P-14-062

T.J. HIRON, M.R.I.C.S
CHARTERED SURVEYOR

Clowdisley,
Golf Club Lane,
St. Mary's,
Isles of Scilly
TR21 0NF

Email terry.hiron@virgin.net
Tel/Fax 01720 422563

RECEIVED BY THE
PLANNING DEPARTMENT
08 DEC 2014

Ref.

~~2.12.14~~
8th/12/14

C Dryden,
Senior Manager, Infrastructure and Planning,
Council of the Isles of Scilly

Dear Craig,

Re: Application for Lawful Use on Chalet at White Cottage, Porthloo

I have received the refusal notice dated 17th November.

It is stated in the refusal notice "the use of the building as a separate independent dwelling house is not immune from enforcement as it has been occupied as ancillary accommodation only" I am at a loss to know why you consider this to be 'ancillary'. As you were aware from the dated picture submitted, this building was erected in 2005 (I enclose a copy of the picture again in case it has been misplaced). The picture is dated 14th May 2005. Miss Leanne Hicks moved in to this building shortly afterwards. She sometimes occupied the dwelling on her own and most of the time there were two residents. The building has two bedrooms, separate lounge, separate kitchen/dining room and a bathroom with a WC. It was obviously a separate dwelling and could in no way be considered 'ancillary'. An 'ancillary' building is normally in the form of sleeping accommodation where the occupant needs to share some facilities of the main house.

If you refer to our application form you will note that the grounds for application was that 'this 2 bedroomed chalet has been occupied for more than 4 years". There was no mention of a change of use to an ancillary building or any reference to a 10 year occupancy period.

Perhaps you misunderstood our application or the fact that all the D of E advice given in their circulars refers to the test of evidence being 'a balance of probability'. This means that the applicant only has to provide enough evidence to prove this and also if the Local Authority has no evidence of its own or from others to contradict this, there is no good reason to refuse the application.

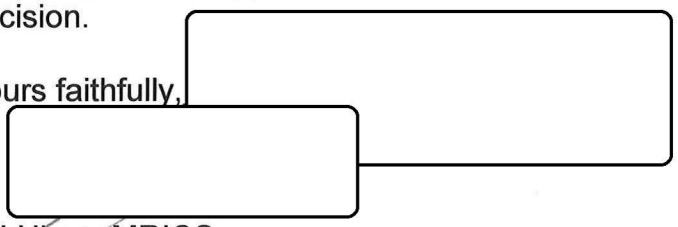
For your information I enclose an explanation of the '4 year rule' given by Martin H Goodall, a solicitor, who is a member of the Law Societies Planning Panel and a legal Association of the Royal Town Planning Institute.
In his explanatory details he says "The rule is quite straightforward. If a building is equipped with the essential facilities required for day to day domestic existence, so that it can be genuinely described as a dwelling and it is continuously used as a dwelling for 4 years, then an application can be made for a Lawful Development Certificate. The dwelling would be Lawful even without the certificate if the qualifications have been met, the certificate simply contains the existing position".

You will also note that when referring to a building which had not been registered for Council tax or elections, this does not prevent immunity from enforcement under the 4 year rule.

You have affadavits in your possession not only stating that Leanne Hicks lived in this building for six years but there were other occupants at different times including the applicant when he had nowhere else to live.

Taking all the above into account I feel that you have made a mistake in refusing this application and we would like to re-apply. In the meantime the applicant has asked me to register an Appeal which will include a claim for costs against the previous decision.

Yours faithfully,



T J Hiron, MRICS

c.c.Liza Walton, Planning Officer

Reapplication forms enclosed!