



Planning Registration  
New Forest District Council  
Appletree Court  
Beaulieu Road  
Lyndhurst  
Hampshire SO43 7PA

My ref: Wingrove/22/NFDC

12<sup>th</sup> April 2022

Dear Sir/Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – CERTIFICATE OF LAWFULNESS OF EXISTING USE OR DEVELOPMENT IN RESPECT OF BREACH OF PLANNING CONDITIONS PREVENTING INSERTION OF WINDOWS AND STAIRCASE – AT WOODLANDS LODGE, TANNERS LANE, SANDLEHEATH SP6 1QB**

Introduction

I attach an application for a Certificate of Lawfulness of Existing Use or Development (CLEUD) made under section 191 of the above Act. The relevant issue is the breach of planning conditions attached to a grant of planning permission in 2005 (ref: 04/83225). The conditions in question sought to prevent the insertion of roof lights and windows at first floor level, and to prevent the installation of a fixed staircase within the dwelling.

The basis of the application is that all of the relevant conditions have been breached for in excess of 10 years and have therefore become lawful. The evidence for this is in the form of a Statutory Declaration made by the owner of the property throughout the relevant period, plus the further attachments to this letter.

Statutory Framework

Applications for CLEUDs are made under section 191 of the 1990 Act. Section 191 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.*

It continues at (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.*

Section 171B of the 1990 Act sets out the time limits for taking enforcement action. Breaches of planning conditions fall under subsection (3) which states: *In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.*

### Assessment

Planning permission was granted for a replacement dwelling at Woodlands Lodge in 2005 (04/83225). This permission was subject to various conditions, the relevant of which in this case are:

*Condition 3: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any re-enactment of that Order) no extension or porch otherwise approved by classes A, B C or D of Part 1 Schedule 2 to the Order shall be erected without express planning permission first having been granted.*

*Condition 4: No windows shall be inserted in the roof of the approved building.*

*Condition 5: No staircase or permanent means of access shall be created to the roofspace of the dwelling hereby approved.*

Condition 3 is unusually worded in that it seeks to remove permitted development rights for extensions and porches that might otherwise be permitted by classes A-D of Part 1. However extensions are governed by classes A and B (the latter being specifically extensions to the roof) and porches are governed by class D.

Class C deals with 'any other alteration to the roof of a dwellinghouse' and no works permitted by class C could properly be described as either an 'extension' or a 'porch'. It therefore seems clear, from the wording of condition 3, that it could not legitimately seek to prevent anything other than extensions or porches, and that roof lights and other windows are not caught by its restrictive wording.

The matter is, however, somewhat academic in this case given that condition 4 specifically prevents the insertion of windows in the roof and condition 5 specifically prevents the installation of a fixed staircase serving that roof space.

The chain of events leading to the breaches of planning control are set out in the applicant's Statutory Declaration. Woodlands Lodge was granted planning permission in January 2005 and approval under the Building Regulations was granted shortly afterwards in March 2005 - work on constructing the replacement dwelling was then commenced.

In June 2005 a further planning application was made for a conservatory (05/85403) which was granted in September 2005.



In constructing the dwelling the applicant's late husband decided to create some additional rooms in the roof space of the dwelling for storage purposes. This was revealed on a visit by the Building Inspector on 8<sup>th</sup> November 2005 and referred to in a letter from Building Control to the contractor dated 14<sup>th</sup> November 2005 (Appendix 1). This letter states...*A visit on the 8<sup>th</sup> November 2005 revealed that the following matters require attention:- rooms in the roof are being constructed without the benefit of Building Regulation consent.* The letter then advised that an application to regularise these works should be submitted within 14 days of the date of the letter.

It can be seen that this letter from Building Control was copied to the applicant, the applicant's then planning agent and also to the Development Control section of the LPA. This resulted in a site visit from the LPA and a letter dated 16<sup>th</sup> November 2005 (Appendix 2). This letter noted that...*the development is not in accordance with the approved plans in that windows have been inserted at first floor level to both the east and west elevations. I would advise that the Council do not condone these windows and that they should be bricked up, and the development completed as per the approved plans. I would appreciate written confirmation that this work will be undertaken.*

This matter was subsequently regularised with Building Control, however it is unclear what if any further action was pursued by the LPA as the applicant has no further correspondence to that effect and confirms that the gable end windows referred to in this letter have remained in place since they were first installed.

Once the dwelling was completed a fixed staircase was then installed, in 2006, and the roof space was converted into bedroom and bathroom accommodation, as confirmed in the applicant's Statutory Declaration. In May 2011 and March 2012 respectively, the applicant's late husband installed two 'Velux' windows into the roof of the dwelling, which is again confirmed by the applicant's Statutory Declaration and by the invoice receipts for the items in question. These roof lights represented an additional breach of condition 4 but again both have now been in place for in excess of the required 10 years and have also become immune from enforcement action and lawful as a result.

#### The Welwyn Principle

Neither the applicant nor her late husband have attempted to positively conceal these breaches of planning control at any time. The LPA was clearly aware of the gable end windows but no action to remove them appears to have been taken. The internal staircase would not have become apparent to the LPA unless an internal inspection was undertaken, however a failure to notify the LPA of this does not amount to concealment. The roof lights are plainly visible on the exterior roof planes of the dwelling and attached at Appendix 3 is an historical aerial photograph from 2014 (the earliest available, legible photograph covering the relevant period). This does not cover the full 10 year period, of course, but is useful nonetheless in that it serves to further corroborate the evidence provided by the applicant in her Statutory Declaration and again confirms that the rooflights have not been deliberately concealed in any way.

To be clear, it has been confirmed in several appeal decisions that simply omitting to inform the LPA of a development or breach of condition does not engage the Welwyn principle, at the heart of which lies a positive effort to deceive and conceal and there is no evidence that this has occurred in this case.

#### Conclusion

In light of the above it is submitted that the breaches of the relevant planning conditions occurred in excess of 10 years ago and have thus become immune from enforcement action and are now lawful,



and that a Certificate of Lawfulness of Existing Use or Development confirming this can therefore be issued.

Yours sincerely

A solid black rectangular box used to redact the signature of Jerry Davies.

**Jerry Davies**

JPD  
PC

COPY



**New Forest**  
DISTRICT COUNCIL

**Building Control**

Principal Building Control Surveyor: Stuart Gange

South Coast Construction  
Ford House  
High Street  
Fordingbridge  
Hampshire

My ref: PSJ/SOC/050497P  
Your ref:

14 November 2005

Dear Sirs

**BUILDING REGULATIONS - INFORMAL NOTICE**

**WOODLANDS LODGE, TANNERS LANE, SANDLEHEATH, FORDINGBRIDGE  
RE: DWELLING.**

A visit on the 8<sup>th</sup> November 2005 revealed that the following matters require attention:-

Rooms in the roof are being constructed without the benefit of Building Regulation consent.

Please arrange for the necessary application to be submitted within the next 14 days. It is anticipated that parts of the work already undertaken may have to be opened-up for inspection.

Yours faithfully



Principal Building Control Surveyor

Tel: 023 8028 5280  
Fax: 023 8028 5223  
E-Mail: Peter.jameson@nfdc.gov.uk

c.c. Land Charges  
c.c. Mr and Mrs G Wingrove Woodlands Lodge Tanners Lane Sandleheath SP6 1QB.  
c.c. Peter Collier 9 Southampton Road Ringwood Hants BH24 1HB.  
c.c. Development Control Alan Frampton NFDC Appletree Court Lyndhurst.



Disability Helpline  
01425 656096

Minicom/Text: 023 8028 5416

Appletree Court, Lyndhurst,  
Hampshire SO43 7PA

Switchboard: 023 8028 5000  
DX 123010 Lyndhurst 2  
www.newforestdc.gov.uk

Development Control  
Head of Service: Chris Elliott

Mr & Mrs Wingrove  
Woodlands Lodge  
Tanners Lane  
Sandleheath  
Fordingbridge  
Hampshire  
SP6 1QB

My ref: af/144/1067/2005  
Your ref:

16 November 2005

Dear Mr & Mrs Wingrove

**BUNGALOW; DEMOLITION OF EXISTING; PLANNING PERMISSION 83225  
WOODLANDS LODGE, TANNERS LANE, SANDLEHEATH**

On 6 January 2005 planning permission was granted to application number 83225 of Bungalow; Demolition of existing. I enclose a copy of the planning permission for your information and you will note that condition number 2 states;

No development shall take place above damp proof course level until samples or exact details of the facing and roofing materials have been submitted to and approved in writing by the Local Planning Authority.

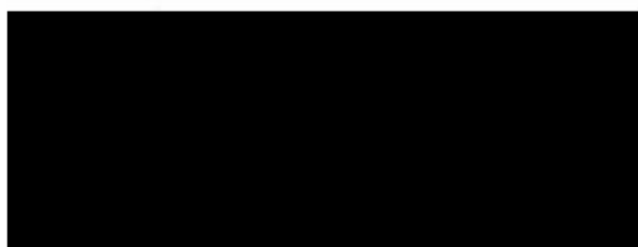
Reason. To ensure that the development takes place in an appropriate way in accordance with policy DW-E1 of the Adopted New Forest District Local Plan

I have checked our register and can find no record of the condition having been discharged. I would therefore appreciate written confirmation of the materials in order to regularise the development

I visited the site and noted that the development is not in accordance with the approved plans, in that windows have been inserted at first floor level to both the east and west elevations. I would advise that the Council do not condone these windows and that they should be bricked up, and the development completed as per the approved plans. I would appreciate written confirmation that this work will be undertaken.

I look forward to hearing from you shortly.

Yours sincerely



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Hampshire SO43 7PA

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Appendix 3

