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# Appeal Decision

**by D Fleming BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 31 March 2020**

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**Appeal Ref: APP/P1425/X/19/3229522**

**9 Outlook Avenue, Peacehaven, East Sussex BN10 8XE**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr Mark Beaumont against the decision of Lewes District Council.
  - The application Ref LW/18/0956, dated 22 November 2018, was refused by notice dated 30 April 2019.
  - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
  - The use for which a certificate of lawful use or development is sought is described by the appellant as the use of the property as two self-contained dwellings without compliance with condition No 2 attached to a grant of planning permission Ref LW/00/2143F.
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## Decision

1. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the property as two self-contained dwellings without compliance with condition No 2 attached to a grant of planning permission Ref LW/00/2143F was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

## Procedural Matter

2. The address of the site in the application form is given as 9 Outlook Avenue but is changed without explanation to 9 and 9a Outlook Avenue on the appeal form. The history of the site is that the original dwelling, No 9, was extended with a residential annex in 2001. A condition was imposed which required that the residential occupation of the annex should be ancillary to No 9. Following the death of the occupier of the annex it appears it was rented out as a self-contained residential unit and became known as No 9a when it was acquired by the appellant.
3. As the current application is concerned with the occupation of the former annex without complying with the relevant condition, the address of the site should refer to No 9 and No 9a Outlook Avenue. The description of the development should also be modified to the use of the former residential annex to No 9 Outlook Avenue, now known as No 9a Outlook Avenue, as a self-contained dwelling without compliance with condition No 2 attached to a grant of planning

permission Ref LW/00/2143F. I believe there would be no injustice if I were to proceed on that basis.

### **Main Issue**

4. The main issue is whether the Council's decision to refuse to grant a certificate was well founded.
5. Section 191(2) of the Act, indicates that uses and operational development are lawful at any time if (a) no enforcement action may then be taken in respect of them because, for instance, the time for enforcement action has expired and (b) they do not contravene the requirements of any enforcement notice or breach of condition notice in force. Lawfulness in this case is to be decided at the time of the application, that is the 22 November 2018.
6. Subsection 191(2)(b) is met here as there is no enforcement notice or breach of condition notice in force. With regard to subsection 191(2)(a), section 171B of the Act deals with the time limits for enforcement action. This sets out three time periods for three different types of development. The first deals with operational development which is not relevant to this case. The second sets out a time period of four years where there has been a change of use of a building to use as a single dwelling house. However, the appellant's claim is that No 9a has been used as a self-contained dwelling house *without complying with a condition* (my emphasis).
7. The appellant's development therefore falls to be considered under the third time period. This states that where there has been 'any other breach of planning control', then no enforcement action may be taken after the end of the period of ten years, beginning with the date of the breach. Having said that, it has been held in case law that the four year period rather than the ten year period applies to a breach of planning control consisting in the change of use of an extension to use as a single dwelling house. This is the case even though it amounted to a failure to comply with a condition imposed when planning permission had been granted for the extension, such that the condition could not be enforced more than four years after the breach. The relevant period for consideration in this appeal is therefore four years, which makes the relevant date the 22 November 2014.

### **Reasons**

8. In an appeal relating to an LDC, the burden of proving relevant facts rests with the appellant and the test of the evidence is the balance of probabilities. The appellant's own evidence does not have to be corroborated by independent evidence. If there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate. This is provided that it is sufficiently precise and unambiguous<sup>1</sup>.
9. To support his case the appellant submits the following documents which relate to No 9a:
  - A copy of a tenancy agreement which began on the 7 March 2014 with Mr and Mrs Trewin; and

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<sup>1</sup> Planning Practice Guidance

- A copy of a tenancy agreement which began on the 13 May 2016 with Miss Brown and Mr Heselwood.

The appellant also submits a copy of a tenancy agreement in respect of the occupation of No 9 which began on the 4 April 2015 with Mr and Mrs Button and an affidavit dated the 11 January 2019. This states that No 9 has been in 'constant residential use for the period of at least four years'. In addition, he explains in his Final Comments that Mr & Mrs Trewin's tenancy agreement continued as a periodic tenancy, as did Miss Brown's in that the use continued after the initial six month term expired.

10. With regard to the residential use, I am required to consider not the availability or suitability of No 9a for a self-contained residential use but whether it was actually put to such use. Furthermore, that the use has continued without material interruption thereafter so as to be immune from enforcement.
11. The appellant's evidence shows that the self-contained residential use of No 9a began in March 2014. The Council confirm that their records show this occupation ceased on the 29 February 2016 and the appellant does not disagree.
12. There was then a break in residential use for over two months before the next occupiers (Miss Brown and Mr Heselwood) moved in during May 2016. The appellant claims to have evidence that No 9a was advertised for rent during this period and that he has proof that he carried out some redecoration and repairs. As this material is not before me, I am unable to take it into account. However, the two month vacancy is not an unusual period of time between lets and it is my view that it can be considered to be *de minimus*.
13. Moreover, it is unlikely that No 9a was used in conjunction with No 9 during this break in occupation as Mr and Mrs Button's tenancy agreement for No 9 began in April 2015 and from the 'Additional clauses' section of the tenancy agreement, it is apparent that the property is subdivided. For example, the landlord gives Mr and Mrs Button consent to erect a shed 'in their part of the garden'. Although the appellant's affidavit dated January 2019 states that No 9 has been in continuous residential use for at least four years, I consider there is some inconsistency over the dates as Mr and Mrs Button's tenancy agreement began in April 2015. Nothing turns on this as it is not necessary to demonstrate that No 9 has been occupied as a self-contained residential unit.
14. The appellant also confirms, as the Council suggested, that Miss Brown's occupation of No 9a, which began in May 2016, became a 'periodic tenancy'. There is also a reasonable explanation for the Council's concerns about Miss Brown's tenancy. The appellant confirms that Miss Brown's partner vacated the property and so a new agreement dated the 13 February 2018 was produced in her name only which continues as a periodic tenancy. There is no break in her residential occupation of No 9a, merely new paperwork to reflect her new situation.
15. Therefore, from all the material before me it is concluded, on the balance of probabilities, that the use of No 9a as a self-contained residential unit took place more than four years before the date of the application. That is to say it began in March 2014 and has continued to date, which is more than four years before the relevant date of the 22 November 2018. There is no evidence from

the Council to contradict the appellant's claims and the proving of relevant facts is precise and unambiguous.

### **Conclusion**

16. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the property as two self-contained dwellings without compliance with condition No 2 attached to a grant of planning permission Ref LW/00/2143F was not well founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

*D Fleming*

INSPECTOR

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## Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on 22 November 2018 the matter described in the First Schedule hereto, constituting a failure to comply with a condition or limitation subject to which planning permission has been granted, in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191(3) of the Town and Country Planning Act 1990 (as amended), for the following reasons:

The use of No 9a Outlook Avenue as a self-contained dwelling without compliance with condition No 2 attached to a grant of planning permission Ref LW/00/2143F began more than four years before the date of the application and continued thereafter; and the use does not contravene the requirements of any enforcement notice in force.

Signed

*D Fleming*

Inspector

Date

Reference: APP/P1425/X/19/3229522

### ***First Schedule***

The use of the former residential annex to No 9 Outlook Avenue, now known as No 9a Outlook Avenue, as a self-contained dwelling without compliance with condition No 2 attached to a grant of planning permission Ref LW/00/2143F.

### ***Second Schedule***

Land at 9 and 9a Outlook Avenue, Peacehaven, East Sussex BN10 8XE

## NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the matter, constituting a failure to comply with any condition or limitation subject to which planning permission has been granted, described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 or 187A of the 1990 Act, on that date.

This certificate applies only to the extent of the matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any matter which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



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## Plan

This is the plan referred to in the Lawful Development Certificate dated:

**by D Fleming Ba (Hons) MRTPI**

**Land at:** 9 and 9a Outlook Avenue, Peacehaven, East Sussex BN10 8XE

**Reference:** APP/P1425/X/19/3229522

Scale: nts

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