PLANNING STATEMENT.
MILL HOUSE BARN, MILL HOUSE, CHURCH LANE, MUGGINTON, ASHBOURNE, DERBYSHIRE DE6 4PL.
TOWN & COUNTRY PLANNING ACT 1990, SECTION 191.
APPLICATION FOR CERTIFICATE OF LAWFUL EXISTING USE OR DEVELOPMENT.

I am instructed by Mr & Mrs S A Armstrong to submit the accompanying application for a Certificate of Lawful Existing Use or Development under the provisions of Section 191 of the Town and Country Planning Act, 1990 in respect of their use of a detached outbuilding at Mill House as a dwelling.

Section 191 indicates:

"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…….

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

(a)the time for taking enforcement action in respect of the failure has then expired; and

(b)it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force…

(3A) In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if—

(a)the time for applying for an order under section 171BA(1) (a "planning enforcement order") in relation to the matter has not expired,

(b)an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or

*(c)a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.***]**

(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.

(5) A certificate under this section shall—

(a)specify the land to which it relates;

(b)describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);

(c)give the reasons for determining the use, operations or other matter to be lawful; and

(d)specify the date of the application for the certificate".

It is accepted development management practice that the onus of proof in a Certificate Lawfulness application lies firmly with the applicant. The standard of proof in respect of a Certificate is on "the balance of probability". It was established in FW Gabbitas v Secretary of State and Newham London Borough Council [1985] JPL630, that an applicant's own evidence does not require to be corroborated by independent evidence in order to be accepted.

It is, equally, a matter that should not be disputed that Statutory Declarations are not to be taken lightly. Further, if the Local Planning Authority has no evidence of its own or from third parties to contradict or otherwise dispute the applicant's version of events, rendering them less than probable, then there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous as to justify the grant of the Certificate on the balance of probability.

I believe that such considerations are at the heart of this application and the background to this development is set out cogently in Statutory Declaration sworn by Mr & Mrs Armstrong.

They have attested that, following their purchase of Mill House in 1993, they subsequently constructed the detached building to which this application relates and that it was converted in 2010 to form a small dwelling, since known as Mill House Barn, with all its facilities independent of Mill House.

It has been so occupied continuously for a period of nearly sixteen years and supporting details of various tenancies are provided.

In the above circumstances, it is considered that the requirements of Section 191 (5) (a) to (d) have been met and that the Certificate of Lawful Existing Use or Development should be

Nevertheless, should the Council require any clarification of the above, or further details to be provided, I shall grateful if the Case Officer will contact me.

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