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# Planning Statement

**TOWN & COUNTRY PLANNING ACT 1990**

**SECTION 191 AS AMENDED BY SECTION 10 OF THE PLANNING & COMPENSATION ACT 1991**

**TOWN & COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015**

**PROPOSAL:**
**APPLICATION FOR**
**A LAWFUL USE CERTIFICATE**
**CONCERNING**
**OCCUPATION OF THE DWELLING**
**IN NON-COMPLIANCE WITH THE**
**HOLIDAY LET OCCUPANCY CONDITION**
**ON PLANNING PERMISSION REF. DC/12/1642**

**SITE:**
**THE LODGE**
**POLECAT LANE**
**COPSALE, HORSHAM**
**WEST SUSSEX RH13 9DJ**

**APPLICANT:**
**MR A NICHOLL**

## Background

The Lodge is a detached dwelling located on the east side of Polecat Lane, in a position approximately 1km to the north of the hamlet of Copsale and 500 metres to the east of the settlement of Southwater.

It is a single storey property comprising 2 bedrooms. It was granted consent under planning permission ref. DC/12/1642. The permission was for a change of use from an annexe to holiday let accommodation and the erection of a single storey side extension following demolition of an existing stable block.

Condition No.5 on the consent stated:

*'The accommodation hereby permitted shall be used for holiday accommodation only and for no other purposes (including any other purposes in Class C3 of the Town & Country Planning [Use Classes] Order 1987 as amended by the Town & Country Planning [Use Classes] [Amendment] [England] Order 2005 or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that Order.'*

## History of Occupation of The Lodge

Following the grant of planning consent of application ref. DC/12/1642, the conversion and extension works associated with the permission were undertaken and completed. These conversion and extension works were completed by the summer of 2014 and included the erection of the kitchen extension at the east end of the building which was constructed following the demolition of a pre-existing stable block.

The applicant has lived at The Lodge on a continual basis since August 2014. Initially, he occupied the property on an Assured Shorthold Tenancy. In November 2019, he purchased the freehold of the property. Throughout his period of occupation The Lodge has been his sole residence.

## The Legislative Background

Section 171B of the Town & Country Planning Act 1990 deals with the time limits for enforcement action in respect of planning control. This section is reproduced overleaf.

Time limits

171B.-

(1)Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other 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, and

(b) in the case of a breach of planning control in Wales, four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, 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 of the breach, and

(b) in the case of a breach of planning control in Wales, four years beginning with the date of the breach.

(2A) There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).

(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.

(4) The preceding subsections do not prevent—

(a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

(b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

By virtue of Section 191(1), uses and operations are lawful if no enforcement action may be taken against them, and they are not in contravention of any enforcement notice which is in force.

Section 191 of the Act provides for an application to determine whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land, is lawful for planning purposes.

In making such an application the onus is on the applicant to provide sufficient evidence to demonstrate (on the balance of probability) that the operations, building works or use, have been undertaken for the required minimum period.

If the decision maker has no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no reason to refuse the application, provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a Certificate 'on the balance of probability'. The decision is to be based on legal issues and not planning merits.

A Certificate application is required to precisely identify the area of land to which it relates, provide precise details of what use or operations have been undertaken and, if appropriate, specify within which Use Class the Use would fall.

## Evidence Presented To Demonstrate Non-Compliance With The Holiday Let Occupancy Condition On Permission Ref. DC/12/1642 For At Least The Past 10 Years

This Certificate of Lawful Existing Use or Development application is accompanied by the following documentation:

1. A Statutory Declaration signed by the applicant, Mr A J T Nicholl. The Declaration sets out the history of his occupation of The Lodge. It is confirmed in the Declaration that he has lived there, on a continual basis, since the 1st September 2014.

   He confirms that The Lodge has been his sole residence throughout this 10 year period.

2. A copy of the original Assured Shorthold Tenancy signed by the applicant concerning the rental of the property. This is dated the 1st September 2014.

3. Council Tax bills for The Lodge for the year 2014 – 2015 and for 2024 – 2025. There is also payment details for the Council Tax payments from 2015 demonstrating that the applicant paid the Council Tax direct.

4. Various energy bills for The Lodge for the period 2015 – 2024. Further, there is an energy contract from 2015 in the applicant's name.

5. Various phone, broadband and TV package accounts taken out by the applicant during the period 2014 to 2022.

6. Two TV licences, one for the first year of occupation (2014 – 2015) and one for the period 2022 to 2023.

7. Two water bills, the first covering the first year of occupation and the second covering the most recent period of occupation.

8. Land Registry Title for the property demonstrating that the applicant purchased the freehold on 26th November 2019.

## Assessment

It is considered that the evidence submitted demonstrates that, 'on the balance of probability', the holiday let occupancy condition placed on The Lodge under application ref. DC/12/1642 has not been complied with, on a continual basis, for a period in excess of 10 years.

Both the Declaration and supporting documentation clearly demonstrate that The Lodge has been permanently occupied by the applicant as a single family dwelling house over the past 10 years. His permanent occupation of The Lodge has meant that it has not been used as a short term holiday let.

The fact that the property has been subject to Council Tax, rather than business rate levy, is further proof of its use as a permanent dwelling. The point at which occupation commenced is established by the Assured Shorthold Tenancy. Utility bills provided demonstrate further the applicant's occupation over the relevant 10 year period.

Permission ref. DC/12/1642 is the appropriate qualifying permission, as the side extension approved as part of this permission, was constructed and completed prior to any occupation taking place. An earlier grant of consent to use it as an annexe was not implemented. This earlier consent did not provide for the extension that was constructed and therefore its internal layout and external appearance differed from the implemented holiday let consent.

On the basis of the evidence provided, it is considered appropriate to issue a Certificate of Lawful Use or Existing Development approval in respect of the non-compliance with the holiday let condition on the property, The Lodge.