

**Grounds for an Application for a Certificate of Lawful Existing Use or Development –  
Garage Conversion and new Shed at New House, Sinnocks, West Chiltington,  
Pulborough, RH20 2JX (the “Property”)**

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**1 Background to the Application**

- 1.1 The Certificate of Lawfulness for Existing Use and Development (CLEUD) is sought on the basis that the relevant works and change of use at the Property were completed over ten years ago. Therefore, this development of the Property is now immune from enforcement action and eligible for the grant of a CLEUD pursuant to section 191 of the Town and Country Planning Act 1990 (as amended) (“**TCPA 1990**”).

**2 The Property / Planning History**

- 2.1 The Property is a two-bedroom home based in West Chiltington, within the Horsham district of West Sussex. Richard Keeling (the “**Applicant**”) is the registered owner of the Property, having constructed the Property between 2005 – 2006 pursuant to planning permission with reference DC/04/1791 (the “**Planning Permission**”). The Property is the Applicant’s private residence.
- 2.2 The planning history for the Property is largely historic, with the Planning Permission being the most recent planning application. Similarly, the enforcement investigations history regarding the Property is also historic, dating from between 1930-2013. There is no enforcement investigation recorded against the Property within the past ten years.
- 2.3 The Application concerns works to convert a garage for use as a living room and the construction of a new shed at the Property (together, the “**Works**”).
- 2.4 The Application also concerns use of the garage as a living space being in breach of condition 4 of the Planning Permission which states as follows:
- The garage hereby permitted shall be used as a private domestic garage in connection with the approved dwelling only for no other purpose*
- 2.5 The onus is on the Applicant to demonstrate that, on the balance of probabilities, the Works were completed at least ten years ago and therefore have acquired immunity from enforcement action. The Applicant also needs to demonstrate that, on the balance of probabilities, the use of the garage as a living space in breach of planning has been occurring for longer than ten years without interruption or secrecy.
- 2.6 The Applicant has provided two statutory declarations which confirm his knowledge of the Works and the use of the garage. Anthony Funnell, the Applicant’s brother-in-law and a professional bricklayer, also provided a statutory declaration which confirms his knowledge of the Works in relation to the construction of the new shed (together, the “**Statutory Declarations**”).
- 2.7 Three statutory declarations have been submitted as part of this CLEUD application. It is appropriate to attach “substantial” weight to statutory declarations where the information contained in them is “precise and unambiguous and where they have been properly declared and witnessed”, otherwise there could be serious consequences if

any of them were shown to be false.<sup>1</sup> They have been properly declared and witnessed and therefore on their own could be the determining evidence to grant the CLUED.

2.8 The Applicant has also provided the following additional evidence in the exhibits as part of the Application:

- 2.8.1 RK1 – the Planning Permission decision notice;
- 2.8.2 RK2 – approved amended plans for the Planning Permission;
- 2.8.3 RK3 – image showing the openings in the garage wall were boarded up taken on 14 May 2014;
- 2.8.4 RK4 – image showing the windows installed in the garage wall taken on 11 May 2015;
- 2.8.5 RK5 – image showing the interior of the garage after works to convert the garage to a living room taken on 27 October 2015;
- 2.8.6 RK6 – image showing the window in the converted garage being open and the room being in use from 22 October 2015;
- 2.8.7 RK7 – Google Earth image showing the location of the Property dated 31 December 2001, prior to construction;
- 2.8.8 RK8 – invoice for the purchase of the roof trusses dated 28 November 2011; and
- 2.8.9 RK9 – Google Earth image showing the location of the new shed dated 6 June 2013.

### **3 Grounds for the Application**

#### Law – Statute and Case Law / Appeal Decisions and Policy

3.1 The relevant law for determining a CLEUD application is contained in section 191 of TCPA 1990. Section 191(1) provides that:

*“If any person wishes to ascertain whether any existing use of buildings or other land is lawful [or] any operations which have been carried out in, on, over or under land are 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.”*

3.2 Section 191(4) provides that:

*“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...they shall issue a certificate to that effect...”*

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<sup>1</sup> Appeal Decision APP/L5810/C/17/3172432

3.3 Under section 191(2)(a) of the TCPA 1990:

*“Operations are lawful at any time if no enforcement action may 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)”*

3.4 Pursuant to section 171B(1)(a) of the TCPA 1990 (as amended) with transitional provisions in The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024:

*“(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building ... operations in, on, over or under land, no enforcement action may be taken after the end of the period of—*

*(a) in the case of a breach of planning control in England, **ten years beginning with the date on which the operations were substantially completed**...*

*(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**”*

(emphasis added)

3.5 “Substantial completion” is not defined in the TCPA 1990. In the context of a housing development, in *Sage v Secretary of the State for Environment* [2003] UKHL 22 it was held that the immunity period started to run from when a building was substantially completed both internally and externally. In particular, it was recognised that the totality of the operations which the developer had originally contemplated and intended to carry out as part of the project would be material to assessing “substantial completion” (as a proportion of the total works to be carried out).

3.6 The relevant policy for determining CLEUD applications is found in the planning policy guidance as follows:

*“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**.”* (emphasis added) [Paragraph: 006 Reference ID: 17c-006-20140306].

3.7 No enforcement action can be taken in respect of the Property because the available evidence indicates that the Works were substantially completed well over ten years ago. The use in breach of a planning permission condition has also been occurring for longer than ten years.

### Analysis

3.8 The Statutory Declarations and supporting evidence confirm that the Works were completed over ten years ago and the use of the garage as a living space has been continuing for longer than this ten year period. In particular:

- 3.8.1 The Applicant started works on the new shed in around November 2011 and recalls finishing the works on the new shed over the summer of 2012 with the help of his brother-in-law Anthony Funnell;
  - 3.8.2 It is apparent that the new shed was in place since at least 6 June 2013 based on the available Google Earth imagery (as visible in exhibit RK9);
  - 3.8.3 The new shed was “substantially completed” at this stage because the operations which the Applicant had intended to carry out to construct the new shed had been completed;
  - 3.8.4 The Applicant first started to use the garage as additional living space for his family in around November 2006 in breach of Condition 4 of the Planning Permission and this use has been continuous and not concealed since; and
  - 3.8.5 The Applicant decided to fully convert the garage in 2015 and had completed all of the relevant works by 27 October 2015 as can be seen in the exhibits RK5 and RK6, including completing the internal finishes to the garage (therefore meeting the requirements for “substantial completion” pursuant to *Sage*).
- 3.9 The Applicant is not aware if the Council has any evidence of its own or from others to make its version of events less probable. Therefore, the Council should grant the CLEUD application given that the Applicant’s evidence is precise and unambiguous.

#### **4 Community Infrastructure Levy (CIL)**

- 4.1 We note that the Council has a CIL charging schedule dated April 2017 (the “**Schedule**”) and the Property is located within the “Charging Area” as defined by the Schedule. However, given the Schedule is dated April 2017 and the Works predate the Schedule, we would argue that no CIL is payable. In any event, the Works would not incur any CIL due to the lack of additional floorspace created by the garage conversion and minimal change to the floorspace of the shed.

#### **5 Conclusion**

- 5.1 Once immunity from enforcement action has been obtained, it can only be lost by either abandonment of the property, the creation of a new planning unit or a material change of use and none of these apply to the Property as it continues to be occupied as the Applicant’s private residence without any recent development having taken place.
- 5.2 For the reasons given above and the evidence provided in the Statutory Declarations, the Works were carried out over ten years ago, comfortably beyond the statutory period for enforcement and therefore this application for a CLEUD should be granted.

**Russell-Cooke LLP**  
**30 March 2026**