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**CHARTERED
TOWN PLANNER**

Planning and Building Control Division
Chichester District Council
East Pallant House
Chichester
PO19 1TY

Wednesday, 27 March 2024

Dear Sir/Madam:

Re: Byways, Church Farm Lane, East Wittering

Certificate of Lawfulness of Existing Use

Change of use of building to use as a Single Dwellinghouse

Introduction

I have pleasure in enclosing the above application for the change of use of an outbuilding at Byways, Church Farm Lane, East Wittering to use as a separate dwellinghouse in the parcel of land edged red on the plans enclosed. The application is submitted under the provisions of section 171B(2) – for the “*change of use of any building to use as a single dwellinghouse*”.

In determining whether a building comprises a dwellinghouse, paragraph 2.81 of Circular 10/97 makes the following relevant statement:

“Where a single, self-contained set of premises comprises a unit of occupation, which can be regarded as a separate “planning unit” from any other part of a building containing them; are designed or adapted for residential purposes, containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse; and are used as a dwellinghouse, whether permanently or temporarily those premises can properly be regarded as being in use as a single dwellinghouse for the purposes of the Act.”

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In this case the compelling evidence – in the form of sworn statements backed up by documentary evidence - demonstrates that the premises subject of this application:

Comprises a single, self-contained premise;

Is a single unit of occupation;

Is designed for residential purposes; and

Contains all of the normal facilities for cooking, eating and sleeping.

It is accepted that the onus of proof is on the applicant, although as confirmed in *F W Gabbitas v SOS & Newham LB*[1985] JPL 630 an applicant's own evidence does not have to be corroborated by independent evidence.

Background

The background is that in 2013 the owners of Byways obtained a Certificate of Lawfulness of Proposed Use or Development to "Construct a new ancillary residential building to be used as a double garage and hobby room" under council reference EWB/ 13/00719/ELD. That building was completed by February 2015. It was then used for purposes incidental to Byways.

Works to adapt part of the building commenced in October / November 2015 but the building continued to be used incidental to Byways with a gym and for storage.

Further works commenced in the summer of 2016 and these works were to convert it into a self contained dwelling. It was occupied by the applicant's son and now wife on 1st April 2017 and has been continuously occupied by them since that date. At that time it was fenced off from Byways so it has its own curtilage.

As converted it comprises a 2 bedroomed dwelling with one bedroom ensuite; a bathroom; and a combined kitchen / dining room / living room. It provides all of the facilities that are necessary to allow day to day living.

The Relevant Time Period

The starting point in the 1990 Act for consideration of this issue is section 55(1), which identifies two forms of development subject to control by the Act: operational and change of use. It provides so far as material:

"..in this Act, except where the context otherwise requires, 'development' means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land."

Section 171B provides two different time-bars for enforcement action for 'breach of planning control' according to different forms of breach whether in the form of impermissible development or for failure to comply with a condition to or limitation on permitted development. In summary, it provides: a time-bar of four

years from substantial completion of works for breach by way of operational development; four years from breach for one particular category only of change of use, namely "of any building to use as a single dwelling house"; and ten years from breach for "any other breach of planning control".

Section 171B reads as follows:

"(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.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of four years beginning with the date of the breach.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach...."

In his report, Robert Carnwath recommended (para 3.17) that "the general period of immunity be 10 years", with no change to the four year rule categories other than to revoke an express provision in section 87(4)(b) of the amended 1971 Act providing for a four year period for breach of conditions relating to operations. His recommendation of removal of operations conditions (para 3.12), but not change of use to single dwelling house conditions, from the four year time-bar appears to have been prompted by complications in the application of the four year period to breaches of conditions exemplified in *Peacock Homes Ltd v Secretary of State* [184] JPEL 729, CA, leading him observe in paragraph 3.12 of his report:

"I would not make any change to the 4 year categories, other than to revoke the paragraph [section 87(4)(b) of the 1971 Act] dealing with conditions relating to operations..."

Robert Carnwath's recommendation was implemented by the Planning and Compensation Act 1991 ("the 1991 Act"), resulting in the new provisions, sections 171A and 171B in an amended 1990 Act. Those new provisions effected in simpler form (but for breaches of condition on operational development) the 1971 Act, as amended, which had, as I have said, expressly articulated the application of the four year rule to failure to comply with a condition preventing a change of use to use as a single dwelling house. This appears to have been the view of the Government in paragraph 9(2) of Circular 17/92, explaining the changes in enforcement provisions made by the 1991 Act, and again in Circular 19/97 "Enforcing Planning Control", Annex 2, para 2.4, stating that section 171B(2):

".. applies either where the change of use as a single dwelling house involves development without planning permission, or where it involves failure to comply with a condition or limitation subject to which planning permission has been granted"

It must therefore follow, in the present case, that the relevant part of the Act is s171B(2) and accordingly the relevant time period is four years – ending on the date of the application for lawfulness being made.

The Facts of this Case

The primary evidence is that of Mr Doug Griffith – contained within his Statutory Declaration - is that in 2013 they obtained a Certificate of Lawfulness of Proposed Use or Development to “Construct a new ancillary residential building to be used as a double garage and hobby room” under council reference EWB/13/00719/ELD.

Works on the outbuilding commenced in March 2014 and it was completed in early 2015. Whilst there were a few minor changes to the fenestration and internal layout of the building he did not consider that those mattered as it was not a planning permission that they obtained and the use remained incidental to the main house.

He attaches a floor plan of the building as completed at DG2 and its location is cross hatched on the plan at DG1. It had a concrete floor throughout, but had insulated external walls. Receipts for the base works; OSB for the structural timber walling; windows; and the garage door which he recalls was the final item in February 2015 are attached at DG3. It was completed in February 2015. He states that as completed, the building had a main machinery store area with a gym to one side and a store for canoes and surf boards the other side.

He continues by stating that at that time their son, Andrew, lived with them in their property, Byways, and he was 27 years old when the building was completed. A lot of the items stored in the building were his and he would be in the building most days. He thinks from this that their son felt it would be much better if he had his own independence and he asked them if it could be converted so he could live in it and be independent. They agreed to this and commenced works on converting the building in November 2015.

At paragraph 5 he makes clear that they undertook the works slowly due to time and cost restraints. First, he insulated the loft; installed the heating pipes; and plasterboarded the walls and fitted a bathroom. This was in October / November 2015 and he attaches receipts for those works at DG4. At this time, he confirms that the building continued to be used with a gym and for storage – ie for purposes incidental to their dwelling.

Due to finance issues, works then stopped at the end of 2015 and did not recommence until the summer of 2016 with the fitting of a gas boiler in June 2016; lighting in September 2016; kitchen units, white goods and shower door in late December 2016. He attaches receipts for those works/items at DG5.

The then states that works were completed in March, a fence was erected to split the building. Parking area and garden from their house and garden and their son and his [then] girlfriend, Emma, moved into it on 1st April 2017.

He then states that their son and partner and now married and that their grandson was born on 15 March 2021.

At DB6 he attaches a floor plan of the building as converted and he confirms that this has been its layout since the end of March 2017 to the present day.

He concludes his Declaration by confirming that since 1st April 2017 the converted outbuilding dwelling has been continually occupied by their son and now daughter-in-law. They have all the facilities they require to live wholly independently from his wife and him and that they are not dependant on them, nor are he and his wife dependant on their son and daughter-in-law for anything..

Additional statutory declarations have been provided by Joyce Griffith [wife of Doug Griffith] and by Andrew Griffith [their son] and Emma-Gael Griffith [their now daughter-in-law].

These additional Declarations confirm the Declaration of Doug Griffith to be accurate and true and both Andrew and Emma-Gael confirm that they have the subject building contains all the facilities for day to day existence; and, has been continuously occupied by them.

All parties confirm that there is no dependency between either property.

Conclusions.

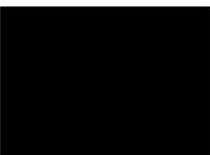
The evidence demonstrates on a compelling basis that the outbuilding was completed in February 2015 and then had a change of use from incidental use to Byways to a separate dwellinghouse on 1st April 2017 and has been in such a use ever since – for a period of nearly 8 years – well in excess of 4 year period that is required to be demonstrated.

Occupation has been continuous since 1st April 2017. The property has its own curtilage – separate from that of Byways – and there is no dependency between either property.

The relevant test, namely, on the balance of probability, has been well exceeded by both the Statutory Declarations themselves which are clear and unambiguous, and also by the documentary evidence.

The certificate for the change of use of the outbuilding to use as a separate dwellinghouse should therefore be issued.

Yours sincerely,



STEPHEN JUPP
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Chartered Town Planner