
Sussex Building Consultancy Limited



Statement of Case

Certificate of lawful use existing relating to use of a self-contained residential unit within an existing detached building.

1 First Avenue, Felpham, Bognor Regis, PO22 7LG.

Date : 7 May 2019

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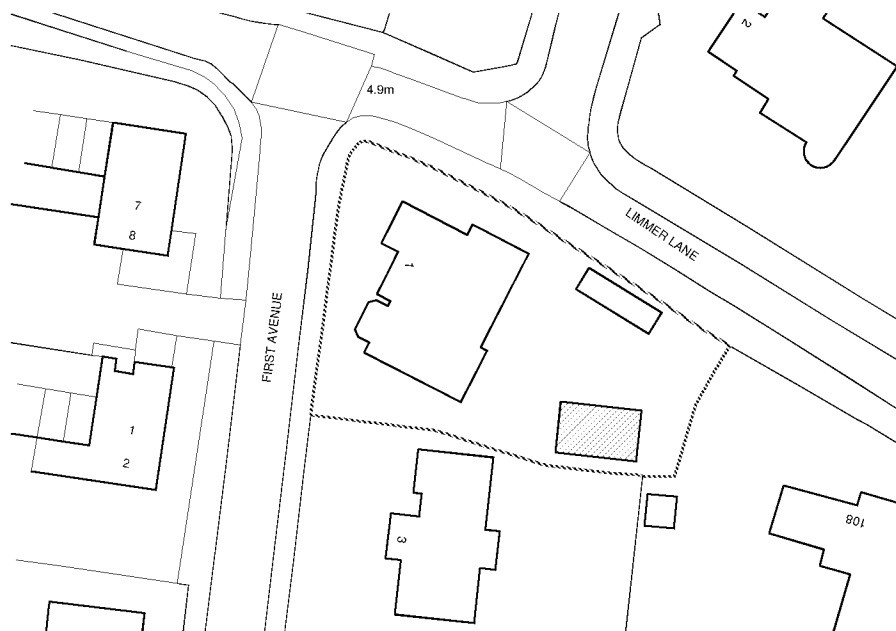
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1.0 Introduction

- 1.1 I am instructed on behalf of my clients Mr and Mrs Kerrigan to submit an application for a Lawful Development Certificate in relation to 1 First Avenue, Felpham, Bognor Regis.
- 1.2 The application seeks to obtain a legal development certificate as legal confirmation that part of the building previously granted permission for use as a detached garage with storage on the first floor above (under planning permission reference BR/219/59) now lawfully operates as a self-contained residential unit on the first floor with access and bathroom facilities on the ground floor.
- 1.3 This residential unit is known as The Garret, 1 First Avenue, Felpham, Bognor Regis, PO22 7LG. This is now used as a self-contained residential unit. The evidence provided makes it clear that the part of the building the subject of this application has been in continuous use as an independent residential accommodation since ???
- 1.4 This statement sets out a brief history of the property and then addresses the legal basis for the application and evidence submitted to justify the facts of the case.
- 1.5 We consider that this evidence sufficiently demonstrates, on the balance of probability, that the use of the building as a separate residential unit is lawful and has been operating in this fashion continuously for longer than the four year qualifying period. We therefore consider there to be no reasonable basis to withhold a Lawful Development Certificate.

2.0 Site Description

- 2.1 The Garret comprises of a mostly first floor one bedroom flat with a ground floor entrance and bathroom facilities set within two storey detached building which has a residential garage area occupying the remainder of the ground floor.



Pic. – Extract of the site plan showing the detached building concerned.

- 2.2 The detached building is set within the grounds of the garden serving No. 1 First Avenue, Felpham – the original deeds show that the current plot was originally planned to be two units of accommodation.
- 2.3 The property has a painted pebble dash render finish to the walls with plain concrete roof tiles to the pitched roof and white PVC framed double glazed windows.
- 2.4 Pedestrian and vehicular access is shared with the main house with ample parking for both dwellings within the site.
- 2.5 The surrounding area is residential in nature. The site is located within the built up area boundary for Felpham, where the principle for development is generally accepted subject to other policies of the local plan.



Pic. – Front elevation of the detached building.

3.0 Planning History.

- 3.1 **Detached Building** - BR/219/59 – Alterations to garage to form store – Approved Conditionally.
- 3.2 **Main House** - BR/149/69 – Extension for study dressing room and bedroom – Approved conditionally.
- 3.3 BR/620/70 – Alterations and additions – approved.
- 3.4 BR/558/73 – 1st floor extension to house over part of balcony.
- 3.5 FP/108/85 – Construction of private swimming pool with permanent cover – approved conditionally.
- 3.6 FP/83/90 – Erection of extension for use as self-contained flat – Refused.
- 3.7 FP/24/91 – Erection of bedroom extension with en suite – approved conditionally.

- 3.8 FP/219/14/HH – Loft conversion, ground floor and first floor extensions – approved conditionally.
- 3.9 As detailed above, planning permission was granted for the alteration and extension of the detached garage to form storage area on the first floor in 1959 – this area was later converted into a self-contained unit of accommodation and since this date has been let to several successive tenants and has been subject to continuous occupation during this period. The flat is still currently let and occupied as a private residential flat.
- 3.10 This is detailed in full within the evidence that accompanies this application.

4.0 Considerations.

Legal Background.

- 4.1 For the purposes of obtaining a certificate of lawfulness, Section 191 of the Town and Country Planning Act 1990 sets out:

‘If any person wishes to ascertain whether:

- a) Any existing use of a building or other land is lawful;*
- b) Any operations which have been carried out in, on, over or under land are lawful:*
or,
- c) Any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,*

He may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

For the purposes of this Act 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 reason); and*
- b) They do not constitute a contravention of any of the requirements of any enforcement notice then in force’.*

- 4.2 In respect of the ‘time for enforcement action’ Section 171B(2) of the 1990 Act states:

‘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’.

- 4.3 It is noted that the residential use is in breach of the planning approval on the original application to altered and extend the detached garage and storeroom. The period for immunity in respect of a breach of the approval is generally 10 years, however, as this is a residential use it is understood that the relevant period in such cases is 4 years as supported by the previous Court of Appeal decision *First Secretary of State v Arun District Council* and another (2006) EWCA Civ 1172 (Auld LJ, Sedley LJ and Carnwath LJ). The clear legislative intention was that, unlike other changes of

use, householders who changed the use of a building to that of a single dwelling house should only be vulnerable to enforcement action if it was instituted within four years. This case remains as good law and has not been overturned.

- 4.4 National Planning Practice Guidance provides that 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 is sufficiently precise and unambiguous to justify the grant of certificate on the balance of probabilities.

Time Limits

- 4.5 The planning and Compensation Act 1991 introduced rolling time limits within which the local planning authorities can take planning enforcement action against breaches of planning control.
- 4.6 The time limits are:
1. Four years for building, engineering, mining or other operations in, on, over or under land, without planning permission. This development becomes immune from planning enforcement action four years after the operations are substantially complete;
 2. Four years for the change of use of a building, or part of a building, to use as a single dwelling house. Enforcement action can no longer be taken once the unauthorised use has continued for four years without any enforcement action being taken;
 3. 10 years for all other development. 10-year period runs from the date the breach of planning control was committed.
- 4.7 Once the relevant time limit has passed, the development and/or use becomes lawful, in terms of planning.

5.0 Evidence.

- 5.1 Affidavit by Mr Stephen Kerrigan, signed and dated 1 May 2019.

This confirms that Mr Stephen Kerrigan is the legal owner of the property known as 1 First Avenue which includes the self-contained unit known as 'The Garret' and has been since 2007. During this time he has rented the property out as a separate unit of residential accommodation.

It states that the entire property known as 1 First Avenue is currently registered at HM Land Registry under Title No. WSX76133 in the name of Mr Stephen Joseph Kerrigan shown edged in red on the submitted site and location plan.

It confirms that the Garret has been let first on the November 2007 and since that date has been let to successive tenants and is still currently let and occupied as a private residential flat.

It also confirms that the letting services of 'Your Move Sales and Lettings' have been used in the tenant finding capacity for the letting of the property since 2013 up until the present day.

- 5.2 The above mentioned extracts provide a legal basis for this application and subsequently we have provided the following evidence to demonstrate that the building has been used as an independent residential unit for a period in excess of four years:

(1) Tenancy Agreements

Agreement between Mr S Kerrigan and Miss Daisy Alana Mitchell-Barnes and Mr Jamie Jay Johnson dated **22 May 2018**.

Agreement between Mr S Kerrigan and Mr Paul Douglas-Smith dated **05 September 2016**.

Agreement between Mr S Kerrigan and Mr Christopher James Rhodri Wilson dated **04 September 2015**.

Business Account summary and emails referring to tenancy agreement between Mr S Kerrigan and Miss Hornibrook and Mrs Burns between the dates of **14 February 2014** and **18 July 2015**

Agreement between SJK Property Management Limited and Mr James Stephenson dated **01 September 2012**.

Agreement between Mr S Kerrigan and Mr Jeremy Lloyd and Miss Charlotte Strange dated **16 July 2011**.

Agreement between Mr S Kerrigan and Mr George Baker and Miss Emily Lovegrove dated **06 March 2010**.

(2) Other evidence

A copy of a letter dated 15 April 2019, from 'Your Move Estate Agents' confirming that they have acted as 'tenant finding' capacity since 30 November 2013 until the present day.

A copy of the flats electrical installation test certificate dated **12 September 2018**.

A copy of the landlord gas safety certificate dated **5 July 2018**.

Fire risk assessment on the flat from Salvum Limited dated **27 July 2017**.

A copy of the 'Landlord Accreditation Scheme' certificate for the property in the name of Mr S Kerrigan dated **23 January 2017** (date of expiry 22 January 2022).

A copy of the Energy Performance Certificate for the flat dated **09 January 2017**.

A copy of the SSE Southern Electric gas bill for the landlord, Mr S Kerrigan, for the flat for **22 August 2015** and **05 September 2015**.

A copy of the 'Landlord Accreditation Scheme' certificate for the property in the name of Mr S Kerrigan dated **25 January 2012** (date of expiry 24 January 2017).

A print off of the property details on the Chichester Student Pad website dated **June 2011**.

A copy of a letter from the Valuation Officer (Worthing) referring to the flat and the 'notice of making a new entry on the valuation list' dated **22 February 2010**.

A copy of the Energy Performance Certificate for the flat dated **07 December 2009**.

6.0 Summary.

- 6.1 The application seeks to obtain legal confirmation that the existing first floor unit known as 'The Garret, 1 First Avenue, Felpham' is lawful as a separate unit of residential accommodation in line with Section 191 of the Town and Country Planning Act 1990.
- 6.2 We conclude that on the basis of the evidence supplied, that the buildings use as an independent residential flat is lawful and has been operating longer than the qualifying periods set out in Section 171B of the 1990 Act. It is clear from the evidence supplied that 'The Garret' has been used as an independent residential unit since at least 6 March 2010. This is supported by copies of tenancy agreements between the landlord and the tenants and a selection of other statements. Certificates and emails supporting this fact. The use of the flat as a separate residential unit has been continuous for the last 9 years and in planning terms is lawful.
- 6.3 Taking into consideration the legal tests by which a Lawful Development Certificate application should be considered, we believe that we have adequately shown, on the balance of probability, that 'The Garret' is lawfully a self-contained dwelling in its own right. Furthermore, the National Planning Practice Guidance provides that 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. We therefore respectfully request that a Certificate of Lawfulness be granted.