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Mr P Isbell  
Chief Planning Officer  
Mid Suffolk District Council  
Endeavour House  
Russell Road  
Ipswich IP1 2BX

19 May 2023  
My Ref: 2881

Dear Mr Isbell,

**Town and Country Planning Act 1990 Section 191**  
**Planning and Compensation Act 1991 Section 10**  
**Application for a Certificate of Lawful Use**  
**Use of building as dwelling**  
**Barn at Waldergrave Farm, Hartest, Suffolk, IP29 4EA**

I am instructed by Mr William Luttmann-Johnson to submit an application for a Certificate of Lawful Use.

The basis for this application is that the building shown edged red on the accompanying plan has been occupied as a dwelling for a period in excess of 4 years and therefore the use has become lawful through the passage of time.

David and Vanessa Adams, the applicants parents in law, have occupied the barn continuously as their sole and permanent residence since August 2003. The barn having been converted by the applicant in November 2002.

These facts are confirmed by the Statutory Declarations provided by the applicants, together with other Statutory Declarations provided by Anne Elizabeth Luttmann-Johnson, Catherine Mary Guiver, Catherine Linda Howard, Lucilla Jane Luttmann-Johnson, Natasha Margaret Vass, Torquil Silvanus Matthew Septimus Riley-Smith, William Luttmann-Johnson and William Robert Stanton.

The occupation as a barn as a separate dwelling will be confirmed by the Council's own Council Tax records.

The Courts have held that the relevant test of the evidence on such matters is "*the balance of probability*" and that the Local Planning authority (LPA) should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "*beyond reasonable doubt*". Furthermore, the Courts have held (*F W Gabbitas v SSE and Newham LBC [1985]*) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted.

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Planning Practice Guidance states that 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 LPA should proceed on the basis that neither the identity of the applicant nor the planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application.

A development, which does not have planning permission, becomes "immune" from planning enforcement action if no such action has been taken within certain time-limits. By virtue of section 171 (2) and (3) of the 1990 Act, a breach of planning control which has obtained immunity by the passage of time also becomes "lawful" for planning purposes. The time-limits for taking enforcement action are specified by Section 171B of the 1990 Act. Section 171 B(2) confirms that where there has been a breach of planning control consisting of the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

In this case, the occupation of the building as a dwelling has taken place for a period in excess of 4 years and so has become lawful through the passage of time.

The planning merits of the use are not relevant to the consideration of this application. The application can only be considered on the basis of whether the breach of the condition has been carried out for a period within which it has become immune from enforcement action having regard to the evidence provided.

The evidence submitted with this application clearly demonstrates that the occupation of the barn as a dwelling has become lawful.

Please do not hesitate to contact me should you require any further information or clarification on any matters.

Yours sincerely

Phil Cobbold BA(Hons) PG Dip MRTPI