

Heine Planning Consultancy

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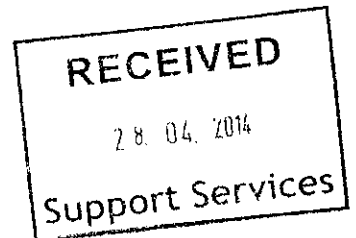
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My ref: L1-J61-02a RCC

Date: 26 April 2014

Rochford DC
Council Offices
South Street
Rochford
Essex SS4 1BW



Dear Sir/ Madam

Re: APPLICATION FOR CERTIFICATE OF LAWFULNESS (EXISTING)

For: CHANGE OF USE OF EXISTING BUILDING AS DWELLING (C3)

BY: MS T SALKELD AND MR LEVI SALKELD

AT: RAYLEIGH TURF YARD, URQUHART HOUSE, TRENDERS AVENUE. RAYLEIGH ESSEX SS6 9RG

I am instructed to make this application. The application is made on line. I enclose a Site plan with the building edged red. The clients will arrange to pay the planning fee of £385 over the counter. I also enclose copies of the letters submitted in support of this application as listed below.

The Council served a planning contravention notice on 15.11.2013 in respect of an extension to an existing building/ 'existing day room' at Urquhart House , Trenders Avenue, Rayleigh. There is no dispute the extension work has been carried out without the benefit of planning permission. I can confirm the work was undertaken mid-2013 and was not finished until October 2013. It is not claimed to be lawful. However, the purpose of this application is to demonstrate that the building was no longer used as a day room when the unauthorised works were carried out, but has been occupied as a separate self contained dwelling for a period of over 4 years. If this is accepted, a separate application will then be made for the extension. If the application for a lawful use of the building is not accepted I will need to advise my clients on their alternative course of action. As the PCN letter explains, one option would be to apply for planning permission for the creation of an additional dwelling on the site however, as the site lies outside any settlement boundary in the Green Belt there would need to be very special circumstances to justify such development.

For the avoidance of doubt, this LDC application is made in respect of the original building only, which measures 4.9m wide x 9m long ie 44.1 sq m and is shown edged red on the attached site plan. It does not concern the extension added in 2013.

The Buckley family bought the yard in or around 1962 and have owned it ever since. Ms Salkeld is the daughter of Nathan Buckley. She lives here with her son Levi (now aged 25), who is now married. The yard has a lawful mixed use for a Turf Business, stabling of horses and a caravan site for occupation by a Gypsy-Traveller family. Prior to their purchase of the land the weatherboard building at the back of the yard was used as a workshop. Permission was previously granted for a caravan for office use in connection with a smallholding and piggery in 1960 and for an agricultural dwelling (not implemented) in connection with a small holding on the land in 1962. There was an existing cess pit on the land which was linked to the workshop when Mr Nathan Buckley purchased the land.

In May 2004 a planning application was made by Dr Kenrick (an elderly academic who used to handle a lot of case work for Gypsy-Travellers in the South East) on behalf of Ms Salkeld for the residential occupation of a mobile home and day room.. The application stated the day room building had been converted in 2002 to provide a [REDACTED] room with bathroom for the applicant's son (then aged 14) and a laundry area for Ms Salkeld. Permission was refused in 2006 and in October 2006 the Council served an enforcement notice which concerned the change of use of the land to a mixed use including the stationing of a caravan for the purposes of mobile habitation. The Notice did not concern the day room and the plan did not appear to include it. I appealed this notice and the refusal of planning permission. My knowledge of the site dates from this time.

In March 2007 I also submitted an application for a lawful development certificate for the use of the yard for the parking of lorries in association with the long established Turf business run by the family. This was duly granted.

At the time of the June 2007 appeal hearing Ms Salkeld was living in a small one bed rough cast chalet caravan on the site which measured just 3.4m wide and 11 m long ie 37.4 sq m. It had its own kitchen cum living area, bathroom and a single bedroom. It was a very compact, older style chalet

unit. There was a small touring caravan on the site but this was only stored and clearly was not lived in. I attach photos at Appendix 1.

By the time of the June 2007 appeal the weatherboard structure had been further adapted. By this stage Levi would have been 18/19 years old and was clearly not living with his mother in the one bed chalet. Although it was described as a day room in 2004 when Ms Salkeld had made her application by the time of the appeal site visit in June 2007 the structure had a fitted kitchen/ dining area with small table and chairs. [REDACTED] This front room was connected by an internal door with internal glazed openings either side, to a second rear room [REDACTED] Behind the door to this room was his bed and, as I recall on the far wall was a table with his computer. I also recall noticing a guitar mounted on the wall. Leading off this second room was a bathroom. The building was connected to the cess/ septic tank in the adjoining garden area. The structure had all the facilities required for day to day living and was clearly capable of functioning separately to the small chalet occupied by Ms Salkeld. Indeed, it was larger than the mobile home. Over the front door was a sign saying 'Levi'. At appendix 1 I attach a photo of the structure as taken at the June 2007 hearing.

[REDACTED]

[REDACTED]

I visited the site again in January 2014 after the PCN was issued. I can confirm that the same Weatherboard building is on site in the same location. However it has been extended to the rear to provide two additional rooms accessed off a central corridor and a new bathroom. One of the rooms is intended as a [REDACTED] for all of Levi's equipment but could double up as a second bedroom. A new kitchen has been fitted and the second (rear) room is now being used as a living room with a sofa and TV.

In August 2008 the small single bed chalet caravan occupied by Ms Tina Salkeld in 2007 was replaced with a much larger twin unit mobile home which has been turned 90 degrees to the timber building. Ms Salkeld informs me that the Council visited to check shortly after it was installed as it was on a different footprint to her one bed chalet next to the stable block. The Council should have a record of this visit.

In my opinion there is no doubt the weatherboard structure is a building, It was relied on in 2007 to serve as a day room and the 2007 appeal decision granted permission for this use in association with the mobile home occupied by Ms Tina Salkeld.

It is now claimed that this structure was being used for residential purposes by Levi Salkeld since 2002. At that time Levi was aged 14 and it is considered this use would have been in association with his mother's occupation of the chalet caravan. By the time of the 2007 appeal, 5 years later, Levi was aged 19 and it was apparent the 'day room' had all the attributes of a small dwelling. The building provided all essential services for day-to-day private domestic existence. This was all on view to the Inspector/ Council officer at that appeal. However, because the s78 application submitted three years earlier had sought consent for a day room this is what was granted permission.

Following the June 2007 appeal the building was used until mid-2013 for a further period of 5 years as a one bed dwelling. It was not until mid to late 2013 that any further alterations were made with the addition of a rear extension to provide two further rooms. This followed the marriage of Levi Salkeld to his wife Elizabeth in April 2012.

The case for a dwelling relies on the following additional supporting evidence. Whilst some letters are undated I can confirm that they were all submitted to support this application following the PCN issued in November 2013.

1. The hand written statement from Mr Levi Salkeld (aged 25) which confirms that he has lived in the building since 2003 next to his mother's caravan. At the time he was aged 14 and he would not have been expected to share his mother's one berth caravan. He confirms that he was living in the building at the time of the appeal in 2007 (when he would have been aged 18/19) and has continued to live in the building ever since ie for a period of some 11 years.
2. Hand written letter from Elizabeth Salkeld , wife of Levi Salkeld, to confirm that the couple married on 14 April 2012. However she was dating Levi since May 2010 (almost 4 years ago) and confirms that he was living in the building at that time.
3. Letter from Car-nect dated 29 January 2014 which confirms that since May 2011 their records show that they have collected his car for servicing etc from 'Weatherboard building, Urquhart House, Trenders Avenue. I accept that in itself this does not prove that Levi Salkeld

was living on the site but this was where his car was collected/ delivered following any works to it.

4. Undated letter from a [REDACTED] confirming that he has known Levi Salkeld for about 7 years and confirms that Levi is living in the feather edge building next to his Mum's mobile home. He visits Levi weekends and confirms that all the time he has known Levi, this has been his permanent place of residence.
5. Undated hand written letter from [REDACTED] who confirms that he has known Levi for 9 years and is a very good friend. He confirms that Levi has lived in the building next to the mobile home for 'them nine years'. The family tell me that [REDACTED] is a good friend and Levi is god parent to his child. [REDACTED] has helped carry out general maintenance for the family including changing a tap and installing light fixtures and a wardrobe. I am told he visits on a weekly basis often with his wife and two children.
6. Letter from a [REDACTED] who confirms that she has known Levi all his life and that he moved into the weatherboard building 9 years ago so that he could have space for himself. She confirms that he sleeps, eats and showers in the accommodation. The applicant tells me that [REDACTED] husband is a friend of Levi's father and visits the site on a regular basis about once every 1-2 months and for special events such as Christmas and bonfire parties.
7. Letter dated 23.12.2013 from a [REDACTED] which confirms that when he visited in 2008 Levi Salkeld was living in the building to the side of the chalet. He re visited the site in 2010 to drop off a light fitting.
8. Email dated 22.12.2013 from [REDACTED] who confirms that Levi was living at the feather-edged building at Urquart House and attaches invoices (for Black out building) for works done including supply and install new electric shower, basin taps in bathroom and new electric radiator in bedroom in May 2006, kitchen works in July 2009, and to repair a water leak in March 2012.
9. Letter dated 29 June 2003 confirming that sky digital satellite equipment was to be installed at the property on 8.7.2003. Whilst I appreciate this does not confirm where the equipment was to be installed or for what purpose, it is submitted as supporting evidence and because it can be shown that it was installed in the building and it is considered unlikely such equipment would be installed for anything other than a residential use.

In my opinion there is good evidence to support the claim that Levi Salkeld has been using the weatherboard/ feather edged/ black building as a self contained dwelling for a period of 4 years or more both on his own and now with his wife. Family friends would have good reason to know how the site is occupied and clearly visit on a regular basis. The building is used independently from the mobile home which is occupied by Ms Salkeld, his mother.

There are no separate utility bills as it is understood the unit shares the same connections as those for the mobile home and they are not paid separately.

If you require any of the above to be provided as sworn affidavits that can be arranged.

Case Law has established that in cases of applications for lawful development the burden of proof is upon the applicant but the test is 'the balance of probabilities' and authorities are advised that if they have no evidence of their own to contradict or undermine the applicants version of events, there is no good reason to refuse provided that the applicants evidence is sufficiently precise and unambiguous.

Circular 10/97 (no longer saved) at para 8.15 stated that an application shall not be refused because the applicant failed to discharge the stricter criminal burden of proof namely 'beyond reasonable doubt'. Moreover the High Court has held that the applicants own version does not need to be corroborated by independent evidence in order to be accepted NEITHER the identity of the applicant or the planning merits are relevant to the purely legal issues involved in determining this test.

The test under Section 171b (2) only applies to change of use of a building to a single dwelling house. First the reference to single dwelling house is important and must be distinguished from the use of a building for human habitation which would be a different change of use and to which the time period under Section 171 b (3) namely 10 years would apply

The courts have held that the distinctive characteristic of a dwelling house is its ability to afford those who used it the facilities required for day to day private domestic existence. A dwelling must have the attributes nowadays considered normal for dwelling houses See Grendon v FSS 2006 EWHC 1711 and R v Grendon v SSCIG 2007 EWCA civ 746.

The use of a building for human habitation is a use not a nil use, but it is a different use from that of a dwelling house. Indeed a dwelling house can come into existence without any residence actually occurring. You can have a residential use of a building but that building may not constitute a single dwelling house. For a building to be a dwelling house there must be more than mere human habitation: the building must have all the necessary attributes of a dwelling, This is a matter of fact and degree and the dwelling must be substantially completed.

In regard to substantial completion (see Sage v SSETR and others Supreme court 2003 UKHL 22) the four year period does not begin until the whole operation of creating the single dwelling house was substantially completed. The law lords found that this was in accordance with the holistic approach to planning law. Parts of the building do not become immune as they are constructed. Time does not start to run until the dwelling is substantially completed.

In this case a building, first used for residential purposes in association with a caravan, had become a single dwelling by June 2007 at the time of the last appeal, and continues to be occupied as a single dwelling. According to the applicant the residential use began in 2002/3 when the structure was being used as a day room in association with the chalet. It is clear that by mid-2007 the structure had the attributes of a self contained dwelling. This is supported by evidence from the applicant and by those who have had good reason to visit the application site and who know the family.

It is argued that the 4 year period has now elapsed and immunity has been achieved under Section 171 B (2) for use of the weatherboard building as a single dwelling. If this is accepted the applicant intends to address separately the extension added in mid-2013.

Yours faithfully

Mrs Alison T Heine

Enc

Cc Ms T Salkeld, Mr L Salkeld

Appendix 1 Photo of chalet and weatherboard building in June 2007

