

Mark Leedale Planning
Chartered Town Planning Consultants

The Head of Planning
Hart District Council,
Civic Offices,
Harlington Way, Fleet GU51 4AE

Our Ref: LR/15/198
15th February 2024

Dear Sir,

Frayle House, Hillside, Odiham RG29 1HX

I enclose, on behalf of my Client, Nick Foster, an application under s.191.

This establishes:

1. That a building which is identified in the submitted particulars has been substantially complete for a period in excess of 4 years.
2. On this basis the identified building is lawful under the terms expressed in s.171B of the Act.

Planning and construction history

Planning permission for an extension to the dwelling was granted on 16th December 2010 under Council reference 10/02669/HOU. There are no limiting conditions on the permission which is described as:

Proposal: Erection of two storey extension to South West facade comprising of extended kitchen / dining and family area to ground floor with extended bedroom space to the first floor. Removal of tile cladding to front of dwelling with matching facing brickwork re-built in place of the existing blockwork structure.

Single storey utility link extension between house and detached garage to South East facade. Remodelling of existing conservatory to the rear of the dwelling.

It is clear from the decision and records made available to me that the relevant drawings include:

174/010
174/006
174/008
174/008

These drawings describe the proposed works.

From records made available to me the Building Regulations submission was made under reference 11/00223/MULFP. The description of the works refers to the same development as was granted planning permission and the record states:

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“Building works complete” with the date of 12th May 2011.

There have been no other applications for planning permission on the site.

It is clear from inspection and the submitted particulars that there is a further extension to the building comprising a single storey element to the rear (north) of the 2010 garage and it is to this which this application relates in establishing that this is lawful by reason of the time limit following substantial completion.

Evidence

The applicant presents the following evidence to establish that the hardstanding and land use are lawful, under the meaning expressed in the Act.

1. Statutory declaration from Nicholas Foster, the owner
2. Statutory declaration from Paul Faraday, the project manager of construction.
3. An electrical completion Certificate.
4. Aerial photographs.
5. Drawings MLP/01-05 inclusive.
6. Photographs of the relevant building.

These documents variously support the matters set out in the statutory declarations in so far as they identify the relevant building.

The test of the evidence

S.171B(1) of the Act sets out time limits and for ease of reference this states:

(1)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.

The position is that the subject building must have been substantially complete for this period (four years) at the time of the application submission. This would be 15th February 2020 as the effective date.

The Circular (10/97) has been cancelled by the published Planning Practice Guidance (PPG). Nevertheless, you will be aware of the principles in the Circular at paragraph 8.12 of Annex A to the Circular 10/97 stated:

In many cases, the applicant for a certificate will be best placed to produce information about the present, and any previous, activities taking place on the land, including a copy of any planning permission he may hold. Some information, especially about the history of any unauthorised activity on the land, will be peculiarly within the applicant's knowledge.

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In this case, the site is not subject to any public access and it cannot be seen from any public vantage point. As such the applicant's evidence must be treated accordingly, unless another party has an alternative version of events, which would cast doubt on these submissions.

The PPG details the test of the evidence as follows:

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.

In this case, the applicant has intimate knowledge of the building and this alone is a matter in favour of the granting of the Certificate. His evidence is consistent and there is no ambiguity.

There is no requirement for the evidence to be wholly definitive and the local authority must issue a Certificate, unless it has contrary evidence of its own which would contradict the applicant's version of events. We respectfully suggest that the "balance of probability test" is well founded and made.

In this case it is clear from the Aerial images that the subject building was not present in 2018 and it is clearly shown with the roof intact in April 2020. This pre-dates the application submission by some two months and the balance of probability test, along with the other evidence, shows that it satisfies the test of s171B(1).

The interpretation of substantially complete is taken as follows:

...it occurs when the contractual conditions for completion of the construction obligations have been met and the owner is able to take possession or assume beneficial use and occupancy of the project.

In this case the electrical certificate confers that the final fix has taken place and satisfies the Regulations so it can be used. In practical terms this is the last act of construction and the roof and walls would be completed to enable effective use of the building.

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In light of the submitted particulars we assume that a Certificate will be issued and if there is any other matter on which I can assist, please let me know.

Yours faithfully,

[Redacted signature]

Mark Leedale.

cc Clients

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[Redacted contact information]

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