



Mid Kent Planning Support
Maidstone House
King Street
Maidstone
Kent
ME15 6JQ

Our ref: AP/15344
15th September 2023

Dear Sir/Madam

WHITE BARN COTTAGE, BROOK FARM, GREEN LANE, MARDEN, TN12 9RA

S191 TOWN AND COUNTRY PLANNING ACT 1990 - APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR EXISTING USE OR DEVELOPMENT (CLEUD) – USE OF PART OF AN EXISTING OUTBUILDING (WHITE BARN COTTAGE) ASSOCIATED WITH THE WHITE BARN FOR ANCILLARY RESIDENTIAL PURPOSES AS AN ANNEX.

I write in respect of the above property on behalf of our client Mr and Mrs Watts, to apply for a Certificate of Lawfulness for an Existing Use or Development (“CLEUD”) under S191 of the Act for the use of part of an existing outbuilding (referred to as ‘White Barn Cottage’) as an annex linked to the White Barn as the host dwelling.

This application is described as such:

“The part conversion of an existing outbuilding for use as an Annex (White Barn Cottage) ancillary to main dwelling (The White Barn) (S191 Certificate of Lawfulness Application)”.

White Barn Cottage is identified on the plans and details enclosed with this application.

White Barn Cottage (WBC) is located to the west of The White Barn and shares an access/driveway with that property. WBC is located within the northeastern section of the existing building which is primarily used as garaging and domestic storage incidental to The White Barn. WBC comprises two double bedrooms with ensuites and a central kitchen/dining/living area.

This application comprises the following:



- CLEUD application form;
- This Covering Letter;
- Site Location Plan
- Existing Floor Plan
- Existing Front and Side Elevations
- Existing Rear and Side Elevations
- Affidavit from Mrs Pamela Watts, dated 5th September 2023
- Affidavit from Miss Aimee Watts, dated 5th September 2023
- Affidavit from Mr Steve Spall, dated 5th September 2023
- Affidavit from Mrs Sarah Moncreiffe, dated 5th September 2023

Context

We explain below that the conversion of the WBC to ancillary residential accommodation is not in accordance with the 1998 planning permission which brought the building in to residential use whereby condition 10 restricts the use of the building to uses which are incidental to the use of The White Barn and restricts any extensions or alterations.

This letter explains that WBC has been occupied as a single self-contained annex associated with The White Barn for more than 10 years and, as such, has become lawful due the passage of time as a result of the provisions under S171B(3) (the 'ten year rule') of the 1990 Act. Evidence of the occupation of the dwelling as a self-contained annex is set out below.

History of Occupation and Works to White Barn Cottage

Mr and Mrs Watts have owned and resided in The White Barn since November 1993. The White Barn was originally part of the wider Brooks Farm complex which was divided up in the 1980s with a number of conversions of the existing buildings to form new dwellings. This included the conversion of The White Barn to a dwelling with ancillary buildings including the pool house, barn and garages, greenhouses, stable block and sheds and paddocks.

In 1998, an application was submitted to the land and buildings to the west of The White Barn in which application 98/0977 sought permission for "use of the premises for a mixed use for: powder blending, and the mixing and packing of filler materials (a use that would



fall within Class B1); and the storage and distribution of such materials (a use that would fall within Class B8). Application also involves the change of use of existing building (Building 1) for purposes incidental to the use of The White Barn as a dwellinghouse, as shown on drawing no. 326/1A received 18.08.98". Building 1 referred to in the description is the wider building comprising the garaging and storage and White Barn Cottage related to The White Barn.

The decision notice includes a condition (10) relating to the use of building 1 which has become part of The White Barn stating:

" 10 – In terms of the existing barn (Building 1) hereby permitted for uses incidental to the use of 'The White Barn' as a dwelling house, no extensions or alterations shall be carried out to the building or satellite antenna attached to it with the prior written consent of the Local Planning Authority."

Application 98/0977 was implemented and building 1 has been used incidental to the purposes of The White Barn since then. It is understood that Incidental use is defined as a use associated to the main dwelling i.e., gym, garage, workshop etc. but it excludes the provision of living accommodation such as bedrooms, bathrooms and kitchens, which is generally referred to as ancillary residential accommodation as set out in the Technical Guidance for Householders.

An application (ref. 10/1656) was granted permission for The White Barn in December 2010 for the erection of a single storey side extension and new hipped roof, new chimney, alterations to fenestration and internal alterations. This was later amended by application 12/0548 after the development had commenced and this revised application was approved in May 2012.

Whilst the construction of the development permitted by the above applications was carried out, Mr and Mrs Watts established temporary accommodation in part of the building subject to this application which now forms WBC. Mr and Mrs Watts used this building as their main living accommodation where it became a self-contained unit until the completion of the works to The White Barn. Works to the outbuilding provided an independent and self-contained accommodation with a living room, kitchen and two bedrooms with ensuite bathrooms including the addition of doors and windows. As confirmed by Mrs Pamela Watts' affidavit, Mr and Mrs Watts moved in temporarily in 2010 and once these works were completed they moved back into The White Barn in the Spring 2013.



In Spring 2013, Mr and Mrs Watts' daughter, Miss Aimee Watts then moved into WBC and the dwelling became Miss Watts and her partner's main residence from 2014 to 2019 as recorded in both the affidavits of Mrs Pamela Watts and Miss Aimee Watts. Miss Watts has confirmed in her affidavit that the property was a fully independent unit that is separate from The White Barn with all day-to-day tasks such as cooking, washing and sleeping, undertaken in White Barn Cottage. However, Miss Watts only occupied WBC through the family ties with her parents who occupy The White Barn.

Miss Watts moved out of the property in Spring 2019 when it became occupied by Mr Steve Spall in Spring 2019 who in return for accommodation provides caretaking, security and animal carer services for The White Barn and wider site. Mr Spall is a close friend of Mr and Mrs Watts and again Mr Spall has only occupied WBC through association with Mr and Mrs Watts of The White Barn (the host dwelling). Mr Steve Spall remains the current occupier of the dwelling and whilst the property is a self-contained annex with all day-to-day tasks such as cooking, washing and sleeping its occupation is entirely dependent on Mr Spall's association and relationship with the occupants of The White Barn as recorded in his affidavit.

Use of Accommodation

In each of the three occupations of WBC, the use of the accommodation has always been ancillary to the main dwelling of The White Barn with functional, occupational and family ties. In the first instance, it was occupied by the owners of The White Barn whilst work to the host dwelling was being undertaken. It was then occupied by the daughter of the owners of The White Barn, providing primary accommodation ancillary to the host dwelling with a direct family link. Following this, WBC is now occupied by a close family friend who provides caretaking, security and animal carer duties in exchange for accommodation demonstrating an occupational link to the main dwelling. Throughout the use, there has been no break in the use of WBC as an annex.

There is no separate curtilage for WBC and it remains part of the curtilage of the main dwelling of The White Barn, with WBC having access to the wider garden. It is also accessed via the same drive and access point with no separate parking area.

There is no separate postal address for the WBC and it does not have its own supply of utilities relying entirely on The White Barn for these services. No separate council tax is paid on WBC and none of the occupants have been charged rent during their period of occupancy.



There is no intention of WBC ever becoming a separate planning unit for use as a separate dwellinghouse as this would compromise the privacy and amenity of The White Barn. The ability to provide definitive separation between WBC and The White Barn is difficult to achieve as well due to the configuration of the buildings, driveway/parking area and the proximity of the buildings.

Standard of Proof – Balance of Probability

The National Planning Policy Guidance (NPPG) provides guidance for submitting and determining Lawful Development Certificates¹. Paragraph 6 of the guidance is clear that the applicant is responsible for providing sufficient information to support an application. If the LPA obtains information, this needs to be shared with the applicant who needs to have the opportunity to comment on it and produce (if needed) counter evidence. In the case of determining applications for existing use, if the LPA has no evidence itself, nor from any 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**.

On the matter of probability, the Court has held (in *F W Gabbittas v SSE and Newham LBC* [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their own, or 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". Nevertheless, a suite of evidence has been provided which is intended to give the Council comfort in their decision-making process.

Conclusion

The change of use of a building to an ancillary residential annex is immune to enforcement if the change of use has occurred for a continuous period of more than 10 years in part because there is no material change of use as the building is already in associate residential

¹ NPPG Lawful Development Certificate Guidance: <https://www.gov.uk/guidance/lawful-development-certificates>

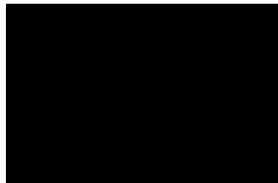


use and due to condition 10 of application 98/0977 restricting the use of the building to incidental with no extensions or alterations.

In this case the WBC has clearly been in use as an annex in excess of 10 years. It was first occupied by Mr and Mrs Watts on a temporary basis from 2010 to 2013, then by Miss Aimee Watts and her partner as their main residence from 2013 to 2019 and then by Mr Steve Spall as his main residence from 2019 to date. In each case, there was a direct functional and/or occupational link to The White Barn in which WBC would not be occupied without this association meaning WBC is an annex of The White Barn. WBC does not have its own gas or electricity supplies but is reliant on services and utilities of The White Barn and has not created a separate planning unit.

As such the change of use of part of the building identified for the purposes of this application took place in excess of 10 years ago and it is submitted that the residential annex of WBC in question is therefore now lawful. It is requested that a Certificate of Lawfulness for an Existing Use or Development be issued to confirm this position.

Yours sincerely,



Alex Payne
Associate

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