

SUPPORTING STATEMENT

for

**A CERTIFICATE OF EXISTING LAWFUL
DEVELOPMENT FOR AN INDEPENDENT
DWELLINGHOUSE**

at

**BARN COTTAGE, REDCROFT
FARMHOUSE, REDCROFT LANE,
BURSLEDON SO31 8AS**

Prepared by

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Client: Mr K Butt

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Exhibits

1. The plan
 2. Original plans for the building, as approved under building regulations
 3. Survey Plan (ref 316/96D)
-
- A. Copy of Tenancy agreement and log of rental payments – K Breckon
 - B. Copy of Tenancy agreement and log of rental payments – N Simmons
 - C. Copy of Tenancy agreement and log of rental payments – N Cooper & S Lesniak
 - D. Copy of Tenancy agreement and log of rental payments – K & C Beattie
 - E. Copy of Tenancy agreement and log of rental payments – G Mc Swiggan
 - F. Copy of Tenancy agreement and bank transfers of rental payments – A Nixon
 - G. Copy of Tenancy agreement and bank transfers of rental payments – A Mawson-Harris
 - H. Copy of Tenancy agreement and bank transfers of rental payments – O Cosgrove
 - I. Bank transfers of rental payments – A Herbert

1.0 INTRODUCTION

- 1.1** This supporting statement is prepared by Southern Planning Practice Ltd in support of an application for a Lawful Development Certificate under section 191 of the Town and Country Planning Act 1990 (as amended) on behalf of Mr K Butt for the change of use of a building to use as a single dwellinghouse.
- 1.2** The building known as ‘Barn Cottage’ formed part of a garage building was erected in 1963. The extent of the residential property the dwelling is edged red on the plan, marked “**Exhibit I**” (“the Plan”).
- 1.3** When the property was purchased by the applicant back in 1983 the previous owner used the accommodation above the garage, at first floor level, for residential purposes. The accommodation has all the facilities and services for independent living, including a bedroom, a bathroom, a kitchen and a living/dining room as shown on the existing plans. The previous owner let the accommodation independently and paid council tax for the building for such purposes.
- 1.4** The applicant has continued to independently let the accommodation and it has been continually occupied as an independent dwellinghouse. Evidence is provided to demonstrate this continual occupancy since 1995 until present (see Exhibits A-I)
- 1.5** The change of use of the first floor of the building to use as a single dwellinghouse occurred more than four years from the date of this application and the plan submitted with this application shows the dwelling in question.
- 1.6** This statement sets out the case and the evidence to support the certificate.

2.0 SITE AND SURROUNDINGS

- 2.1 The dwelling known as 'Barn Cottage' is located to the south of Redcroft Farmhouse, a grade II listed building. The property is located in the settlement of Bursledon, within the Eastleigh Borough.
- 2.2 It is accessed via a shared driveway from Oakhill which serves Redcroft Farmhouse, The Coach House and the application site.
- 2.3 The property consists of habitable accommodation and a garage building. It is accessed via a set of stone steps along the northern elevation of the building.



Access steps to Barn Cottage

- 2.4 Internally, the cottage consists of a living room, bedroom, bathroom and kitchen.



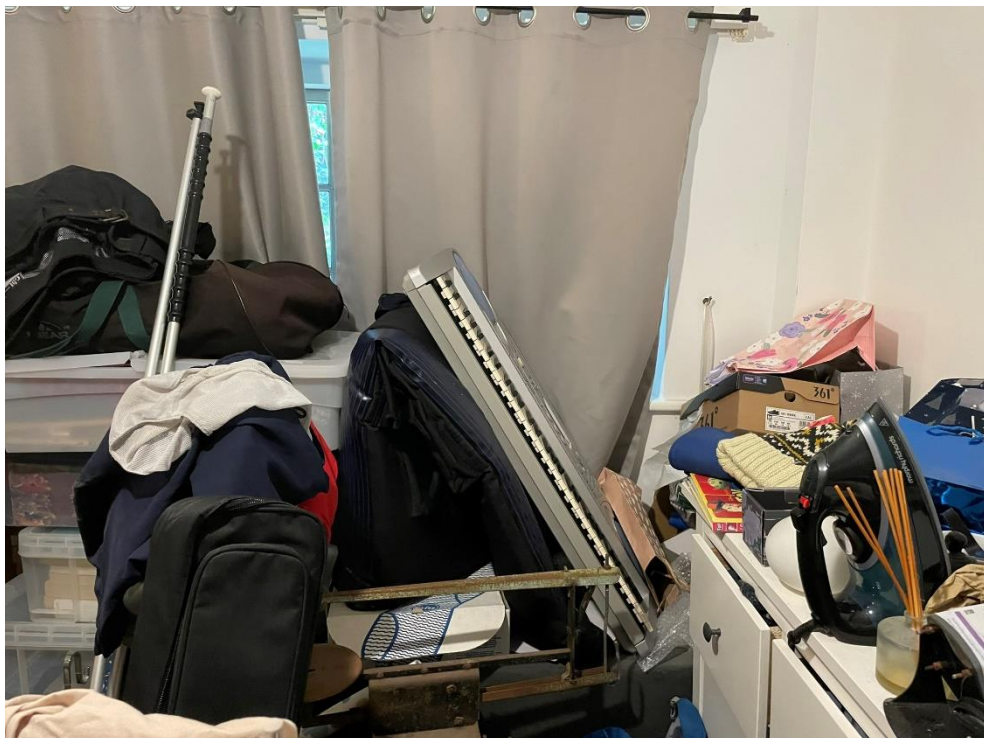
Living room within Barn Cottage



Living room within Barn Cottage



Bedroom within Barn Cottage



Bedroom within Barn Cottage



Kitchen within Barn Cottage



Bathroom within Barn Cottage

3.0 HISTORY AND EVIDENCE

3.1 The planning history for Redcroft Farmhouse is as follows:

- L/10/68093 - Listed Building Consent: Re-siting of existing garden store and erection of single storey summerhouse with adjoining store room – Grant 06.04.2011
- F/10/68094 - Re-siting of existing garden store and erection of single storey summerhouse with adjoining store room – Permitted 06.04.2011
- L/12/71249 - Listed Building Consent: Re-siting of existing garden store and erection of single storey summerhouse with adjoining store room – Grant 21.09.2012
- F/12/71207 - Re-siting of existing garden store and erection of single storey summerhouse with adjoining store room – Permitted 21.09.2012

3.2 Copies of the original plans for the building, as approved under building regulations in 1963, are shown at **Exhibit 2**.

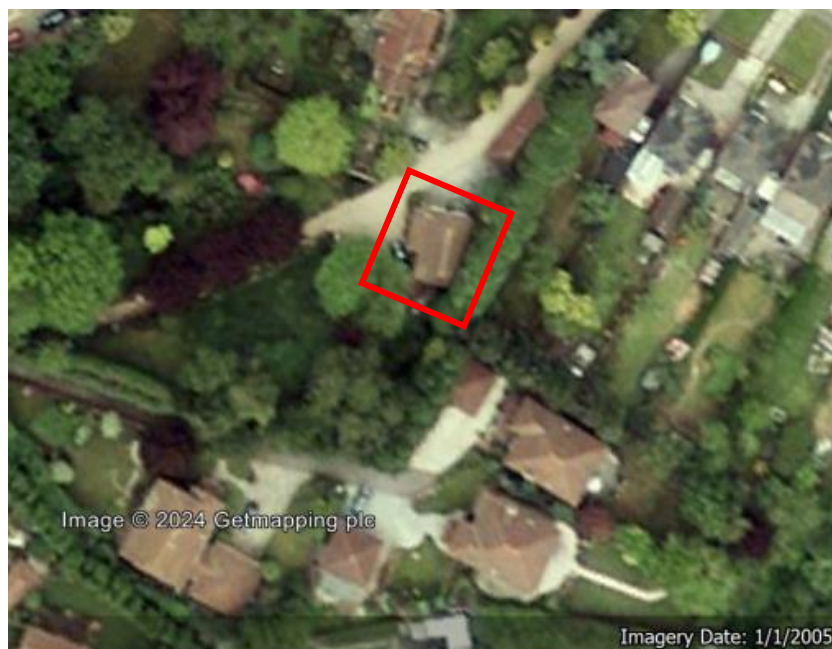
3.3 The property is shown and identified as 'Barn Cottage' in the Survey Plan (ref 316/96D) dated June 1996 as submitted and approved under planning permission F/10/68094 as shown at **Exhibit 3**.

3.4 The property has a registered postal address and separate council tax has paid on a regular basis.

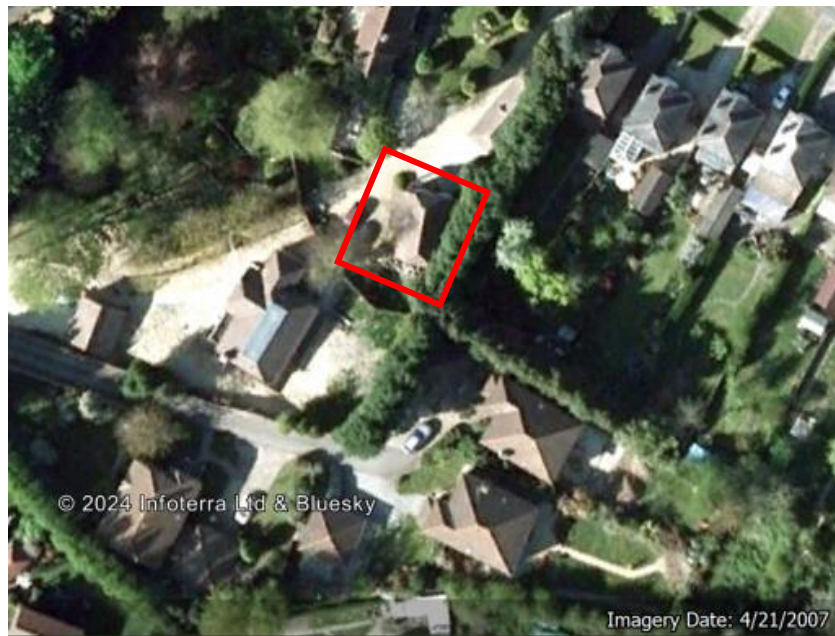
3.5 The aerial photography from Google earth demonstrates Barn Cottage was in place in 1999, 2005, 2007, 2014 and 2019 as identified on the following images:



Aerial photography 1999



Aerial photography 2005



Aerial photography 2007



Aerial photography 2014



Aerial photography 2019

3.6 In terms of occupancy, the tenants, dates of occupancy and relevant Exhibits are set out below:

Tenant Name	Date moved in	Date moved out	Evidence	Exhibit
K Breckon	1 st November 1992	30 th April 1993	Copy of Tenancy agreement and log of rental payments	A
N Simmonds	19 th July 1993	31 st January 1994	Copy of Tenancy agreement and log of rental payments	B
N Cooper & S Lesniak	11 th March 1995	11 th May 1996	Copy of Tenancy agreement and log of rental payments	C

K & C Beattie	8 th June 1996	7 th February 1997	Copy of Tenancy agreement and log of rental payments	D
G McSwiggan	13 th June 1997	12 th December 1997	Copy of Tenancy agreement and log of rental payments	E
A Nixon	26 th November 2016	1 st September 2019	Copy of Tenancy agreement and Bank transfers of rental payments from 22/02/2017-01/01/2019	F
A Mawson-Harris	3 rd September 2019	3 rd March 2021	Copy of Tenancy agreement and Bank transfers of rental payments from 01/01/2020-01/01/2021	G
O Cosgrove	7 th July 2021	7 th December 2021	Copy of Tenancy agreement and Bank transfers of rental payments from 01/01/2021-01/01/2022	H
A Herbert	19 th December 2021	present	Bank transfers of rental payments from 01/01/2022-01/01/2023	I

4.0 PLANNING LAW

- 4.1 This application is made under Section 191 of the Town & Country Planning Act 1990 (as amended) “the Act”, which enables anyone to apply to the local planning authority for a decision 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. Section 191 (1) and (2) of “the Act” states:

“191. Certificate of lawfulness of existing use or development.

(1) If any person wishes to ascertain whether—

- (a) any existing use of buildings or other land is lawful;*
- (b) any operations which have been carried out in, on, over or under land are lawful; or*
- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is 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.

(2) For the purposes of this Act uses and operations are lawful at any time if—

- (a) no enforcement action may then 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);*
- (b) They do not constitute a contravention of any of the requirements of any enforcement notice then in force.*

- 4.2 Following the Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 coming into effect on the 25th April 2024. As a result, the time period in which local planning authorities can take enforcement action against unauthorised development in England is, in all cases, 10 years. The time limits when enforcement action can be taken are specified in Section 171B of the Act:

“(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

*(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”*

4.3 In the case of unauthorised operational development or the change of use of any building to use as a single dwelling, this was formally four years. As there is a transitional period and as the development was ‘substantially completed’ before 25th April 2024, the new time period is not considered to apply in this case. Therefore, in terms of the time limit for enforcement action for this development, the previous wording of section 171B is relevant:

*“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 **four years** beginning with the date on which the operations were substantially completed.”*

4.4 Section 191(4) of the Act states:

“(4) 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.”

4.5 In the case of *F W Grabbittas v SSE and Newham LBC [1985]* it was held that the applicant’s own evidence does not have to be corroborated by ‘independent’ evidence in order to be accepted. If the LPA 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 good reason to refuse the application.

4.6 A certificate application is determined on the balance of probability.

5.0 ASSESSMENT

- 5.1 Barn Cottage is a separate planning unit. It has all the 'day-to-day' facilities of a dwelling and has been occupied independently from Redcroft Farmhouse. Its character and use are that of an independent dwellinghouse.
- 5.2 From the evidence, the occupation of Barn Cottage for well over 30 years established that the residential use is lawful under Sections 171B (2) and 191A of the Act. Although the Cottage was empty from December 1997 until November 2016 the use was not abandoned and has since resumed being continuously occupied. Even so, the latest period of continuous occupation is in excess of four years.
- 5.3 In *Panton and Farmer v Secretary of State for the Environment*, a distinction was drawn between a use being dormant and a use being abandoned or abrogated. A dormant use, or one which is physically inactive, may still exist for the purposes of S191, whereas abandonment or other forms of abrogation will result in the use being lost by operation of law.
- 5.4 It was held in *Hughes v Secretary of State for the Environment, Transport and the Regions* that the four criteria set out by Nolan J. (as he then was) in *Trustees of the Castel-y-Manach Estates v Secretary of State for Wales & Taff Ely Borough Council* are relevant to the determination of whether the use of a building has been abandoned:
- the physical condition of the building;
 - the length of time for which the building had not been used for the relevant use;
 - whether it had been used for any other purposes (such as intervening uses); and
 - the owner's intentions
- 5.5 The property, Barn Cottage is in a sound structural condition and still use. Based on the various cases, the previous periods of non-use, between tenants are short and not significant.
- 5.6 It is clear from the evidence that there has been no intervening use.

5.7 For these reasons, it is considered that the development is lawful.

6.0 CONCLUSION

- 6.1 Barn Cottage became a separate dwelling unit in 1993. Since 1993 was occupied continuously until 1997 by tenants who rented the property. In 2017 the independent occupancy resumed until the present time. As the development was 'substantially completed' before 25th April 2024, it is thus immune from enforcement action under the four-year rule.
- 6.2 The correct application of planning law is that the dwelling has been a separate independent dwelling since 1993, a Certificate of Lawfulness of existing development should therefore be granted.