

South Glos Council  
PO Box 299, South Gloucestershire,  
BS15 0DR

Our ref: PR02394

Date: 08 February 2024

**Sent via e-mail**

Dear Sir/Madam,

**Town and Country Planning Act 1990**

**Certificate of lawfulness for existing residential dwelling**

**Wychwood, Church Road, Rudgey, Bristol, BS35 3SH**

I write on behalf of our client, Martin Lally, in support of an application for a certificate of lawful development. The certificate seeks to establish that the existing building is lawful development under Section 191 of the Town and Country Planning Act 1990.

We attach the following documents:

- Site location plan;
- Site plan;
- Statutory declaration signed by Mr Martin Lally;
- Statutory declaration signed by previous owners;

CLEUDs are provided for under Part VII of the Town and Country Planning Act 1990 (as amended) with s.191 relating to existing uses/developments and s.192 referring to proposed use or development.

Under the provisions of s.191(1) any person wishing to ascertain whether an existing use of buildings or other land is lawful or whether any operations which have been carried out in, on,

over or under land are lawful can make an application for a certificate of lawful use. In this regard, paragraph 2 of s.191 states the following:

*"No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission, or because the time for enforcement action has expired or for any other reason)."*

### **Planning history and current use**

The property had an agricultural tie in association to planning permission SG6180 granted on the 23<sup>rd</sup> November 1961, which had a condition by the following wording: -

*"The occupation of the dwelling shall be limited to the persons employed or last employed locally in agriculture as defined by section 119(i) of the town and country planning act 1947 or in forestry and the dependants of such persons."*

We know that from the 31<sup>st</sup> August 2007, when the previous owners purchased the property it was only used as a residential home and that neither of the previous occupants worked in agriculture or forestry, this is confirmed in their statutory declaration which has been submitted with this application.

The property was then purchased by the applicants, Mr and Mrs Lally on the 25<sup>th</sup> November 2011 and it then became their residential home. It has been their residential home for the period 2011 to present. Neither Mr or Mrs Lally have worked in the agricultural or forestry industries as is confirmed in their statutory declaration which has been submitted with this application. The property has been in continual residential use for more than 10 years which now means the property should be exempt from any enforcement action against condition E of planning permission SG6180.

### **Relevant case law**

The onus is placed on the applicants to prove, on the balance of probabilities, that the Certificate of Lawfulness should be granted. This was confirmed in the case of *F W Gabitas v Secretary of State for the Environment and Newham Borough Council* (1985), where the court held that the applicant's own evidence need not be corroborated by "*independent*" evidence in order to be accepted.

With reference to the balance of probabilities, In the case of *Re H and Others (Minors) (A.P) (Respondents)* (1996), Lord Nicholls explained that the balance of probability test was a flexible one, stating, "*The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was **more likely than not**. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the*

*court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury... The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established."*

In *Miller v Minister of Pensions* [1947] 2 All ER 372, Denning stated that, "If the evidence is such that the tribunal can say 'we think it more probable than not' the burden is discharged, but if the probabilities are equal, it is not." Expressed in percentage terms, if the conclusion is reached that it is 51% likely that a Certificate of Lawfulness should be granted, then, by the balance of probabilities, it should be granted.

### **Review of evidence submitted.**

In accordance with s171B(2) of the Town and Country Planning Act 'Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.'

The time to establish lawful development is therefore 4 years for a residential dwelling as confirmed by the Supreme Court ruling *First Secretary of State v Arun District Council and Another*: CA 10 Aug 2006 ([2006] EWCA Civ 1172).

### **Conclusion**

The evidence provided is sufficient to demonstrate on the balance of probabilities that the building has been used as a dwelling in breach of the agricultural occupancy condition since 2007 and residential use by persons not employed in agriculture or forestry is therefore lawful.

The planning fee has been paid via the Planning Portal. If you have any further queries, then please do not hesitate to contact me.

Yours faithfully,

**Stokes Morgan Planning Ltd**