
Site Address: Ferndale, Gutner Lane, Hayling Island, PO11 0RN
Proposal: Application for Lawful Development Certificate relating to the occupation of the dwelling in breach of Condition 2 of Planning Permission 15118/3.
Application No: APP/14/00707 Expiry Date: 01/09/2014
Applicant: St. Hermans Estate Company Ltd Team: Team 1
Agent: Mr Tutton Case Officer: Stephen Andrews
Robert Tutton Town Planning Consultants Ltd
Ward: Hayling East

Recommendation: **GRANT A CERTIFICATE OF LAWFUL USE**

1 Site Description

The application site comprises a detached chalet style dwelling within the rural area of Hayling Island, the dwelling has access to Gutner Lane and a detached garage on site.

The immediate area is characterised by a small cluster of detached dwellings within a rural setting. To the rear and side of the application site are agricultural fields and paddocks.

2 Planning History

98/54513/001 - Relief from Condition 2 of 15118/3 to allow for unrestricted residential occupation of the dwelling (not tied to agriculture or forestry). Withdrawn - 07/10/1998

15118/3 - House and garage at Gutner Farm, Gutner Lane, Hayling Island. Approved - 18/04/1972

This planning permission included the following restrictive condition:

"The occupier of the dwelling shall be a person employed or last employed in agriculture, as defined by Section 221(1) of the Town and Country Planning Act 1962, or in forestry, or the dependant of such a person."

3 Proposal

A Lawful Development Certificate has been submitted to establish that the dwelling has been occupied by persons not employed in agriculture or forestry for more than 10 years. As such the restrictive provisions of condition 2 of planning permission 15118/3 are no longer relevant. This is claimed because the period for a breach of condition has exceeded the time scale of 10 years permissible for the Council to take enforcement action.

4 Policy Considerations

There are no policy implications in considering applications of this nature.

5 Statutory and Non Statutory Consultations

Council Tax:

The Council tax records confirm that Council tax has been paid for this dwelling since 1993. The records on the tax file accord with the occupation of the dwelling provided by the applicant and within the sworn affidavits.

6 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 4

Number of site notices: None

Statutory advertisement: Not applicable

Number of representations received: 1 - received from the residents' association. The representation states that the dwelling has been occupied by persons not employed in agriculture or forestry for a period greater than 10 year and as such no objection is raised.

7 Planning Considerations

In order to grant a Certificate of Lawfulness for the use of the property as an unrestricted dwelling house, the Council would have to be satisfied that, on the balance of probability, the occupation had been carried out, for an unbroken period, by persons not employed in agriculture or forestry for a period of at least ten years prior to the date of the application. It is therefore considered that the main issue arising from the application is:

- (i) The quality of the available evidence

Evidence Provided by the Applicant:

1: Application covering letter prepared by Robert Tutton confirms the site chronology in respect of occupation and shows that the evidence submitted covers the period from December 2003 to the present date.

2: Sworn affidavit from Mr Richard Michael Hampton Weekes. Accountant for St Hermans Estate Company Limited, the site owners, since February 1992. He has stated within his evidence that from his own personal knowledge the dwelling has not been occupied by persons engaged in agriculture or forestry since 31st March 1999. However, within his statement he has referred to the company records, which provide evidence from 18th December 2003 to February 2014.

3: Sworn affidavit from Mrs Debbie Jubber, occupant of Gutner Farm Bungalow, immediately next door to Ferndale (application site). Mrs Jubber states that she has lived in her property since February 1999 and was well acquainted with previous occupants of Ferndale and the occupations of the former tenants. Her declaration includes the following tenants and lists their occupation also:

- Jonathan Hope - Walkers Crisps
- Katherine Hope - Doctor's Secretary

- Kim Gifford - Gardener
- Theresa Gifford - Livery yard at Westcroft
- Andy Graham - Builder
- Theresa Talley - Cleaner/housewife
- Robert Moret - Roofer
- Joleen Moret - Letting Agent/Housewife
- Carly May - Estate Agent
- Kristian May - Roofer
- William Bramwell - Care Worker (now at Bedhampton tip)
- Hollie Bramwell - Housewife

4: Sworn affidavit from Mr Andrew Graham former tenant of Ferndale (application site). Mr Graham states that he lived at Ferndale with his partner Theresa Talley and her daughter Katie Talley between 17th July 2008 and 17th April 2009. He has confirmed that prior to his tenancy and during his occupation of Ferndale that he was employed as a Builder. He has also confirmed that no other occupant was employed in agriculture or forestry during this period.

5: Sworn affidavit from Mr Robert Scott Moret former tenant of Ferndale (application site). Mr Moret states that he lived at Ferndale with his wife Jo Moret and their two children Summer and Bethany Moret between 1st May 2009 and 30th September 2010. He has confirmed that prior to his tenancy and during his occupation of Ferndale that he was employed as a Roofer. He has also confirmed that no other occupant was employed in agriculture or forestry during this period.

6: Sworn affidavit from Mrs Carly Marie May former tenant of Ferndale (application site). Mrs May states that she lived at Ferndale with her husband Kristian May and their two children Alfie and Summer May between 1st February 2011 and 28th February 2013. She has confirmed that prior to her tenancy and during her occupation of Ferndale that she was employed as an Estate Agent and her husband was employed as a roofer. Mrs May has also confirmed that no other occupant was employed in agriculture or forestry during this period.

7: Sworn affidavit from Mr Jonathan Nelson Hope former tenant of Ferndale (application site). Mr Hope states that he lived at Ferndale with his wife Katherine Iris May Hope and their two sons Archie and George Hope between 18th December 2003 and 31st July 2006. He has confirmed that prior to his tenancy and during his occupation of Ferndale that he was employed as a Supervisor with Walkers Crisps and his wife was employed as a doctor's secretary. Mr Hope has also confirmed that no other occupant was employed in agriculture or forestry during this period.

8: Additional information supplied by Mr Richard Michael Hampton Weekes, accountant for St Hermans Estate Company Limited. Including:

- Millers Estate Agents invoice for tenancy agreement for Mr and Mrs Gifford dated 23 October 2006.
- Sample statements regarding Mr and Mrs Giffords rent from Millers Estate Agents dated 04/10/2007 and 12/06/2008.
- Extracts from the Bramwells short hold tenancy covering the period 13/03/2013 to 12/02/2014.
- News extract showing character for Mr Bramwell and why no evidence has been requested directly from him.

Council's own Evidence:

Council Tax records show that the dwelling has been listed and liable for Council Tax since 1993. The Council's own records are consistent with the occupation of the dwelling as evidenced. The break in occupancy of August to September 2006 and October 2010 to January 2011 were cited as house maintenance and renovation prior to new tenants moving in. It is not considered that these gaps represent a meaningful break in the occupation of this dwelling by those not employed in agriculture or forestry.

Evidence from Case Officer site visit:

Unable to gain access to interior of property, however, the site was clearly used for residential purposes. The site visit itself did not and could not have established a definitive link with agriculture or forestry.

8 Conclusion

It is considered that there is sufficient evidence to prove that, on the balance of probability, Ferndale, Gutner Lane, Hayling Island, PO11 0RN has been continuously occupied as a residential dwelling by persons not employed in agriculture or forestry since 18th December 2003. There is no conflicting evidence to cast doubt on the validity of the documents provided by the Applicant and the Council's own evidence and the letter of representation received by the Residents' Association supports this view. A Certificate of Lawfulness should therefore be granted for the use of the dwelling without the restrictive condition stating that occupation should be by persons employed in agriculture or forestry, or their dependant's.

9 RECOMMENDATION:

That the Executive Head of Planning and Built Environment be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/14/00707 for the following reason:

It appears to the Local Planning Authority that, on the balance of probability, the occupation described in the First Schedule taking place on the land described in the Second Schedule has taken place for a continuous period of at least ten years up to the date of the current application. The Authority has considered evidence submitted by the applicant, third parties, Council Tax records and evidence obtained by the Authority during a site inspection.

FIRST SCHEDULE

Unrestricted use as a single dwelling house.

SECOND SCHEDULE

This Certificate relates to the land outlined in red, as shown on the submitted Location Plan 'Ferndale, Gutner Lane, Hayling Island, PO11 0RN'.