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Planning Statement

Certificate of Lawfulness for an Existing Use/Development (CLEUD) to Confirm the Lawful Construction & Occupation of a C3 Residential Dwellinghouse, Outbuildings and Associated Amenity Space

Kingstone

Bramble Lane, Thakeham, West Sussex, RH20 3DZ

Prepared for

Mr Clifford King

Prepared by

Peter Young BSc MA MRTPI

Vr 1.5 August 2024

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1. INTRODUCTION

1.1. We are instructed by Mr Clifford King, to submit an application for a Certificate of Lawfulness for an Existing Use/Development (CLEUD) in relation to his dwellinghouse, outbuildings and garden. The application is seeking to confirm the construction and occupation of his dwelling, known as Kingstone, is now a lawful development through the passage of time.

1.2. Mr King commenced construction of this property, with the assistance of his brother, Jacob King, in early October 2014, with the dwelling being completed and occupied on 15 February 2015. Mr King has lived at the site on a permeant basis ever since and Kingstone is his sole residence.

1.3. the application is supported by nine Sworn Affidavits (SA), including one from the applicant. One from his brother, and the remainder from friends, colleagues and other local landowners. This is accompanied by documentary evidence, including old invoices and some other private information. Many of these are provided as confidential items, and the applicant would ask that given the sensitive nature of some of this information, that the LPA do not publish this on their public access website.

1.4. It is the Applicant's view that the Sworn Affidavits (SA) provide a compelling material consideration in support of the CLEUD, which can be cross referenced to the other supporting information. The application will demonstrate that the dwelllinghouse, outbuildings and garden have been occupied on a continuous basis as a C3 residential property since 15 February 2015.

1.5. The submission and SA's detail how Mr King first moved to the site, following his previous accommodation in Worthing becoming uninhabitable and on the verge of homelessness. The evidence provided in the nine SAs is precise and consistent. It is gathered from a wide source of perspectives, including those who have know of the dwelling since construction works commenced. These corroborate the information supplied in this Statement and confirm that the residential occupation of the building and site has exceeded the 4-year still required by legislation.

1.6. The applicant is aware of the changes to legislation governing CLUEDs that were introduced on 25 April 2024. They are aware that Regulation 5 of the transitional arrangements confirm that if the breach to planning control occurred before the 25 April 2024, then the requisite period that must be demonstrated is a 4-year test and not a 10-year test, which is introduced from 26 April 2024.

1.7. Submitted with this application is information that confirms the works are lawful and exempt from planning control. Also submitted are floor and site plans for the dwelling in order to assist Officer's determination of the application.

1.8. This application should be read in conjunction with the following plans and documents:

- 1:1250 Site Location Plan;
- 1:500 Block Plan;
- Elevation Plan of Kingstone;
- Floor Plan for Kingstone;
- Elevation Plan for Shed;
- Elevation Plan for Outbuilding;
- Sworn Affidavit, with Appendices signed by Mr Clifford King;

- Sworn Affidavit, with Appendices signed by Mr Jacob King;
- Sworn Affidavit, with Appendices signed by Mr Reed De Rouen;
- Sworn Affidavit, with Appendices signed by Mrs Jane Hollerin;
- Sworn Affidavit, with Appendices signed by Ms Cait O'Halloran;
- Sworn Affidavit, with Appendices signed by Mr Harry Prior;
- Sworn Affidavit, with Appendices signed by Mrs Dawn Rashleigh (to be supplied in due course);
- Sworn Affidavit, with Appendices signed by Mr Will Sudan;
- Sworn Affidavit, with Appendices signed by Mr Luke Wilshire; and
- CIL Forms.

2. SITE & SURROUNDINGS

2.1. Kingstone is a single storey, two bedroom dwellinghouse, located in a small plot located to the north of Bramble Lane in the parish of Thakeham. The plot has a south-west / north east orientation and is generally, flat, but with levels dropping to the north and north east.

2.2. Kingstone is located in the far north east corner of the plot, set at the lowest point in the field. There is a small detached shed located adjacent to the south west corner of the building. Vehicular and pedestrian access is taken from the a central location in the south west part of the site. The site is bounded by hedging on to Bramble Lane. There is a public footpath that runs on land to the north of the plot.

2.3. The site is generally open, but includes a small allotment patch and an outbuilding located to the south west of Kingstone. This includes utility space, a spare bathroom and includes renewable energy technologies. To the north west of the site is a fence line, which splits the plot from a neighbouring small holding. This is owned by the applicant, but does not form part of the application site.

2.4. Kingstone is a simple, single storey dwelling, with a mono-pitched roof and rectangular footprint. The building is clad in black-painted weatherboarding and has a marine plywood with torch-on-felt roof. The south west elevation is a blank facade. There is an entrance door on the north west elevation and windows on the rear (north east) elevation that look over a neighbouring field and woodlands beyond. Internally, the building has a kitchen/living space, two bunkbeds, a bathroom and separate bedroom.

2.5. The outbuilding immediately adjacent to Kingston, has a similar appearance in terms of cladding materials. It is notably smaller and lower rise building, having a typical domestic shed appearance.

2.6. The outbuilding to the south west, is a site cabin that has been converted to ancillary/utility space. It has the appearance of a small lorry trailer, with white walls and a roof. It has been installed on a secure platform and includes timber steps to an entrance door.

2.7. The site is well contained from public views by hedging, but there are views of the site possible through the site entrance from the footpath. There are two parking spaces formalised on site accessed via a double width vehicular access.

3. BACKGROUND

3.1. The applicant grew up in rural Kent, but relocated to Sussex with his mother and brother (Jacob). After moving to West Sussex, Mr King and his younger brother, left his mother in December 2008. At the time, Jacob was still a minor and Mr King became is guardian. They were housed by Worthing Borough Council (WBC) at a flat on Phrosso Road. They lived here for a while, before being relocated to a flat in 15 Western Place, Worthing

3.2. The property was a private flat, but was secured for Mr King and his brother by WBC. From their arrival, the flat was a poor form of accommodation, but as they had nowhere else to go, they accepted the flat as a roof over their head and some stability.

3.3. Their flat was on the top floor of the building and suffered with bad leaks from the buildings flat roof. After they arrived they alerted both the Council and landlord to the problems and remediation works were undertaken, but always to a poor standard. Over the years, their roof continued to leak.

3.4. Having grown up in the countryside and being interested in both animal husbandry and crop growing, Mr King decided to purchase a plot of land off Bramble Lane in Thankeham in December 2013. His flat in Worthing had no outdoor space and he wanted somewhere to keep chickens, plant fruit trees and grow vegetables.

3.5. During mid 2014, there continued to be problems at the 15 Western Place flat, and a series of roof leaks damaged the building and caused damp issues to worsen. Repairs were made, but again poorly, with water pooling on a flat roof and then causing further leaks.

3.6. During 2014, Mr King had spoken with the Council about getting rehoused, but as Jacob was no longer a minor, they were not deemed a priority case and as they had existing accommodation, and they were informed they would not be assisted. In early September 2014, there was another significant leak at the flat and this time part of their roof collapsed (please see photos in Clifford's SA), taking down ceilings inside the flat and damaging furniture and property.

3.7. Throughout September 2014, Mr King tried to get the landlord to compensate them for the loss of furniture and belongings damaged in the latest leak. However, no assistance was forthcoming and the the landlord began to drag their heels with the repair works. As a result of this, Mr King held back rent from the landlord as a bargaining chip to get the repairs made.

3.8. It was in late September 2014 that Mr King, in discussion with his brother, decided that they could not reasonably continue to live at Western Place and needed to find alternative accommodation. Mr King simply wanted a secure roof over his head and not one where he was not at the behest of a 'slum'-landlord and living in substandard accommodation.

3.9. Mr King and his brother started work on Kingstone in early October 2014. Both work in the building trade and so had access to materials, construction knowhow and friends they could seek assistance from. It was decided that Mr King's land would only be suitable for him and so arrangements were made for Jacob to move in with his godmother in Rustington.

3.10. The construction works took place throughout the remainder of the 2014 and into January 2015. Mr King remained in dispute with the landlords of the Western Place flat and were threatened with a Section 21 Eviction Notice. This was used as impetus to complete the construction works at Kingstone. Mr King and his brother was asked to leave the flat by 20 February 2015 and left a few days before, with Mr King moving into Kingstone on 15 February 2015.

3.11. The shape and form of Kingstone and the adjacent shed that exists on site today was established by 15 February 2015. Since then, Mr King has undertaken improvements to the building, but these have principally been internal and energy supply works, such as installing a log-burner, improving the kitchen and installing bunkbeds for use by visitors and his nephew.

3.12. Initially, Mr King obtained his energy from a Mitsubishi L200 generator with an inverter, which was upgraded in 2017 to solar panels. He also made a wind turbine from a car alternator and some 4-inch pipes (which is still visible on the roof of the outbuilding). These two installations provided all his electrical energy requirements until mains electricity was installed and connected on 2 March 2021 (please see Clifford's SA).

3.13. Since he moved to the site, he has had a gas supplied from 13kg bottles of gas purchased from a local company called Four Seasons. This has been used for hot water and cooking. Provided with this submission are invoices dating back to July 2020 (please see Clifford's SA). Earlier invoices were not kept by Four Seasons after they changed their record keeping systems.

3.14. A domestic water supply was connected to the site on 2 December 2018 (please see Clifford's SA). Prior to this, Mr King had relied on water collected on site for showering and watering the garden. Drinking water, like his gas supply, was purchased in bulk locally and stored at the property.

3.15. During his occupation of Kingstone, the building has been repainted and improvements made to the interior of the utility outbuilding, which double as a space for a washing machine and spare toilet. He has planted apple and cherry trees on site and has a small vegetable patch. To the north west of his site is another plot of land he owns, which is used as a smallholding and supplies him with food.

3.16. The site is well maintained and has had all its boundaries enhanced by new hedge planting, apart from to the north west, which is demarcated by a post and wire fence. The site is largely open, apart from a small orchard.

3.17. Mr King is a well known local resident and knows most of the other landowners in the Bramble Lane area. He regularly has guests over and arranges camping trips for friend and family. He often interacts with ramblers using the local footpath and other passers-by. He has never hidden his occupation of the site and over the years has been aware of LPA enforcement investigations in the local area. This has included at his brothers smallholding, which is located to the immediate south west of his land, and removal of an unauthorised dwelling on land to the immediate north west.

3.18. Since 15 February 2015, Mr King has solely lived at the site and mainly worked in the local area on building sites. Kingstone is his only property and has been his security from homelessness for the past 9 years and 6 months.

3.19. It should be noted that when some of the SA's were drafted and executed, they refer to occupation of the site for 9 years and 4 or 5 months. These were correct at the time of drafting, but are now marginally out of date. However, there is consistency in the SA's from Mr King and his brother about his initial occupation on 15 February 2015, which should be referenced as a commencement of his occupation.

4. WATER NEUTRALITY

4.1. The recent High Court Judgement from, Ward v Secretary of State for Housing, Communities and Local Government [2024] EWHC 1780 (Admin), established when water neutrality did or did not apply to development.

4.2. The Inspector, who had dismissed the original appeal, had determined that only lawful development was exempt from the requirement to demonstrate water neutrality. This has been challenged by the claimant at the High Court, but the presiding Deputy Judge Dan Kolinsky KC, sided with the approach adopted by the Inspector.

4.3. In supporting this position, the Judge stated that, "*I do not consider that the Inspector's approach of treating "otherwise accounted for" as akin to "immune from planning control" was outside of the range of reasonable approaches open to him. It reflected the inspector's judgment (as the competent authority) as to how NE's guidance best applied to the circumstances of this case.*"

4.4. As is discussed throughout this Statement, the applicant submits and can demonstrate evidence, that on an assessment of the balance of probability, confirms that the current occupation of the dwelling is immune from enforcement control. This is discussed in Section 5, below. If the LPA conclude that the evidence supports the case for lawful immunity, then it is clear that there can be no issues with water neutrality.

5. CONSIDERATIONS

5.1. Section 191)(a) of the Town & Country Planning Act 1990 (TCPA) enables a person wishing to ascertain whether any existing use of buildings or other land is lawful, to apply to the Local Planning Authority for determination.

5.2. Section 191(2) of the TCPA provides that, "*for the purposes of this Act uses and operations are lawful at any time if - a) 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); and b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.*"

5.3. Section 191(4) of the TCPA states, "*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, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application*."

5.4. Paragraph 006 of the relevant Planning Practice Guidance (PPG) explains that the applicant is responsible for providing sufficient information to support an application. This Paragraph, explains

that, in the case of applications for an existing use, if the authority holds 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 a balance of probability.

5.5. For the purposes of the Act, uses and operations are lawful at any time if no enforcement action may be taken in respect of them because (amongst other things) the time for enforcement action has expired. Activities assume the status of lawfulness through the passage of time, and Sections 171A and 171B of the Act note that enforcement action may be taken in respect of a breach of planning control only within 4 years of the occurrence of operational development or change of use to residential.

5.6. If formal enforcement action is not taken within that time, the activity comprising the breach of planning control becomes lawful and may be so certified by Certificate granted under Section 191 of the Act. The relevant time for determining whether the time for enforcement action has expired is the date of the application (see Nicholson -v- Secretary of State for the Environment, 14/8/1977).

5.7. The Act has recently been updated by the The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4) and Transitional Provisions Regulations 2024. This has had the effect of equalising all breaches of enforcement control to a 10 year test and dispensing with the 4 year test.

5.8. However, the amendments made to the TCPA by section 115 of the 2023 Act (time limits for enforcement) do not apply where:

5.9. a) a breach of planning control referred to in section 171B(1) of the 1990 Act (1) (time limits), the operations were substantially completed, or

5.10. b) in respect of a breach of planning control referred to in section 171B(2) of the 1990 Act (time limits), the breach occurred, before the day on which that section comes into force.

5.11. The new Act came into force on 25 April 2024. Therefore, prior to this date, and providing that the occupation started beforehand, the Statutory Instrument released with the Act confirms that, "*If the change of use to a single dwellinghouse occurred before April 25, 2024, the four-year time period applies instead of the new 10-year period.*"

5.12. Given this, the tests for this submission remain consistent with the requirements of Section 171, and from prior to 25 April 2024. The test for this submission is 4 years continuous occupation.

5.13. The Secretary of State has advised LPA's, that the burden of proof on an application under Section 191, is firmly with the applicant (please see the PPG)). The relevant test is "*the balance of probability*" and LPA's are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events, there is no good reason to refuse the application, provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of the certificate.

5.14. This application seeks confirmation Kingstone, the outbuildings and its residential curtilage have been lawfully occupied on a continuous basis for residential use, without *de minimis* gaps, for a

period in excess of 4 years. The applicants evidence indicates a continuous occupation for over 9 years and 6 months, with no gaps in occupation.

5.15. Looking at the legislation guiding what is defined as a dwellinghouse, there is no definition of his within the TCPA. However, the issue is covered in other legalisation.

5.16. Part C of the Use Classes Order 1987, as amended, defines Class C3 as "*dwellinghouses*" and refers to "*use as a dwellinghouse (whether or not as a sole or main residence) by – (a) a single person or by people to be regarded as forming a single household; (b) not more than six residents living together as a single household where no care is provided for residents; or (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).*"

5.17. Against these tests, the applicant submits that Kingstone complies with the definition of a dwellinghouse and is currently occupied by a single person.

5.18. Using the Birdle Principle, it is clear that the planning unit here, comprises the dwellinghouse known as Kingstone, its shed, utility outbuilding and garden space. This is a clearly defined plot with its own access, boundaries and parking. The evidence and submission is made in regards to the land as well as the buildings.

5.19. The combined evidence of the nine Sworn Affidavit (SA) and documentary evidence, supplied within the applicants own SA, confirm the buildings and land have been occupied on a permanent residential basis for over 9 years and 6 months.

5.20. All those who have provided SA's have known the site for over 4 years, with the majority knowing the site since Kingstone was first occupied. This is either through a direct local connection to the site (i.e. nearby landowners), giving them firsthand knowledge of the sites history, or through friends, family and colleagues, who have been regular visitors over the years.

5.21. Since 15 February 2015, there have been no gaps in occupation and the applicant's residential use of the site has been continuous. This is evidenced through SAs confirming that many guests (due to poor phone signal locally) often arrive unannounced, but always find Mr King at home. Others are from neighbouring landowners who see Mr King at his property on a weekly basis and have done throughout his occupation of the site.

5.22. The evidence supplied by Mr King and his brother Jacob is detailed and precise. Dates are clear and the memory of these is either based around a clear recollection of the history of the site, other matters taking place at the time, or through documentary evidence that corroborates these dates.

5.23. In particular, there is complete clarity about when Mr King moved to the site. The initial occupation of Kingstone was at the end are an arduous and uncomfortable period of occupation at the flat in Worthing. Photos from this time detail the damage to the roof and the flooding of the flat. This has clearly left a detailed imprint on the memory of the applicant, with Ms O'Halloran's evidence confirming that it was a regular topic of conversation in their relationship.

5.24. Likewise, being threatened with eviction and then moving away from his brother Jacob for the first time, are clearly memorable markers for Mr king. Moving to the site was also a positive step for the

applicant who now had a home to call his own. The 15 February 2015 date, was an important step in Mr King's life and a well remembered milestone.

5.25. Within supporting SA's from friends and local residents, there are a number who visited the site shortly after Mr King first moved to the dwelling. This includes Mr De Rouen, who visited and stayed with Mr King in June 2015. Mr Wilshire who had visited the site prior to Mr King building Kingstone, and then remembers visiting him in early 2015, after the dwelling was complete. Mrs Hollerin, remembers Mr King building Kingstone and moving into the dwelling in February 2015. Ms Rashleigh also saw Mir King building the property and she first visited him in Kingstone towards the end of 2015.

5.26. These are all independent, but consistent pieces of evidence that confirm Kingstone being occupied since 2015. Other SA's provided by other friends, a partner and a colleague also corroborate the occupation. Jacob King has been a continual visitor and guest throughout his older brothers occupation. He to is a local landowner and works with his brother. Mr King has adapted Kingstone so that Jacob's son can come and stay. He provides strong and compelling evidence of the occupation that is consistent with Mr King's recollections.

5.27. Ms O'Halloran is Mr King's partner and first visited the site in January 2017. Despite living elsewhere in the UK & Ireland, she was a regular guest at Kingstone and would stay for periods of 2-3 weeks at anyone time. She also communicated with him throughout the Covid-19 lockdown and recalls speaking with him on a daily basis within his living room. Again, her evidence is detailed and clear.

5.28. Mr Prior also first visited Kingstone in 2017. He was a colleague of Mr King and had met him on a local building site. Since then, he has been a regular visitor and even stayed at Kingstone in his van. Mr Sudan, likewise first visited Kingstone in the summer of 2017. He is another neighbouring landowner and likewise, see's Mr King on a weekly basis.

5.29. The combined evidence of all the SA's provides a consistent account of the occupation of the Kingstone site for over 9 years and 6 months.

5.30. For the determination of this CLUED, the time period that must be demonstrated to confirm the works are lawful is 4 years. This would mean that the applicant would need to demonstrate, on the balance of probability, that the use had taken place continuously since 30 August 2020. All the SAs precede pinpoint the occupation of Kingstone welling advance of this date and confirm that Mr King has been resident in the dwellinghouse known as Kingstone for a period well in excess of 4 years.

5.31. Also submitted with the application are photos and documentary evidence supplied in Mr King's SA. Whilst the photos are often undated, they have been taken over a period of time and are presented in Mr King's SA as appendices, with commentary relating to exact or approximate dates. They also show Mr King at the land and many show both inside and outside of Kingstone.

5.32. Some other documentary evidence is also provided in Mr King's SA. This includes records of gas purchases that preceded August 2020. Confirmation of when water was connected to the site (2018) and electricity records since 2021.

5.33. Individually, this documentary evidence would not confirm the continuous use of the site for the purposes outlined in the SA's. However, as supporting evidence, it provides consistency with the sworn evidence in the SA's. It also confirms that overtime, Mr King has improved is accommodation and has everything required for comfortable residential occupation.

5.34. The documentary evidence supplements the more key evidence contained with the nine SA's. Collectively, the submitted evidence demonstrates the construction and residential occupation of Kingstone, the outbuilding and land for residential purposes on a continuous basis for a period in excess of 4 years, prior to the date of this submission.

5.35. In accordance with Government guidance, the evidence provided is precise and unambiguous and passes the test of demonstrating the C3 residential use, "*on the balance of probability.*" On this basis, and having regards to Section 191 of the Town & Country Planning Act 1990, the use has assumed the status of lawfulness. This should be confirmed by the grant of the certificate application.

5.36. The Gabbitas judgement, clearly dictates that the LPA must grant a Certificate, on a balance of probability, unless it possesses evidence contrary to the applicants; or information that would call into question the applicant's version of events. Here, the nine SA's collectively demonstrate the occupation and use of the dwelling, outbuildings and land, and this evidence is precise and has clearly detailed the use as taking place for not less than 9 yeas and 6 months.

5.37. The applicant is looking forward to receiving a favourable determination, though should Officers have any questions or require any further information, then the Applicant would ask that they are contacted promptly with any queries or questions arising from an assessment of the evidence.