

Design & Access Statement – Certificate of Existing Lawful Development

Applicant

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Ash Tree Barn
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Introduction

This Statement is submitted to support an application for a Certificate of Lawful Existing Development at the site known as Ash Tree Barn (previously Monks Green), Monks Green Farm, Mangrove Lane, Hertford, Herts, SG13 8QL.

By way of background, Planning Permission was granted on 9th December 2011, reference 3/11/1808/FP for the conversion and extensions and alterations to existing sheds to provide 6 live/work units.

Subsequently 12 units were developed but were not built in accordance with the approved plans and thereafter the approved plans were never implemented. The period of time is in excess of 4 years since the development was substantially completed.

On that basis, the development of the site would have become immune from enforcement action after a period of 4 years in accordance with section 171B(1) of the Town and Country Planning Act 1990.

Evidence

We refer to plans:

11/MGF/SC/01

11/MGF/SC/02

11/MGF/SC/03

Plan 11/MGF/SC/01

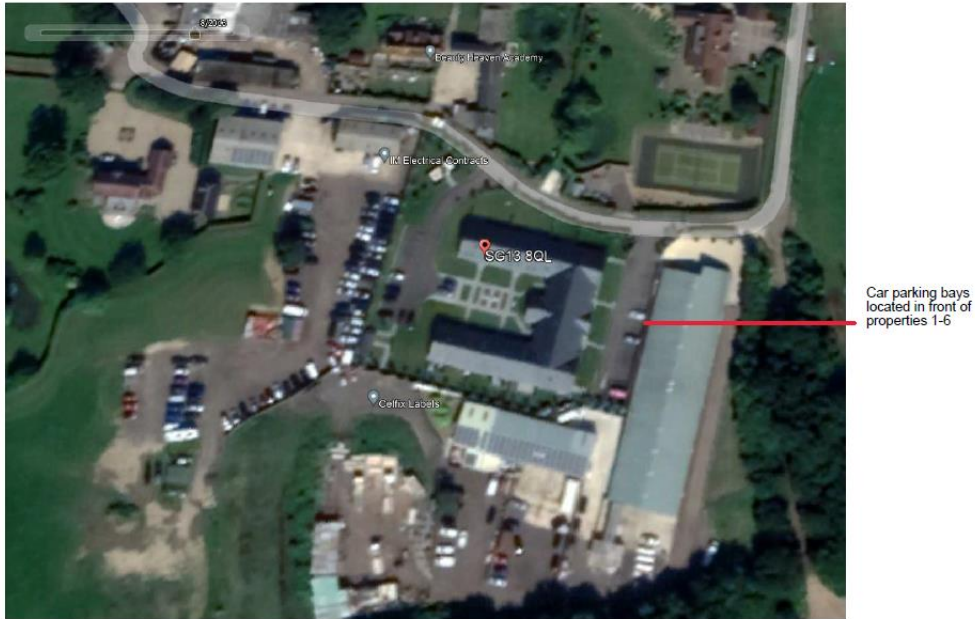
This plan shows the internal layout of 12 units which differs from the finished build and the drawings which were submitted with the building regs certificate. First floors were added to include bathrooms and bedrooms. The ground floor layouts differ as the kitchen areas have increased.

Plan 11/MGF/SC/02

This plan shows the external layout of the site. We wish to draw attention to the number of parking bays and their locations.

The refuse area also differs from the approved plan and a small building was erected which provides a secure room for the bore hole pumping control which was not shown on the original approved plans.

The overall size of the site increased from the approved site plan and we refer to a recent site plan submitted with this application, which shows the parking areas for properties now known as 1-6 Ash Tree. The original plan identifies 12 car parking bays which was increased to 18 bays. The extension of the site provides these parking bays and which borders on to another building with a fence dividing. See aerial photograph of 2013.



*HISTORIC AERIAL IMAGES: Ash Tree Barn, Monks Green Farm, Mangrove Lane, Hertford
(Obtained via Google Earth) 2013*

Plan 11/MGF/SC/03

This plan shows the approved elevations and roof plan. We draw attention to the height on this plan as 4m. The building regs submitted drawing shows a height of 5.25m, 1.25m greater than the approved plan which substantially increases the internal volume.

The roof velux windows were an addition and not shown on the approved plans. The windows, doors and finished materials are different.

NHBCs were submitted for all 12 units, dated February 2013 as were the final drawings showing how the building was completed.

The Council's Outside Officer inspected the site in October 2012 which confirmed completion. The Council have a record of this.

This leaves no doubt as to when the development was substantially completed.

In addition to the above, it is noted that officers have been aware of elements of change between that which exists and the approved plans.

Application 3/18/1663/CLE, here the officer's site visit confirmed the layout with living areas on the ground floor, fitted kitchens with white goods and bedrooms and bathrooms accessed via a staircase.

In applications 3/22/1919/FUL and 3/23/0272/FUL, the officer states that the existing landscaping and parking arrangements differ from the scheme approved under planning ref 3/11/1808/FP where the parking was proposed in front of units 1-6. The officer also refers to the internal layouts.

These officer comments identified changes to the approved plan which has led to further scrutiny of the approved plans and comparison with the building regs plans submitted and the building as it was built in 2012.

Summary

In summary, the evidence provided in this application is sufficient to establish that the balance of probabilities test has been applied. The development of the site does not accord within any planning permission granted in respect of the development and cannot be considered to fall within planning permission reference 3/11/1808/FP.

The Town and Country Planning Act 1990 s. 171B (1) states:

“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.”

In respect of case law and planning appeals, over time there have been numerous cases which could be quoted but this application relies on the following:

Sage v Secretary of State (2003)

Lord Hobhouse of Woodborough stated in the judgement:

“As Council for Mr Sage accepted, if a building operation is not carried out both internally and externally, fully in accordance with the permission, the whole operation is unlawful.”

Mr T Reynolds and Taunton Deane District Council (20th March 2017)

The Appeal Inspector stated:

“I conclude that, as a matter of fact and degree and on the basis of probabilities, the dwelling is likely to have been substantially completed in breach of the planning permission granted under Ref 10/2004/028, for a period in excess of four years prior to the date of the LDC application and so as to be immune from enforcement action. It cannot therefore be bound by the conditions contained therein.

The Council’s decision to refuse to grant a Lawful development Certificate was not well-founded. The appeal should succeed, and I will exercise accordingly the powers transferred to me under s195(2) of the 1990 Act as amended.”

Handoll and Others v Warner Goodman and Streat and Others (1995)

The Court of Appeal stated that:

“If a development has been carried out other than in accordance with the planning permission granted, it is unauthorised and unlawful, and therefore any conditions attached to the permission can have no effect upon it. It would be open to the planning authority to serve an enforcement notice to prevent any use of the unauthorised development. However,

once the time for enforcement had passed, the planning authority would be unable to enforce either the original permission or any conditions attached to it."

We would like to remind the Council that PPG states:

The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

In the case of applications for existing use, if a local planning authority has no evidence itself, nor any 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 evidence in the form of the building regs which were submitted to the Council in February 2013, along with the approved plans which were submitted under planning application 3/11/1808/FP, when comparing, clearly differ. During site visits, officers have noted differences between the approved plans and the site.

We wish to remind the Council that should they obtain information to contradict this application, as the PPG states, they are required to share it. However, in this case, both sets of plans and the actual site as it was built leaves no room for doubt. To quote the PPG, the evidence is precise and unambiguous to justify the grant of a certificate on the balance of probability.

To conclude, the building was substantially completed in October 2012, with the Council's Outside Officer signing off for occupancy to take place. The submission of the build regs certificate also supports this and confirms that the development was built in accordance with the drawings ref 11/MGF/SC/14, 11/MGF/SC/15, 11/MGF/SC/16, 11/MGF/SC/17, 11/MGF/SC/18, 11/MGF/SC/19, 11/MGF/SC/20, 11/MGF/SC/21, 11/MGF/SC/23, 11/MGF/SC/24, 11/MGF/SC/25, 11/MGF/SC/26, 11/MGF/SC/27.

The signing off by the Council's Outside Officer in 2012 and the submission of the building regs and plans in 2013, leaves no doubt as to when the building was substantially completed. Any enforcement proceedings which were put into force post February 2017 are invalid as the building is immune from enforcement action and no enforcement action exists predating February 2017.

The evidence presented is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability". With the time for enforcement now passed, the building is lawful and conditions which were attached to the original permission are no longer valid.