

SECTION 191 OF THE TOWN AND COUNTRY PLANNING ACT 1990 AS AMENDED  
AND TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)  
(ENGLAND) ORDER 2015

APPLICATION FOR A LAWFUL DEVELOPMENT CERTIFICATE FOR AN EXISTING USE  
OR DEVELOPMENT

IN CONNECTION WITH

THE EXISTING SWIMMING POOL, POOL HOUSE AND PLANT ROOM

AT

BLACK HOUSE  
SOUTHERNDEN ROAD  
EGERTON  
ASHFORD  
TN27 9BT

Prepared by:

Phil Plant BSc (Hons) MRICS  
Rural Planning Consultant  
Mid West Planning Ltd  
18 Church Street  
Shifnal  
Shropshire  
TF11 9AA

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## CONTENTS

1.	INTRODUCTION	3
2.	THE APPLICATION	3
3.	SITE AND BACKGROUND INFORMATION	6
4.	ASSESSMENT	7
5.	CONCLUSION	7

## 1. INTRODUCTION

- 1.1 This statement has been produced by Philip Plant of Mid West Planning Ltd and is based on the guidelines published by the Ministry of Housing, Communities & Local Government Guidance about lawful-development-certificates and establishing whether a proposed or existing development is lawful.
- 1.2 Philip Plant holds a Bachelor of Science with Honours Degree in Rural Enterprise and Land Management and is a member of the Royal Institution of Chartered Surveyors.
- 1.3 Philip Plant is the Managing Director of Mid West Planning Limited which specialises in all aspects of rural planning. Philip Plant has provided rural planning advice to both applicants and Local Planning Authorities including Shropshire Council, Stafford Borough Council and Warwick District Council.
- 1.4 This report and planning application have been prepared following the instruction of Felicity Sims to regularise the development of the existing swimming pool, pool house and plant room in development control terms.
- 1.5 The application site is situated on the eastern side of Southernden Road approximately three miles to the north east of Headcorn. The application site is the established garden residential curtilage of The Black House. The property is accessed from Southernden Road. Please see figure One below for an extract from the site plan showing the general layout of the site and application area.

## 2. THE APPLICATION

- 2.1 The application is for a lawful development certificate for an existing use or development under Section 191 of the Town and Country Planning Act 1990, As Amended and Town And Country Planning (Development Management Procedure) (England) Order 2015.
- 2.2 Section 171B of the Town and Country Planning Act 1990 ("the Act") states as follows:  
"(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period

of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the 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 four years beginning with the date of the breach...

(3) 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”.

2.3 Finally, S191 of the Act confirms that if:

“(1) 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)....

(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”.

2.4 The questions in front of the Council, therefore, are, firstly whether any enforcement action can be taken by them in relation to the construction of the swimming pool, pool house and plant room and secondly whether any enforcement action can be taken by them in relation to the change of use of land for the use associated with the developments described above.



Plate One: Google Earth Aerial photograph showing the location of the subject dwelling, swimming pool and pool building in April 2020.



Figure One: - Extract from the Site plan.

### 3. SITE AND BACKGROUND INFORMATION

- 3.1 The Black house is a residential dwelling owned and occupied by the applicant Felicity Sims. The Black House is a substantial detached residential dwelling with substantial grounds which encompass a tennis court, swimming pool as well as the tractor shed, store, stables and horse arena subject of this application.
- 3.2 An extract of the site plan is depicted at Figure One above.
- 3.3 Felicity Sims has approached Mid West Planning Ltd to see if they can obtain a Certificate of Lawfulness for the swimming pool, pool house and plant room at The Black House as planning consent was not obtained prior to development.
- 3.4 Further investigations with Felicity Sims have confirmed that the developments have been substantially completed in excess of ten years.

#### 4. ASSESSMENT

4.1 Aerial photographs of the site and documentation submitted in Ms. Sims witness statement confirm that the swimming pool, pool house and plant room have been present at the site since at least 2007. Please refer to the Witness Statement submitted with this application for details.

#### 5. CONCLUSION

5.1 In accordance with the time limits set out in Section 171B of the Town and Country Planning Act 1990 it is asserted that the evidence put forward in this statement is conclusive and therefore no enforcement action may be taken and a certificate of lawfulness should be granted for the swimming pool, pool house and plant room at the Black House.

Phil Plant BSc (Hons) MRICS  
Rural Planning Consultant  
Mid West Planning Ltd.

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