

Report of Service Lead: Legal

Application for Lawful Development Certificate – 22/01611/LDC

12 The Old Piggery, Firgrove Lane, North Boarhunt Hampshire PO17 6JU

Winchester City Council, has received an application for a Lawful Development Certificate on behalf of the owner of the above property who is seeking a Certificate for retention of a building as a single dwelling house (C3) on the basis that there has been a change of use of a building to a dwelling house as a result of which the construction and use of the building as a dwelling house has become immune from enforcement action and therefore lawful.

The applicant claims that a building was constructed and completed by February 2012 and that the building was subsequently converted into a dwelling house and continuously occupied as a dwelling house from February 2017 to the date of the application.

Documentation Submitted:

Six Statutory Declarations have been submitted with the application from:

The applicant (JK) who says that he started to build a barn on the site in November 2011 and it was completed by February 2012; he says the barn was an extended home for friends and family and he let his nephew who had nowhere to live, move into the building in February 2017 where he still lives;

A labourer (JR) who says that he helped to convert the barn into a three bedroomed house which was completed by October 2014;

A carpenter (DK) who says he worked on the barn starting in May 2014 to complete the dwelling house by October 2014;

Another worker (PJ) who says he brought materials to the site and helped the above two convert the barn;

A family member (JMK) who says she watched the applicant build the barn starting in November 2011 and finishing in February 2012.

The nephew/occupier (EHK) who says he moved into the dwelling house on 12 February 2017 and is still there.

Representations:

There has been one representation submitted – by the Boarhunt Parish Council who have objected to the application- however they have not provided any evidence either in support of or in objection to the evidence submitted with the application.

A formal consultation response has been submitted by the Council's Planning Enforcement team.

The Law:

The Town and Country Planning Act 1990

Section 191(1)-(2) of the Act provides as follows:

191.— Certificate of lawfulness of existing use or development.

- (1) 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);

Section 191(4) of the Town and Country Planning Act 1990 (as amended) (“the Act”) provides as follows:

191(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

Section 171B (1)-(2) of the Act provides as follows:

171B — Time limits.

- (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 the period of four years beginning with the date of the breach.***
- (2A) N/A
- (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 summary, a change of use of an existing building to a dwelling house becomes immune from enforcement action after four years but if a dwelling house is constructed as a new building, the use of that building as a dwelling house does not become immune from enforcement action until ten years after substantial completion of the dwelling house.

Guidance Note:

Paragraph 005 17c-005-20140306 of the National Planning Guidance (NPPG) states:

'in the case of applications for existing use, 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 alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability'.

The burden of proof regarding decisive matters of fact rest with the applicant and the relevant standard is the balance of probability.

Relevant Enforcement History and WCC records:

There is enforcement history for the wider site owned by the applicant. There is no Enforcement Notice in force in relation to this building.

The enforcement consultation response is as follows:

The use of the building in question is not considered to be immune under the 4 year rule as it has not been demonstrated that the building was in use as something else prior to changing its use to residential. The 4 year rule requires the change of use of an existing building.

The building appears to have been constructed as a dwelling as we have no evidence to show any conversion to a dwelling from something other than a dwelling.

The accounts provided do not tally up. Some declarations note it was completed in 2012, with no mention of what it was completed as. Then some state that it was completed in 2014. Another declaration notes substantial completion in 2012, but again, substantially complete as what?

If the building was constructed as a dwelling and had no intermediate use, the time limit for immunity would be 10 years for a change of use of land; either from agricultural land to residential, or through separation of land to form more than one separate unit of accommodation.

Aerial imagery shows the building present in 2017, but not 2013. The assertions that the building work was started in 2011 and completed in 2012 are therefore a fabrication. Please see screenshots below:

2017 Imagery



2013 Imagery



There is a lack of evidence provided and the information submitted cannot be relied upon due to obvious discrepancies. The appropriate time limit in this case would be 10 years for a change of use of land to residential, not 4 years as it has not been demonstrated that there was an existing building, under a different use, that was then converted to residential.

Analysis/ Conclusion:

- The applicant's claim is that he started construction of a building (a barn) in 2011, that it was (substantially) completed in 2012 and that in 2014 it was converted into a 3 bedroomed dwelling house, which has been occupied as a dwelling house since February 2017.

- The enforcement consultation response contradicts this, in that aerial photographs show that in 2013, this building had not been constructed- although there is a much smaller structure shown. The 2017 aerial photo shows a larger building in situ.
- The 2013 photo contradicts the applicant's claim that the building was substantially completed by 2012.
- No evidence has been submitted to verify the claim that the building that is shown in the 2017 photo was used as anything other than a dwelling house when it was constructed.
- The immunity period for use of a dwelling house unlawfully constructed as a new building is 10 years.

As a result of the contradictions in the evidence, I am not satisfied on the balance of probabilities that the construction of a building and its use as a dwelling house is immune from enforcement action and lawful and the application should therefore be refused.

Fiona Sutherland
Public Law Manager
For Service Lead: Legal

Dated: 23 September 2022