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*Planning Applications / Appeals / Enforcement / LDF*

Dear Sirs,

**Application made under Section 191 (1) of the 1990 Planning Act**

**Application seeking to confirm the lawful use of the property as an independent residential unit**

**The Chalet at Gate House, Gate Lane, Freshwater, PO40 9QT**

This property was constructed in 2010 and has been used on a consistent basis as a separate residential unit since first built up to the present day.

The building was granted planning consent in February 2010 under reference P/01842/09.

Condition 3 attached to the consent stated, *'The development hereby permitted shall not be occupied at any time other than for purposes that are incidental to the enjoyment of the main dwellinghouse known as Gate House.'*

***Grounds for the application***

Section 191(1) of the 1990 Planning Act advises that if any person wishes to ascertain whether a failure to comply with a condition is lawful and application may be made to the LPA.

As provided for within Section 191 (3) of the Act, concerning a failure to comply with a condition, such a breach is lawful if the time for taking enforcement action in respect of the failure has expired and it does not constitute a contravention of any enforcement or breach of condition notice in force.

The submitted application seeks to clarify that through the passage of time the development has become lawful.

The application and submitted information clearly show that, on the balance of probability, The Chalet has been used as an independent self-contained residential unit for a period exceeding ten years.

In respect of a breach of condition, the relevant time period for enforcement is ten years, thus if the use exceeds ten years of continuous activity, then enforcement action can no longer be taken.

Confirmation of the date of construction and continuing occupation as a separate residential unit is supplied with the application in the form of eight statutory declarations, three from the owners and their daughter who have occupied The Hut and five other individuals who had had first-hand knowledge of the use of the property throughout the relevant period. In addition, a letter from the son has been prepared and submitted.

In the case of such applications, 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 following evidence is provided:

- Statutory declarations from the owners and their daughter confirming continuous independent occupation for over the last ten years to the present time
- Statutory declaration from the son of Mary Hutchings confirming her occupation from 2010 to 2018
- Statutory declaration by the boyfriend of Lily Hutchings confirming her occupation
- Statutory declaration by the owner's friend (Andrea Entioldi) confirming that he installed the bathroom and kitchen in The Chalet in 2010 and new gas boiler in 2019 and confirming evidence of occupancy during subsequent visits
- Statutory declaration by a family friend (Nicola Moody) who confirms visiting Mary Hutchings during her lifetime between 2010 and 2018 and also visiting both Lily and Louis Hutchings in The Chalet
- Statutory declaration by a family friend (Antonia Plumptre) who confirms occupation of The Chalet by Mary Hutchings and Lily Hutchings
- Letter from Louis Hutchings confirming occupation between March 2020 and March 2021. He is unable to complete a statutory declaration as he is working overseas, and at sea.
- Receipt from Lushington Garden Buildings Ltd dated March 2010
- Invoices (2) dated May 2010 from MSM Plumbing and Heating Supplies Ltd
- Invoice dated June 2010 from SSE Power Distribution for new power supply for Annexe to Gate House

On this basis it is suggested that a Certificate of Lawfulness can be granted to confirm that the continued use of the property as an independent residential unit is lawful for planning purposes.

Yours faithfully,

**Paul Stack**