

STATEMENT OF CASE

'Certificate of Lawful Use Existing relating to the use of a first-floor unit known as 44a Summerley Lane as a self-contained residential flat in breach of planning permission FP/212/00/'.

**44a Summerley Lane, Felpham, Bognor Regis,
West Sussex, PO22 7HX**

FEBRUARY 2018

1.0 INTRODUCTION

- 1.1 I am instructed on behalf of my client, Jacqueline Barbara Shilton, to submit an application for a Lawful Development Certificate in relation to 44a Summerley Lane, Felpham.
- 1.2 The application seeks to obtain a Legal Development Certificate as legal confirmation that part of a building previously granted planning permission for use as office accommodation ancillary to the use of 44 Summerley Lane as a 'Community Store', (under planning permission **ref: FP/212/00**) now lawfully operates as a self-contained residential flat (Use Class C3).
- 1.3 The first-floor unit in question is known as 44a Summerley Lane. 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 24th November 2004**, up to the present time.
- 1.4 This statement sets out a brief history of the property and then addresses the legal basis for the application and the 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 4-year qualifying period. We therefore consider there to be no reasonable basis to withhold a Lawful Development Certificate.

2.0 SITE DESCRIPTION

- 2.1 No. 44 Summerley Lane comprises a two-storey detached building, located to the west side of Summerley Lane.



Fig 2. Aerial image of the Site (*courtesy of Google Maps*)

- 2.2 The building consists of red brick walls at ground floor level, with a projecting first floor element that is horizontally boarded. The roof is tiled.



Fig 1. Photograph of the application site (Courtesy of Google Maps)

- 2.3 The building has a 'community store', with shop front at ground floor level, and incorporates a post office function. The first floor is split into an office use and private residential flat.
- 2.4 There is customer parking to the front of the site. Additional parking to the rear is accessible via a side vehicular access drive.
- 2.5 The surrounding area is primarily residential in nature. The site is located within the defined built-up area boundary for Felpham, where the principle of development is generally accepted subject to other policies in the plan.

3.0 PLANNING HISTORY

- 3.1 According to the records held by Arun District Council, 44 Summerley Lane has the following planning history:-

Summerley Post Office & Stores. 44 Summerley Lane

- **Planning ref: FP/231/16/PL/:** Retention of 3 no. condensing units with new acoustic housing. Approved Conditionally.

Summerley Corner, Summerley Lane

- **Planning ref: FP/212/00/:** Outline application for the demolition of existing parade of shops and flats. The Construction of 12 houses and community store. Approved Conditionally.

- 3.2 As detailed above, planning permission was granted on 6th March 2001 for *'outline application for the demolition of existing parade of shops and flats. The construction of 12 houses and community store'* (ref: FP/212/00/). Our client, Jacqueline Barbara Shilton, was involved with the construction thereof, the letting of the Community Store and the letting of the flat. The flat was first let on **24th November 2004** and has since that date 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.

- 3.3 This is detailed in full within the evidence that accompanies this application.

4.0 CONSIDERATIONS

Legal Background

- 4.1 For the purpose 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 buildings 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.

(2) 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 other 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 a condition of the original planning permission. The period for immunity in respect of a breach of condition is generally 10 years. However, as this is a residential use it is understood that the relevant period in such cases is 4 years. This scenario is supported by the 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). In this case, the condition stated, *"Upon vacation, the extension hereby permitted shall at all times be used for purposes incidental to 8, Ceres Place as a single dwelling house and shall at no time be occupied or disposed of as a separate independent unit of residential accommodation."* The High Court queried whether this condition was enforceable and valid and held that although there is a four year limit for serving an enforcement notice where the breach of planning control is a material change of use of a building to a single dwelling house (section 171B(2)), if the enforcement notice actually refers to a valid condition prohibiting use as a single dwelling house it is then governed by section 171B(3) and a ten year time limit applies. However, the Court of Appeal held that the ten year time limit in section 171B(3) should only apply to breaches that fell within neither subsection (1) nor (2) and held that breach of planning control consisting of the change of use of any building to use as a single dwelling house within s.171B(2) could occur as a result of a failure to comply with a condition attached to a planning permission and whether or not that failure resulted in a material change of use constituting development. 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. Given such intent, it would be illogical for there to be a different period for enforcement depending on whether the breach of planning control involved a

failure to comply with a condition as well as or instead of development without the required planning permission. Similarly, it would be illogical for the time limit to depend on whether the local authority formulated its enforcement notice on the basis of a breach of planning control consisting of development without permission or as breach of a condition. This case remains as good law and has not been overturned.

- 4.4 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 provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities.

(i) Time Limits

- 4.5 The Planning and Compensation Act 1991 introduced rolling time limits within which 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 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. The 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.

Evidence

- 4.8 The above-mentioned extracts provide the 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 continuous period in excess of four years:

(i) Affidavit by Jacqueline Barbara Shilton, signed and dated 25th January 2018

It confirms that Barbara Shilton is the Director of L E Walwin & Partners Limited of 44b Summerley Lane, Felpham. Barbara Shilton confirms that she is familiar with the property at 44 Summerley Lane, which currently comprises a Community Store on the ground floor, Ms. Shilton's office on the First Floor known as 44b Summerley Lane and a residential flat ("The Flat") on the first floor known as 44a Summerley Lane.

It states that the entire building known as 44, 44a and 44b Summerley Lane is currently registered (with other land) at HM Land Registry under Title No. WSX278578 in the joint names of Barbara Shilton and Ms. Shilton's brother, Kent Leslie Walwin as shown edged ref on the Land Registry Plan ("JBS1").

It confirms that following planning consent from Arun District Council dated 6th March 2001 under Application Reference FP/212/00/ for the construction of (inter alia) a Community Store, Barbara Shilton has been involved with the construction thereof, the letting of the Community Store and the letting of the Flat.

It states that the flat was first let on the **24th November 2004** to a Roy Beaney and has since that date been let to several successive tenants and is still currently let and occupied as a private residential flat. Messrs Leaders of 61 High Street, Bognor Regis have since the first letting arranged all subsequent lettings of the Flat and on each occasion have checked in and checked out each respective tenant as evidenced by exhibit “JBS2”.

It is confirmed that the Flat has since **24th November 2004** been occupied continuously as a private residential flat.

The statutory declaration is also accompanied by a Land Registry Plan (“JBS1”) and a letter from Mr. Simon Wickenden, Branch Manager of Leaders dated 4th December 2017. This letter confirms that they have acted in a tenant finding capacity in the residential letting of the above property since 24-11-2004 until the present day. In each letting they have arranged a check in and check out of each respective tenant, and can confirm, continuous occupation during the period (“JBS2”).

(ii) Banks Statements

A selection of bank statements addressed to ‘The Secretary’, LE Walwin & Partners Ltd, 44b Summerley Lane, dated at regular intervals between June 2005 and July 2015. They each detail rental payments.

The HSBC statements are dated as follow:-

- 16th June – 15th July 2005;
- 16th January – 15th February 2007;
- 16th November – 15th December 2007;
- 16th June – 15th July 2008;
- 16th May – 15th June 2009;
- 16th September – 15th October 2009;

- 16th June – 15th July 2010;
- 16th June – 15th July 2011;
- 16th May – 15th June 2012;
- 16th June – 15th July 2013;
- 16th April – 15th May 2014;
- 16th June – 15th July 2015.

There is also an additional bank statement from HandelsBanken, dated 30th June 2016.

(iii) Tenancy Agreements

7 No. tenancy agreements, between the Landlord and the 'tenant' for letting an unfurnished flat on an assured short hold tenancy under Part 1 of the Housing Act 1988.

These details of these agreements are as follows:-

- Agreement between the Landlord (L E Walwin & Partners Limited) and the 'tenant' (Mr. Roy Edwin Beaney), dated 24th November 2004.
- Agreement between the Landlord (L E Walwin & Partners Limited) and the 'tenant' (Lynn Bundell) and permitted Occupant (Charlotte Bundell 6-and-a-half years), dated 26th March 2007.
- Agreement between the Landlord (Ms. Jacqui Shilton) and the 'tenant' (Robert Stebbings and Susan Ann Stebbings), dated 15th September 2007.
- Agreement between the Landlord (L E Walwin & Partners Limited) and the 'tenant' (Ben Robin David Parslow and Tom Christopher Redman and Rebecca Maria Staines), dated 10th November 2007.
- Agreement between the Landlord (L E Walwin & Partners Limited) and the 'tenant' (Tom Christopher Redman. Farheed Abdeslam Khamlichi), dated 4th October 2008

- Agreement between the Landlord (L E Walwin & Partners Limited) and the 'tenant' (Robert Philip Kay), dated 28th August 2014.
- Agreement between the Landlord (L E Walwin & Partners Limited) and the 'tenant' (James Matthew Randell), dated 7th November 2015.

(iv) **Leaders Letter**

A letter from Simon Wickenden, Branch Manager of Leaders, dated 4th December 2017. It confirms that they have acted in a tenant find capacity in the residential letting of the above property since the 24-11-2004 until the present day. In each letting they have arranged a check-in and check-out of each respective tenant, and can confirm continuous occupation during the period.

6.0 SUMMARY

This application seeks to obtain legal confirmation that an existing first floor unit known as 44a Summerley Lane, Felpham, is lawful as a separate unit of residential accommodation in line with Section 191 of The Town and Country Planning Act 1990.

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 for longer than the qualifying periods set out in Section 171B of the 1990 Act. It is clear from the evidence supplied that No. 44a Summerley Lane has been used as an independent residential unit since **24th November 2004**, as confirmed by Jacqueline Barbara Shilton in her signed and dated affidavit. This is supported by a letter from Leaders, Tenancy agreements between the Landlord and Tenants and a selection of bank statements detailing receipt of rent. The use of the unit as a separate dwelling has been continuous for the past 13 years, and in planning terms it is therefore lawful despite the restrictions attached to the original planning permission (ref: FP/212/00/).

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 No. 44a Summerley Lane 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.

February 2018