Date 22 December 2017
Our Reference CCOP1/GRA1359/1
Your Reference
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Knights 1759

Planning
Staffordshire Moorlands District Council
Moorlands House
Stockwell Street
Leek
ST13 6HQ

Dear Sir / Madam

Certificate of Lawfulness of Existing Use of Operation or Activity including those in Breach of a Planning Condition
Stable Loft, Lea House Farm, Horton, ST13 8PU
Planning Portal Reference: PP-06624828

Knights 1759 have been instructed by Mr A Graham to establish through a certificate of lawfulness of existing use that the use of Stable Loft, Lea House Farm, Horton as a residential dwelling is lawful. The dwelling comprises first floor accommodation located over an existing livery building which contains two bedrooms, lounge & dining room, kitchen and bathroom.

The certificate of lawfulness has been formally submitted today via the Planning Portal and has been given the reference number **PP-06624828**. A cheque for **£385** accompanies this certificate to enable you to validate this certificate application.

Pursuant to Section 191 of the Town and Country Planning Act 1990 the Local Planning Authority is invited to issue a Certificate which recognises the lawful use of the Stable Loft, and that it has been used for a continuous period as a single dwellinghouse.

Planning permission was obtained on 30 January 2004 under LPA reference SMD/2003/0900 (alternative reference: 03/01292/FUL) for the 'Change of use from a stable loft to holiday let'. Condition 2 of that planning permission stated that:

"The holiday unit(s) hereby permitted shall only be occupied by persons whose main residence is elsewhere; no person shall occupy the unit(s) for a period in excess of 4 weeks at any one time, nor return to the unit(s) until a period of at least 4 weeks has elapsed."

Section 171 of the Town and Country Planning Act 1990 makes it clear that other than in cases of operational development or changes of use of any building to use as a single dwelling house (where the

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immunity period is four years), enforcement action may be taken within the period of 10 years beginning with the date of the breach.

In general, a 10-year period will therefore apply in cases of a breach of condition imposed on a planning permission.

However, in *Arun DC v First Secretary of State [2007] 1 W.L.R. 523* the Court of Appeal held that the four-year period in s.171B(2) rather than the 10-year period in s.171B(3) applied to a breach of planning control consisting in the change of use of an extension to use as a single dwelling house, even though it amounted to a failure to comply with a condition imposed when planning permission had been granted for the extension, such that the condition could not be enforced more than four years after the breach.

In our case it is necessary to be able to demonstrate to the Authority that the condition is currently being breached and as at the date of the application, a breach had taken place over the previous four years.

To constitute a breach, the property must have been occupied:-

- By a person who was occupying it as their main residence (while in occupation this would apply even if they owned another property elsewhere);
- By persons who occupied it for more than four weeks at a time;
- By persons who left and then returned to occupy within 4 weeks of their last occupation.

A summary of the documentation which has been submitted in support of this certificate application is set out below:

- Enclosure 1 - Assured shorthold tenancy agreement - Mr Connelly
- Enclosure 2 - Assured shorthold tenancy agreement - Ms Jones
- Enclosure 3 - Assured shorthold tenancy agreement - Ms Wheeler
- Enclosure 4 - Assured shorthold tenancy agreement - Mr Sambridge
- Enclosure 5 - Assured shorthold tenancy agreement (aborted) - Ms Carina Hollander-Hancock
- Enclosure 6 - Marketing history by Daniel & Hulme (2006-2017)
- Enclosure 7 - Schedule of accounts for Stable Loft (2005-2017) by Thompson Chartered Accountants

It is clear that the property has been occupied by Mr Chris Connelly since 1 April 2017. Mr Connelly has continued to occupy the property since his tenancy came to an end and is currently holding over at the moment. The LPA is aware of this following correspondence between Julie Howard (SMDC Enforcement officer) and the applicant as well as Stephen Hulme of Daniel & Hulme letting agents between September and December 2017.

Prior to that date there have been a succession of residential occupiers dating back to (7 September 2006). These are set out below:

- Ms Sarah Jones who signed an assured shorthold tenancy agreement on 29th April 2015 for an initial term of 6 months. She resided there until early October 2016 with the agreement being renewed until notice was served and the tenant vacated the property.

- Ms Julie Wheeler who signed an assured shorthold tenancy agreement on 14th June 2007 for an initial term of 3 months. She resided there beyond that term until April 2015 with the agreement being renewed until notice was served and the tenant vacated the property.

- Mr Drew Sambridge who signed an assured shorthold tenancy agreement on 7th September 2006 for an initial term of 3 months. He resided there until May 2007 with the agreement being continued until notice was served and the tenant vacated the property.

Since first occupation of the building in September 2006 the applicant has employed the letting agent Daniel & Hulme to market the property and manage the tenants. A sample of the tenancy agreements are enclosed with this submission (**Enclosures 1 - 4**) which go back over the last 4 years and beyond which sets out the occupation periods by reference to each letting.

We are advised that when in occupation, those occupying the property were doing so as their main residence and the period of occupation per tenant was always well in excess of 4 weeks with all tenants holding over after the tenancy had come to an end. We are also advised that the tenants typically moved to this property due to the need to relocated to the area as a result of work commitments. For instance, we are informed that Ms Jones practiced as a vet in the Biddulph area, owned another property in Scotland but resided at the application property during her tenancy (returning to Scotland for short periods of time during some weekends and annual leave periods) whilst at all times maintained the application property as her main dwelling retaining her day-to-day belongings at the property when absent.

We have been provided with a schedule of rental income for the Stable Loft between the years of 2006 and 2017 from the applicant's accountant which demonstrates that a steady stream of income was provided over this period of time. This information is contained in **Enclosure 7**.

On the balance of probabilities it is the case that a breach of condition 2 has taken place for more than four years and a certificate of lawful use should be issued by the Council to recognise that fact. Indeed, the property has been occupied in breach of condition for more than 10 years.

In addition to the above, we have also been provided with a document which details the marketing history of The Stable Loft by Daniel & Hulme. This document is contained in **Enclosure 6**.

The document contained in **Enclosure 6** demonstrates that the property was first marketed for a period of 55 days between 14 July 2006 and 6 September 2006, which coincides with Mr Sambridge agreeing his tenancy on 7 September 2006. Following the tenancy of Mr Sambridge coming to an end the property was again marketed for a period of 11 days between 1 June 2007 and 12 June 2007 when upon a new tenancy was agreed with Ms Wheeler on 14 June 2007, who resided at the property for 8 years. When Ms Wheeler gave notice to the applicant that they intended to terminate their agreement, the applicant was approached by Ms Jones directly who registered their interest to take residence of the property. Ms Jones was then directed to the letting agents on 18 March 2015, she consequently took

occupation of the building on 29 April 2015 and we are advised that she continued to renew her tenancy up until 12 September 2016 at which point the property was marketed again (with Ms Jones remaining in the property for three more weeks until early October 2016 whilst the notice period was being served). This period of marketing continued for 225 days between 12 September 2016 and 25 April 2017 before a tenancy agreement was made with Mr Connelly on 1 April 2017.

Whilst it is acknowledged that there was a substantial period of time whilst the property was vacant between 2016 and 2017 this does not imply that the building reverted back to a holiday use as Daniel & Hulme continued to actively market the property on the rental market. This was carried out via means of providing details of the property at their offices together with online marketing on the Daniel & Hulme website and on the Rightmove website. Indeed during this time we have been advised by the applicant's letting agent that the property was viewed on the following dates: 21/09/15, 22/09/16, 30/09/16, 21/10/16, 04/11/16, 19/12/16, 20/12/16, 10/01/17, 03/02/17 and 13/03/17. This marketing led to two abortive tenancies prior to the current occupant of Mr Connelly taking residence. The aborted tenancies comprised Mr Walley and Mr Cooper signed a tenancy agreement on 21 January 2017 before cancelling the agreement, and Ms Carina Hollander-Hancock twice signed and cancelled a tenancy agreement (the first agreement being on 1 February 2017). A copy of the aborted tenancy agreement by Ms Carina Hollander-Hancock is contained in **Enclosure 5**.

Given the fluctuating nature of the rental market it is evident that a property this type, location and rural setting is by no means a standard property in the Leek rental market as it is somewhat individual in its offer. The added complication is that despite its rural location, tenants are not able to have pets at the property on account of it being located at a working stable yard. As a consequence it is reasonable to expect that prospective tenants who would be interested in residing in such a bespoke property may take a longer than usual period of time to come forward. In light of the above, the 225 day period of time when the building was vacant between 2016 and 2017 does not represent a break to the continuous period of time when the occupancy condition was being breached on account of the consistent level of marketing that was taking place to locate a new tenant and the absence of any occupation (or advertisement of such) as holiday accommodation during that time.

It is therefore considered that on the balance of probability that the breach of condition 2 has occurred for a continuous period in excess of 4 years. In fact is can be demonstrated that at the time of submission of this breach of condition had occurred for in excess of 10 years. On this basis, the application building can be lawfully used a single residential dwelling and therefore a certificate of lawfulness should be issued.

Yours sincerely

CARL COPESTAKE

Knights
1759

Enclosed: Application fee of £385 (Payable to 'Staffordshire Moorlands District Council')

Copy: Mr A Graham
Mr S Hulme (Daniel & Hulme)