**DELEGATED DECISION REPORT**

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| **SMD/2017/0856**<br>**Valid 29/12/2017** | **STABLE LOFT**<br>**LEA HOUSE FARM BOND HOUSE LANE**<br>**HORTON** | **RESIDENTIAL USE FOR A PERIOD IN EXCESS OF 4 WEEKS AT ANY ONE TIME AND RETURNING WITHIN AT LEAST 4 WEEKS AFTER THAT PERIOD HAS ELAPSED.**<br><br>**(CERTIFICATE OF LAWFULNESS - EXISTING)** |

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**MAIN ISSUES**

- Does the matter relate to a breach of planning control?
- Was the breach/matter occurring on the date of the application?
- Could enforcement action be taken in respect of the breach/matter?

**DESCRIPTION OF SITE**

The converted stable loft forming a first floor flat at Lea House Farm, Bond House Lane, Horton, Staffordshire, ST13 8PU.

A first floor stable loft within the farm yard has been converted to provide a flat for residential lettings. The 'material change of use' was granted planning permission ref. 03/01292/FUL and was described as a "change of use from stable loft to holiday flat". Permission granted on the 30th January 2004 subject to a condition that reads as follows:

*"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"*

The first floor flat provides all of the facilities necessary for independent self contained residential accommodation.

**PROPOSAL**

There is some confusion here. The applicant's proposal reads as though he seeks confirmation that a 'change of use' is lawful but his description of the use appears to reference or relate to the terms of the occupancy condition:

*"Residential use for a period in excess of 4 weeks at any one time and returning within at least 4 weeks after that period has elapsed"*

The proposed use that he describes is oddly drawn and, while it is a use that would fall within Class C3 “dwellinghouse”, it is obviously contrived to address and draw on the affects of the occupancy condition.

In reality when the planning permission was granted for the ‘holiday flat’ in January 2004 a material change of use was in effect permitted for part of a building (first floor) to be used as a dwelling, while the intent was that it would only be used by persons on holiday, the use of the flat would be materially the same as any other use falling within Class C3.

The applicant points to the judgement in *Arun DC v First Secretary of State [2007] 1 W.L.R. 523* in an attempt to demonstrate, I think, that the breach amounts to the use of the building as a dwelling and that it is a four year period which is applicable to the immunity question. In that case 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. However, that case was fundamentally different because specifically the breach of the condition did also amount to a ‘material change of use’, to a use that was different to that granted planning permission. In the applicant’s case however, this is simply not the case, while the condition is breached the use of the flat remains materially the same as that which was granted planning permission.

The real matter at stake is the terms of the occupancy condition and the existing occupant’s breach of that. The use of the flat as a dwelling is lawful because that it what planning permission has already been granted for, but the permission was subject to an occupancy condition that limited the periods of time during which an occupant could use it as such.

What the applicant really appears to be asking is whether enforcement action could be taken in respect of the occupant’s existing breach of the occupancy condition and therefore whether that occupancy is now lawful. I consider the most logical and meaningful way of dealing with the application is to consider it in this manner, and therefore I will deal with it accordingly.

**SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS**

Condition no. 2 of planning permission 03/01292/FUL that was granted for a change of use from stable loft to holiday flat on the 30th January 2004, the condition reads as follows:

*“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”*

## CONSULTATIONS

### Town / Parish Comments

Neither support or object. Feel there might be anomalies in the application statement.

## OFFICER COMMENTS

### Does the matter relate to a breach of planning control?

While the first floor flat can be used as a dwelling, the permission was granted subject to a condition that limited the period and terms of occupancy. The submitted evidence explains that the existing occupant does not have a main residence elsewhere and that his period of occupancy is already in excess of 4 weeks. His occupancy is a breach of the condition. However, his continuing use of the flat has not resulted in a material change of use that does not have planning permission.

### Was the breach/matter occurring on the date of the application?

Section 191of the Act only provides for a certificate of lawfulness to be issued in respect of an *existing* breach of a condition i.e. a breach that is subsisting on the date of the application. There is no such provision for a proposed or future breach of a condition. The evidence states that the existing occupant was occupying the flat on the date of the application. There is no reason to believe that it was not.

### Could enforcement action be taken in respect of the breach/matter?

According to the submitted evidence the existing and ongoing failure to comply with the occupancy condition by the person currently occupying the flat, who does not have a main residence elsewhere, only began on the 1st April 2017 and exceeded 4 weeks from the 29th April 2017. It had been taking place, therefore, for less than 9 months on the date of the application. After this period of time enforcement action may still be taken and the matter can not be considered lawful. A failure to comply with a condition will only become lawful after a period of 10 years.

The applicant's submision also evidenced various other occaisons where the condition had previously been breached before the current occupation began. However, the evidence only demonstrated how on each occaison the period of occupation fell well short of the time necessary to establish immunity before their period of occupation came to an end and the breach or failure to comply ceased. There was no such failure to comply for a period of at least 5 months, prior to the existing occupancy beginning, because the flat was vacant. During that time there was no breach that could have been the subject of enforcement action. The period of occupation in excess of 4 weeks, that preceeded that 5 month period, began on the 25th May 2015 and lasted for less than 17months and, after that period of time, enforcement action could still have been taken.

The applicant explains that during this 5 month period there was an intention to breach the condition again and that the property was being marketed as an unrestricted flat. However, this is of no consequence to the question of whether during that period there was a failure to comply with the condition.

**OFFICER RECOMMENDATION :** That the Council REFUSES to certify that on 22/12/2017; the matter constituting an existing failure to comply with the occupancy condition at the property had become lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended).

**Case Officer: Ben Hurst**
**Recommendation Date: 15/03/2018**

X B.S. Haywood

Signed by: Ben Haywood

**On behalf of Staffordshire Moorlands District Council**