Certificate of Lawfulness Application

(Exisitng)

For a Residential (C3) as an independent dwelling

AT

Cherry Tree Farm

Blackpool Road

Newton

Preston, PR4 3RE



Prepared for: Prepared by:

Mr Philip Heys, Robert Gifford von Schiller

Cherry Tree Farm, Aberdeen House,

Blackpool, South Street,

Newton, Haywards Heath,

Preston, West Sussex,

PR4 3RE. RH16 4NG.

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Appendix 1 – Affidavit

**Introduction 1.0.0**

1.0.1 We act on behalf of Philip Heys, Cherry Tree Farm, Blackpool Road, Newton, Preston, PR4 3RE in preparing and submitting the Certificate of Lawful Development Application to regulate the current planning position. The property known as “The Cherry Tree Barn” has been lived in as a residential dwelling for a considerable time far in excess of the four year period required under the Town and Country Planning Act 1990 Section 191 as amended by Section 10 of the Planning and Compensation Act 1991, Town and Country Planning (General Development Procedure) Order (England) 2015 because the change of use of the building or part of a building has been used as a single dwelling house. The structure has been occupied continuously since.

**The Location 2.0.0**

2.0.1 The Cherry Tree Barn is located to the rear of Cherry Tree Farm, Blackpool Road, Newton, Preston, PR4 3RE accessed via the rear between the garages or via Blackpool.

**Pre-application advice from Fylde Council 3.0.0**

3.0.1 No pre application advice has been obtained as the property is now except from enforcement and the owner was unaware that he was in breach of planning.

**Planning History 4.0.0**

4.0.1 The following is a list of planning applications around the farm:

 [**ADVERTISEMENT CONSENT FOR ERECTION OF ONE NON-ILLUMINATED, DOUBLE-SIDED, POLE-MOUNTED SIGN - RETR...**](https://www3.fylde.gov.uk/online-applications/applicationDetails.do?keyVal=_FYLDE_DCAPR_52559&activeTab=summary)

CHERRY TREE FARM, BLACKPOOL ROAD, NEWTON WITH CLIFTON, PRESTON, PR4 3RE

Ref. No: 19/0969 | Received: Tue 26 Nov 2019 | Validated: Fri 29 Nov 2019 | Status: Decided

[**FORMATION OF VEHICLE ACCESS TO SERVE DWELLING FROM BLACKPOOL ROAD ALONG WITH FORMATION OF DRIVEWA...**](https://www3.fylde.gov.uk/online-applications/applicationDetails.do?keyVal=_FYLDE_DCAPR_52434&activeTab=summary)

CHERRY TREE FARM, BLACKPOOL ROAD, NEWTON WITH CLIFTON, PRESTON, PR4 3RE

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[**SINGLE STOREY REAR EXTENSION TO LINK DWELLING TO GARAGE - RETROSPECTIVE APPLICATION**](https://www3.fylde.gov.uk/online-applications/applicationDetails.do?keyVal=_FYLDE_DCAPR_52405&activeTab=summary)

CHERRY TREE FARM, BLACKPOOL ROAD, NEWTON WITH CLIFTON, PRESTON, PR4 3RE

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**The Planning Requirements for a Certificate of Lawfulness 5.0.0**

5.0.1 Section 191 of the Town and Country Planning Act 1990

191 Certificate of lawfulness of existing use or development.**E+W**

(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); and

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

(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.

(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.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

(7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission—

(a)section 3(3) of the [**M1**](http://www.legislation.gov.uk/ukpga/1990/8/section/191#commentary-c14023641)Caravan Sites and Control of Development Act 1960;

(b)section 5(2) of the [**M2**](http://www.legislation.gov.uk/ukpga/1990/8/section/191#commentary-c14023651)Control of Pollution Act 1974; and

(c)section 36(2)(a) of the [**M3**](http://www.legislation.gov.uk/ukpga/1990/8/section/191#commentary-c14023661)Environmental Protection Act 1990.**]**

**Annex 8: lawfulness and the Lawful Development Certificate (LDC**) **6.0.0**

6.0.1 In this Annex "the 1990 Act" (except where it is qualified by "as originally enacted") means the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1991 Act").

6.0.2 Sections 191 and 192 of the 1990 Act provide for anyone (not just a person with a legal interest in the land) to apply to the local planning authority (LPA) for a lawful development certificate (LDC). A certificate is a statutory document certifying:

(1) in the case of an application under section 191, the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition; or

(2) in the case of an application under section 192, the lawfulness of proposed operations on, or use of land.

6.0.3 A LDC has no function in determining whether consent may be required under other legislation such as the Planning (Listed Buildings and Conservation Areas) Act 1990

**Lawfulness for planning purposes 7.0.0**

7.0.1 By virtue of section 191 (2), uses and operations are "lawful" if no enforcement action may be taken against them and they are not in contravention of any enforcement notice which is in force. And, by virtue of section 191(3), a failure to comply with any condition or limitation subject to which planning permission has been granted is "lawful" if the time for taking enforcement action in respect of the failure has expired and it does not constitute a contravention of any enforcement notice or breach of condition notice which is in force. Development or other activity on land is lawful for planning purposes if it is within one of the following categories and does not involve a failure to comply with a condition or limitation subject to which planning permission has been granted:

(1) it is not within the definition of "development" in section 55(1) and (1A) of the 1990 Act. (This might be because it is so insignificant that it can be disregarded (a "de minimis" operation, use or activity); or because it involves a change of use which is not, as a matter of fact and degree, materially different, for planning purposes, from a previous lawful use of land.); or

(2) it is specifically excluded from the definition of development by section 55(2) (for example, a use of land for the purpose of "agriculture"); or

(3) it is within the definition of "development" in section 55, but is exempted from the need for planning permission by the provisions of section 57; or

(4) it benefits from an extant grant of planning permission under Part III of the 1990 Act (or the equivalent Parts of preceding Acts); or

(5) it benefits from a general planning permission granted by the Town and Country Planning (General Permitted Development) Order 1995 (SI 1995/418), or by a simplified planning zone or enterprise zone scheme; or

(6) it benefits from deemed planning permission, whether under section 90 or by virtue of compliance with the requirements of an effective enforcement notice; or

(7) it took place before 1 July 1948 (the "appointed day" Country Planning Act 1947); or

(8) it is development by or on behalf of the Crown; or

(9) the time for taking enforcement action has expired.

7.0.2 “Taking enforcement action" is defined in section 171A of the 1990 Act. It is the issue of an enforcement notice or the service of a breach of condition notice. The section also defines a "breach of planning control" (against which it is possible to take enforcement action) as the carrying out of development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted.

7.0.3 A breach of planning control becomes "immune" from planning enforcement action if no such action has been taken within certain time-limits. By virtue of section 191 (2) and (3) of the 1990 Act, a breach of planning control which has obtained immunity by the passage of time also becomes "lawful" for planning purposes, as explained in paragraph 8.3 above.

7.0.4 As explained in paragraphs 2.4 and 2.5 of Annex 2 to this Circular, section 171B of the 1990 Act specifies the time-limits for taking enforcement action.

7.0.5 Guidance on interpretation of the terms "substantially completed" and "use as a single dwellinghouse", where they are used in relation to the time-limits, is given in paragraphs 2.80 and 2.81 of Annex 2 to this Circular.

7.0.6 The combined effect of these provisions is that if the development or activity was, on or after 27 July 1992, immune from enforcement action it also became lawful for planning purposes. This applies whether or not a LDC has been issued under sections 191 or 192 of the 1990 Act. There is no compulsion to apply for a LDC, though obtaining a LDC or grant of planning permission is a prerequisite to an application for any of the licences referred to in paragraph 8.24 below.

**Application for an LDC 8.0.0**

8.0.1 Article 24(1) to (4) of the Town and Country Planning (General Development Procedure) Order 1995 (SI 1995/419) ("the GDPO"), specifies the contents of an application and how it should be made. Applications must be submitted to the LPA in writing. Although no application form is prescribed in the GDPO, model application forms, which LPAs may like to use, are appended to this Annex.

There are two kinds of application:

(1) subsection (1) of section 191 provides for an application to determine 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; and

(2) subsection (1) of section 192 provides for an application to determine whether any proposed use or operations would be lawful for planning purposes.

8.0.2 Application for a LDC in respect of existing operations, uses or activities (section 191)

8.0.3 Section 191(1) of the 1990 Act enables anyone to apply to the LPA 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.

8.0.4 Subsection (4) of section 191 provides that if, on an application under the section, the LPA 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 LPA or a description substituted by them (see paragraph 8.35 below), they shall issue a certificate to that effect; and, in any other case, they shall refuse the application.

**The relevant test of the submitted evidence 9.0.0**

9.0.1 In appeals to the Secretary of State which raise "legal issues" (for example, enforcement appeals on grounds (b) to (e) in section 174(2)), where the burden of proof is on the appellant, the Courts have held that the relevant test of the evidence on such matters is "the balance of probability". As this test will accordingly be applied by the Secretary of State in any appeal against their decision, a LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "beyond reasonable doubt". Moreover, the Court has held (see F W Gabbitas v SSE and Newham LBC [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted.

9.0.2 If the LPA have 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, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability". The LPA should proceed on the basis that neither the identity of the applicant (except to the extent that he or she may or may not be able personally to confirm the accuracy of any claim being made about the history of a parcel of land), nor the planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application.

**The content of an LDC under section 191 10.0.0**

10.0.1 Subsection (5) of section 191 provides for certain matters a LDC must contain. The LDC is particularly valuable because its effect is similar to a grant of planning permission. It is therefore vital that the certificate indicates precisely the area of land to which it relates (normally by means of an attached, scaled site-plan); precise details of what use, operations or failure to comply with a condition are found to be lawful, why, and when. For example, if a certificate is for a use of land -unless the use falls within one of the "use classes" specified in the UCO current at the time, or the certificate is granted on the basis that a specific grant of planning permission confers, lawfulness on the use it is important for it to state the limits of the use at a particular date.

10.0.2 These details will not be legally equivalent to a planning condition or limitation. They will be a point of reference, specifying what was lawful at a particular date, against which any subsequent change may be assessed. If the use subsequently intensifies, or changes in some way to the point where a "material" change of use takes place, the LPA may then take enforcement action against that subsequent breach of planning control (which a less precise certificate might well preclude). A LDC must therefore be precisely drafted in all respects. (See also 8.11 about the need for applications to be specific.) additional descriptive material is necessary to describe the building's siting, design and appearance, including accurate drawings of the building's elevations. matter for which it is granted regardless of whether the matters fall within a "use class" of the UCO. But where within a "use class", a LDC must also specify the relevant "class".

10.0.3 In all cases the description must be more than simply a title or label, if future interpretational problems are to be avoided. The LDC should therefore state the characteristics of the matter so as to define it unambiguously. This is particularly important for uses which do not fall within any "use class" (that is, a "sui generis" use). So for example a LDC for a caravan site might typically include the number and type or size of caravan found to be lawful at the application date and, where the use is seasonal, the calendar dates on which the use then took place.

10.0.4 Paragraphs above explains, in principle, why so much detail may need to be provided, first by the applicant when applying for the LDC, and then in the certificate itself. Some further illustration may be helpful to LPAs and prospective applicants.

10.0.5 One obvious example requiring such detail would be the case of an unauthorised building substantially completed more than four years ago and in respect of which an LDC is sought. The application, and any LDC, should identify the location and form of that building (which may be on a site with a number of similar buildings) with sufficient precision to ensure that it cannot be confused with any other building on the site, either at the application date or in future. This minimises the possibility of its being confused with any new building which might subsequently replace it in the same position on the site. Identification will usually best be in the form of a scaled plan or plans and whatever additional descriptive material is necessary to describe the building's siting, design and appearance, including accurate drawings of the building's elevations.

**Conclusion 11.0.0**

10.0.1 Our client, Philip Heys wanted to regulate the planning position of “The Cherry Tree Barn” as they were unaware that they have been in breach of a condition for so long.

10.0.2 In accordance to the regulations we have submitted this certificate of lawful development and the associated supporting documents.

10.0.3 The attached affidavit (statement of Oaths) have been provided in accordance to the requirements of the Town and Country Planning Act Section 191 as amended by Section 10 of the Planning and Compensation Act 1991. Town and Country Planning (General Development Procedure) England 2015.