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Civic Offices
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PO9 2AX

CHARTERED TOWN PLANNER

Thursday, 07 December 2017

Dear Sir / Madam:

Re: Meadow Farm Nursery, Woodgaston Lane, Haying Island

Material change of use of building to use as a single dwellinghouse

This application seeks to establish the lawfulness of the use of a building at Meadow Farm Nursery as a single dwellinghouse and its immediate land for residential purposes, namely garden in associated with the dwelling.

The subject building was constructed in 1985 and used for agricultural purposes until the conversion works commenced in January 2013. Accordingly, the building had a first use and therefore the issues arising in *Lawson Builders Ltd v SSCLG & Wakefield MBC* [2013] EWHC 3368 (Admin) do not apply, namely what is the time frame where there is no first use and therefore no 'change of use' has arisen.

This application seeks a lawful certificate for the change of use of a building on the above land to a dwellinghouse.

Accordingly, the application is submitted under the provisions of section 171B(2), namely:

"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".

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

Furthermore, if a local authority does not successfully contradict or challenge an applicant's own precise and unambiguous evidence, a Certificate should normally be granted.

Legal Background

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."

Facts of this case

In this case, there are three Statutory Declarations: from the joint owners of the property, Georgina Newell and Dan Myatt as well as from Georgina Newell's husband, Philip Newell. Georgina and Philip are the occupiers of the subject dwelling.

Included within Georgina's Statutory Declaration are letters from: Peter Smith [GN3] who carried out general building, decorating work as well as first and second fixing; Don Gray [GN4] who plastered the walls; and, Kevin Johnson [GN7] who fitted carpets in the two bedrooms.

There are also photographs; invoices for materials; bills from BT and Sky along with a number of photographs which corroborate the evidence.

The submitted declaration from Georgina Newell is the most detailed and from her evidence the following facts can be drawn:

- In December 2012 they started to clear the building and the land around it. On 1st January 2013 they commenced works to convert the building into a dwellinghouse for her and her husband, Philip Newell, to live in.
- The works of converting the building into a dwelling comprised the following operations: installation of floor insulation; lined and insulated walls; insulated the roof; first fix of services; replaced all windows with

UPVC; plastered walls; second fix of all services; decorated; laid wood flooring; and carpets; installed kitchen suite and bathroom.

- Most of the works were undertaken by her brother, Dan Myatt, who had help from Peter Smith.
- They also employed a plasterer, Don Gray.
- The works were completed on 30th April 2013 and on 1st May 2013 Mr and Mrs Newell moved into the dwelling. The dwelling is annotated by a thick black line on the plan at GN2 and the extent of garden associated with the dwelling is cross hatched on the same plan. The garden is separated from the rest of the land by fencing and hedging.
- There is a file containing receipts for all the works and council officers are welcome to view this upon request.
- She attaches at GN5 some of the receipts for the first fix elements of the conversion. These include: CCF receipt dated 25 January 2013 for insulation; Hornsey Steel invoice 4 February 2017 for roof sheeting; Covers receipts 25 January 2013 for sawn timber and chipboard and 11 February 2013 for timber and plasterboard; and, BES receipt 30 April 2013 for a gas regulator.
- Attached at GN6 are receipts for the fittings and fixtures. These include: PlumbWorld receipt 18 March 2013 for some bathroom fittings; Carpet Superstore receipt of 28 March 2013 for carpet which is in both bedrooms; B&Q receipt of 29 March 2013 for laminate flooring which is in the kitchen/living area; and, an Ikea receipt of 28 March 2013 for the kitchen.
- The carpet purchased from the Carpet Superstore was fitted by Kevin Johnson in the two bedrooms.
- The dwelling has its own telephone line with broadband.
- A sky engineer install a sky box and cable at the end of April 2013.
- A few photographs of the barn prior to the conversion works in 2013 are attached at GN10 in order to illustrate its previous agricultural use.
- No photographs were taken of the works of conversion and only a few photographs have been taken since they occupied the building.
- She has attached some photographs of their occupation since 2013 at GN11 although they do not have a great many. Photograph 1 shows the earliest photograph she could find from June 2013 and shows their dog in its bed and the TV in the corner of the living area. Photograph 2 is from October 2014 and shows the kitchen and living area. Photographs 3 to 5 show their dogs on the settee and in photograph 4 from December 2014 her husband is in the background. Photographs 6 and 7, both from December 2015, show bedroom 2/study and bathroom. Photograph 8 shows the garden and a lean-to that they

erected in mid 2016. The lean-to is made from scaffold poles and is not physically attached to the dwelling.

- They now have a son, Michael John Newell, who was born on 21st March 2017. During her pregnancy she had regular visits from a midwife and health visitor. She attaches at GN12 an extract from their son's health book which shows a health visitor visit on 3 April 2017. The final series of photographs at GN10 show her during her pregnancy [photographs 9-10] and with their newly born son [photograph 11].
- She reaffirms that occupation of the dwelling commenced on 1st May 2013 and that it has been continuously occupied since that date by her husband and her as a self contained residential unit.
- She also confirms that its floor layout has always been as that shown on the floor plan which she attaches at GN13.

The Declarations of her husband and brother confirm that they have read her sworn Declaration and that they confirm the facts to be true.

The evidence shows that the buildings has bene used as a dwellinghouse since 1sy May 2013. It is also clear that the

Conclusions

I consider that the evidence is clear, precise and unambiguous.

The evidence demonstrates, on the balance of probabilities, that the subject building has been used continuously – as a single dwellinghouse - since 1st May 2013. This is a period more than four years ago. Section 171B(2) therefore applies.

Accordingly, the application for a certificate of lawfulness should be granted.

Yours sincerely,



STEPHEN JUPP

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Chartered Town Planner

