on Willowbrook Stables as a dwelling has continued from March 2017 to present day without change, abandonment or extinguishment and should consequently be regarded as lawful on that basis.

Our client has exhibited more than sufficient evidence as part of her statutory declaration and previous applications that the building/dwelling has been occupied and used as a residential dwellinghouse for a period in excess of four years. Additionally, to the comments made by the Council themselves in the Delegated Report for Application No. 22/1695/ELD ascertain that, beyond a reasonable doubt, there is sufficient evidence to prove the use of the building on Willowbrook Stables as a dwelling for the past 4 years.



On behalf of our client, we do believe that there is sufficient evidence to demonstrate on the balance of probability that the building/application site has been used as a Class C3 dwellinghouse for 4 years or more as at the date of the application.

As such, a Certificate of Lawfulness in accordance with the provisions of section 191 of the Town and Country Planning Act 1990 should be granted. We therefore invite the Council to issue a Certificate in the form sought.

The above aside, if you require a reasonable change to the description of this application, please do kindly contact us to discuss.

Thank you for your attention and we look forward to hearing from you in due course.

Yours faithfully



HOLMES & HILLS LLP

