



**TOWN AND COUNTRY
PLANNING ACT 1990**

PLANNING STATEMENT

**Application for a Lawful
Development Certificate for
change of use of outbuilding to
a self-contained residential
dwelling**

**at
The Annex
The Old Forge
Westbrook Hay
London Road
Hemel Hempstead
HP1 2RG**

May 2021

**Prepared by
James Holmes
BA (Hons) MA MRTPI**

**63 Marlowes
Hemel Hempstead
Herts
HP1 1LE**

**Telephone: 01442 291785
Email: james.holmes@argroup.co.uk**



CHARTERED TOWN PLANNING CONSULTANTS

CONTENTS

	Page No
1. Introduction	3
2. The Site and Background	3
3. Relevant Statutory Provisions	4
4. Key Issues Relevant to the Determination of the Application	4
5. Evaluation	7
6. Conclusion	18

Appendices

1. Decision notice relating to Dacorum application 4/01579/06/FHA
2. Appeal decision confirming four year rule where a condition is in place
3. Decision confirming that utility bills can be paid by a third party

1. INTRODUCTION

- 1.1 My name is James Holmes and I am a Director with Aitchison Raffety, Chartered Town Planning Consultants. I have an MA in Town Planning and am a Member of the Royal Town Planning Institute.
- 1.2 This Statement relates to an application for a Lawful Development Certificate in respect of the existing use of a self-contained residential dwelling known as 'The Annexe', The Old Forge, Westbrook Hay, Hemel Hempstead HP1 2RG
- 1.3 The change of use to a self-contained dwelling house took place more than four years ago and the use has continued without interruption since that time. The use as a single dwelling is, therefore, lawful having regard to Section 191 of the Town and Country Planning Act 1990.

2. THE SITE AND BACKGROUND

- 2.1 This application relates to a self-contained separate dwelling house known as 'The Annex' which is located to the northwest of The Old Forge.
- 2.2 The dwelling comprises, a lounge and kitchen on the ground floor and two bedrooms and a bathroom on the first floor. The property has a large garden, which is mainly laid to lawn and is separated from The Old Forge by a hedge.
- 2.3 The property has a separate vehicle access from the farm road at the front, which also serves The Old Forge.



Front elevation of The Annex

- 2.4 By way of background, in October 2006 planning permission was granted for “conversion of existing stable/tack room to residential” at The Old Forge (4/01579/06/FHA). A copy of the Decision Notice is provided as [Appendix 1](#).

3. RELEVANT STATUTORY PROVISIONS

- 3.1 Under Section 191 (1) (a) Town and Country Planning Act (TCPA) 1990, if any person wishes to ascertain whether any existing use of buildings or other land is lawful, they may make an application for the purpose to the Local Planning Authority (LPA), specifying the land and describing the use, operations or other matter.
- 3.2 Under Section 191 (2) (a) TCPA 1990, for the purposes of this Act, uses and operations are lawful if no enforcement action may then be taken, whether they did not involve development or require planning permission, or because the time for enforcement action has expired.
- 3.3 Under Section 191 (4) TCPA 1990, 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.
- 3.4 Under Section 191 (5) TCPA 1990, 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.*
- 3.5 Under Section 191 (6) TCPA 1990, the lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.
- 3.6 Under Section 171B (3) TCPA 1990, in the case of any other breach of planning control (not comprising building operations or a 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 ten years, beginning with the date of the breach.
- 3.7 Under Section 171A (1) TCPA 1990, for the purposes of this Act, carrying out development without the required planning permission constitutes a breach of planning control.

4. KEY ISSUES RELEVANT TO THE DETERMINATION OF THE APPLICATION

- 4.1 This application seeks a Lawful Development Certificate under Section 191 of the Town and Country Planning Act 1990 in respect of an existing use.
- 4.2 The advice in Planning Practice Guidance (PPG) on '*Lawful Development Certificates*' makes it clear that the onus of proving the lawfulness of an existing use rests with the applicant. The relevant legal test of the evidence is '*on the balance of probability*'. An applicant's own evidence does not need to be corroborated by independent evidence to be accepted.
- 4.3 Where the Council has no evidence of its own, or from others, to contradict or make less than probable the applicant's version of events, there is no good reason to refuse the application

provided that the applicant's evidence is sufficiently precise and unambiguous to pass the 'balance of probability' test.

- 4.4 In order for a Certificate Of Lawfulness of an existing use to be issued, the Local Planning Authority should be satisfied, on the balance of probabilities, that the residential use, that is, a self-contained dwelling independent of the main house, has been continuously on-going for a period of four years or more.
- 4.5 For the avoidance of doubt, all of the following cases have been considered on the basis of becoming lawful after four years. It should be noted that the law in relation to lawful use is the same across all of England and Wales and local authority boundaries and policies have no relevance. This case relates to the application of national law and not local planning policy.

Case Study No	Application Reference	Address	Application Description	Lawful Period	Decision
1	19/03567/ACL	105A Aylesbury Road Bierton HP22 5BT	Existing use as single dwelling house	4 Years	Certificate Issued 17 December 2019
2	19/03272/ACL	Land off Pilch Lane Great Horwood	Application for a Lawful Development Certificate for an existing development of use of part of stable building as separate unit of residential accommodation	4 Years	Certificate Issued 21 November 2019
3	19/01325/ACL	10 Fern Lane Haddenham HP17 8EL	Application for a Lawful Development Certificate for an existing use of The Old Brewery Flat as an independent single residential property	4 Years	Certificate Issued 17 June 2019
4	19/01092/ACL	Barn Stable Amber Glen Stud College Road North Aston Clinton HP22 5EZ	Application for a Lawful Development Certificate for construction within existing stable building of single residential unit	4 Years	Certificate Issued 7 June 2019
5	19/01044/ACL	The Cabin known as The Annex Underwood HP18 0QW	Application for Lawful Development Certificate for an existing use as a separate residential dwelling.	4 Years	Certificate Issued 4 June 2019

Case Study No	Application Reference	Address	Application Description	Lawful Period	Decision
6	19/00474/ACL	The Barn Oakley HP18 9PW	Application for a Lawful Development Certificate for an existing development of use of dwelling as single private dwelling house	4 Years	Certificate Issued 9 July 2019
7	19/00401/ACL	Flat Ascott Home Farm Wing LU7 0PP	Application for a Lawful Development Certificate for existing use of a self-contained residential dwelling	4 Years	Certificate Issued 20 March 2019
8	18/02615/ACL	Rowden Farm Mentmore	Application for a Lawful Development Certificate for an existing dwelling	4 Years	Certificate Issued 22 February 2019

4.6 It is noted that there is a planning condition on the consent granted for the building as originally constructed, which restricts the use of the building, as follows:

“3. The residential conversion hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as The Old Forge, Westbrook Hay, London Road, Bourne End, Hemel Hempstead.

Reason: To safeguard and maintain the strategic policies of the local planning authority as expressed in the County Structure Plan and Dacorum Borough Local Plan and for the avoidance of doubt.”

4.7 However, even with a condition as above, the relevant period to become lawful is still four years, as confirmed in the Appeal Decision attached as **Appendix 2** (Planning Inspectorate Reference 3145202 relating to The Annex, Drewton Lane, South Cave, Brough, Yorkshire). The relevant extracts of the Appeal Decision are set out below, and it should be noted the Inspector criticised the Council for seeking to apply a 10 year period.

“5. When completing the LDC application form, the appellants ticked several boxes as to the grounds and the Council took the view that a LDC was sought in respect of a breach of condition no. 1 imposed on the 1994 permission. The appellants had indicated in their ‘planning statement’, however, that a LDC is sought in respect of a change of use of the Annexe to a single dwellinghouse – which would have become lawful, because no enforcement action could be taken against it, after a shorter period of time than would be the case with a breach of condition.

6. Under s171B(2) of the 1990 Act, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach of planning control, where the breach consists in the change of use of any building to use as a single dwellinghouse. Under s171B(3), no enforcement action may be taken in the case of any other breach of planning control until after the end of the period of ten years beginning with the date of the breach.

7. While most breaches of condition fall to be considered under s171B(3), there is an exception where such a breach arises from a change of use of a building to use as a single dwellinghouse. The condition on the 1994 permission precluded the use of the Annexe as a dwellinghouse but the claim is that the use of the building has been changed to that. **The LDC application is made under s191(1)(a) to establish whether an existing use of a building as a dwellinghouse is lawful and the relevant immunity period is four years as set out under s171B(2).**

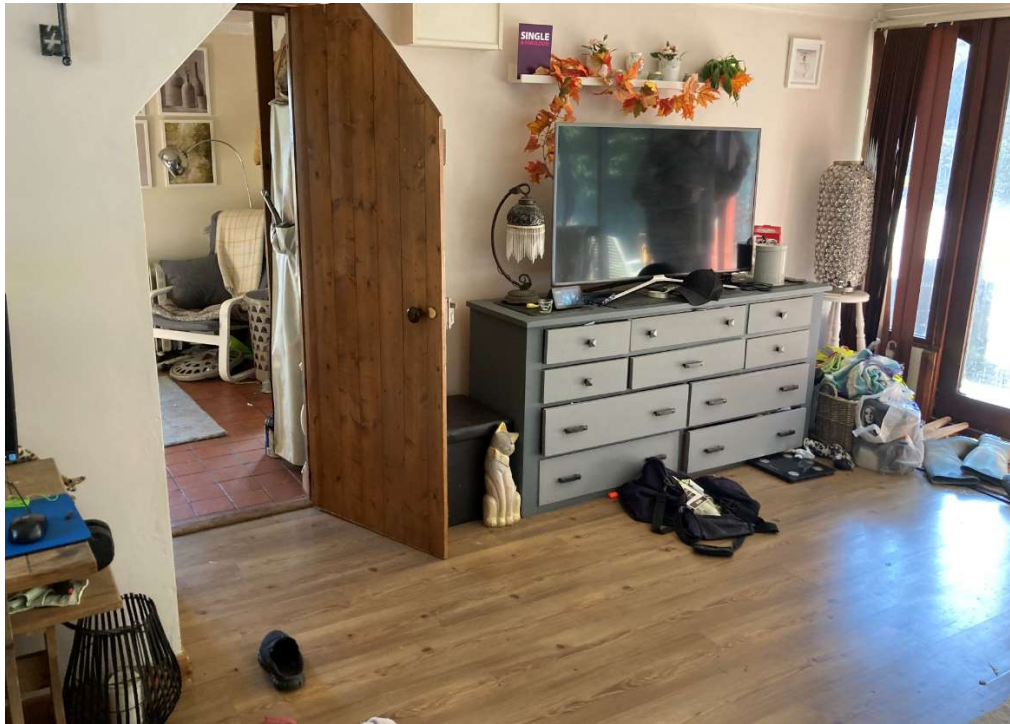
8. **The Council's reason for refusing to grant the LDC was flawed not only because it was based on the ten year rule, but also in other respects. However, it does not follow that the appeal must succeed. My remit is to determine whether the refusal was well-founded, and not whether the reason for refusal was correct.** (Author's emphasis)

5. EVALUATION

- 5.1 The criteria for determining use as a dwelling house include both the physical condition of the premises and the manner of use.
- 5.2 In respect of the physical condition, The Annex is self-contained and includes normal facilities, for cooking, eating and sleeping, associated with use as a dwelling house. It contains a large living area and a kitchen on the ground floor and two bedrooms and a bathroom on the first floor, as shown in the photographs below.



Living Room



Living Room



Living Room



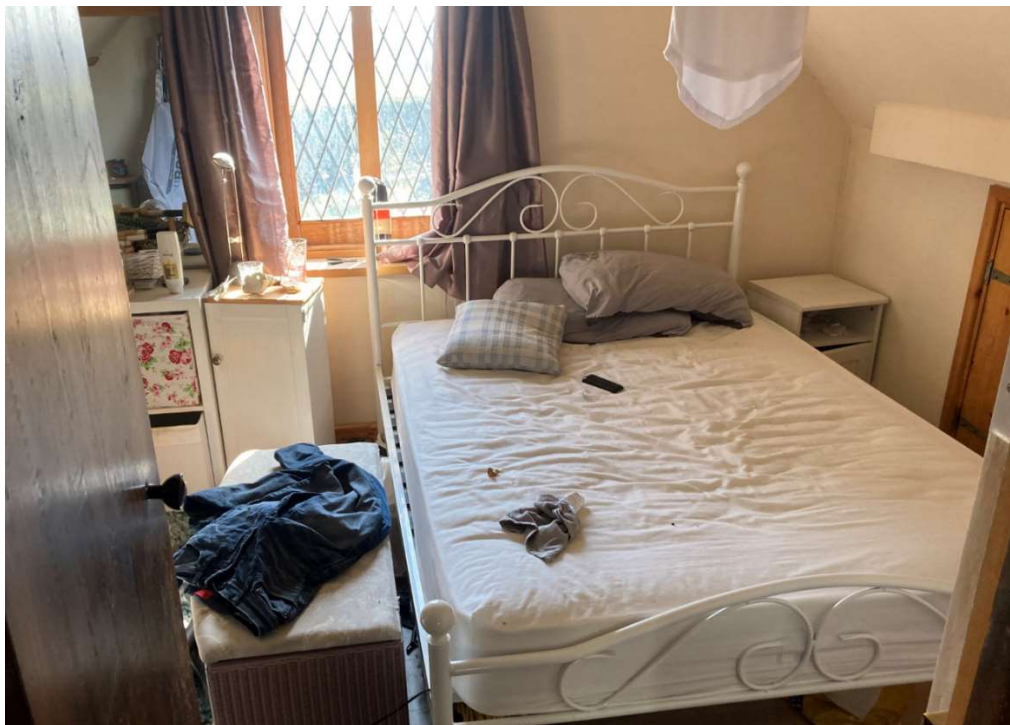
Kitchen



Kitchen



Kitchen



Bedroom 1



Bedroom 2



Bathroom

- 5.3 The Annex has its own separate access, which is shown in the photograph below. However, currently the occupier uses the main vehicle access to The Old Forge. There are numerous examples of two properties being served by the same vehicle access and this does not have any bearing on the application.



The Annex has a separate vehicle access

- 5.4 In respect of the use of The Annex, the application is supported by Council Tax records which confirm that the property has been registered as a separate dwelling house for in excess of the required period of four years in which to become lawful. The existence of Council Tax records confirming use as a separate dwelling should be given substantial weight in support of the application.

Directgov Council Tax valuation list					
Council Tax band details					
ANNEXE AT THE OLD FORGE, WESTBROOK HAY, BOVINGDON, HEMEL HEMPSTEAD, HERTS HP1 2RG					
Last update on 12/05/2021					
Local authority reference number	Council Tax band	Improvement indicator	With effect from	Mixed use property	Court code
618653902004	A		01/06/2014	No	
<p>Do you think this Council Tax band is wrong?</p> <p>Key to the table</p> <p>Council Tax band - this determines how much Council Tax you pay. Show help</p> <p>Improvement indicator - if a property has been improved or extended since it was placed in a Council Tax band, the VOA can't review the banding to take account of the alterations until it's sold. Once a sale takes place the banding will be reviewed. As each Council Tax band covers a range of values, the band isn't always increased following improvements and a sale.</p> <p>Mixed use property - a property can have a domestic or mixed use - "yes" identifies a mixed use property.</p> <p>Court code - a court code shows the Council Tax band has been reviewed by a Valuation Tribunal or the High Court. Show help</p>					

Council Tax records demonstrate that the Annex has been in use as a separate dwelling since at least June 2014 (in excess of the minimum period of four years to become lawful)

- 5.5 Two shorthold tenancy agreements are also provided, showing the use of the building as a separate dwelling for far in excess of the required four year period to become lawful. The first tenancy agreement is dated June 2014 and property was occupied by Ricky Reid for just over a 3 year period until July 2017. Note that the tenancy refers to a 6 month period until May 2015 but was carried over to save having to issue new ones. The tenancy agreement refers to the property as "Old Forge (coach house)", which was the name previously given to The Annex.

**ASSURED SHORTHOLD
TENANCY AGREEMENT**
for a furnished [unfurnished] dwelling house

THIS AGREEMENT is made the 1st day of June 2014
BETWEEN MARCEK HALLS
(hereinafter referred to as 'the Landlord' of the one part, which expression includes the person for the time being entitled to the reversion immediately expectant on the Tenancy hereby created);
AND ~~RICHARD~~ RICKY REID
(hereinafter referred to as 'the Tenant' of the other part, and if more than one the liability of each under this agreement shall be joint and several)
BY THIS AGREEMENT the Landlord lets and the Tenant takes all [those rooms located on the _____ floor] of the building known as OLD FORGE (COACH HOUSE)
(hereinafter referred to as 'the Property') together with the Fixtures, Fittings, Furniture and Effects therein (as more particularly set out in the Inventory annexed hereto and signed by both parties) for a term certain of months [weeks] ('the Term')
from 1st June 2014 to 31st MAY 2015
at the rent of £ 750 per calendar month [week] and on the Special and General Terms and Conditions set out in the following pages of this Agreement.
THE TENANT agrees to pay the Rent in advance by [method of payment] _____ in the following instalments namely a first payment of £ 750 on the signature of this Agreement and thereafter the sum of £ 750 per calendar month [week] commencing on the 1st day of JULY, 2014
If any rent or other money payable by the Tenant to the Landlord under the provisions hereof shall not be paid within fourteen days of the day on which it became due the same shall be payable with interest thereon at the rate of four per centum per annum above the base minimum lending rate of _____ Bank for the time being in force calculated on a day to day basis from the day upon which it became due down to the date of payment.
THE TENANT also agrees to pay to the Landlord on the signature of this Agreement a deposit ('the Deposit') of £ _____ as security against the failure by the Tenant to make good on demand by the Landlord and at the Tenant's expense any damage by the Tenant to the Property or to any Fixtures, Fittings, Furnishings and Effects and as security against any expense, arrears of rent or other nuisance occasioned to the Landlord by the failure of the Tenant to behave in a tenant-like manner or to observe the Special General Terms and Conditions of this Agreement.
The Tenant shall follow the procedures of the relevant tenancy deposit protection scheme to seek recovery of the deposit or to resolve a dispute over recovery of all or part of the deposit.
Specifically the Tenant hereby agrees not to use any part of the deposit in lieu of rent.

2 © Jan 2008 NATIONAL LANDLORDS ASSOCIATION, 22-26 Albert Embankment, London SE1 7TJ

*Tenancy agreement showing the property in use as a dwelling in June 2014
(in excess of the minimum period of four years to become lawful).*

- 5.6 The second tenancy agreement is dated August 2017 and the occupier was stated as Lucy Johnson. It refers to the property as "Old Forge (coach house)", which again, was the name previously given to The Annex. Again, it should be noted that the tenancy agreement refers to a 6 month period but was carried over to save having to issue new ones.

TENANCY AGREEMENT
(unfurnished property)

Assured Shorthold Tenancy
under Part 1 of the Housing Act 1988 as amended by the Housing Act 1996

Note: This Tenancy contains an optional 6 month Break Clause in Paragraph 12. Please read the accompanying notes before completing this document

Date Signed:	1st Aug 2017
Parties:	1. The Landlord : MARCEL HALLS 2. The Tenant(s): LUCY JOHNSON
Property:	The dwelling known as and situated at THE COACH HOUSE OLD FORGE, LONDON RD, HP1 2RG
Term:	A term certain of 6 months commencing 1st Aug 2017
Rent:	£ 9.00 per month
Payable:	in advance by equal monthly payments. The first payment is to be made on the date of signing of this Agreement and subsequent payments on the 1st day of each month thereafter.
Deposit:	£ / which will be held in accordance with the rules of one of the government-approved Tenancy Deposit Schemes

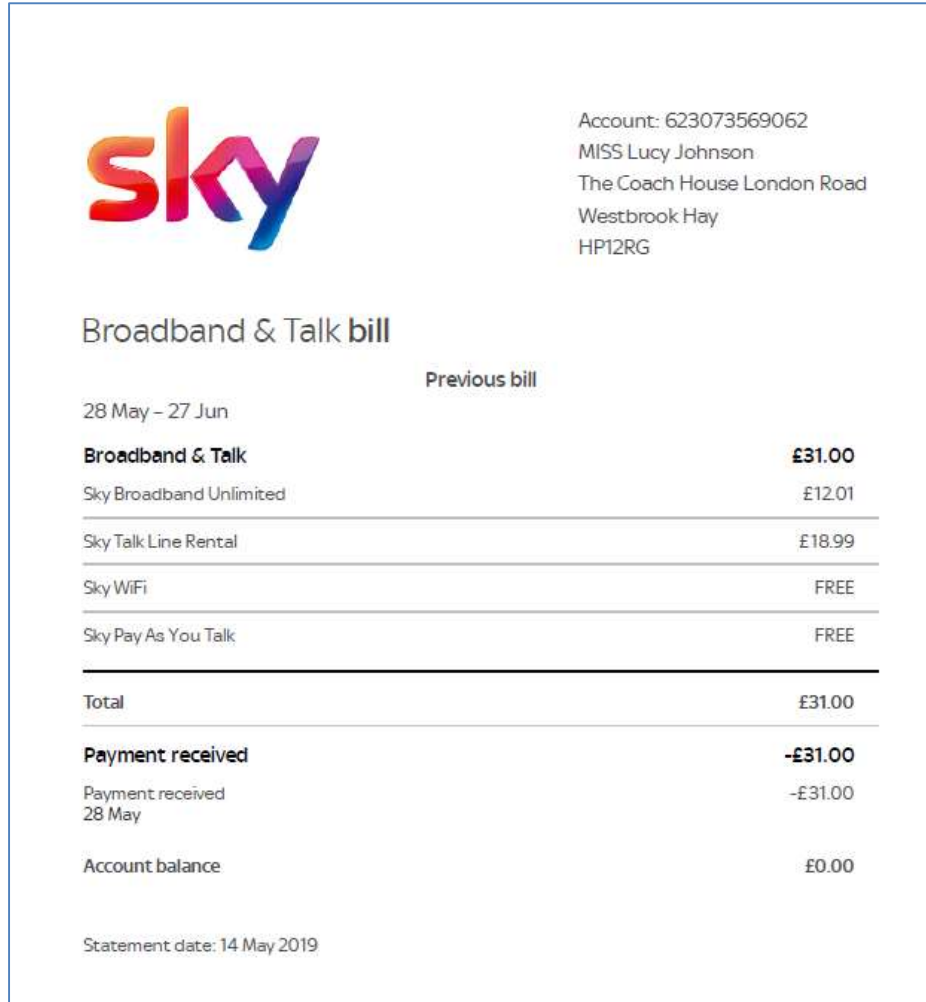
1. The Landlord lets and the Tenant takes the property for the Term and at the Rent payable as above.
2. This agreement is intended to create an Assured Shorthold Tenancy as defined in section 20 of the Housing Act 1988 (as amended by the Housing Act 1996) and the provisions for the recovery of possession by the Landlord in section 21 thereof apply accordingly.

Page 1 of 5

*Tenancy agreement showing the property in use as a dwelling in August 2017
(in excess of the minimum period of four years to become lawful).*

- 5.7 It should be noted that the property is still occupied by Lucy Johnson, who has occupied the property as her sole home since 1 August 2017. As she is still living at the property there should be no need to submit additional evidence to confirm continuous use as a dwelling. However,

we provide below a Sky Broadband bill dated May 2019, which falls within the relevant four year period and shows continuous use. Furthermore, as noted above, we have provided council tax records confirming that council tax has been paid on the property since at least June 2014 a period of 7 years.



The image shows a Sky Broadband & Talk bill for the period 28 May to 27 Jun. The bill is for account 623073569062, held by Miss Lucy Johnson at The Coach House, London Road, Westbrook Hay, HP12RG. The bill details charges for Sky Broadband Unlimited (£12.01), Sky Talk Line Rental (£18.99), Sky WiFi (FREE), and Sky Pay As You Talk (FREE). A total of £31.00 is shown, which has been fully paid, leaving an account balance of £0.00. The statement date is 14 May 2019.

Broadband & Talk bill	
Account: 623073569062	
MISS Lucy Johnson	
The Coach House London Road	
Westbrook Hay	
HP12RG	
28 May - 27 Jun	
Previous bill	
Broadband & Talk	£31.00
Sky Broadband Unlimited	£12.01
Sky Talk Line Rental	£18.99
Sky WiFi	FREE
Sky Pay As You Talk	FREE
Total	£31.00
Payment received	-£31.00
Payment received 28 May	-£31.00
Account balance	£0.00
Statement date: 14 May 2019	

Sky Broadband bill demonstrating occupation throughout the relevant four year period

- 5.8 It is confirmed that the occupier of The Annex, Lucy Johnson, is not related to the owner/occupier of the adjoining dwelling at The Old Forge. Her evidence alone is sufficient for a Lawful development Certificate to be issued.
- 5.9 In respect of utilities, the property is served by a coin operated electric metre, which is located in the kitchen. A photograph of which is provided below. The property has electric radiators in all rooms.



The Annex is served by a separate coin operated electricity metre



Location of the electric metre in The Annex

- 5.10 Utility bills are paid by the owner of The Old Forge, but there are many case studies which confirm that this does not result in ancillary use, or affect the ability to issue a Certificate. This is confirmed in the case study attached as **Appendix 3** relating to land off Pilch Lane, Great Horwood, Buckinghamshire, where a Certificate was issued where no separate meters existed for utility bills (LDC 19/03272/ACL). Again this is a matter of national planning law and local authority boundaries or local policies are not a relevant consideration.
- 5.11 A wood burning stove is located in the kitchen and fuel is bought by the occupier of the property. For the sake of clarity, it is confirmed that the property is not connected to a gas supply and does not use oil central heating.



A wood burning stove is located in the kitchen

No concealment

- 5.12 There is no evidence to suggest that the owner or others have sought to conceal in any way the existence of The Annex. As demonstrated in this Statement the owner has been paying Council Tax on the property for several years. The application is not considered to be materially different to other Lawful Development Certificates that have been issued, which the Council did not consider represented concealment.
- 5.13 The information submitted in support of the current application for a Lawful Development Certificate represents the correct position and is signed as a true and accurate statement of the facts.

6. CONCLUSION

- 6.1 In conclusion, the application is for a Certificate of Lawful Use for the material change of part of an outbuilding to a self-contained residential dwelling, known as 'The Annex'.
- 6.2 A condition on the planning permission on the outbuilding states that it cannot be used for any purpose other than as ancillary to the residential accommodation. However, the Appeal Decision attached as **Appendix 2** makes clear that notwithstanding such a condition, ancillary residential accommodation will become lawful if it is used as a single dwelling house for a period of 4 years.
- 6.3 The application includes evidence in the form of Council Tax records, utility bills and Tenancy Agreements, which demonstrate that the use has taken place for in excess of the four year period to become lawful.

- 6.4 The Annex is self-contained and includes the normal facilities for cooking, eating and sleeping associated with use as a single dwelling house. It contains two bedrooms, a living area, kitchen and a bathroom. It has its own vehicle access and parking area.
- 6.5 It is confirmed that the occupier of The Annex is not related to the owner/occupiers of the adjoining dwelling at The Old Forge.
- 6.6 The property has its own electric metre and is not connected to the gas supply. Utility bills are paid by the owner of The Old Forge but there are many case studies which confirm that this does not prevent a Certificate from being issued. See the case study attached at [Appendix 3](#) which relates to a dwelling with no separate meters for utility bills, which was issued a Certificate of Lawful Use.
- 6.7 Local authorities are advised that *“if they have no evidence of their own to contradict or undermine the applicant’s version of events, there is no good reason to refuse the application, provided the applicant’s evidence is sufficiently precise and unambiguous”*.
- 6.8 It is considered that the evidence proves, on the balance of probability, that the development is lawful. As such, we consider that a Lawful Development Certificate can be issued.

APPENDIX 1
Decision notice relating to 4/01579/06/FHA

Dacorum Borough Council
Planning and Regeneration
Civic Centre Marlowes
Hemel Hempstead
Herts HP1 1HH



MR G HALLS
THE OLD FORGE
LONDON ROAD
BOURNE END
HEMEL HEMPSTEAD HERTS
HP1 2RG

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION - 4/01579/06/FHA

THE OLD FORGE, LONDON ROAD, BOURNE END, HEMEL HEMPSTEAD, HP1
CONVERSION OF EXISTING STABLE/TACK ROOM TO RESIDENTIAL

Your application for full planning permission (householder) dated 14 July 2006 and received on 18 July 2006 has been **GRANTED**, subject to any conditions set out overleaf.

A handwritten signature in black ink that reads 'S. Wright'.

Head of Planning and Regeneration

Date of Decision: 25 October 2006

CONDITIONS APPLICABLE TO APPLICATION: 4/01579/06/FHA

Date Decision Made: 25 October 2006
Date Decision Dispatched: 25 October 2006

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.**

Reason: To comply with the requirements of Section 91 (1) of the Town and Country Planning Act 1990 as amended by Section 51 (1) of the Planning and Compulsory Purchase Act 2004.

- 2 All new or altered external surfaces shall be finished or made good to match those of the existing building.**

Reason: To ensure a satisfactory appearance to the development.

- 3 The residential conversion hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as The Old Forge, Westbrook Hay, London Road, Bourne End, Hemel Hempstead.**

Reason: To safeguard and maintain the strategic policies of the local planning authority as expressed in the County Structure Plan and Dacorum Borough Local Plan and for the avoidance of doubt.

- 4 No material, debris, vehicles or machinery associated with the development hereby permitted shall be stored or used within the Wildlife Site (Bovingdon Reach, Reference W/S 65/084) located immediately adjacent to the site.**

Reason: To protect the integrity of the Wildlife Site.

- 5 Prior to the commencement of development a seasonally appropriate survey for bats and breeding birds (such as barn owls, swallows, swifts, house sparrows and starlings), as well as an ecological impact assessment shall be conducted by a suitably licenced ecologist and submitted to the Local Planning Authority. Surveys for nesting birds will need to be undertaken during the nesting season. If nesting birds are present any building work undertaken must avoid the bird nesting season (March - August).**

Should bats or breeding birds be found then English Nature will need to be consulted and a DEFRA licence will need to be obtained prior to any work commencing on site and mitigation measures proposed.

Reason: To ensure that the habitats of bats and nesting birds are adequately protected.

NOTE 1:

This decision to grant planning permission has been taken for the following reason and having regard to the policies and proposals in the development plan set out below and to all other material planning considerations, including relevant supplementary planning guidance.

The site is located in an area where residential conversions are acceptable in principle in accordance with Policy 110 of the Borough Plan. There would be no adverse effects on the appearance of the building or the appearance of the street scene. The amenity of adjoining neighbours would not be adversely affected. Car parking within the site is adequate. The proposals therefore accord with Policy 11 of the Borough Plan.

NOTE 2:

The following policies of the development plan are relevant to this decision:

Hertfordshire Structure Plan Review 1991-2011

Policies 1, 2, 5, 25 and 38

Hertfordshire Structure Plan Alterations 2001-2016 Deposit Draft Version

Policies 1, New Policy (Making development more sustainable), New Policy (Design and quality of development), 2, 5, 25 and 38

Dacorum Borough Local Plan 1991 - 2011

Part 3 General Proposals

Policies 4, 11, 13, 19, 58, 102, 110 and 119

Appendices

Appendices 5 and 7

APPENDIX 2
Appeal decision confirming four year rule where a condition is in place



Appeal Decision

Site visit made on 22 November 2016

by **Jean Russell MA MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: **23 December 2016**

Appeal Ref: APP/E2001/X/16/3145202

The Annexe, Drewton Lane, South Cave, Brough, Yorkshire, HU15 2AG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Richard William Turner and Mrs Charlotte Lucy Turner against the decision of East Riding of Yorkshire Council.
 - The application ref: DC/15/03696/CLE/WESTES, dated 18 November 2015, was refused by notice dated 19 January 2016.
 - The application was made under sections 191(1)(a) of the 1990 Act as amended.
 - The development for which a certificate of lawful use or development is sought is a separate dwellinghouse in occupation by a single family and curtilage and access.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

Application for Costs

2. An application for costs was made by Mr Richard William Turner and Mrs Charlotte Lucy Turner against East Riding of Yorkshire Council. This application is the subject of a separate Decision.

The LDC Application

3. The appeal concerns a two storey building known as 'The Annexe' and surrounding land. The site is owned as part of the property associated with a dwellinghouse known as Ash Lea.
4. Planning permission (ref: 318-367B) was granted on 10 March 1994 for the erection of the Annexe 'for use as office and study'. The '1994 permission' was subject to one condition that the building 'shall only be used for purposes incidental to the enjoyment of the dwellinghouse, "Ash Lea" as such, and...not...for any business or commercial purposes whatsoever'. The reason for the condition was that 'the site is situated in an area...where it is intended that the existing uses of land shall remain, for the most part, undisturbed'.
5. When completing the LDC application form, the appellants ticked several boxes as to the grounds and the Council took the view that a LDC was sought in respect of a breach of condition no. 1 imposed on the 1994 permission. The appellants had indicated in their 'planning statement', however, that a LDC is sought in respect of a change of use of the Annexe to a single dwellinghouse – **which would have become lawful, because no enforcement action could be taken against it, after a shorter period of time than would be the case with a breach of condition.**

Appeal Decision: APP/E2001/X/16/3145202

6. Under s171B(2) of the 1990 Act, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach of planning control, where the breach consists in the change of use of any building to use as a single dwellinghouse. Under s171B(3), no enforcement action may be taken in the case of any other breach of planning control until after the end of the period of ten years beginning with the date of the breach.
7. While most breaches of condition fall to be considered under s171B(3), there is an exception where such a breach arises from a change of use of a building to use as a single dwellinghouse¹. The condition on the 1994 permission precluded the use of the Annexe as a dwellinghouse but the claim is that the use of the building has been changed to that. The LDC application is made under s191(1)(a) to establish whether an existing use of a building as a dwellinghouse is lawful and the relevant immunity period is four years as set out under s171B(2).
8. **The Council's reason for refusing to grant the LDC was flawed not only because it was based on the ten year rule, but also in other respects.** However, it does not follow that the appeal must succeed. My remit is to determine whether the refusal was well-founded, and not whether the reason for refusal was correct².

Occupation and Use

9. The LDC application was made for a 'dwellinghouse in occupation by...' but 'occupation' does not denote development as defined by s55(1). It would be more precise to say that a LDC is sought for 'the material change of use of a building to use as a separate dwellinghouse with a separate curtilage and access'. Having said that, who occupies the land on what basis are relevant considerations.

Main Issue

10. The main issues are whether a material change of use of the Annexe to use as a separate dwellinghouse has occurred, and whether any such use has taken place on a continuous basis so as to be immune from enforcement action.

Reasons

11. Where a LDC is sought, the onus of proof is on the appellants and the standard is the balance of probabilities. If there is no evidence to contradict or make the appellants' version of events less than probable and their evidence is sufficiently precise and unambiguous, a LDC should be granted. The LDC application was dated 18 November 2015 and so the four year or material date is 18 November 2011.
12. Ash Lea was purchased in 2005 by Mrs Turner's father, Mr Bradley. He moved into the house and allowed the appellants to move into the Annexe. They altered the interior of the building so that it would contain a full kitchen, utility room, living room, bathroom and two bedrooms. They claim that the works were substantially completed *and* the Annexe was used as a separate dwelling from 15 October 2005.

Material Change of Use

The Planning Unit

13. Whether there has been a material change of use is a matter of fact and degree; there needs to be some significant difference in the character of the activities from what has gone on previously. The concept of the planning unit and its primary use

¹ *FSS v Arun DC* [2006] EWCA Civ 1172; s171B(3) *does* apply where permission is granted for a dwelling subject to a condition which restricts occupation, and a change in occupation is in breach of the condition but does not change the use of the building as a dwelling.

² S195(2) and (3) of the 1990 Act as amended

Appeal Decision: APP/E2001/X/16/3145202

or uses is fundamental. It was held in *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207 that the planning unit should be determined with regard to the unit of occupation and the concept of physical and functional separation. The area to be looked at should be that which is used for a particular purpose, including any part of the area put to incidental uses. The planning unit is not to be confused with 'curtilage' which is simply an area of land that is closely associated with a building.

14. The appellants suggest that the Annexe was within the same planning unit as Ash Lea when acquired by Mr Bradley in 2005. I agree with and would expand upon that assessment: the property at Ash Lea was a single unit of occupation with a single primary use, residential use, from the use of the dwellinghouse. The Annexe replaced a piggery which may have been outside the curtilage of Ash Lea, but I have seen no evidence that the planning unit was in a mixed use from 1994.
15. When considering whether there has been a change of use of a building to a single dwelling, it is necessary to look at when the premises were capable of providing viable facilities for living and the use commenced³. The Council does not dispute that the Annexe has provided viable facilities for living since October 2005; it has been capable since then of use as a dwellinghouse. However, it is still necessary to consider when such a use might have begun. It has been held that too much stress ought *not* to be placed on 'actual use'⁴ – but that will be critical in this case because the Annexe was already within a residential planning unit.

Incidental and Ancillary Uses

16. Since the condition imposed on the 1994 permission restricted the use of the Annexe, the parties have discussed the meaning of 'incidental' and 'ancillary' uses. If referring to a condition such as this, or indeed to legislation, I would normally quote the wording originally used, in the interests of precision and clarity⁵. In a general planning context, however, the words 'incidental' and 'ancillary' can be used interchangeably; they are not distinguishable as the appellants suggest.
17. Incidental or ancillary uses are uses which are subservient to a primary use taking place within the same planning unit. They are not integral to or part of the primary use, but they are functionally related to it and the functional relationship should be one that is normally found. By way of example, if the primary use of the planning unit is a dwellinghouse, living accommodation would be integral to that use, while a home office or study would be an incidental or ancillary use.

The 1994 Permission

18. The appellants have considered how the 1994 permission ought to be interpreted. It was held in *Telford and Wrekin BC v SSCLG* [2013] EWHC 79 (Admin) that, 'as a general rule, a planning permission is to be construed within the four corners of the document itself, ie, including the conditions in it and express reasons for those conditions unless another document is incorporated by reference or it is necessary to resolve an ambiguity in the permission or condition'.
19. When the 1994 permission is read with condition no. 1, it is plain that approval was granted for an office and study only to be used for purposes incidental to the enjoyment of the dwellinghouse, Ash Lea⁶. The appellants accept that point, but also suggest that the permission did not authorise 'residential occupation'. That

³ *Impey v SSE & Lake District SPB* [1981] JPL 363; *Backer v SSE* [1983] JPL 167; *Grendon v FSS & Another* [2006] EWHC 1711 (Admin)

⁴ *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15

⁵ S55(2(d) of the 1990 Act and parts of the Town and Country Planning (General Permitted Development) Order 2015 specifically use the term 'incidental'.

⁶ This finding is consistent with *Sevenoaks DC v FSS* [2004] EWHC 771 (Admin)

Appeal Decision: APP/E2001/X/16/3145202

submission is right insofar as the building was not to include living accommodation. However, the 1994 permission did not authorise any 'non-residential' use of the planning unit because the 'office/study' was to be incidental to the use of the dwellinghouse and not a new primary use⁷.

20. I find the 1994 permission unambiguous but, if that is not the case, *Telford* would allow reference to other documents⁸. The address of the land given on the application form was 'Ash Lea, Drewton, South Cave'⁹. It was stated on the form that the development was to be an 'alteration or extension', and a supporting statement described that 'the building is intended for multi-purpose family use...storeroom, a study/office, a library/store, and childrens [sic] playroom'¹⁰.
21. The 'site edged red' on the plan submitted with the 1994 application was drawn tightly around the Annexe, but it was placed within a wider site edged blue, encompassing Ash Lea and all land at the property. Article 3(1)(b) of the *Town & Country Planning (Applications) Regulations 1988* – in force at the time – only required that a planning application be accompanied by 'a plan which identifies the land to which it relates.' The 1994 plan did not identify any separate access to or curtilage around the Annexe to facilitate independent use.
22. Thus, the Annexe was approved for use for purposes incidental to the enjoyment of the dwellinghouse, Ash Lea. It was to be sited within a planning unit which had a sole primary residential use. The former owner has confirmed that the 1994 permission was implemented in accordance with the plans and condition.

Uttlesford

23. The Council suggested, citing *Uttlesford DC v SSE & White* [1992] JPL 171, that the occupation of the Annexe by close relatives of the owner of Ash Lea is 'an ancillary act'. The judgment is relevant but the Council has misinterpreted the findings.
24. The situation in *Uttlesford* was that enforcement action had been taken against a change of use of a garage to private living accommodation. As with the Annexe, the *Uttlesford* garage had been permitted for incidental use. It was held that although the garage now had the facilities of a self-contained unit, it nonetheless remained part of the same planning unit as the original dwellinghouse and the planning unit remained in single family occupation. In that situation, a material change of use had not occurred.
25. Since the Annexe contains living accommodation, its use is no longer incidental to the enjoyment of Ash Lea. The question is whether the building remains part of the same planning unit as Ash Lea and the unit remains in single family occupation – or whether the planning unit was subdivided in October 2005 as a result of a change of use of the Annexe to a separate dwelling. It follows from *Burdle* and *Uttlesford* that regard must be had to physical and functional connections in the round and not simply the relationship between the occupiers of the land.

Has a Material Change of Use Occurred?

26. From October 2005, the appellants state that they have been the sole occupiers of the Annexe and surrounding land; the site is a separate unit of occupation. Mrs

⁷ Appeal statement paragraphs 6.7 and 6.65

⁸ Later judgments have supported taking 'a pragmatic view' such that it may be permissible to look at extrinsic evidence when interpreting the uses subject to a planning permission: *Wood v SSCLG* [2015] EWHC 2368 (Admin); *R (oao Kembell) v SSCLG* [2015] EWHC 3368 (Admin); *University of Leicester v SSCLG* [2016] EWHC 476 (Admin)

⁹ The Council changed the address to 'Ash Lea, Drewton Lane' – and yet the building was accessed from Station Road – but this does not seem to be of any consequence.

¹⁰ Quoted in the Council's report

Appeal Decision: APP/E2001/X/16/3145202

- Turner's parents and brother, however, continue to occupy Ash Lea and so the pre-existing planning unit remains in single family occupation. Whether the Annexe is a discrete unit of occupation will depend on its physical and/or functional separation.
27. The Annexe is some metres from Ash Lea and the appellants have emphasised that the building now has its own curtilage. A yard in front of the Annexe is enclosed on one side by a garage wall. In November 2005, the appellants erected fences to the sides of the yard and the Annexe and within land at the rear so as to create play, garden, parking and woodland areas. However, I saw gates at both sides of the yard and in a fence by the woodland which link to the retained land at Ash Lea.
 28. I also saw that the drive to the Annexe from Drewton Lane is rocky and rough. Drivers would need to turn on it to exit, or continue through the site to an egress onto Station Road with poor sightlines. The parking spaces by the drive are at the rear of the Annexe and set behind an intervening garden area. By contrast, the access to Ash Lea from Station Road leads shortly from the highway to a generous and well-surfaced parking area that is close to the Annexe. There are gates allowing passage between this parking area and the front of the appeal building.
 29. This access is the only one to Ash Lea and it is not included within the appeal site. However, there is a large sign on the roadside verge stating that the access serves 'Ash Lea and the Annexe'. The appellants may prefer to use the Drewton Lane drive because of traffic on Station Road, but it remains true that a shared access is available, which would be convenient for all to use, and this denotes physical if not functional links between the appeal building and original dwellinghouse.
 30. The Annexe was registered separately for Council Tax in 2006 and the appellants have separate bins. They have their own landline for telephone and internet connection and do not need to use any facilities within Ash Lea on a day-to-day basis. However, those are not decisive indications of functional separation – and the appellants have not said how other utilities are supplied to the Annexe or if they receive separate electricity or water bills.
 31. The appellants have described that they use the Annexe as their own home: they have added a sun room; Mr Turner's children stay regularly; they have two dogs; and they use the internet for shopping. They visit Ash Lea on occasion for Sunday lunch but do not spend more time with Mrs Turner's parents than might be the case in any other family. I do not dispute these points but the appellants could live in this way whether the use of the Annexe is integral to that of Ash Lea or if there has been a material change of use.
 32. Moreover, the evidence suggests that some weight should be attached to the relationship between the appellants and Mrs Turner's father. The appellants were able to move into the Annexe because Mr Bradley purchased and occupied Ash Lea. They pay rent to Mr Bradley but at less than the market rate. The rent has been low because the appellants had to fund the conversion of the Annexe – but most works were completed some ten years before the LDC application was made. I have seen no books or bank statements to confirm that rent has been paid.
 33. The use of the Annexe for living accommodation has been facilitated and sustained by family ownership of the land and family ties, such as to indicate a functional link between the use of Ash Lea and the Annexe. That Mr Bradley now wishes to sell Ash Lea but still let the Annexe to the appellants does not alter that finding.
 34. The appellants suggest that there has been a fundamental change to the character of the area but the evidence does not support that proposition. As a matter of fact and degree, I find that the use of the Annexe and its 'curtilage' was physically and functionally connected to the use of Ash Lea as a dwellinghouse on the date of the

Appeal Decision: APP/E2001/X/16/3145202

LDC application. On the balance of probabilities, the site was still part of the planning unit at Ash Lea which was still in single family occupation. The appellants have not shown that a material change of use to a separate dwellinghouse had occurred. Had I reached the opposite conclusion on this issue, however, it would have made no difference to my decision.

Continuity of Use

35. An unauthorised use must continue substantially uninterrupted before it can acquire immunity from enforcement action¹¹. Had a material change of use taken place, the Annexe would need to have been used as a dwellinghouse for four years from 18 November 2011 or earlier, such that any periods of non-occupation were *de minimis* and the Council could have taken enforcement action at any time. Where a dwelling is lawful, the occupiers do not need to be continuously or even regularly present but, prior to that, the use must be affirmatively established¹².
36. The appellants claimed in their statutory declarations that they have lived in the Annexe continuously since 15 October 2005. Mr Bradley agreed in his statutory declaration, and I note that a family friend said the same in a letter. The sworn statements in particular carry considerable weight, and I have had regard to the updated declarations from Mrs Turner and her father. However, the appellants have given little information to illustrate continuous occupation.
37. Mrs Turner did not say when the sun room was added to the Annexe, save that this was 'after 2005'. She submitted copies of a Council Tax notice dated 16 January 2006; letters from pension and pet insurance providers dated 23 June and 3 November 2006; her driving licence dated 8 May 2009; and her poll card for the May 2015 elections. These documents are addressed to her at the Annexe but do not show that it was used for a dwelling for any continuous four year period.
38. I have seen no correspondence addressed to Mr Turner at the Annexe, which might have plugged the gaps in the evidence from his wife. I have seen no copies of any rent book or utility bills; such documents are commonly provided in cases such as this. The appellants have children and pets but they have not recounted family events or provided photographs taken at the Annexe over time. I conclude that they have not shown continuous occupation or use of the Annexe for any four year period, such that enforcement action could have been taken at any time

Conclusion

39. The appellants made detailed submissions regarding case law, but their evidence regarding their actual use of the site was imprecise and ambiguous. They have not shown that, on the balance of probabilities, a material change of use of the Annexe to use as a separate dwellinghouse had occurred by the date of the LDC application or that any such use took place for a continuous four year period. I have had regard to all other matters raised but none alter my conclusion. The Council's decision to refuse to grant a LDC was well-founded and the appeal fails.

Jean Russell

INSPECTOR

¹¹ *Thurrock BC v SSETR & Holding* [2002] JPL 1278; *North Devon v SSE & Rottenbury* [1998] EGCS 72 applies a similar principle to a breach of condition.

¹² *Swale BC v FSS & Lee* [2005] EWCA Civ 1568

APPENDIX 3
Decision confirming utility bills can be paid by a third party

The Officer's Report states: -

Evidence -

“With regard to utility bills the applicant advises that there is no separate meter for the unit of accommodation and therefore the applicant and tenant had an agreement that he would pay a third of the water and utility bills for the wider yard.”

Legal opinion -

“There is no information available to the LPA that is contradictory to the basis of the application. Without robust evidence suggesting otherwise, there should be no reason to dispute the application and in these circumstances, the recommendation to issue the certificate is supported.”

CONCLUSION

“On the basis of the evidence submitted and available, it is considered that on the balance of probabilities, it is more likely than not that the part of the stable building subject to this application has been used as a dwellinghouse for a period in excess of 4 years.”

ACLA

AYLESBURY VALE DISTRICT COUNCIL

Town and Country Planning Act 1990, Sections 191 & 192
(as amended by Section 10 of the Planning & Compensation Act 1991)

Town and Country Planning (General Development Procedure) Order (England) 2015
(as amended), Part 8, Article 39

CERTIFICATE OF LAWFULNESS FOR EXISTING USE OR DEVELOPMENT

19/03272/ACL

Mrs Catherine Hems
31 Vicarage Road
Winslow
MK183BJ

Ms S Rudd
13 The Green
Great Horwood
MK17 0RH

The Aylesbury Vale District Council hereby certify that on 9th September 2019 the matter described in the First Schedule to this Certificate in respect of the land specified in the Second Schedule to this Certificate and edged red on the approved plan number shown below, was lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason(s):-

- 1 On the basis of the evidence submitted and available, it is considered that on the balance of probabilities, it is more likely than not that the part of the stable building subject to this application, and edged red on the Block Plan (SR/CH/02), has been used as a dwellinghouse for a period in excess of 4 years.

First Schedule

Use of part of stable building as separate unit of residential accommodation

Second Schedule

Land Off Pilch Lane Great Horwood Buckinghamshire

Approved Plan:-

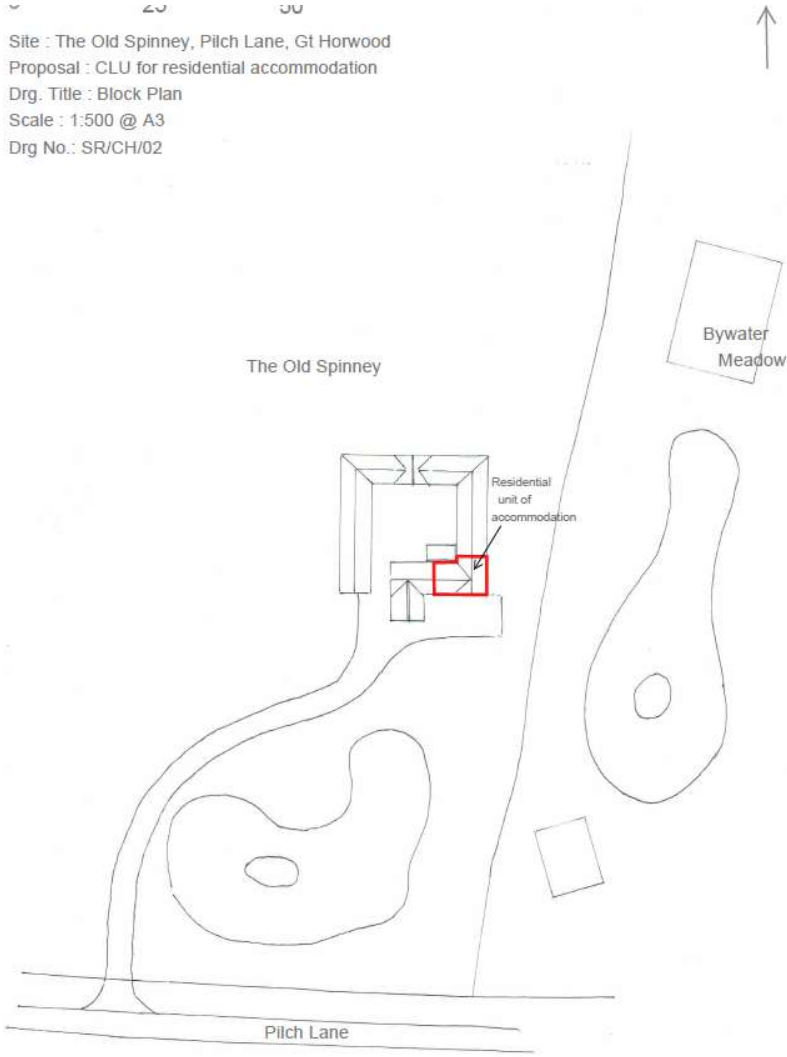
Location Plan (SR/CH/01)
Block Plan (SR/CH/02)
Floor Plans (SR/CH/03)
Elevations (SR/CH/04)

Philip Dales

For and on behalf of the District Council
21st November 2019

Notes:

1. This Certificate is issued solely for the purpose of Section 191 of the Town & Country Planning Act 1990 (as amended).
2. It certifies that the use(s) specified in the First Schedule taking place on the land described in the Second Schedule was lawful on the specified date and thus was not liable to enforcement action under Section 172 of the 1990 Act on that date.
3. 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 approved plan(s). Any matter which is materially different from that described or



Site : The Old Spinney, Pilch Lane, Gt Horwood
 Proposal : CLU for residential accommodation
 Drg. Title : Elevations
 Scale : 1:100 @ A3
 Drg No.: SR/CH/04