

Planning Statement

In support of an application for a Certificate of Lawfulness of Existing Use or Development (CLEUD) in relation to:

1. The change of use of former agricultural land to the rear of 1 Proctor Fold to garden and associated extension of residential curtilage, in use for over 10 years.
2. The conversion and change of use of the former garage to an annex at 1 Proctor Fold, Osbaldeston Lane, Blackburn Lancashire BB2 7LU, completed more than 4 years ago.
3. The lawfulness of the extension to the side of the former garage as part of that residential unit, completed more than 4 years ago.

Introduction

1. This statement has been prepared to accompany an application for a Certificate of Lawful Existing Use or Development to confirm the lawful status of the former garage building at 1 Proctor Fold, including alterations and extensions undertaken during conversion of the building. Additionally to confirm the residential curtilage of the address of 1 Proctor Fold and the change of use from agricultural field to garden.
2. The application is made under section 191(1) (a) and (b) of the Town and Country Planning Act 1990 (as amended).
3. The application seeks to establish that the works undertaken at the site and the resulting annex has attained lawful status due to the passage of time. Additionally, that the extension to the annex sits on land which is a garden and forms part of the residential curtilage.
4. Evidence is presented within the application to confirm when conversion to an annex took place, was completed, and that the building has been occupied since conversion. Additionally that the land to the rear of the address is used as a garden, and has been a garden for in excess of 10 years and therefore forms part of the lawful curtilage of the address.
5. Evidence is presented in relation to an extension of the annex which provides part of the residential accommodation at the annex, and which has been in place since 2017. Additionally, evidence is presented in relation to the use of land to the rear of 1 Proctor Fold as residential garden since at least 2006 and forming part of the residential curtilage of the address, 1 Proctor Fold, Osbaldeston Lane which incorporates the annex.
6. A plan identifying the land which is the subject of the application is attached.
7. This application seeks a positive Certificate of Lawfulness of Existing Use or (CLEUD) to confirm that the former garage building was converted to form an annex more than 4 years ago and has been in residential use since that time. It has therefore attained immunity from enforcement action due to the passage of time. The application also seeks to establish that the extension to the annex was completed at the same time as the conversion of the building to residential use and is therefore also immune from

enforcement action due to the passage of time. Finally the application seeks a positive CLEUD to confirm the residential curtilage of the whole property known as 1 Proctor Fold includes the garden to the rear of the property which has been in use as a garden at the address for in excess of twenty years.

Legislation

8. Section 171B of the Town and Country Planning Act 1990 (TCPA) states that:

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 four years beginning with the date when 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 dwelling house, no enforcement action may be taken after the end of the period of 4 years beginning on the date of the breach.

3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 10 years beginning the date of the breach.

9. Section 191 of the Act refers to Certificates of Lawfulness of Existing Use or Development. Sub-section (1) states "If any person wishes to ascertain whether: ·

Any existing use of buildings or other land is lawful; · Any other operations which have been carried out in, on, over, or under land are lawful; or

Any other matter constituting a failure to comply with any conditions 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".

10. Section 191 (2) states: "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); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force”.

11. Section 191 (4) 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 description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application”.

Period of immunity

12. In respect of the annex and the extension to the annex –

S171B of the TCPA sets out that for operational development, no enforcement action may be taken after the end of the period of four years beginning with the date when the operations were substantially completed and that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of 4 years beginning on the date of the breach.

13. In respect of the garden and curtilage –

The same act sets out that 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.

14. The legislation refers to “the change of use of any building to use as a single dwelling house”. If it can be demonstrated that the works were completed more than four years ago and the change of use commenced and continued, then a certificate of lawfulness should be granted in respect of the existing use and development as a whole.

15. National Planning Practice Guidance states that, “In the case of applications for existing use, if a local planning authority has no evidence itself, nor any 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, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability”.

Evidence of satisfying immunity period

16. The small parcel of former agricultural land to the rear of 1 Proctor Fold was purchased by the former owner of 1 Proctor Fold in around 2003. Legal paperwork is no longer in existence due to the passage of time since the purchase. Despite instructing conveyancers to register the title of the land at the time, there appears to have been some professional negligence on the part of the conveyancer and a failure to register the land with the Land Registry. The Land Registry currently advise a period of 16 months for first registrations of land to be completed. This process is underway.
17. Google maps aerial photography attached at Appendix 5 demonstrate the land has been ‘fenced off’ from the surrounding fields has been mown and kept and used as a residential garden since 2003. They demonstrate that the residential curtilage of the address is beyond that which is shown on the Land Registry Title Plan. Use as a garden can be seen in photographs from more than 10 years ago at Appendix 6.
18. The former garage/annex was built in 2005. Planning permission application 3/2004/1130 refers. The planning permission is free of any condition that would prohibit the further development of the building. A copy of the grant of planning permission can be found at Appendix 1. The reasons for approval were given as ‘The proposal has no significant detrimental impact on nearby residential amenity nor would it have an adverse visual impact.’
19. In 2016 an application was submitted by the former owner of 1 Proctor Fold for building regulations relating to the development and conversion of the former garage building to residential. Copy documentation recently obtained from the Local Authority can be found at Appendix 2.

20. No application for planning permission was submitted at this time.
21. An application for a Lawful Development Certificate was submitted under application reference 3/2023/0980. This application related to the annex and sought to establish the lawful use of the annex as a separate dwelling. The application was refused. Within the decision notice it is stated that 'whilst evidence has been provided to demonstrate that the building has been used as a habitable space, this is not an indication of use as a single residential unit separate to that of no.1 Proctor Fold. The fact that the building is now in residential use would not mean that it automatically constitutes a separate dwellinghouse....it is the view of the Local Planning Authority that the use of the garage would be more akin to annex/extended family unit which is used in conjunction with the host residential property of no.1 Proctor Fold.
22. The conversion works were undertaken during 2016 and 2017. The works were substantially completed by November 2017.
23. The building comprises all of the usual facilities including lounge, dining kitchen, utility room and wc, two bedrooms and a bathroom.
24. The building is in full view of the road. There has been no attempt to conceal the development of the building nor the occupation of the building as a residence. The core of the building remains as it was when it was originally built as a garage, which was approved on the basis that it does not cause a significant detrimental impact on nearby residential amenity nor have an adverse visual impact.
25. The overall appearance of the building remains largely similar to when it was a garage with the garage door having been replaced with windows.
26. There is a small extension to the rear of the building. The extension was added and completed at the same time as the conversion works.
27. Since the works which were substantially completed in November 2017, the building has been in continuous occupation. Evidence to establish this is provided in the appendices to this statement. This evidence includes photographs at Appendix 3 and gas bills at Appendix 4.
28. The gas bills identify the first billing period for the separate building, addressed to and identified as 1A, as commencing 29th September 2017. The complete set of gas bills

demonstrate usage of gas at a typical residential rate, are addressed the current occupier of the building, are addressed to a separate property and demonstrate continuous occupation to the present day. The building is registered for council tax purposes and has a separate council tax banding as an annex.

29. The evidence additionally confirms in the photographs that the extension was also completed at the same time as the conversion. They show that extension forms part of the living accommodation of the annex unit and that it was completed more than four years ago.

Conclusions

30. The building, being the former garage at 1 Proctor Fold, Osbaldeston Lane was converted to residential use / annex and was substantially completed in 2017.
31. This involved a number of physical alterations and an extension in addition to the change of use of the building to residential accommodation.
32. No planning permission was applied for, resulting in what the Local Planning Authority suggest may be unlawful development.
33. Section 191 (2) of the TCPA 1990, states that uses and operations are lawful, if no enforcement action may be taken because the time for enforcement action has expired.
34. Section 171(b) states that the relevant time limit for a breach of planning control consisting in the change of use of any building to use as a single dwelling house, is a period of 4 years beginning on the date of the breach.
35. There is clear evidence that the change of use and associated works at the site including the extension were substantially completed and the building was brought into residential use in excess of 4 years prior this application being made and that the use of the building as residential occurred for a continuous period of more than four years.
36. There is clear evidence that the residential curtilage of the property and the change of use of land to residential garden occurred in excess of ten years prior to this application being made.

37. The LPA in the Delegated Report appear to accept that the evidence submitted with the refused application, and included with this application for certainty, is sufficient to demonstrate that the building has been in residential use for a period of in excess of 4 years.
38. The development is therefore immune from enforcement action due to the passage of time and a Certificate of Lawful Development should be issued in line with the requirements of Section 191 (4) of the Town and Country Planning Act, 1990.