

West Planning Team
East Devon District Council
Blackdown House
Border Road
Heathpark Industrial Estate
Honiton
EX14 1EJ

Our ref: 10519

06 January 2022

Dear Sir/Madam

Application for a Certificate of Lawfulness for an Existing Use – Section 191 Town and Country Planning Act 1990

Application to demonstrate that the property is not subject to an agricultural tie at The Bungalow, Poltimore.

On behalf of our client, we hereby submit an application under Section 191 of the Town and Country Planning Act 1990 (as substituted by the Planning and Compensation Act 1991, Section 10 (1)), for a certificate of lawfulness for an existing use, which seeks to confirm that the property known as “the Bungalow” is not subject to an agricultural tie, and an unencumbered residential use would be lawful. The Planning Portal reference number for this application is PP-10525142.

This letter forms the supporting planning statement for the application and is accompanied by the following documents:

- Application form, which has been duly completed and signed;
- Site Location Plan, drawing number 001;
- Copies of the relevant decision notices;
- This Planning Statement by Bell Cornwell LLP.

The statutory application fee of £462 is being paid via the Planning Portal.

The Site and its History

The site refers to The Bungalow which is located close to the settlement of Poltimore. It is a single storey bungalow set back from the road with a parking area to the front. A lane runs adjacent to the site which leads to a separate residential property. To the east is agricultural land and beyond that a number of outbuildings.



Figure 1 Site location (c) google maps

Planning application 76/CO502 – Bungalow and Garage

In 1976 permission was granted for a bungalow and garage (reference 76/CO502) on the eastern side of the access road which leads to Huxham Wood Farm. However, this dwelling was not constructed.

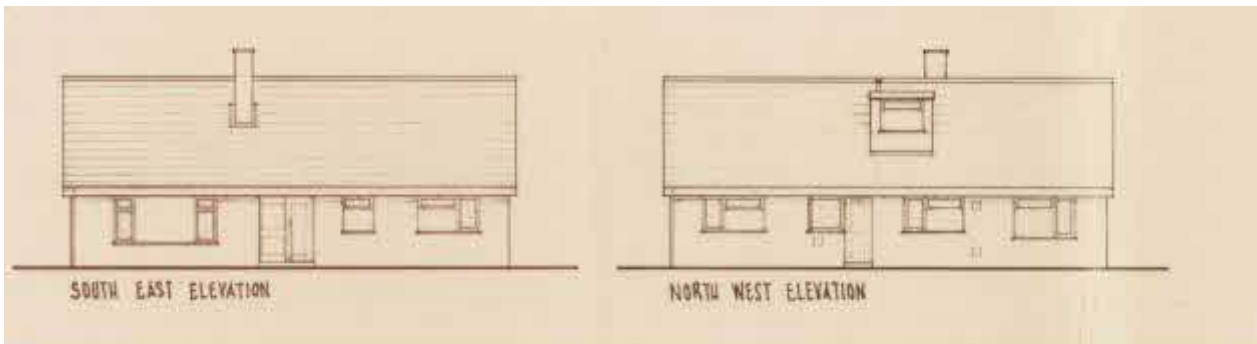


Figure 2 Planning application drawings 76/CO502

Planning application 92/P0904 – Agricultural dwelling and garage substitute for 76/P0502

In 1992 planning permission was granted (under reference 92/P0904) for “Agricultural Dwelling & Garage Substitute For 76/P0502”. This was on the western side of the lane and carried a number of planning conditions – notably stating that it was an alternative to the 1976 permission, and that only one dwelling can be constructed. There was an additional planning condition that restricted the use to ‘a person solely or mainly employed, or last employed in the locality in agriculture.’ This permission was not implemented.

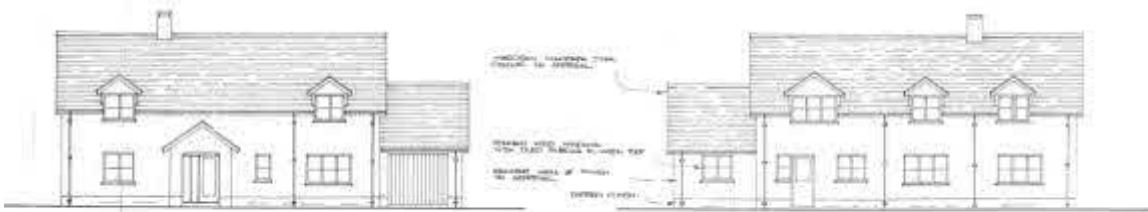


Figure 3 Planning application drawings 92/P0904

Planning Application 95/P0099 – Agricultural Dwelling

In 1995 another alternate scheme (95/P0099) sought to construct an agricultural dwelling in the original position approved in 1976 albeit to a different design.



Figure 4 Planning drawings 95/P0099

As part of this application, a legal agreement was entered into to ensure that only one of these dwellings was constructed. This agreement identifies the two sites as 'the red land '95/P0099' and the blue land 92/P0904.



Figure 5 legal agreement drawings

Clause 5 of the legal agreement states that “the Developers wish to develop the green land by the erection of an agricultural dwelling thereon (herein called ‘the proposed development’). The legal agreement does not restrict the use of the dwelling, but stipulates that only one dwelling shall be constructed (see figure 6).



(1) This Agreement is made pursuant to Section 106 of the Town and Country Planning Act 1990 enabling the Council and the Developers the adjoining landowner and the Mortgagee to enter into these presents and in consideration of the covenants hereinafter contained

(2) Nothing in this Agreement is or amounts to or shall be construed as a Planning Permission or approval

(3) The Developers and the adjoining landowner hereby jointly and severally covenant with the Council that:-

(a) The proposed development shall not be carried out if the development the subject of the 1993 Planning Permission has been carried out already either in whole or in part

(b) Following the commencement of the proposed development the 1993 Planning Permission shall not be implemented either in whole or in part

(4) The Mortgagee hereby covenants with the Council that should it obtain possession of the land it will be bound by the covenants in clause (3) above as though it were the Developer

Figure 6 Excerpt from the legal agreement

The description of development for application 95/P0099 states that the proposal is for an agricultural dwelling. There is a planning condition which required the development to be carried out as an alternate to that approved under the 1992 permission, but the reason for the condition is to ensure that that only one permission is implemented, not to restrict any use.

It should be noted that the planning officers report for 95/P0099 requires that an agricultural occupancy condition is attached to the planning permission. However, this has not been carried through the formal Decision Notice of the Council. There is therefore no legal agreement, or a planning condition restricting the use of the property.

CONDITIONS/REASONS FOR REFUSAL:

1. CA03- Alternative Development (7/23/92/P0904/00005)
Reason - standard
2. CA02- Agricultural Occupation
Reason - standard
3. A recessed and splayed window bay in accordance with plans to be submitted to and approved in writing by the Local Planning Authority shall be constructed level with the adjacent County road before the burglar is first occupied.
Reason - In the interests of highway safety.

Figure 7 Excerpt from officer report recommendations



POLTIMORE

The Council hereby grants permission to carry out the development described in the application and the plans attached thereto subject to the following conditions :

1. The development to which this permission relates must be begun not later than the expiration of five years beginning with the date on which this permission is granted.
(Reason - To comply with Section 91 of the Town and Country Planning Act 1990.)
2. The development hereby permitted shall be alternative to that development permitted by Notice of Decision No.7/23/92/P0904/00005. If at any time after any works or operations are started or carried out under or by virtue of that permission (in whole or in part) then the permission hereby granted shall thenceforth be void and of no effect and no works or operations of any kind may thereafter be started or carried out under or by virtue of the permission hereby granted.
(Reason - To ensure that only one permission is implemented).
3. A recessed and splayed waiting bay in accordance with plans to be submitted to and approved in writing by the Local Planning Authority shall be constructed level with the adjacent County road before the bungalow is first occupied.
(Reason - In the interests of highway safety).

Figure 8 Excerpt from Decision Notice

Certificate of Lawfulness Application

An application for a certificate of lawfulness of existing use or development can be made under s. 191 of the Town and Country Planning Act 1990, which states:

(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.

.....



(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.'

The only reference to this being an agricultural dwelling on the decision notice is in the description of the development. Case law says that limitation on a use must be expressed by way of planning condition, it is insufficient to state it in the description of development. Without a condition being imposed on the decision notice, there would not be a restriction for the Council to enforce against as there is no agricultural tie, and the property can be used as an unrestricted dwelling.

The applicant is therefore seeking confirmation from East Devon District Council that there is no agricultural tie and an unencumbered use is lawful.

Burden of Proof

The burden of proof is on the applicant, who must provide sufficient evidence to justify the grant of a certificate "on the balance of probability". That submitted evidence must confirm that the matters described in the application have occurred.

Guidance on Certificates of Lawfulness is set out in NPPG. Paragraph 006 Reference ID: 17c-006-20140306 provides further information on providing sufficient information to support an application, with the following advice:

"...The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

In the case of applications for existing use, if a local planning authority has no evidence itself, nor any 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..."

Evidence and Conclusions

This application includes the decision notices in relation to the history of the site illustrated above. This shows there is no agricultural condition.

Case law says (*I'm Your Man Ltd v SSE* (1998) 77 P & CR 251 (*I'm Your Man*)) that limitation on a use must be expressed by way of planning condition, it is insufficient to state it in the description of development.

More recently, the case of *Manchester City Council v Secretary of State for Housing, Communities and Local Government* [2021] EWHC 858 (Admin) illustrates that the principle of *I'm Your Man Ltd v*



SSE (1998) 77 P & CR 251 (*I'm Your Man*) that a limitation on a planning permission must be expressed by way of a condition and it is insufficient to state it in the description of development.

Without a condition being imposed on the decision notice, there would not be a restriction for the Council to enforce against as there is no agricultural tie, and the property can be used as an unrestricted dwelling.

If the Council failed to place the condition on the decision notice it could not enforce any tie, because the description of the house as an "agricultural Dwelling" is still a "Dwelling" under Class C3. Without a condition being imposed on the decision notice, even by mistake, there is nothing to enforce against and no breach of condition will have occurred, even if the dwelling is occupied by someone who isn't in agriculture. If the Council has issued in mistake, the decision could be judicially reviewed and the evidence behind the decision could be taken into account. However, the application is long since passed any review date.

In summary, this evidence demonstrates unambiguous evidence which confirms that the building has no agricultural tie and therefore the grant of a certificate to reflect this is justified.

We look forward to discussing the details of this application with you in due course. If you require any further information or clarification, please do not hesitate to contact Peter Thomas on the number below.

Yours faithfully

BELL CORNWELL LLP



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