The Planning Inspectorate

OT100-074-367

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Appeal Decision

Inquiry held on 13 September 2011

Site visit made on 13 September 2011

by R O Evans BA(Hons) Solicitor MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 5 October 2011

Appeal Ref: APP/X1545/X/11/2147310
Flat above garage, Stitches Farm, Lower Chase, Althorne, Chelmsford, CM3 6BY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Stuart Davis against the decision of Maldon District Council.
- The application Ref LDE/MAL/10/00279, dated 7 April 2010, was refused by notice dated 10 June 2010.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is "existing residential use by people not connected to the main house".

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Reasons – Preliminary Matters

2. All the evidence heard at the inquiry was given by affirmation. I raised the question of the wording of the application with the parties at the start of the inquiry. I return to this below.

3. Stitches Farm comprises an active agricultural unit of some 56ha, with a range of buildings to the west of the unmade road or lane known as Lower Chase. As shown on the application plans, the main dwelling stands in a large plot bordering the lane, with an irregular northern boundary separating it from the agricultural buildings.

4. The subject building stands between the main house and the lane. It is a single storey structure with a pitched roof, measuring approximately 14m x 8m. Most of the ground floor is given over to a garage, with a double door on the western elevation. A door at the northern end however leads into a small enclosed kitchen area, with a bathroom beyond it, and steps leading up to the roofspace. At the time of my visit the fitted kitchen was fully equipped with a cooker, fridge/freezer and a small eating counter. A coin operated electricity meter was mounted on the wall. The steps led into a furnished living area, with a bedroom at the southern end of the building and a cupboard at the northern end containing a boiler. Mounted on the outside walls were a gas supply unit and a satellite dish. A paved driveway at the southern end led to a now fenced entrance from Lower Chase. The paving extended around and

between the buildings with a walled gateway between them providing vehicle access from the common northern entrance to the farm. For convenience, I shall refer to the subject premises as 'the flat'.

5. As Circular 10/97 advises, the burden of proof lies with the Appellant, the relevant test of the evidence being on the balance of probability. An appellant's evidence does not need to be corroborated by independent evidence in order to be accepted. If there is no evidence to contradict or otherwise make an appellant's version of events less than probable, there will be no good reason to dismiss the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous to meet that test.

6. The sole issue is whether the use for which the certificate is sought was lawful at the date of the application. To summarise relevant statutory provisions, pursuant to section 191 of the 1990 Act, a use of land is lawful at any time if no enforcement action may then be taken in respect of it because the time for such action has expired. Section 171B provides that, where there has been a breach of planning control consisting in the change of use of any building (which includes any part of a building) to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. To be clear, the effect of this provision is not that the Appellant necessarily has to show a continuous period of four years immediately preceding the date of the application, but rather that the use had become lawful at some time before then and has not subsequently been displaced or superseded.

The Evidence

7. Planning permission was granted in 1997 for the demolition of a previous garage and its replacement with a building of similar appearance and proportions to that actually erected. The approved plan shows there to be storage space in the attic. The Appellant's evidence is that the building as permitted was found to be too narrow to accommodate his cars so that it was actually built slightly larger than approved and thus was capable of providing living accommodation. In summary, the building was fitted out as presently arranged; his son then lived in 'the flat' with his girlfriend from January 1999 to March 2001; his daughter moved into it with her then boyfriend in March 2001 and continued to live there until May 2008; and that since then it has been occupied more or less continually by others, mostly under formal tenancy agreements.

8. In addition, while neither the Appellant's son nor his daughter paid rent, both they and their partners were employed and led separate, independent lives, catering for themselves and using only the facilities in 'the flat'. Because of his son's then working arrangements, the Appellant had seen him mainly only when the family met for a take-away meal on a Friday evening. He did not get on well with his daughter's partner so saw even less of them on a social basis. Mains water and electricity were connected, the latter being supplied via the farm supply, though apportioned for accounting purposes. The present meter was installed when his daughter moved out in 2008. Gas was supplied separately but the suppliers had never sent a bill for it. 'The flat' had only been registered for Council Tax purposes as a separate dwelling in 2008 but had always been used as such. The southern access had been in use until about 3 years ago, when it was blocked up. The Appellant's financial support he regarded simply as that of a generous father subsidising his young adult

children so that it only became necessary to cover utility bills and Council Tax when 'the flat' was occupied by others.

9. The Appellant's evidence was broadly confirmed at the inquiry first by his son's partner, who described a similar physical arrangement of the building in 1999 as I found and living arrangements consistent with the Appellant's description. There was no telephone line at that time, as she and Mr Davis (junior) relied on their mobile phones and did not then have computers. The Appellant's daughter described 'the flat' in similar terms. She also confirmed her living arrangements and employment position. She had taken all her personal items from the main house when moving in but had had fitted furniture there so made use of items left by her brother. She had her own television set and in 2004 the couple had arranged for installation of a telephone line, satellite television and broadband connection. She remained in occupation of 'the flat' after her partner left in 2006 and continued to live separately to her parents. An employee of the Appellant's, who had been based at Stitches Farm since 2000 and who had visited 'the flat' some 5 or 6 times also confirmed the physical and living arrangements in so far as she was able to.

10. Short statutory declarations had also been previously submitted from the Appellant's son (with photographs said to have been taken when he occupied the premises), the son's grandfather, 2 other long standing employees and a friend. All were brief but consistent with each other and with the evidence given at the inquiry. Also exhibited were a number of tenancy agreements beginning in February 2009, an employee of the Appellant's being said to have lived in 'the flat' without a formal agreement between May and December 2008.

11. Both the Appellant's agent and the Council's witness gave evidence not from their first hand knowledge of the factual history so much as based on their interpretation and professional assessment of it. The Council accepted that 'the flat' had had all the facilities required for day-to-day private domestic existence, as in *Gravesham BC v SSE and O'Brien*, [1983] JPL 306, since the son first occupied it. They contended however that if there had been a material change to use as a separate dwelling rather than use for purposes incidental to the use of the main dwelling, it had occurred at about the time 'the flat' was first registered for Council tax purposes and was occupied by people other than members of the Appellant's family. The Appellant had thus not been able to show a four year period of such use prior to submission of the application.

Conclusions

12. The consecutive occupation of the premises by the Appellant's son and daughter may not have resulted in the creation of any formal tenancies, nor any form of legal obligations between them, but the evidence about their living and working arrangements was not contradicted or rebutted in any way. Save possibly for minor details based on memory, it was consistent throughout and I have no reason to doubt it. Further, neither the son's nor the daughter's occupation was as an extension of their parental home. It was not a case of them having just a room of their own, where they continued otherwise to live as part of the family household. Rather, both were young adults living separate lives with their partners and both were employed, albeit in the son's case by his father's business. The Appellant may have subsidised them considerably but so might he have done had they lived elsewhere. On the

evidence before me, the nature and character of their occupation reflected the facilities available to them, namely use of 'the flat' as a dwelling in its own right, not merely as an annexe.

13. Neither the lack of legal relations nor the family connection undermines that view. For present purposes, the determining factors are the way in which the premises were occupied and used rather than who occupied them or when they were registered separately for Council Tax (though both can be evidentially relevant). The Appellant's son and daughter may have had no security of tenure had the Appellant asked them to vacate the premises but the fact is, he did not. The apparent lack of a separate television licence is a peripheral matter which carries little weight. As the Appellant's daughter remarked, she was 17 or 18 (at the time she moved into 'the flat') and did not give it a second thought.

14. As a question of fact and degree, I find on this evidence that the use of 'the flat' as a separate dwelling by the Appellant's offspring and their partners continued with a single short interruption from January 1999 until May 2008. That use might have been further consolidated once the premises were occupied by other people but in land use terms, its character did not then change and it had by then continued wholly uninterrupted for some 7 years. The lack of a discernible exterior curtilage does not prevent 'the flat' being a planning unit in its own right, though may have implications for any permitted development rights.

15. It is conceivable on the Appellant's evidence that the building was constructed at least partly as a dwelling, rather than as a garage and store with a subsequent change of use. The point was not argued but even if it were so, the result would probably have been a building with a 'nil' lawful use at the time of its construction. The issue would thus remain first one of whether and when the change of use occurred. Given my above findings, the combination of the provision of the accommodation and 'the flat's' occupation means that the change of use occurred in January 1999. Put another way, if the question is asked, could the Council have taken enforcement action in say, 2000 or 2001, the answer is undoubtedly yes. Given also the continuity of occupation, it follows that considerably more than 4 years have elapsed since then. With no intervening change of use or other reason to regard the use as displaced, the lawful use in April 2010 was as a single dwellinghouse separate from Stitches Farmhouse.

16. The description in the application may have been used elsewhere but does not in my opinion adequately reflect that use. The Council did not formally agree to a change in the description but I see no reason not to exercise the powers under section 191(4) to issue a certificate in more accurate and readily understood terms. The premises affected should also be more clearly described.

R O Evans

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr D W O Whipps	Solicitor, Holmes & Hills, Braintree
He called:	
Mr S Davis	The Appellant
Ms K Watton	Partner to Mr D Davis
Ms S Davis	Appellant's daughter
Ms E Jackson	Appellant's employee
Mr K Lilley MTCP MRTPI	Planning Consultant, Smart Planning Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Ms J Lean	of Counsel, instructed by the solicitor to the Council
She called:	
Mr M Shingler BA(Hons) DipTP MA	Development Control Team Leader

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 7 April 2010 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black and described as "The Garage" on the first plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The time for taking enforcement action against it had expired.

Signed

R O Evans

Inspector

Date 05.10.2011

Reference: APP/X1545/X/11/2147310

First Schedule

Use as a single dwellinghouse

Second Schedule

The premises known as The Flat above Garage, Stitches Farm, Lower Chase, Althorne, Chelmsford, CM3 6BY (comprising accommodation on the ground and first floors as shown on the second plan attached to this certificate)

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The Planning Inspectorate

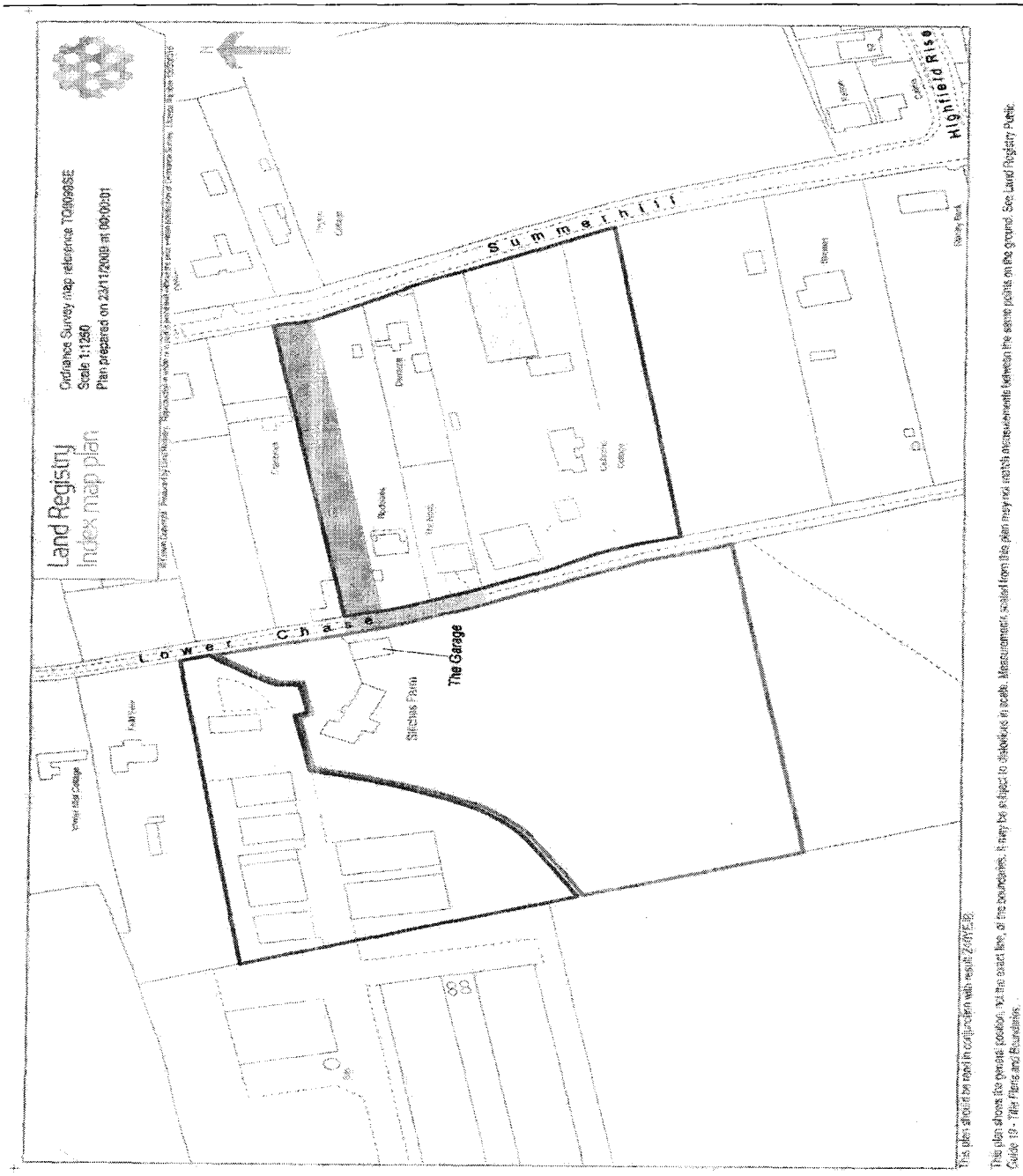
Plan

This is the first plan referred to in the Lawful Development Certificate dated: 05.10.2011

by R O Evans BA(Hons) Solicitor MRTPI

Land at: Flat above Garage, Stitches Farm, Lower Chase, Althorne, Chelmsford, CM3 6BY

Reference: APP/X1545/X/11/2147310



The Planning Inspectorate

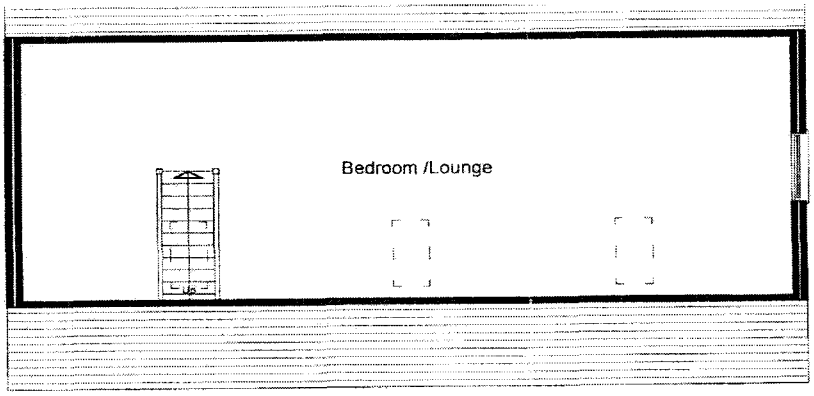
Plan

This is the second plan referred to in the Lawful Development Certificate dated: 05.10.2011

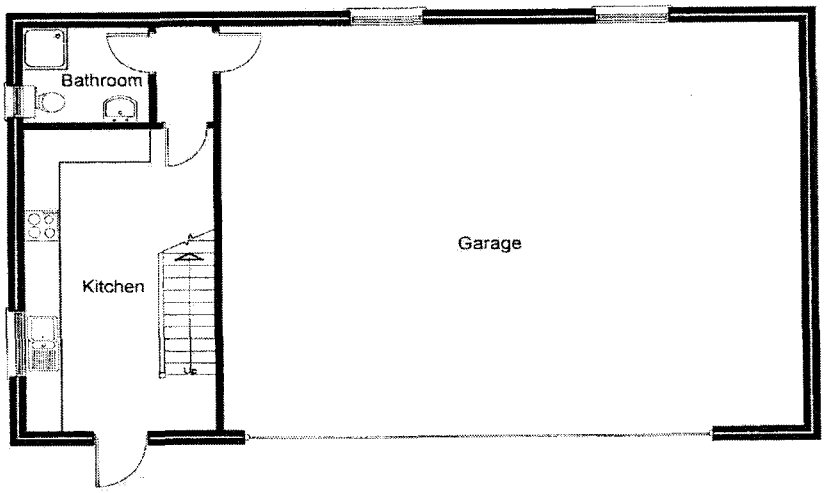
by R O Evans BA(Hons) Solicitor MRTPI

Land at: Flat above Garage, Stitches Farm, Lower Chase, Althorne, Chelmsford, CM3 6BY

Reference: APP/X1545/X/11/2147310



First Floor Plan



Ground Floor Plan