

SUPPORTING STATEMENT

for

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

at

**THE SUMMER HOUSE, REDCROFT
FARMHOUSE, REDCROFT LANE,
BURSLEDON SO31 8AS**

Prepared by
Mr A C Partridge
BSc (Hons), Dip UP, MRTPI



Date: September 2024

Client: Mr K Butt

Southern Planning Practice Ltd

Registered Office: Youngs Yard, Churchfields, Twyford, Winchester SO21 1NN
Tel: 01962 715770 E-mail: info@southernplanning.co.uk Website: www.southernplanning.co.uk
Registered in England and Wales No. 3862030

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Exhibits

1. 'The Plan'
2. Tenancy Agreement
3. Email from Mahdi Shirzadkhan
4. Bank Statements

2 - IA	Copy of Tenancy Agreement	Tony Green
2 - IB	Copy of Tenancy Agreement	Olivia Cosgrove

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 lawful use of the Summer House as a dwellinghouse.
- 1.2 The building known as 'The Summer House' sits alongside the northern boundary, to the rear and broadly at right angles to Redcroft Farmhouse. The dwelling is edged red on the plan, marked "**Exhibit I**" ("the Plan").
- 1.3 Planning permission was originally granted for the re-siting of *existing garden store and erection of single-story summer house with adjoining store room* under reference F/12/71207 on 21 September 2012.
- 1.4 The internal layout was subsequently adjusted to provide a open plan kitchen and sitting room, bathroom, shower room, gallery and two bedrooms. The development was completed on 31 September 2013. It was initially occupied by the applicant's daughter in March 2016 before being rented out in October 2019¹ to a series of tenants who have occupied the property continuously for a period of more than four years.
- 1.5 As the change of use to use to a single dwellinghouse occurred more than four years, the use is lawful.
- 1.6 This statement sets out the case and the evidence to support the certificate.

¹ The day given on the application form is nonminial

2.0 SITE AND SURROUNDINGS

- 2.1 The dwelling known as 'The Summer House' is located to the northwest side of Redcroft Farmhouse. The property is located in the settlement of Bursledon, within the Borough of Eastleigh.
- 2.2 It is accessed via a shared driveway from Oakhill which serves Redcroft Farmhouse, Barn Cottage, The Coach House and the application site. The property lies up against its northern boundary, south of the corner of the junction of Oakhill with Portsmouth Road, broadly at right angles to it and to the rear of Redcroft Farmhouse.
- 2.3 The property is 1 storey but with a gallery in the roof space. It is built in timber under a clay tile roof.



The Summer House with patio

- 2.4 Internally, the property consists of a two bedrooms, bathroom and shower rooms and open plan kitchen, with diner/sitting room. It has all of the day-to-day facilities of a dwellinghouse. These are shown below



View of kitchenette and staircase leading up to bedroom



View of diner/sitting room



View of shower and WC



View of bedroom



View of bedroom



View of bathroom and WC



View of mezzanine gallery

3.0 HISTORY AND EVIDENCE

3.1 The relevant planning history of 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 The property has separate mains electric which powers and heats the property. There is a separate meter at the rear of the property.

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

Tenant Name	Date moved in	Date moved out	Evidence	Exhibit
Carly Foltys	March 2016	Sept 2019	Sworn Statement of Mr K Butt	
Mahid Shirzadkhan	Oct 2019	March 2021	Sworn Statement of Mr K Butt	3 and 4

			Email from Mahid Shirzadkhan Bank Statement	
Tony Green	April 2021	June 2022	Sworn Statement of Mr K Butt Copy of Tenancy Agreement Bank Statements	IA & 4
Olivia Cosgrove/Ross Grindrod	24 June 2022	Current	Sworn Statement of Mr K Butt Copy of Tenancy Agreement Bank Statements	IB and 4

- 3.4 The occupants have always made use of the patio for sitting out as well as a little outhouse situated in the southeast corner of the Property.

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 Grabbitts 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 The Summer House is a separate planning unit. It has all of 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, although the property had all the day to day facilities by 2013 there was no breach of planning in respect of the use of the building until October 2019 when any functional relationship was removed by the renting out the property to a tenant, Mahdi Shirzdkhan who had just previously occupied the Coach House. There followed two other tenants who occupied the property in quick succession. The last occupant had previously lived in Barn Cottage but after leaving there, a few months later she came back taking up the tenancy of the Summer House with her partner Ross Grindrod. They continue to reside at this property.
- 5.3 The evidence from the email, tenancy agreements, bank statements and Sworn Statement of Mr K Butt corroborates the case.
- 5.4 As the patio and outhouse formed part of the planning unit the case of *Newland v Secretary of State for the Communities and Local Government* establishes that the four-year rule applies where it is ancillary to the residential use.
- 5.5 As the property has been occupied independently for more than four years without any substantive break its use is lawful.
- 5.6 For these reasons, it is considered that the certificate should be issued.