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Supporting Statement

Land north of Mill House, Rowfant, West Sussex

CLIENT: MR BEN ASHMORE

December 2024
JB/HM/LS/31673



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1 INTRODUCTION

1.1 OVERVIEW

- 1.1.1 This Supporting Statement is submitted on behalf of our client, Mr Ben Ashmore, in support of a Lawful Development Certificate ('LDC') application pertaining to the use of existing buildings as 2no. residential dwellings (Use Class C3) on land at Mill House, Rowfant, RH10 4TB. These dwellings are hereafter referred to as 'Dwelling 1' and 'Dwelling 2'.
- 1.1.2 A Lawful Development Certificate is requested to establish that the use of land and operational development carried out is lawful by virtue of time, in accordance with Section 191 of the Town and Country Planning Act 1990.
- 1.1.3 The application is therefore described as such:

"Application made under Section 191 of the Town and Country Planning Act 1990 to establish the lawfulness of 2no. independent residential dwellings (Use Class C3) and associated operational development".

1.2 LEGISLATIVE BACKGROUND

- 1.2.1 Section 191 of the Town and Country Planning Act (TCPA), as amended, states that if any person wishes to ascertain whether any existing use of buildings or other land is lawful; or any operations which have been carried out in, on, over or under land, are lawful; or any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, they are able to make an application to the local planning authority specifying the land and describing the use or operation in question.
- 1.2.2 The local planning authority in this case is Mid Sussex District Council (MSDC).
- 1.2.3 If MSDC is provided with information satisfying them of the lawfulness at the time of the application of the use, or of a description modified by MSDC, they shall issue a certificate to that effect.
- 1.2.4 Section 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 sets out the determination procedure for a lawful development certificate. It states that any such application must be accompanied by:
- A plan identifying the land to which the application relates, drawn to an identified scale and showing the direction of north;
 - Evidence verifying the information included in the application as the applicant can provide; and

- A statement setting out the applicant's interest in the land, the name and address of any other person known to the applicant to have an interest in the land, and whether any such other person has been notified of the application.
- 1.2.5 The National Planning Practice Guidance (NPPG) states that in the case for applications for existing development, 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.
- 1.2.6 A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application process.
- 1.2.7 Section 171(5) of the TCPA provides further guidance and states that a Lawful Development Certificate for an existing use must specify the land to which it relates; describe the use, operations or other matter in question; give the reasons for determining the use, operations or other matter to be lawful; and specify the date of the application for the certificate.
- 1.2.8 In accordance with these requirements, the following documents are submitted:
- Site Location Plan (via the Planning Portal);
 - This Supporting Statement, describing the use in question and the reasons as to why the building operations and use described herein are lawful by virtue of time;
 - Drawings of all buildings included within the scope of this application:

DOCUMENT TITLE	AUTHOR
Site Plan	Applicant
Floor Plan	Applicant
Front, Side and Rear Elevations	Applicant

- Supporting evidence, comprising:

DOCUMENT TITLE	AUTHOR
Statutory Declaration from the Applicant and occupant of Dwelling 1	Mr Ben Ashmore
Statutory Declaration from an occupant at Mill House	Mrs Sarah Ashmore

Statutory Declaration from the tenant of Dwelling 2 Mr James Treserders

1.3 INTEREST

- 1.3.1 The Applicant is the legal owner of the land in question. No other parties have a freeholder or leasehold interest in the land.

2 SITE BACKGROUND

2.1 SITE DESCRIPTION

- 2.1.1 This application relates to two independent residential dwellings located on land to the north of Mill House on Old Hollow, Rowfant. The dwellings are outlined in red in **Figure 2.1** below, with their respective curtilages outlined with a dotted line.
- 2.1.2 The two dwellings are accommodated within single storey buildings located on land previously owned by Mill House, although the land is now owned by the Applicant. Dwelling 1 is located in the position of a former stable building and adjoining tack room. Dwelling 2 is contained within a building formerly used as a workshop and storage space. There is also a small ancillary outbuilding which has been constructed immediately adjacent to Dwelling 1.
- 2.1.3 Access to the dwellings is taken via a shared driveway leading from Old Hollow to the south, which diverts westward to serve Mill House.



FIGURE 2.1 - SITE LOCATION

2.2 USE

- 2.2.1 This application seeks to regularise the use of land for residential purposes, under Use Class C3 – Dwellinghouses, as defined in the Town and Country Planning (Use Classes) Order 1987, as subsequently amended.

- 2.2.2 Works to create Dwelling 1 were completed in November 2020 and the building has been occupied by the Applicant, his partner and his child until the present day. The house contains a large kitchen/dining room, living room, bedrooms and bathroom. Externally, the house benefits from a private garden which is bounded by a perimeter fence.
- 2.2.3 Separately, works completed on an unattached utility storage building to the east of the building in 2023. These works fall outside the scope of this application.
- 2.2.4 Dwelling 2 was converted into a self-contained residential dwelling (Use Class C3), beginning in 2008 but as a fully self-contained unit completing in June 2013. In June 2013, a lease was agreed with James Tresadern who has been occupying the building as his principal dwelling for a continuous basis until the present day. The building contains a living room, kitchen, two bedrooms and a shower/cloakroom. Externally, the house benefits from a private garden which is bounded by a perimeter fence.

2.3 RELEVANT PLANNING HISTORY

- 2.3.1 An application for a Lawful Development Certificate for Proposed Use or Development was submitted under reference 08/00094/LDC in January 2008 to ascertain whether the demolition of the buildings and the erection of ancillary accommodation in the site of Dwelling 1 would fall under the scope of householder permitted development rights¹. The application confirmed that the intended use of the replacement building was for ancillary accommodation, comprising a 'day room', toilet, and study, as shown in **Figure 2.2** below. The operations proposed in the certificate were never implemented.

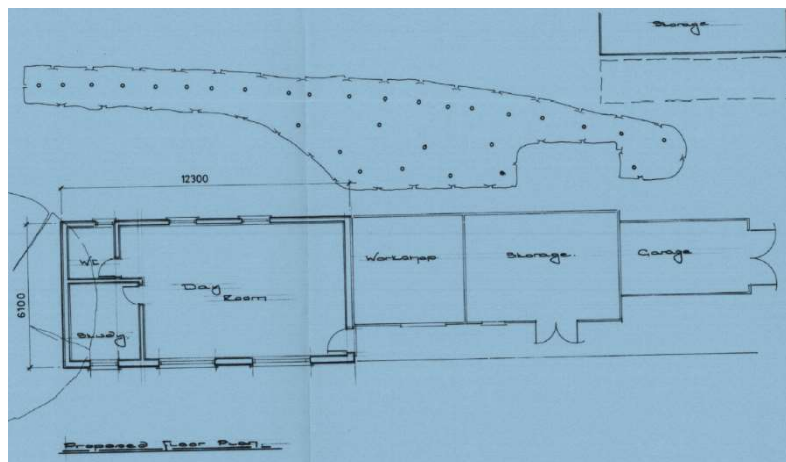


FIGURE 2.2 – FLOOR PLAN PROPOSED UNDER 08/00094/LDC

¹ Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended

- 2.3.2 A second relevant planning application is planning permission reference DM/16/5524 which proposed a first-floor extension to an existing single storey extension to Mill House which now falls under separate ownership.
- 2.3.3 In addition to the extension, the original application sought planning permission for the construction of a new single storey annexe outbuilding following the demolition of the existing outbuildings. However following discussions with MSDC the proposed annexe was withdrawn from the application and permission was granted for the extension to the house only.



3 LEGISLATIVE ASSESSMENT

3.1 SUMMARY

- 3.1.1 Section 191(2) of the TCPA states that uses and operations are lawful at any time if:
- a) No enforcement action may then 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); and
 - b) They do not constitute a contravention of any of the requirements of any enforcement notice then in force.
- 3.1.2 These considerations are discussed below in turn.

3.2 TIME LIMITS FOR ENFORCEMENT ACTION

- 3.2.1 Time limits for enforcement action are set out in Section 171B of the TCPA which were recently updated by the Levelling-up and Regeneration Act 2023 and put into force by the Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024.
- 3.2.2 Where it relates to operational development or the use of a building as a single dwelling house substantially completed before 25th April 2024, no enforcement action may be taken after the end of the period of 4 years, beginning with the date of the breach. It is therefore necessary for the application to demonstrate that the buildings have been occupied as two independent dwellings on a continuous basis over this period of time.
- 3.2.3 Statutory declarations have been submitted by the Applicant and occupant of Dwelling 1, the tenant of Dwelling 2 and an occupant of Mill House, which confirm that:
- Dwelling 1 was substantially completed and occupied in November 2020. It has been occupied on a continuous basis with no break over a period of 4 years to the present day by an individual household.
 - Dwelling 2 was substantially completed and occupied as an independent dwelling for an individual household in June 2013. There has been no break in residency until the present day, thereby covering a total period of over 11 years.

- 3.2.4 It can therefore be demonstrated without any doubt that the use of Dwelling 1 and Dwelling 2 as independent dwellings exceeds the time limits for enforcement action set out in the aforementioned regulations.

3.3 ENFORCEMENT ACTION

- 3.3.1 A review of the MSDC Planning Register has revealed that there have been no Enforcement Notices or other formal enforcements placed on the property relating to the subject use, nor any operational development within the site boundary.
- 3.3.2 The proposal does therefore not constitute a contravention of any of the requirements of any enforcement notice then in force in accordance with Section 191(2)(b).

3.4 OTHER RELEVANT CONSIDERATIONS

Whether the buildings can be regarded as a dwellinghouse

- 3.4.1 There is no statutory definition of what constitutes a dwelling house. However, in *Gravesham BC v SSE & O'Brien* [1982], the Secretary of State confirmed that a distinctive characteristic of a dwelling house is its ability to afford to those who use it the facilities required for day-to-day private domestic existence.
- 3.4.2 This is reflected in Circular 10/97 (albeit no longer in force) which states that where a single, self-contained set of premises comprises a unit of accommodation, which 1. can be regarded as a separate 'planning unit' from any other part of a building containing them; 2. are designed and adapted for residential purposes, containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse; and 3. are used as a dwelling, whether permanently or temporarily, by a single person or more than one person living together.
- 3.4.3 The submitted documents demonstrate that Dwelling 1 and Dwelling 2 contain all of the facilities required for independent living, including a clearly defined area of curtilage separate from each other and from other nearby dwellings. The dwellings have no reliance whatsoever on Mill House and are occupied by two separate households.
- 3.4.4 In *Burdle & Williams v SSE & New Forest RDC* [1972], the inspector concluded that a planning unit should be determined by identifying the unit of occupation and whether there is a physical and/or functional separation of primary uses as a matter of fact and degree. The judge provided three categories for consideration:

TEST	RESPONSE
<i>1. A single planning unit is where the unit of occupation is used for one main purpose and</i>	Dwelling 1 and Dwelling 2 are occupied by two independent households, comprised of the

<i>any secondary activities are incidental or ancillary.</i>	Applicant and his family (Dwelling 1) and Mr James Tresadern. The dwellings are not reliant upon each other or any other nearby dwelling for any day-to-day use and facilities. The use of these dwellings is not secondary to another property.
<i>2. A single planning unit can be one that is in a mixed use because the land is put to two or more activities but it is not possible to say that one is ancillary or incidental to another.</i>	Dwelling 1 and Dwelling 2 are two separate units of independent accommodation and are clearly recognised by separate front doors and clearly defined rear garden areas. The question of whether the uses are incidental to Mill House is discussed further below. It can be concluded that the uses are not incidental.
<i>3. The unit of occupation comprises two or more physically separate areas that are occupied for different and unrelated purposes. In such a case, each area used for a different main purpose, together with its incidental activities, ought to be considered as a separate planning unit.</i>	Dwelling 1 and Dwelling 2 are two separate units occupied by two individual households. The accommodation and rear garden areas are unrelated to each other and are physically separated by boundary walls and fencing.

Whether the buildings can be regarded as incidental or ancillary to Mill House

- 3.4.5 In light of Test 2 outlined above, it is relevant to consider whether the two units of accommodation can be considered incidental or ancillary to Mill House given the historical ties to the property and previous use of land. The assessment of Dwelling 1 and Dwelling 2 within this context will differ slightly as Dwelling 1 was created through the use of building operations, whereas the Dwelling 2 was created through the conversion of an existing building.
- 3.4.6 There is no legal definition for 'incidental' and 'ancillary' in planning legislation. However, in a residential context, the Government's Guidance titled 'Permitted Development Rights for Householders: Technical Guidance' makes it clear that a "*purpose incidental to a house would not...cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.*" By comparison, an ancillary use is generally considered to include some elements normally integral to a dwelling such as those facilities listed above.

Incidental Use

- 3.4.7 The submitted evidence demonstrates that the building operations carried out in the creation of Dwelling 1 facilitated the introduction of a self-contained unit of accommodation providing primary accommodation for the Applicant and his family. It can therefore be concluded, in line with Government guidance outlined in paragraph 3.4.6, that the dwelling is not an incidental use.

- 3.4.8 This is of particular relevance to Dwelling 1 which replaces the original outbuilding. The erection of a building within the curtilage of dwellinghouse for a purpose that is incidental to the enjoyment of that dwelling house would normally fall under the scope of permitted development rights provided by Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (hereafter referred to as the 'GDPO'). The facilities contained within the building are not incidental and therefore do not fall within the scope of permitted development rights as it comprises an independent dwelling.
- 3.4.9 It should be noted that through the determination of the 2008 application, MSDC considered the principle of replacing the pre-existing outbuilding with a replacement building for ancillary accommodation to fall within the scope of Class E. However, the replacement building in that case did not include the provision of a self-contained unit of accommodation, only a 'day room', toilet and study.

Ancillary

- 3.4.10 In considering whether Dwelling 1 is ancillary to Mill House, of particular relevance to this assessment is appeal reference APP/X1545/X/22/3313618, relating to the use a former outbuilding as an independent dwelling occupied by those with a family link to an adjacent house. A copy of this decision is contained at **Appendix 1**.
- 3.4.11 In the determination of the application, the Local Planning Authority had contended that the family link between the occupant and the occupant of the original host dwelling meant that the building was used as annexe and not an independent home. However, the Inspector concluded that:
- *The unit in question had all of the necessary facilities to allow the occupants to live separately.*
 - *The unit was physically separate from the main dwelling by a reasonably large amount of garden space.*
 - *The unit had its own vehicle access and a boundary fence that had been erected between the two garden areas.*
 - *The layout of the site, the separate access and the defined boundary plots indicates two separate planning units. This was considered further compounded by facilities contained therein, allowing the occupants to live independently without any reliance on the main property in terms of access or facilities.*
 - *The occupants had their own pets, bins, home insurance as well as there being independent services and utility meters, which all supports their claim of independent use. There was no indication that the occupants were reliant on the original main house in their day-to-day activities. The submitted evidence specifically outlines that he only visits his parents on social occasions.*

- 3.4.12 It is clear therefore that the level of separation and independence from the main dwelling is the pertinent question in determining whether or not a unit of accommodation is ancillary. The same conclusions can be applied to the use of Dwelling 1. The two dwellings share their own water, electricity and sewage separate from Mill House. The gas supply and phone line are separate to each dwelling.
- 3.4.13 The question of whether the use of Dwelling 2 is incidental or ancillary to Mill House is not relevant. Dwelling 2 has been leased for a period of over 11 years to an individual party who has no association whatsoever with Mill House.

4 SUMMARY AND CONCLUSION

- 4.1.1 This Supporting Statement is submitted to accompany a Lawful Development Certificate ('LDC') application pertaining to the use of an existing building as 2no. residential dwellings (Use Class C3) on land at Mill House, Rowfant, RH10 4TB.
- 4.1.2 The application is submitted on behalf of the applicant, Mr Ben Ashmore.
- 4.1.3 A Lawful Development Certificate is requested to establish that the use of land and operational development carried out is lawful by virtue of time, in accordance with Section 191 of the Town and Country Planning Act 1990. The application is therefore described as such:

"Application made under Section 191 of the Town and Country Planning Act 1990 to establish the lawfulness of 2no. residential dwellings (Use Class C3) and associated operational development".

- 4.1.4 A package of evidence has been submitted to support the application which demonstrates that the use of the buildings and associated building operations exceed the 4 year time limits for enforcement action.
- 4.1.5 The dwellings are physically and functionally separate from each other and from the nearby Mill House. They are occupied by individual households and contain all of the facilities required for independent living, including a clearly defined garden area for external amenity.
- 4.1.6 There are no relevant Enforcement Notices in place.
- 4.1.7 Based on the information provided within this report and the application enclosures, we therefore respectfully request that this application for a Lawful Development Certificate for Existing Use and Development is granted. However, should MSDC wish to discuss the certificate description or its enclosures further, please do not hesitate to contact us for further details.

APPENDIX

1





Appeal Decision

No site visit

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17TH NOVEMBER 2023

Appeal Ref: APP/X1545/X/22/3313618

2 Oak Cottages, Maldon Road, Bradwell-On-Sea, Essex CM0 7HS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr & Mrs Hollingsworth against the decision of Maldon District Council.
 - The application ref LDE/MAL/22/00916, dated 9 August 2022, was refused by notice dated 5 October 2022.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use is sought is an independent dwelling.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use describing the existing use which is found to be lawful.

Background and Preliminary Matters

2. Due to the nature of this case, it was determined that it was not necessary for me to conduct a site visit. The main parties were made aware of this fact, and no further comments or objections were received. The appeal concerns the lawfulness or otherwise of the use of a workshop outbuilding as an independent dwelling. I will hereafter refer to the workshop outbuilding as simply the 'workshop'.
3. Having regard to the Statutory Declarations (SDs) submitted with the appeal, it was noted that exhibit KH1, referenced in Mr K Hollingsworth's SD, had not been provided. On request, the appellant confirmed that this was an error, and exhibit KH1 was not part of the submissions. The parties are also content that the appeal can proceed by the written representation procedure. I have no reason to disagree with the parties and so will proceed to determine the appeal based on the written evidence before me.
4. In cases such as this the onus is on the appellant to demonstrate, on the balance of probabilities, that the use of a workshop as an independent dwelling has continued without significant interruption for a period of 4 years prior to the submission of the certificate of lawfulness. Any 4 -year period before the material date is relevant. Matters such as planning policies and the effect of the development on matters such as neighbour's living conditions or the character and appearance of the area are not relevant. My determination is made solely on matters of fact, planning law, and application of judicial authority.
5. The site edged in red on the site location plan includes the workshop and surrounding garden land (subject of the appeal). It is stated in the Planning Statement that fencing divides the plots of 2 Oak Cottages and the workshop,

with their own separate gardens and outbuildings. The host dwelling has a separate garden area outlined in blue. The appellants have submitted a site plan as well as detailed floor and elevation plans of the workshop. The plans show the workshop as being approximately 11.39metres (m) in length x 5.26m wide, and 2.2m and 3.84m in height to the eaves and ridge respectively. The accommodation includes a kitchen dining and living area, a conservatory, two bedrooms, one with an ensuite and another with a WC.

Main Issue

6. The effect of s191(2) of the Town and Country Planning Act 1990 (the Act) is that such a use would be lawful if no enforcement action can be taken because the time for taking such action has expired. The relevant date is the date of the application, which in this case is 9 August 2022. The relevant 4-year date would be 9 August 2018. The relevant test is the balance of probability, not the more onerous test of beyond reasonable doubt.
7. The Planning Practice Guidance (PPG) advises that where the Council 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 probability¹.
8. The main issue is therefore whether the Council's refusal to issue a certificate of lawfulness in respect of the use of the workshop as an independent dwelling was well-founded. That turns on whether the available evidence demonstrates that the building has been used as a separate independent dwelling for a continuous period of more than four years before the date of the application.

Reasons

Evidence

9. In addition to plans, the appellants have submitted two SDs, one by the appellants' son, Mr K Hollingsworth and another by the appellant Mrs J Hollingsworth, both signed by them and witnessed by a solicitor, ensuring that they comply with the Statutory Declaration Act 1835. The SDs are dated 25 August 2021 and 28 September 2021 respectively.
10. Both SDs set out that Mr K Hollingsworth, his father (Mr S Hollingsworth) and a friend constructed the workshop (as a workshop) between 2007 and 2010. It is indicated that Mrs J Hollingsworth has mobility issues and was unable to access the first floor in the main dwelling. Following Mr K Hollingsworth and his wife moving into the main dwelling, the workshop was converted in 2011 by altering it internally. The two SDs go on to state that the appellants moved into the workshop in 2011 and have lived in it independently of the main property since that time. The workshop has been assigned a different address (2A, Oak Cottages).
11. Mr K Hollingsworth's SD specifically indicates that the appellants utilise their own access off Maldon Road, whereas he and his wife (occupants of the main house) park on the street to the front of 2 Oak Cottages. He goes on to add that the single storey nature of the workshop means his mother can be more mobile, he visits his parents for social occasions but lives independently of them. He states

¹ Lawful development certificates. Paragraph: 006 Reference ID: 17c-006-20140306.

that the appellants have their own waste bins, post box, tv aerial and internet connection as well as separate services, including electricity, gas and water supplies with associated meters. Mrs J Hollingsworth's SD is similar in content; however, she sets out that her mobility improved by using the single storey workshop as a dwelling. She also details having her own garden, access and utilities as well as conservatory and cattery.

12. The following exhibits are included with Mrs J Hollingsworth's SD; Energy Performance Certificate dated December 2014, Home Insurance Policy Schedule covering December 2015 to December 2016. Both exhibits detail the address 2A, Oak Cottages. A confirmation email from British Gas, dated 25 January 2015, outlining the installation of an electric meter for a Feed In Tariff payments at 2A Oak Cottages. Photographs of utility meters, waste bin facilities, a television aerial and address signage at the property are provided together with photographs of the workshop (following its conversion) being used as part of a social event.
13. Other information includes a letter from Maldon & District Citizens Advice to the Department of Work and Pensions (DWP) dated 21 June 2018. This letter is in response to a visit from the DWP and an assessment of Mrs J Hollingsworth's mobility at the property. The converted workshop is referred to as the 'bungalow' in the letter.
14. There are also ten statements submitted by a mixture of neighbours, friends and family members. The letters set out that they have known the appellants for varying periods of time (all more than 4 years) and have been to the property to visit them for social events, staying the night as well as house or dog sitting. The statements by neighbours, friends and family members are not co-signed by a solicitor or a Commissioner for Oath, meaning they would not comply with the Statutory Declaration Act 1835. However, they are still a form of evidence that must be considered, even if they cannot be afforded as much weight as factual details or SDs compliant with the Statutory Declaration Act 1835.

Independent Use

15. The Council accepts that the building was substantially completed more than four years before the date of the application. However, the Council contends that the family link means the workshop is in use as an annex to the host property, which is compounded by the fact that Mrs J Hollingsworth has mobility issues.
16. Based on the evidence before me, the workshop has all of the necessary facilities to live separately and is physically separate from the main dwelling by a reasonably large amount of garden space. The workshop has its own vehicle access and a boundary fence has been erected between the two garden areas. The layout of the site, the separate access and the defined boundary plots indicates two separate planning units. This is further compounded by facilities contained therein, allowing the occupants to live independently without any reliance on the main property in terms of access or facilities.
17. The SDs corroborate the above by stating that the appellants live independently of the main property and have done so since 2011. They also indicate that the workshop as an independent dwelling has its own access, garden and boundary. The appellants also have their own pets, bins, home insurance as well as there being independent services and utility meters, which all supports their claim of independent use. There is no indication that the appellants are reliant on their

son or the main house in their day-to-day activities. In fact, Mr K Hollingsworth's SD specifically outlines that he only visits his parents on social occasions. Also, due to the building being single storey as well as being fitted with facilities to help with mobility issues, the workshop provides his mother and father with independence.

18. I acknowledge that the land is owned by the appellants, that Mrs J Hollingsworth has health issues that restrict her mobility, and the occupants of the main property are closely related. Consequently, it is possible that the workshop could be utilised as an annex. However, all of the evidence with the appeal indicates that it is being used independently, and there is no contradictory evidence produced by the Council, or others, to indicate that the building has been, or is currently being used as an annex. In this respect, the Council's claim that the workshop is being used as an annex is not contradictory evidence in its own right, and does not make the appellants claims less than probable.
19. I note that independent evidence, such as, purchases of goods or materials during the conversion; separate utility bills as well as payment of separate Council tax over the requisite period would have supported the appellants claims more robustly. However, the SDs and the evidence provided is sufficiently precise and unambiguous. The fact that the missing information highlighted by the Council has not been provided does not contradict the appellants claims or make them less than probable. The Council has also not produced any evidence to show that enforcement action could not have been taken if they were to have investigated the breach during the requisite period of time.
20. Accordingly, on the balance of probabilities, the evidence produced is sufficiently precise and unambiguous in setting out the use of the building as an independent dwelling.

Continuous Use

21. The appellant must also demonstrate that for a period of 4 years or more prior to the date of the application, the independent use has been continuous. *Case law*² has also determined that the use can be established over a 4-year period prior to the date of the application, and once immunity is gained, the established use can only be lost via abandonment or a supervening event. If there are no matters concerning abandonment or a supervening event prior to the date of the application, then the use can be considered lawful.
22. The appellants SDs set out that the use has been ongoing since 2011 and has not changed since that time. The SDs do not state the exact date or month in 2011. However, even if the use commenced in December 2011, this is still an extended period of at least 10 years from the date of the application. The corroboratory evidence is dated between December 2014 and June 2018. The evidence shows that in 2014 a different address was being used and by 2015 separate home insurance had been obtained and separate utility meters had been installed. The letter to the DWP in 2018 demonstrates that the workshop was still being used as an independent dwelling at this time.
23. There is no further corroboratory evidence between June 2018 and the date of the application. However, the SDs are precise and match in respect of their claims, and there is no evidence to contradict the appellants claim that the use

² R (on the application of Ocado Retail Ltd) v Islington London Borough Council [2021] EWHC 1509 (Admin)

began in 2011 and has yet to cease. Even if I were to take the view that the independent use did not commence until the Energy Performance Certificate was certified (December 2014), this would still be a period more than 7 years from the date of the application. There is also no evidence of abandonment or a supervening event between June 2018 and the submission of the application on 9 August 2022. Accordingly, the SDs together with the corroboratory evidence set out a period of more than 4 years where the workshop was being used independently as a dwelling, prior to the date of the application.

24. The Council indicates the SDs produced are by the appellant and the appellant's son, and therefore cannot be afforded as much weight as independent evidence. It is also suggested that the photographs of the meters and waste bins do not provide sufficient evidence to show that these items belong to the building. They also contend that the photos of the social event are undated and do not prove the building has been continuously occupied for more than 4 years.
25. I appreciate that the appellants and their son have interest in the outcome of the application, but this is not a good reason to give the SDs less weight. Contrary to the Council's position, in my judgement, the appellants are the most relevant persons to provide detailed information on the use of their property, provided it is precise and unambiguous. Accordingly, I attach significant weight to the SDs, especially since they appear to have been properly declared and witnessed, with serious consequences if any of them were subsequently shown to be false.
26. The exhibits and photographs could have been annotated as suggested by the Council, however, the exhibits should be looked at together with the SDs, and not in isolation. If looked at in conjunction with Mrs J Hollingsworth's SD, in my judgement, it is sufficiently clear she is referring to the utility meters, bins and other items at the converted workshop.
27. Having regard to the whole of the evidence, it is sufficiently precise and unambiguous in setting out the use of the building as an independent dwelling for the requisite period of four years. There is no evidence to suggest that the use as an independent dwelling was interrupted or has been lost via abandonment or a supervening event following the lawful residential use being established. Consequently, the workshop has on the balance of probability, been in continuous use as a separate dwelling for more than four years prior to the date of the application.

Conclusion

28. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use in respect of the workshop being in use as an independent dwelling was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

M. P. Howell

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 9 August 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use of the workshop building as an independent dwelling commenced more than four years prior to the date of the application for the Lawful Development Certificate and continued thereafter without material interruption.

Signed

M. P. Howell

INSPECTOR

Date: 17TH NOVEMBER 2023

Reference: APP/X1545/X/22/3313618

First Schedule

An independent dwelling

Second Schedule

2 Oak Cottages, Maldon Road, Bradwell-On-Sea, Essex CM0 7HS

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: **17th November 2023**

by M. P. Howell Dip TP MRTPI

Land at: 2 Oak Cottages, Maldon Road, Bradwell-On-Sea, Essex CM0 7HS

Reference: APP/X1545/X/22/3313618

Do not Scale

