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CHARTERED TOWN PLANNER

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

Wednesday, 04 November 2020

Dear Sir/Madam:

Re: Stoney Brook Farm, Eastergate Lane, Walberton

Certificate of Lawfulness of Existing Use

Use of building first floor of southern end of building as a separate dwellinghouses

Introduction

I have pleasure in enclosing the above application for the use of the first floor of the southern end of the building at Stoney Brook Farm, Walbeton as a separate dwellinghouse in the position 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 such case, the word *‘building’* has been held to include *‘part of a building’*. On this basis the use of part of the subject building as a separate dwellinghouse can be considered under the four year rule.

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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Clearly the above tests need to be compared to the fact that Section 55 of the 1990 Act states that the following does not constitute a material change of use:

"The use of buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such".

In this case the compelling documentary evidence – in the form of historic documents and council tax records - demonstrates that the premises subject of this application:

- Comprise a single, self-contained premise;
- Are a single unit of occupation;
- Are designed for residential purposes; and
- Contain 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 Gabbitts v SOS & Newham LB* [1985] JPL 630 an applicant's own evidence does not have to be collaborated by independent evidence.

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

In this case we have the primary Statutory Declaration of the sole occupier of the dwellinghouse, Tom Reynolds, who has confirmed the following:

1. He previously lived in his parents dwelling which for a very long time has been in the northern end of the barn.
2. In early 2013 it was decided that it would be best for him to have his own place to live and due to his inability to afford anywhere to rent or buy they decided that the best option would be to convert the first

floor area of the southern part of the barn which had been used for general storage.

3. So in March 2013 he obtained a quotation from Tom Bradstock of Ford Construction for the general timber works necessary to achieve the conversion.
4. Works started in the early summer of 2013 and the works took a considerable period of time as he self-funded them in order to avoid taking out a mortgage which he knew would be difficult for him to obtain.
5. During the conversion works he used not only Ford Construction but also various individuals who provided the necessary help when he needed it.
6. He attaches at Exhibit TR2 various photographs that he has managed to find on his mobile phone of the works in progress. These are: (1) 13 December 2013 – spray foam insulation on underside of roof and initial stud work with infill insulation on south and west walls; (2) 14 November 2014 – new chipboard floor down and studwork on east wall; (3) 7 January 2015 – plasterboarding and skim plastering finished; (4) 20 September 2015 – walls painted, electrics fitted and kitchen just finished; and, (5) 21 March 2016 – living in the flat.
7. He confirms that the internal layout that was created is the same as that shown on the plan attached as Exhibit TR3. It has always had this layout.
8. The flat provides him with all the facilities that he needs for day to day existence. In particular it has: a combined kitchen/living/dining area; a bedroom; and, a bathroom.
9. Since his parents retain ownership of the land and building he has had a tenancy agreement with them. He attaches this as Exhibit TR4 and this confirms the date of his first occupation of the flat as 3rd October 2015.
10. He confirms that he has continuously occupied the said flat since this date; that it provides him with all the facilities required for day to day living; and, that he is not dependent upon his parents for anything. He lives wholly self-contained and self-sufficient from them.

An additional four Statutory Declarations have been provided by people involved in the works of conversion in order to confirm that dates of the said works. These four Declarations collaborate the facts set out in the Declaration of Tom Reynolds in respect of the period of time taken to undertake the conversion works.

Conclusions.

The evidence – in the form of the Statutory Declarations documents; photographs and a Tenancy Agreement - demonstrate on a compelling basis that the first floor of the southern part of the subject building has been in continuous use as a separate dwellinghouse since 3rd October 2015.

This period of occupation exceeds the required four year period.

The relevant test, namely, on the balance of probability, has been exceeded by over a year, as set out in the documentary evidence which is clear, precise and unambiguous.

The certificate for the use of the southern part of the first floor of the subject building as edged red on the submitted plan as a separate dwellinghouse should therefore be issued.

Yours sincerely,



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