

The logo consists of two overlapping trapezoidal shapes, one blue and one green, with a white rectangular element in the center where they overlap.

# GATEWAY

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## Planning Consultants

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Title: Supporting Statement

Application: Certificate of Lawful Existing Development

Author: Abigail Baldrey BSc Hons, PG DIP SURV MRICS  
Gateway Planning Consultants

Publication Date: 29 June 2023

Site Address: Blue Bury Farm, Walkern Road, Watton at Stone,  
Hertfordshire, SG14 3RJ

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# Administration Page

## Report Release

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## Change History

Date	Version	Event/Amendments
21 <sup>st</sup> June 2023	I	Initial Draft
29 <sup>th</sup> June 2023	II	Final ready for submission

## EXECUTIVE SUMMARY

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This Statement is submitted to support an application for a Certificate of Lawful Existing Development at Blue Bury Farm, Walkern Road, Watton at Stone, Hertfordshire, SG14 3RJ (the "Property").

Outline Planning Permission was granted on 28<sup>th</sup> August 2002 (Ref: 3/02/0763/OP) for the erection of an agricultural workers dwelling at Blue Bury Farm, Walkern Road, Watton at Stone.

Reserved Matters were approved on 29<sup>th</sup> April 2003 (Ref: 3/03/0069/RP).

A dwelling was subsequently constructed but was not built in accordance with the approved plans. The Planning Permission (Ref: 3/02/0763/OP and 3/03/0069/RP) was never implemented and due to the passage of time has now lapsed (along with any associated conditions) and this application will establish that the dwelling, as built, is lawful.

Immunity from enforcement action is achieved when a dwelling has been substantially completed for a period in excess of four years. Blue Bury Farm, Walkern Road, Watton at Stone, Hertfordshire, SG14 3RJ was substantially completed well over four years ago and this is clear from observations of the Property, its style, setting and materials, Council Tax Records, historic aerial images and a Statement of Truth made by the owner / occupier.

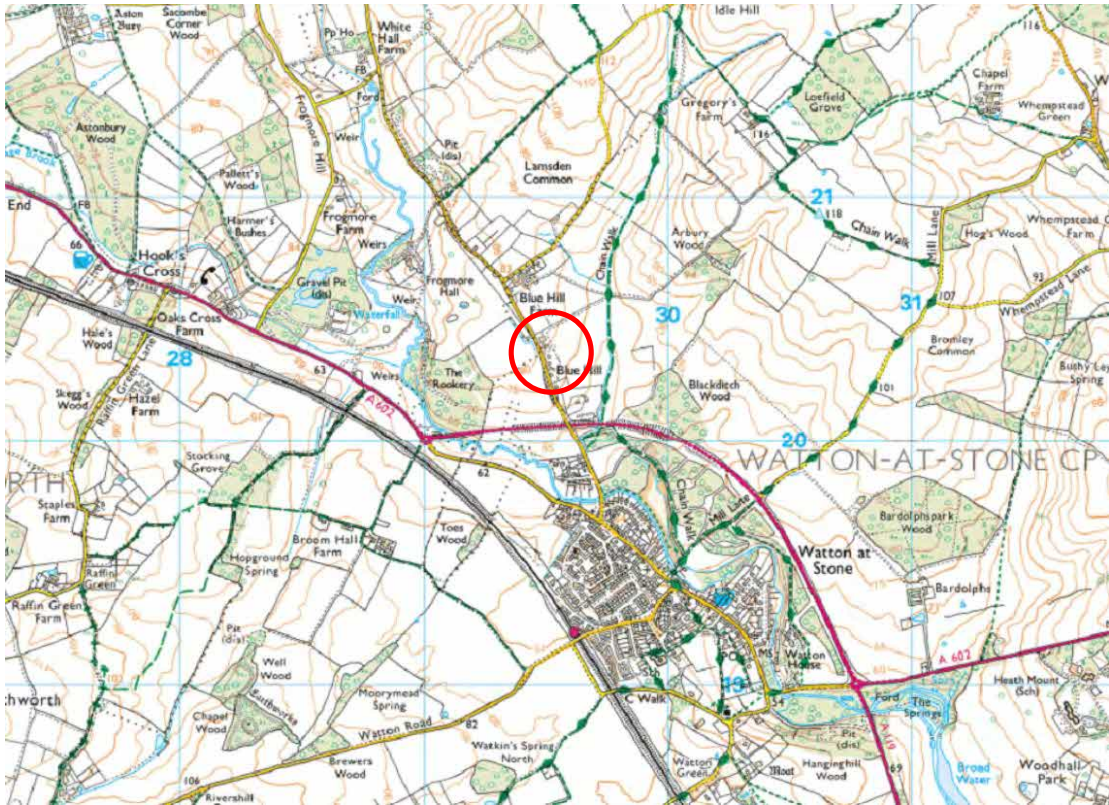
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## 2 SITE DESCRIPTION

### 2.1 Location

Blue Bury Farm is situated approximately 1.3 km northwest of the village of Watton at Stone and 7.8km southeast of Stevenage.



### 2.2 Situation

Blue Bury Farm comprises a two storey detached property constructed of brick and rendered elevations and set under a pitched tile roof. The Property is situated off a private driveway which leads directly off the adopted highway.

The Property is surrounded by its own gardens and grounds, which extend to 0.86 acres (0.35 ha) and is bordered to the west by the adopted highway, to the south by residential property and to the north and east by agricultural land and buildings.

## PLANNING HISTORY

An Outline Planning Application was submitted on 12<sup>th</sup> April 2002 for the erection of an agricultural dwelling at Blue Bury Farm, Walkern Road, Watton at Stone (Ref: 3/02/0763/OP). Planning Permission was granted on 28<sup>th</sup> August 2002 subject to the following conditions:

- 1 The development hereby permitted shall not be carried out otherwise than in accordance with detailed plans and drawings showing the siting, design and external appearance of the building(s), the means of access thereto and landscaping of the site, which shall have been approved in writing by the Local Planning Authority before any development is commenced.
- 2a Application for approval in respect of all matters reserved in this permission shall be made to the Local Planning Authority within a period of 3 years commencing with the date of this notice.
- 2b The development to which this permission relates shall be begun by not later than whichever is the later of the following dates:
  - (i) the expiration of a period of 5 years commencing on the date of this notice
  - (ii) the expiration of a period of 2 years commencing on the date upon which final approval is given by the Local Planning Authority
- 3 The occupation of the dwelling hereby permitted shall be limited to persons:-
  - (i) obtaining at least the current minimum agricultural wage from employment in the locality in agriculture as defined in section 336 (1) of the Town and Country Planning Act 1990, or in forestry
  - (ii) who have reached retirement age, have retired from employment in the locality in agriculture or forestry
  - (iii) being resident dependants of person falling within (i) or (ii) above
  - (iv) being a widow or widower of persons falling within (i) or (ii) above
- 4 The existing bund shall be retained and shall be landscaped in accordance with details required to be submitted in accordance with condition 1 above.
- 5 Detailed plans, showing the existing and proposed ground levels of the site relative to adjoining land, together with the slab levels and ridge heights of the proposed buildings, shall be submitted to, and approved in writing by the Local Planning Authority prior to the commencement of development.
- 6 The existing mobile home, on the adjoining land within the applicant's ownership, shall be removed, and the site landscaped in accordance with details required to be submitted in accordance with condition 1 above within one month of the first occupation of the dwelling permitted hereby.

Reserved Matters were approved on 29<sup>th</sup> April 2003 (Ref: 3/03/0069/RP). The Reserved Matters were approved along with the following plans:

Location Plan	1:2500	Stamped as received 15 <sup>th</sup> January 2003
Site Plan	1:500	Stamped as received 15 <sup>th</sup> January 2003
Front, Rear and Side Elevations	1:100	Stamped as received 15 <sup>th</sup> January 2003
Ground Floor Plan	1:100	Stamped as received 15 <sup>th</sup> January 2003
First Floor Plan	1:100	Stamped as received 15 <sup>th</sup> January 2003
OS Plan		Undated
OS Plan		Dated 28 <sup>th</sup> April 2003

Construction of a dwelling commenced soon after the Reserved Matters Consent was granted and was substantially completed by the mid-2000s.

A further application was submitted for the erection of a detached double garage with store under reference 3/04/0501/FP, granted on 30<sup>th</sup> April 2004, which was later varied by application 3/09/0367/FO to allow the loft space above the garage to be used as a bedroom.

The main dwelling was subsequently extended with the addition of a conservatory to the rear under application 3/04/2241/FP, granted on 30<sup>th</sup> December 2004.

## 4 EVIDENCE

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The Town and Country Planning Act 1990 s. 171B (1) states:

“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.”

The Act clarifies that where building operation have been carried out or a structure used as a residential dwelling, immunity from enforcement action is only obtained when the structure or use have been occurring for a period in excess of four years.

For a Certificate to be granted this application must demonstrate two things. Firstly, that the dwelling has not been built in the position approved by the Reserved Matters Consent 3/03/0069/RP and secondly, that the dwelling has been substantially complete for a period in excess of four years.

### A Dwelling built out of position

Copies of the plans approved by Reserved Matters Consent (Ref: 3/03/0069/RP) were obtained from the online planning register at East Hertfordshire District Council. The plans are attached, as downloaded, at Annex B.

Annex C provides an accurate representation of the location of the dwelling as it was built, at a scale of 1:1250, produced by a Chartered Land Surveyor. This plan shows the position of the dwelling as originally built, with later extensions indicated.

Annex D provides a comparison of the dwelling as approved under Reserved Matters consent (Ref: 3/03/0069/RP) (outlined red) with the position of the dwelling, as built, (outlined blue).

Reference points that were present when Planning Permission was granted in April 2003 and still present today were used to establish the position of the Property and to enable comparison of the “as built” and “as approved” positions. These include the adjacent adopted highway, electricity sub station, site access, bund and established site boundaries to the west and south.

The dwelling has been shifted wholesale from its approved position and variations between the “as approved” and “as built” positions are set out below.

Between points (A-A') the discrepancy is 5.77 metres  
Between points (B-B') the discrepancy is 5.62 metres  
Between points (C-C') the discrepancy is 5.70 metres  
Between points (D-D') the discrepancy is 5.81 metres

(measurements taken from the comparison plan at scale 1:1250 attached at Annex D).

Outline Planning Permission (Ref: 3/02/0763/OP) and Reserved Matters (Ref: 3/03/0069/RP) gave consent for a dwelling, as detailed on the approved plans, to be built on land at Blue Bury Farm, Walkern Road, Watton at



Stone, however by virtue of the above discrepancies, the dwelling that was constructed on the site was materially different to that approved.

As the development was materially different to the development that was granted, Outline Planning Permission (Ref: 3/02/0763/OP) and Reserved Matters Consent (Ref: 3/03/0069/RP) were never lawfully implemented.

Condition (1) of Outline Planning Permission: 3/02/0763/OP requires that:

The development hereby permitted shall not be carried out otherwise than in accordance with detailed plans and drawings showing the siting, design and external appearance of the building(s), the means of access thereto and landscaping of the site, which shall have been approved in writing by the Local Planning Authority before any development is commenced. (our emphasis)

As the development was not lawfully implemented within the required timeframe, the Planning Permission has lapsed in its entirety, along with all its conditions.

## ⌋ Dwelling substantially complete for a period in excess of four years

The dwelling was constructed and substantially completed over 10 years ago. This is clear from the style of the Property, its materials, a Statement of Truth made by the current owners (Annex E), Aerial Images (Annex F) and Council Tax Records (Annex G).

## ⌋ Balance of Probabilities

To establish whether the level of evidence submitted is sufficient to enable the Council to grant the Certificate, the "Balance of Probabilities" test must be applied. This test is a civil standard of proof under which there is no requirement for the applicant to prove their claim beyond all reasonable doubt. The decision must be made based on the available evidence and provided the Council are satisfied that the event is more likely than not to have occurred, then the test has been met. There is no requirement to consider Planning Policy.

Circular 10/97 (now deleted) advised Local Planning Authorities that if they have no evidence of their own to contradict or undermine the submitted evidence and provided the evidence is sufficiently precise and unambiguous, they should grant the Certificate.

Furthermore, in the Case of *F W Gabbitas v SSE and Newham LBC* [1985] JPL 630, the Court held that the applicant's own evidence did not need to be corroborated by "independent" evidence in order to be accepted. If the Local Planning Authority had 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".

## ∧ Summary of the Evidence

From the evidence submitted at Annexes A – L it is clear that the dwelling was not built in accordance with the plans approved under Reserved Matters Consent (Ref: 3/03/0069/RP).

To be lawful the development would need to have been built wholly in accordance with the approved plans and it was not. The evidence also provides clear proof that the development was "substantially complete" in excess of four years ago.

The dwelling was therefore unlawful at the time of construction, but as a period in excess of 4 years has elapsed since the development was substantially completed, the development is immune from enforcement action and a Certificate of Lawful Existing Development for the dwelling "as built" should be granted.

The Council could have taken enforcement action at any time up to four years from when the development was substantially completed, but they did not. As the Planning Permission was never implemented, it has lapsed (along with all the associated conditions) in line with the time limits specified at condition 1.

This application seeks to secure the lawfulness of the dwelling, as built, in order to safeguard the interests of the owner and applicant.

## ┌ CASE LAW

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### 2.1 Sage v Secretary of State [2003]

Enforcement action was taken against a dwelling which was determined to have no planning permission. The Appeal sought to authorise the continuing occupation of the dwelling without the burden of an agricultural occupancy condition attached to the Planning Permission because the dwelling was materially different to that which had been approved and had been completed for more than a 4-year period. The Planning Inspectorate upheld the Appeal and Granted the Certificate of Lawful Development. In relation to one of the many defences offered, Lord Hobhouse of Woodborough stated in the judgement:

*"As Council for Mr Sage accepted, if a building operation is not carried out both internally and externally, fully in accordance with the permission, the whole operation is unlawful."*

### 5.2 Handoll and Others v Warner Goodman and Streat and Others [1995]

In Handoll v Warner [1995] the Court of Appeal considered a preliminary matter in negligence proceedings against a firm of solicitors and the local planning authority. Although Planning Permission had been granted for the erection of an agricultural dwelling, subject to a condition restricting the occupation of the dwelling to persons employed in agriculture, the dwelling was erected some 90 feet (27.4 m) west of the approved location.

Outline planning permission was granted on 22 October 1977. The planning permission specified:

*"Outline application for permission to erect a dwelling and garage in connection with agriculture and for the vehicular / pedestrian access at West End lane, Stickney. Location of development: OS Sheet No. 90.6, Field No. 10 pt Grid Ref 534450 358580."*

The Reserved Matters application was submitted to the District Council on 30 November 1977. Elevation drawings and a block plan detailing the bungalow's location were submitted. Approval of Reserved Matters was given on 2 December 1977. The location of the development was stated to be "as in the Outline Planning Permission". Having obtained Planning Permission the bungalow was constructed; however it was not positioned as per the block plan or in the position detailed on the application form.

The Court of Appeal stated that:

*"If a development has been carried out other than in accordance with the planning permission granted, it is unauthorised and unlawful, and therefore any conditions attached to the permission can have no effect upon it. It would be open to the planning authority to serve an enforcement notice to prevent any use of the unauthorised development. However once the time for enforcement had passed, the planning authority would be unable to enforce either the original permission or any conditions attached to it."*

## 5.2 Summary of Case Law

The consequence of these Court of Appeal decisions was repeated in the now deleted Circular 11/95:

Where operational development is carried out in a way which differs materially from approved plans, it amounts to development without Planning Permission; and  
Any conditions imposed on the Planning Permission for those operations are unenforceable because the particular Planning Permission has not been implemented.

As a result of this Circular, Local Planning Authorities should ensure that where Planning Permission has been granted for the carrying-out of operations, subject to conditions, that the operations do not differ materially from the approved plans. If there is a material difference, they will need to consider seeking a specific application for Planning Permission to authorise the operations and grant the permission within four years of the substantial completion of those operations. They could then impose the same conditions on that permission. Alternatively, they may wish to consider taking enforcement action to remedy the breach, or to require the development to comply with the terms of the permission, if they intend to enforce the conditions.

## 6 APPEAL DECISIONS

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These Appeal cases are significant as they parallel almost exactly the circumstances at Blue Bury Farm. They all involve dwellings that were built out of position and in all cases the Inspector has found the discrepancies to be material and has granted a Certificate of Lawful Existing Development.

### 2.1 Mr T Reynolds and Taunton Deane District Council (20th March 2017)

An Appeal was submitted after a Certificate of Lawful Use application was refused by Taunton Deane District Council. The Appeal considered whether the dwelling was constructed and substantially completed in breach of the Planning Permission and for a period of time so as to be immune from enforcement action.

The Council's reason for refusal was that it considered the dwelling to have been constructed largely in accordance with the Planning Consent and that the differences highlighted were not material or significant.

The dwelling and garage had been built between 7.5 metres and 9.0 metres from the approved location. The Council attempted to make it appear that the location of the dwelling was not important, however the Inspector disagreed and at paragraph 24, when considering the significance of the differences, stated:

*"As I understand it the dwelling and driveway as constructed are not in the position shown on the approved drawings; in my opinion, the difference is considerable and material."*

In deciding the Appeal the Inspector further stated:

*"I conclude that, as a matter of fact and degree and on the basis of probabilities, the dwelling is likely to have been substantially completed in breach of the planning permission granted under Ref 10/2004/028, for a period in excess of four years prior to the date of the LDC application and so as to be immune from enforcement action. It cannot therefore be bound by the conditions contained therein."*

*The Council's decision to refuse to grant a Lawful development Certificate was not well-founded. The appeal should succeed and I will exercise accordingly the powers transferred to me under s195(2) of the 1990 Act as amended."*



The dwelling that was the subject of this Appeal was accessed off a private driveway, some 58 metres from the public highway. It was screened from view by the agricultural buildings, trees and a mature hedgerow. Despite its secluded position the Inspector considered the discrepancies to be considerable and material. The Appeal was allowed and the decision issued on 20th March 2017.



Aerial image taken from Google Earth



View of the site from the public highway – the farmhouse is not visible (Google Earth)

## ↳ Mrs D Malpass, Mrs D Smith & Miss K Smith and South Staffordshire Council (15 December 2017) (Annex I)

An Appeal was submitted after a Certificate of Lawful Use application was refused by South Staffordshire District Council. The Appeal considered whether the dwelling had been constructed and substantially completed in breach of the Planning Permission and for a period of time, so as to be immune from enforcement action.

The dwelling had been built between 6.87 m and 7.1 m out from the approved location with a rotation of 0.61 degrees. The Council although agreeing that the property had been built out of position, did not consider the discrepancy to be a material difference.

In deciding the Appeal, the Inspector stated:

"It is evident from this plan that, in line with the Lydeard Hill House appeal, there has been a wholesale shift in the footprint of the dwelling. I accept the Council's claim that the 'as built' footprint still overlaps the 'as approved' position in parts, but the degree of overlap is small, and significantly less than 50 %. No part of the erected building, such as the front projection, appears to wholly accord with the siting of what was permitted. Although the Council says that the different position would not have had other implications, for example in terms of proximity to neighbours, this appears to go beyond the fact and degree assessment that is required"

In Sage, Lord Hobhouse of Woodborough, giving the leading judgment, held that: "...if a building operation is not carried out, both externally and internally, fully in accordance with the permission, the whole operation is unlawful. The very notion of materiality determines that it is appropriate to apply a degree of common sense to the absolute language of this quote. However I cannot agree, as a matter of fact and degree, that a difference in siting of approximately 7 m can be said to be de minimis, as the Council claims. For the Appellants it is asserted that the Lydeard Hill House appeal related to a dwelling built 5.5 m further south-east than it should have been and this figure is not challenged. The fact that the evidence points to a more significant departure from what existed in that case, tends to support my conclusion in terms of materiality.

I conclude that the Appellant has shown that the dwelling was not built in accordance with planning permission SSDC/95/00913. Since the planning permission was not implemented and the period for enforcement action against the building operation has expired, the development is immune from enforcement action and therefore lawful.

The Inspector concluded that the Council's decision to refuse to grant the Lawful Development Certificate was not well founded and allowed the Appeal.

## 5.2 Mrs L Davenport and Bromsgrove District Council (28 July 2015) (Annex J)

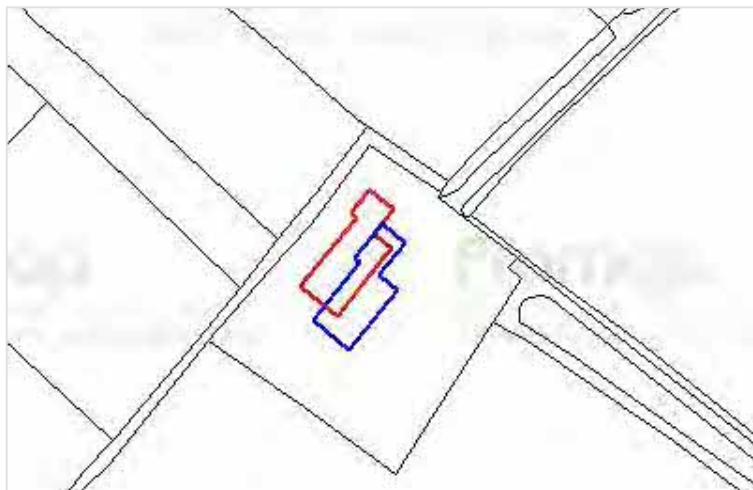
This Appeal involved a farm dwelling that was approved subject to an Agricultural Occupancy Condition. However, the dwelling "as approved" by the Planning Permission differed from the dwelling that was constructed. The dwelling had been substantially completed for more than 4 years before the CLEUD application was submitted. The basis for the original CLEUD application was that the dwelling was built 8.02 m from its approved position and was therefore materially different to that for which permission was granted. The Planning Permission was therefore not lawfully implemented and as a consequence the Agricultural Occupancy Condition did not apply.

The Planning Inspector agreed with the facts and logic of the appellant's case and considered the discrepancy between the "as approved" position and "as built" position" to be significant and material. The Inspector agreed with the view taken in Handoll (1995), which stated that where development has been carried out, other than in accordance with the Planning Permission granted, it is unauthorised and unlawful and therefore any condition attached to the permission can have no effect on it. He further stated that the relevant Planning Permission had not been implemented and as the property had been substantially complete for more than 4 years, it was immune from enforcement action.

Importantly the Inspector considered the discrepancy between the "as approved" and "as built" position to be material despite the scale of the dwelling and the fact that it was situated in an isolated position, well screened by mature hedges and trees, not visible from neighbouring properties and situated at the end of a private drive, some 221 metres from the adopted highway.



View of the Property from the adopted highway



Development as approved shown red, as built shown blue



#### 6.4 Mr D Phillips and Carmarthenshire Council (3<sup>rd</sup> December 2014) (Annex K)

An Appeal was submitted after a Certificate of Lawful Existing Development application was refused by Carmarthenshire Council on 14th April 2014.

The main issue, as identified by the Inspector was:

“whether or not the dwelling which has been erected on the appeal site has the benefit of outline planning permission Ref: D4/21758 and reserved matters approval Ref: D4/22093 which sought to impose agricultural occupancy conditions on the dwelling”

The dwelling had been built between 6.70 m and 7.0 m south of the approved position, and with a rotation of 18 degrees, such that the footprint of the approved position and as built position just overlapped. No further discrepancies were identified. The level of discrepancy was not challenged by the Council, however they concluded that such a discrepancy was not significant.

The Council contended that whether a permission was to become a nullity would depend on the level of significance of the result of the change, whether the change alters the heart of the consent', and whether the dwelling as built had been located outside the area which constitutes the land to which the permission relates.

The Inspector in his decision addressed each of the Council's points:

“If a dwelling is located outside the area which constitutes the land to which the permission relates, this is indicative that the difference in location is material. However, this does not mean to say that if a dwelling is built within its plot (as shown on the approved plans) but in a different location to that shown on the approved plans, the difference in location would not be material. Logically, if this were not to be the case, a dwelling could be built anywhere within its plot and be found to comply with its planning permission.

The question of whether or not a pre-condition goes to the 'heart of the consent' is a well-known concept, but I am not convinced by the Council's point that whether a change 'alters the heart of the consent' is relevant to a situation, such as that before me, where a change in location is under consideration. It seems to me that the simple question to be asked is whether or not the change is material.

The Inspector then went on to consider the submitted Appeal Cases:

In the reported appeal decision, the Inspector found that there were a number of differences between the building that had been built and that which had the benefit of permission. Some differences related to design and height. There, the Inspector did consider the impact of the changes in terms of views from public vantage points. The alignment of a wall had also been changed, but by about 200-300mm, which the Inspector found to be insignificant. In this context, he did not refer to alignment in terms of impact.

However, from the above, I accept that it could be argued that impact could be a determining factor in some cases where a building has been built in a different location to that which has planning permission. In the case before me, the building has not been built on a different site as was the case in Handoll and Suddick and it is not 27.43 metres away from where it should

be. On the other hand, there has not been a realignment of somewhere in the region of 200-300mm. The differences between the location of the building before me that has been built and that which received planning permission are set out in paragraph 7 above [Para 7 found that the dwelling as constructed is in the order of 6.7 metres further west and 7.0 metres (at its maximum) further south relative to the road frontage than that shown on the site layout plan approved pursuant to the reserved matters application. The report also said that the building has been rotated approximately 18 degrees clockwise from that shown on the approved plan.]. To my mind, the differences are of such an extent that the change in location of the building is material, irrespective of whether or not the change has had an adverse impact on views towards the building from the public realm. To put it another way, I certainly do not regard the change in location as “falling within the normal tolerances and minor variations inherent to the construction process.

I therefore find, as a matter of fact and degree, that the building the subject of application Ref: W/29174 was not constructed with the benefit of outline planning permission Ref: D4/21758 dated 14 January 1992 and approval of reserved matters Ref: D4/22093 dated 17 March 1992. Consequently, the building is not bound by the agricultural occupancy conditions attached to the outline planning permission and the reserved matters approval. It follows that at the date of application Ref: W/29174, the building could have been used as a residential dwelling without any agricultural occupancy condition.”

The Inspector concluded that the Council’s decision to refuse to grant the Lawful Development Certificate was not well founded and allowed the Appeal.

## Mr T Rolfe and Ms D Parkin and Sedgemoor District Council (24 July 2012) (Annex L)

An Appeal was made under Section 195 of the Town and Country Planning Act 1990 after a Certificate of Lawful Use application was refused by Sedgemoor District Council. The applicants successfully appealed the Council’s decision.

The Council’s reason for refusal was that it considered the dwelling to have been constructed largely in accordance with the Planning consent. It stated that:

“The fact that the building incorporates minor changes not agreed with the Local planning Authority does not equate to a void consent. The dwelling has been built to the same size, scale and bulk, and on the correct location within the plot to ensure that the planning consent has been implemented in accordance with the above planning application, therefore permission is refused and the original conditions on 45/11/00021 still apply and need to be adhered to.”

The house had been constructed 5.50 metres south east of the approved location, such that the front of the house just overlapped with where the rear of the house should have been.

The Planning Inspector stated that as the development had been carried out in one operation and was materially in the wrong place, it meant that the whole scheme constituted development without Planning Permission and the relevant Planning Permission had not been implemented.

He further stated that the Council could have taken enforcement action at any time up to four years from when the development was substantially completed, however they did not, and the Inspector concluded that the development was therefore immune from enforcement action.

The appeal was allowed and a Lawful Development Certificate was issued.

## Mr & Mrs J D Potts and Richmondshire District Council (3<sup>rd</sup> September 2012)

The Appeal was made under section 195 of the Town and Country Planning Act against the refusal by Richmondshire District Council to grant a Certificate of Lawful Use or Development.

The appeal site was located about 250 m to the south of Hawkswell Lane in open countryside and shielded from view by a substantial range of agricultural buildings. Full Planning Permission was granted in December 1991 for the erection of a dwelling house. The permission contained a number of conditions, one of which restricted the occupation of the dwelling to those employed in agriculture.

The main issue under consideration was whether the original Planning Permission had been implemented and whether the subsequent erection of the dwelling was undertaken without the benefit of Planning Permission. The appellants contended that the Planning Permission was not implemented and fell outside the scope of that permission, due to changes in the siting and levels of the dwelling. The Council contended that the changes in siting and levels were reasonable and considered that Planning Permission would not have been resisted if an application for variation had been made.

The differences between what was permitted on site and what was built included a wholesale shift of the dwelling between 6-7 m to the east or south east. The Inspector considered that the difference could not be considered to be "within normal tolerances". He stated:

*"The variation that has taken place is not "very minor"; it is material and significant".*

He subsequently concluded that the Council's refusal to grant a Certificate of Lawful Existing Use or Development was not well founded and granted the Certificate of Lawful Existing Development.

Mr & Mrs Lomas and East Devon District Council (8<sup>th</sup> November 2007)

An Appeal was lodged after the Council refused, in part, to grant a Certificate of Lawful Existing Use or Development (CLEUD). The issue was whether the building as originally constructed was in line with the permission granted. The discrepancies between the “as approved” and “as built” dwelling can be summarised as follows:

- The substitution of a conservatory for a veranda
- Changes to windows
- Change in material and finish of windows and guttering
- 40 cm increase in chimney height
- 10.6% increase in footprint

The dwelling had been substantially completed for a period in excess of 4 years and as a result the Inspector concluded that it was too late for the Council to bring enforcement action and that its retention without complying with the conditions attached to the permission was lawful.

In this case the dwelling was set back from the road 167 metres and could not be seen from any public vantage point, but this did not prevent the Inspector from concluding that the dwelling “as built”, differed from the dwelling “as approved” specifically and exclusively due to the physical differences between the drawings “as approved” and the dwelling “as built”. The Inspector allowed the Appeal and granted the CLEUD.



Mr C and Mrs A Naden and High Peak District Council (24<sup>th</sup> May 1995)

In this instance the Appeal sought to authorise the continued occupation of the dwelling without the hindrance of the agricultural occupancy condition attached to the Planning Permission, because the dwelling materially differed from that approved and had been completed for more than 4 years. The Inspector upheld the Appeal and granted a Certificate of Lawfulness. In this case, the Inspector addressed and dismissed the Council's contention that the occupancy condition would in fact stand as the dwelling had since been occupied by someone who satisfied the occupancy condition.

Mr R T Mennell and Shrewsbury and Atcham Borough Council (July 2004)

The Appeal was against enforcement action served on a building which differed internally and externally from the design granted Planning Permission. The Inspector dismissed the Appeal and upheld the enforcement notice

requiring the building to be demolished and the land returned to its former state. In paragraph 26 of the decision, the Inspector observed:

“In considering the Appeal on ground [c] I referred to the observations of Lord Hobhouse that if an operation is not carried out both externally and internally in accordance with the relevant planning permission then the whole operation is unlawful. This is the case in the Appeal before me. Because it is not in accordance with the approved plans the erection of the whole building was in breach of planning control.”

## 6.10 Mr & Mrs Pitt and the London Borough of Croydon (August 2002)

This was an Enforcement Appeal brought under section 174 of the Town and Country Planning Act. The Appeal was against Enforcement Action which alleged variation between a dwelling “as built” and the dwelling “as approved” on the submitted plans. The Enforcement Notice enforced against the whole dwelling and not the variations themselves and stated that where development is carried which differs from the details submitted and approved, then the whole development is unlawful not just the variations themselves. This view was confirmed in Sage v Secretary of State 2003 where Lord Hobhouse of stated:

“As Council for Mr Sage accepted, if a building operation is not carried out both internally and externally, fully in accordance with the permission, the whole operation is unlawful.”

Within the Appeal decision the Inspector stated that the dwelling as built was 0.07 m (70 mm) wider, 0.06 m (60 mm deeper) and 0.10 m (100 mm) higher to the eaves than represented on the approved drawings. Even though these dimensional differences were stated by the Inspector to be individually quite small, he concluded that they were material in planning terms. The Inspector concluded that the dwelling built on the site did not benefit from Planning Permission, and the discrepancies constituted a breach of planning control.

The important point from this decision is that even minor variations from what was approved are material in planning terms and can cause a development not to benefit from the Planning Permission as approved.

# 7 LOCAL AUTHORITY DECISIONS

## 2.1 Shropshire Council

Planning Permission was granted in 1962 for a single storey farm workers bungalow on land at Kinlet, Bewdley. The dwelling was duly constructed and substantially completed by 1976.

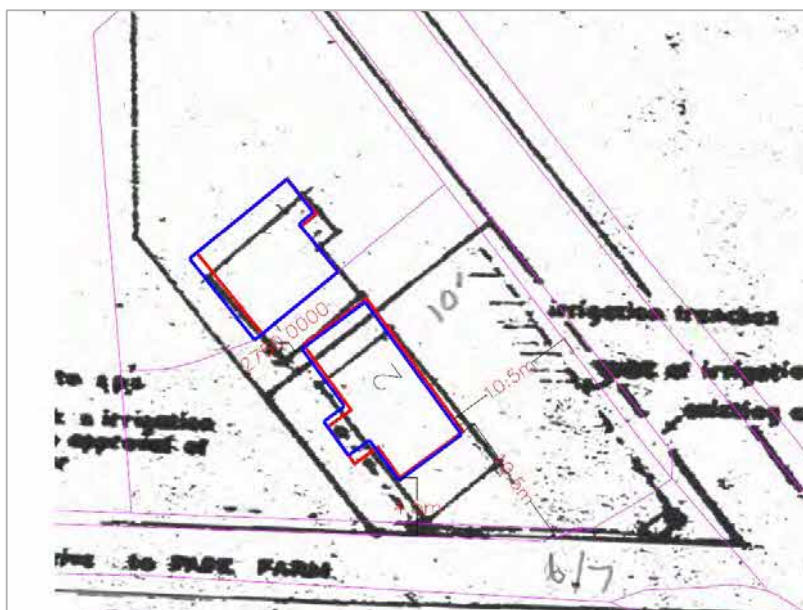
The dwelling was found to have been erected some 4.3m<sup>2</sup> larger than permitted and moved further north from the boundary. The dwelling was also not erected in the position required by the Planning Permission and was erected between 2.51m and 3.72m from its approved site.

The planning officer stated in the Development Management Report that:

*"It could be argued that if these measurements were only slightly different compared to the permitted scheme; such as less than 500mm that the dwelling would have been built in the "spirit" of the original planning permission, but it is clear from the submitted documents and calculations that have been undertaken on the site that there are material differences between what was approved and what has been constructed" (our emphasis).*

In view of these material differences between the dwelling as approved and the dwelling as built, it was found that the Planning Permission for the erection of the agricultural dwelling was never implemented and due to the passage of time, it had lapsed (along with all conditions).

Shropshire Council concluded that the dwelling had not been built in accordance with the submitted plans and therefore considered it to be a breach of the permitted plans. As a result the conditions, including the Agricultural Occupancy Condition would no longer apply. As more than 4 years have elapsed the dwelling was immune from enforcement action and a Lawful Development Certificate was issued in May 2018.



Extract from approved footprint comparison plan, originally produced by Les Stephan Planning Ltd

## Wychavon District Council (Annex H)

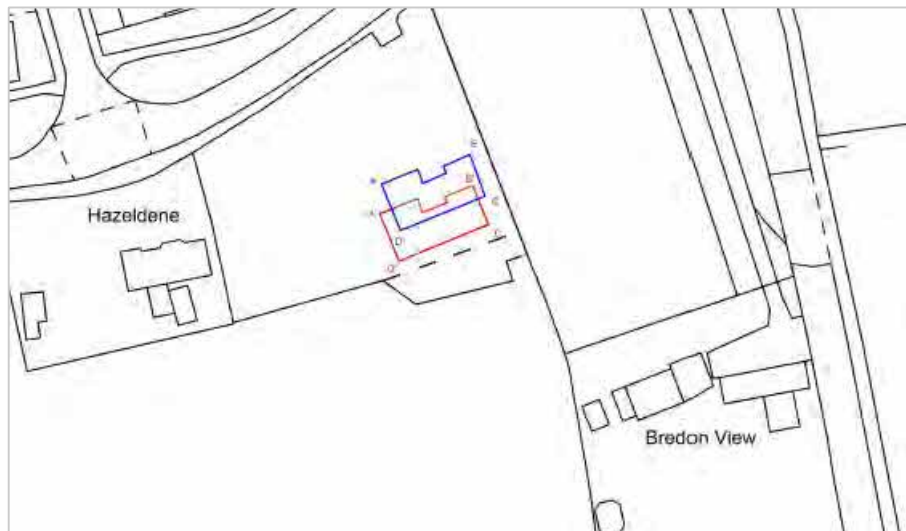
Planning Permission was granted for an agricultural dwelling in 1981. A dwelling was subsequently constructed on the site, but this did not correlate with the approved plans. The dwelling was not erected in the position required by the Planning Permission and instead were erected between 5.46 m and 5.87 m south of the approved position.

Wychavon District Council could find no evidence to dispute the facts and despite the significant overlap between the approved and as built footprint, found that the dwelling was materially different to that for which Planning Permission had been granted. The planning officer stated in the Decision Report:

“The footprint of the dwelling as approved does overlap the dwelling as built but there is a difference of between 5m-6m with the dwelling being built further South of the approved position. It is clear from the plans and aerial photographs the dwelling as built is closer to the Southern boundary of the site. As such this is considered to be a material difference in this instance between the house as approved and as built, so that the development would have been considered to be unlawful and would have been exposed to enforcement action at the appropriate time. However, no such enforcement action was commenced or any correspondence related to the unauthorised nature of the development initiated by the Council within the required 4 year period.

On the basis of the above it is considered that the building was constructed in a materially different location to the approved dwelling and should therefore be considered as a separate planning entity unrelated to either or any of the relevant original planning permissions.”

A Lawful Development Certificate was issued in May 2023 and the occupancy condition was found to no longer apply.

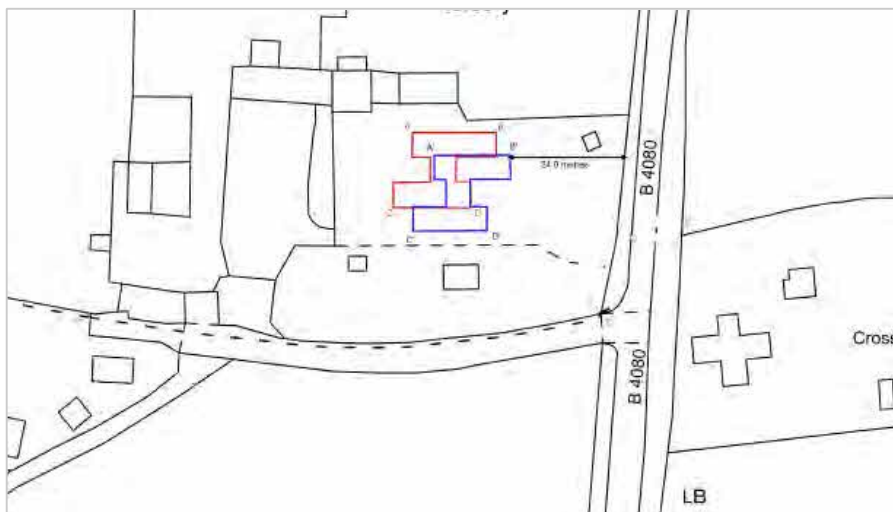


## 5.2 Wychavon District Council

A dwelling was constructed on a site in Bredon in the late 1970s to support a horticultural nursery. The dwelling was not erected in the position required by the Planning Permission and was erected, based on the approved site plan between 5.62m and 6.55m from its approved position.

Wychavon District Council agreed that the dwelling, as constructed, was materially different to that for which Planning Permission had been granted. A Lawful Development Certificate was issued in 9<sup>th</sup> June 2022 and the occupancy condition was found to no longer apply. The planning officer, in her Report, stated:

It is noted that whilst the footprint of the dwelling as approved and as built does overlap there is around or over 5.62 metres difference between the built position and the approved position (the approved position would have been closer to the highway). As such this is considered to be a material difference in this instance. As such, there are material differences between the house as approved and as built, so that the development would have been considered to be unlawful and could have been the subject of enforcement action at the appropriate time.



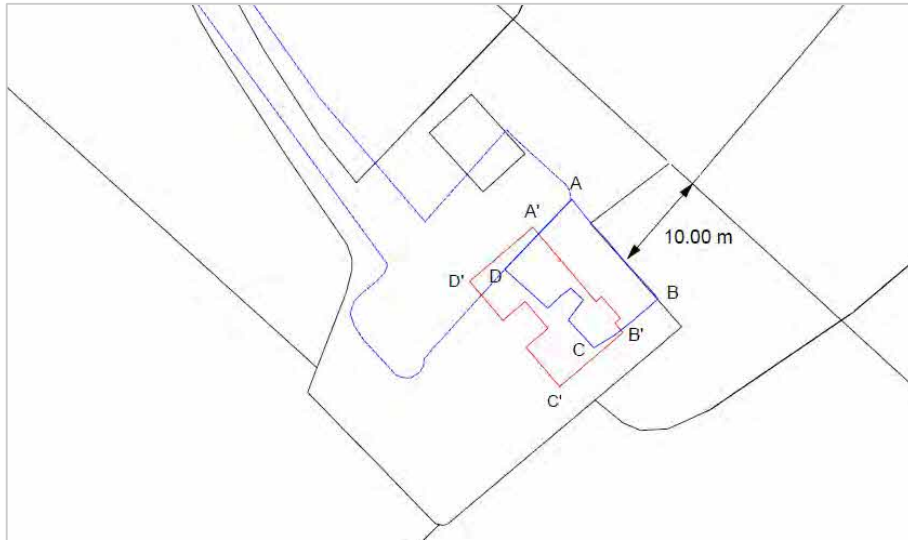
#### 6.4 Wychavon District Council

A substantial agricultural dwelling was substantially completed in August 2005 to support a poultry enterprise on land outside of Evesham. The dwelling was completely screened from the public highway by a substantial range of agricultural buildings and existing vegetation. The dwelling is accessed off a private driveway and is set back 203 m from the public highway.

The dwelling was not erected in the position required by the Planning Permission and was erected 3.64 m south west of its approved position.

Wychavon District Council could find no evidence to dispute the submitted facts and agreed that the dwelling, as constructed, was materially different to that for which Planning Permission had been granted. A Lawful Development Certificate was issued in July 2017 and the occupancy condition was found to no longer apply.



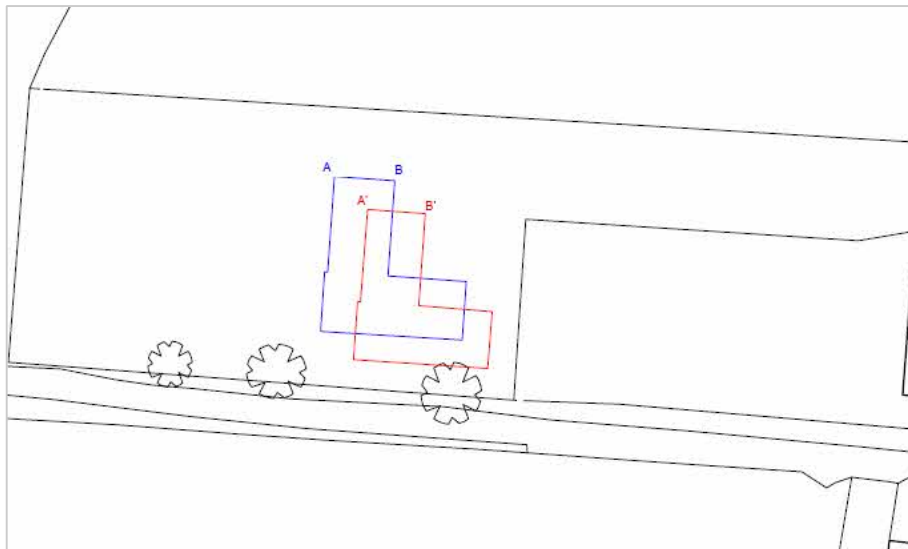


Wychavon District Council

An agricultural dwelling was constructed in the early 1990s to support an agricultural enterprise in mid Worcestershire.

The dwelling was not erected in the position required by the Planning Permission and was erected 5.76 m north west of it approved position.

Wychavon District Council could find no evidence to dispute the submitted facts and agreed that the dwelling, as constructed, was materially different to that for which Planning Permission had been granted. A Lawful Development Certificate was issued in September 2019 and the occupancy condition was found to no longer apply.



Wychavon District Council

Planning Permission was granted on 12th December 1985 for the erection of an Agricultural Dwelling on land at Broad Lane, Bishampton. An amended house design was later submitted and approved.

The dwelling was not erected in the position required by the Planning Permission and was erected between 8.23 m and 11.98 m from its approved site. The Planning Permission for the erection of the agricultural dwelling was never implemented and due to the passage of time, lapsed (along with any associated conditions).

Wychavon District Council could find no evidence to dispute the submitted facts. Despite the fact that there was a crossover of building footprint the Council considered that the “as built” dwelling differed materially from that approved, so as to render the original permission as unimplemented. A Lawful Development Certificate was issued in July 2021 and the Agricultural Occupancy Condition was found to no longer apply

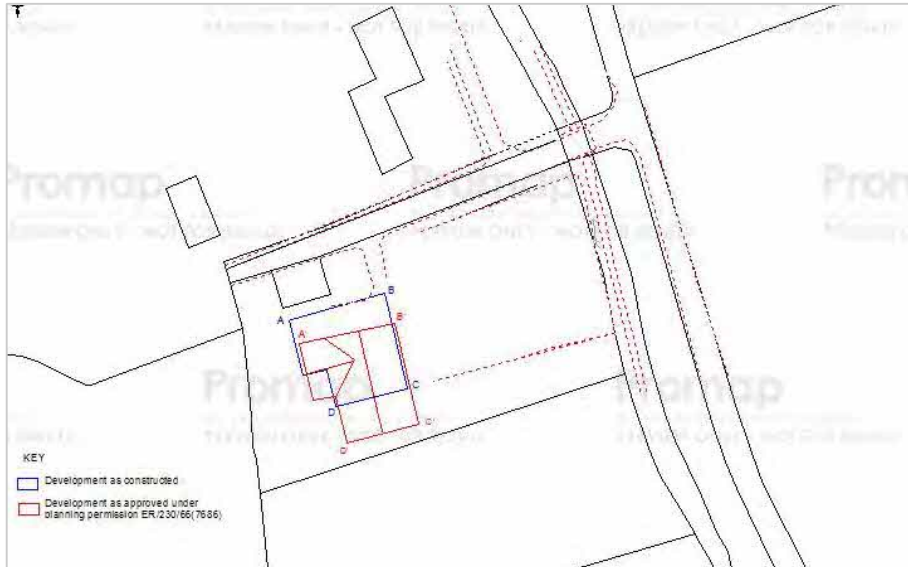


## Wychavon District Council

An agricultural dwelling was constructed in the late 1960s to support an agricultural enterprise at Murcot.

The dwelling was not erected in the position required by the Planning Permission and was erected 3.58 m north of its approved position.

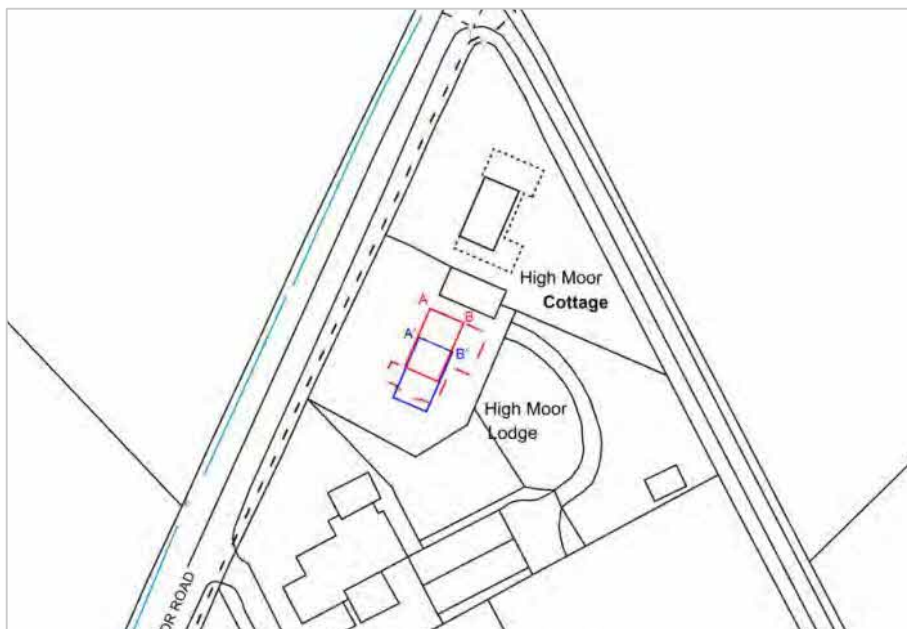
Wychavon District Council could find no evidence to dispute the submitted facts and agreed that the dwelling, as constructed, was materially different to that for which Planning Permission had been granted. A Lawful Development Certificate was issued in October 2015 and the occupancy condition was found to no longer apply.



## Harrogate Council

Planning Permission was granted in 1979 for an agricultural dwelling on land at Boroughbridge, York to support a mushroom farm. The dwelling was duly constructed; however it was not erected in the position required by the Planning Permission and instead were erected 6.46 m from its approved position.

Harrogate Council could find no evidence to dispute the facts and despite the significant overlap between the approved and as built footprint, found that the dwelling was materially different to that for which Planning Permission had been granted. A Lawful Development Certificate was issued in August 2021 and the occupancy condition was found to no longer apply.



## 7 Dorset Council

An agricultural dwelling was constructed in the mid-1970s to support an agricultural enterprise in West Dorset. The dwelling was not erected in the position required by the Planning Permission and was erected between 9.41 m and 12.23 m north west of its approved position and rotated through 14 degrees.

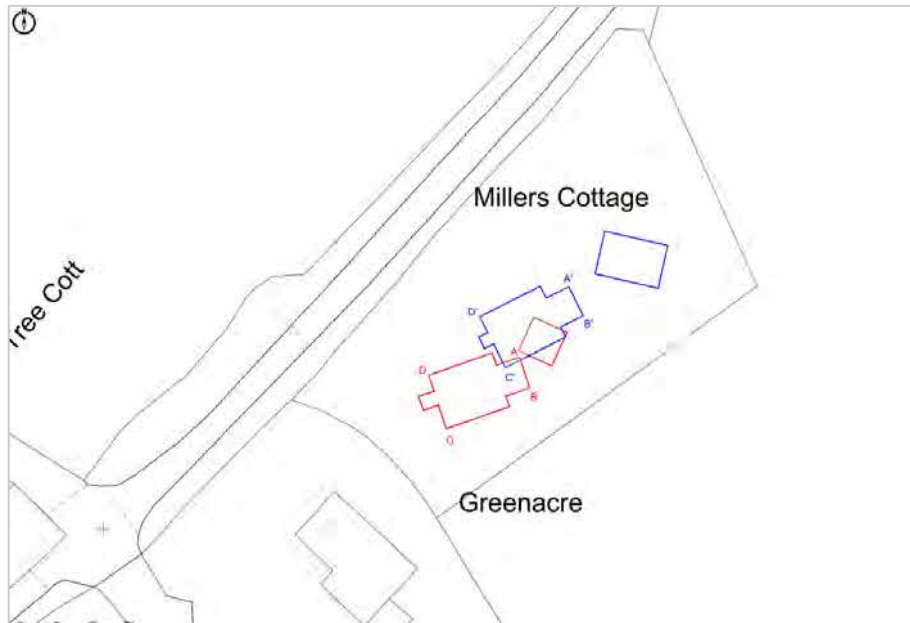
Dorset Council could find no evidence to dispute the submitted facts and agreed that the dwelling, as constructed, was materially different to that for which Planning Permission had been granted. A Lawful Development Certificate was issued in September 2020 and the occupancy condition was found to no longer apply.



## 6.10 Shropshire District Council

An agricultural dwelling was constructed in 2006 to support an existing agricultural enterprise. The dwelling was not erected in the position required by the Planning Permission and was erected between 10.30m and 12.48m north east of its approved position.

The Council could find no evidence to dispute the facts and found that the dwelling was materially different to that for which Planning Permission had been granted. A Lawful Development Certificate was issued in March 2021 and the occupancy condition was found to no longer apply.

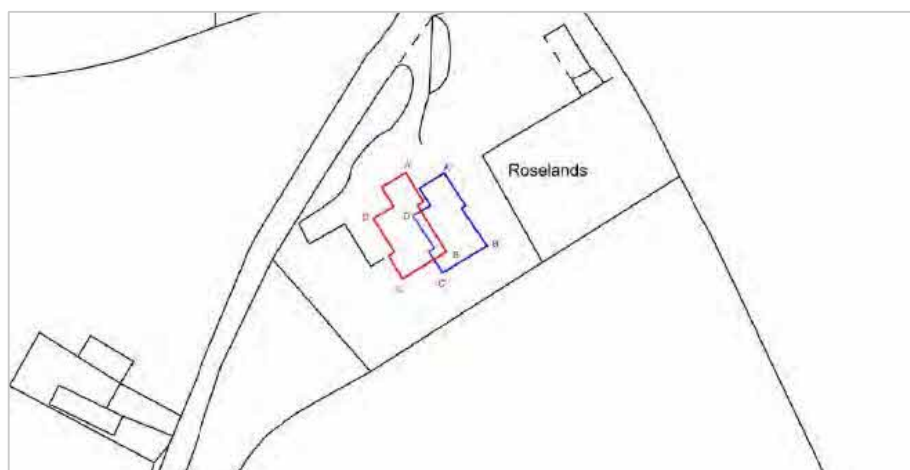


### 7.11 Mid Devon District Council

Outline Planning Permission was granted in 1965 for an agricultural dwelling to be constructed. Reserved matters were approved in 1964.

The dwelling was not erected in the position required by the Planning Permission and was erected between 8.37 m and 9.02 m from its approved site.

Mid Devon District Council could find no evidence to dispute the submitted facts. Despite the fact that there was a crossover of building footprint the Council considered that the as built dwelling differed materially from that approved, so as to render the original permission as unimplemented. A Lawful Development Certificate was issued in December 2020 and the occupancy condition was found to no longer apply.

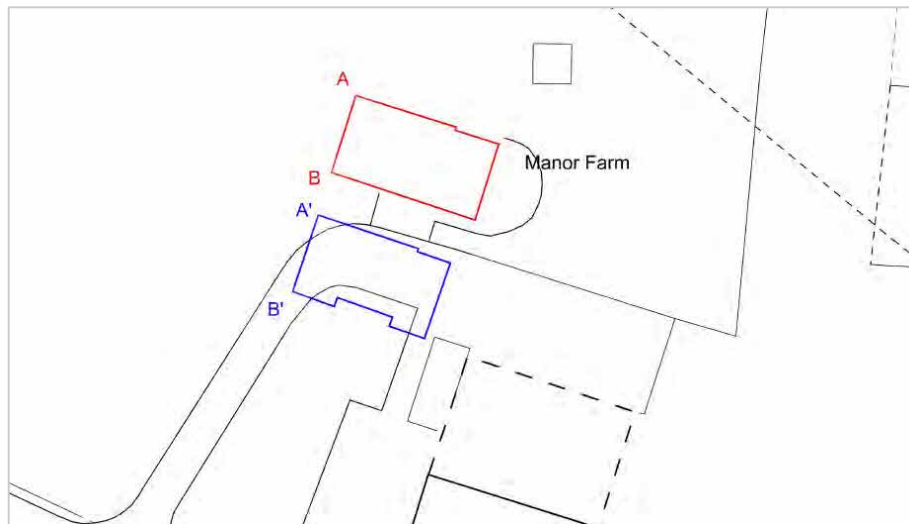


### 6.10 South Kesteven Council

A substantial agricultural dwelling was substantially completed in the late 1980s to support an agricultural enterprise just south of Manthorpe.

The dwelling was not erected in the position required by the Planning Permission and was erected some 11.80 m north of its approved position.

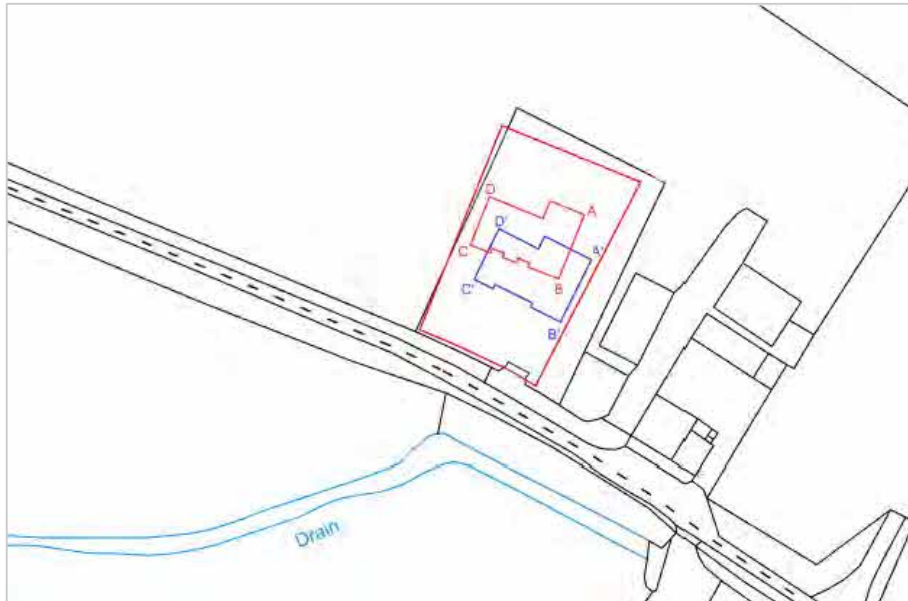
There was no overlap between the approved and as built footprints and the dwelling was considered to have been built materially in a different position. No other discrepancies were identified and on the basis of the differing positions, South Kesteven DC found that the dwelling, as constructed, was materially different to that for which Planning Permission had been granted. A Lawful Development Certificate was issued in June 2020 and the occupancy condition was found to no longer apply.



### 7.13 Carmarthenshire Council

Planning Permission was granted for an agricultural dwelling to replace a redundant farmhouse in 1994. The dwelling was constructed and substantially complete by 2005. The dwelling was not erected in the position required by the Planning Permission and instead were erected between 6.95 m and 9.59 m south of the approved position.

Carmarthenshire Council could find no evidence to dispute the facts and despite the significant overlap between the approved and as built footprint, found that the dwelling was materially different to that for which Planning Permission had been granted. A Lawful Development Certificate was issued in November 2020 and the occupancy condition was found to no longer apply.



7.14 Malvern Hills District Council

Planning Permission was granted in January 1962 for an agricultural dwelling and new access track on land at Abberley, Worcestershire. The dwelling was constructed in the mid 1960s. The dwelling was not erected in the position required by the Planning Permission and instead were erected between 13.02 m and 14.26 m east of the approved position.

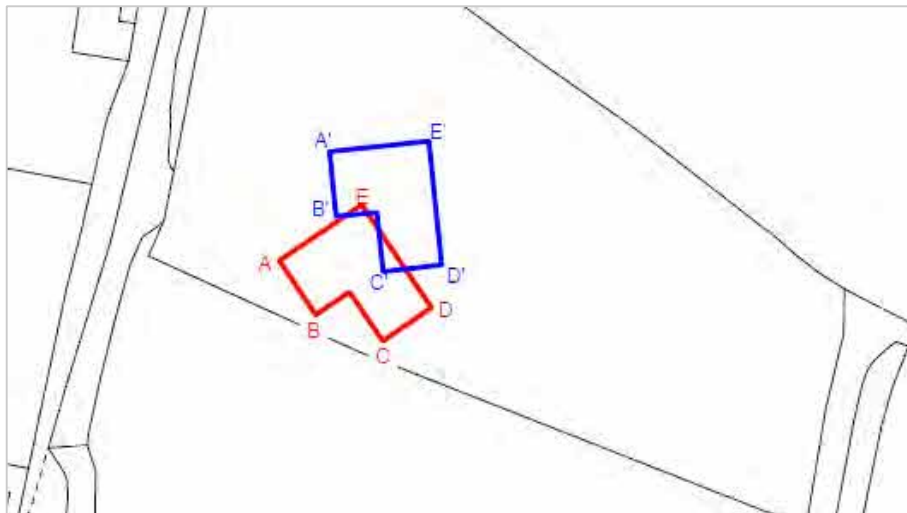
Malvern Hills District Council could find no evidence to dispute the facts and agreed that the dwelling, as constructed, was materially different to that for which Planning Permission had been granted. A Lawful Development Certificate was issued in October 2019 and the occupancy condition was found to no longer apply.



## 6.10 South Staffordshire Council

In 1971 Planning Permission was granted for a two-storey farmhouse to be erected on land at Shipley, Wolverhampton. The dwelling as constructed is well screened from the public highway and set well back on the plot.

The dwelling was not erected in the position required by the Planning Permission and was erected 28 degree out and between 5.51 m and 15.21 m from its approved position. South Staffordshire Council could find no evidence to dispute the facts and agreed that the dwelling, as constructed, was materially different to that for which Planning Permission had been granted. A Lawful Development Certificate was issued in June 2019 and the agricultural occupancy condition was found to no longer apply.



## 6.10 Tewkesbury Borough Council

An agricultural dwelling was constructed on the site during the late 1970s. The dwelling is well screened from the public highway by a substantial mature hedge. The dwelling is accessed off a private driveway and is set back 165 m from the public highway. The dwelling was not erected in the position required by the Planning Permission and instead was erected 25 degrees out and between 3.48 m and 11.09 m from the approved position.

Tewkesbury Borough Council could find no evidence to dispute the submitted facts and agreed that the dwelling as constructed, was materially different to that for which Planning Permission had been granted. A Lawful Development Certificate was issued in August 2016 and the occupancy condition was found to no longer apply.

## 6.10 Mid Devon District Council

Outline Planning Permission was granted in April 1972 for an agricultural dwelling to be constructed. Reserved matters were approved in October 1972.

The dwelling was not erected in the position required by the Planning Permission and was erected 12.80 m west of the approved site.

Mid Devon District Council could find no evidence to dispute the submitted facts. Despite the fact that there was a crossover of building footprint the Council considered that the as built dwelling differed materially from that



approved, so as to render the original permission as unimplemented. A Lawful Development Certificate was issued in March 2016 and the occupancy condition was found to no longer apply.

#### 6.10 Cotswold District Council

A substantial two storey agricultural dwelling (c. 3,300 sq. ft. GEA) was constructed by the applicant on land just outside Cheltenham and occupied from February 1975. The dwelling is well screened from the public highway by a substantial mature hedge, mature trees and agricultural buildings. The dwelling is set well back on the plot, approximately 61 metres from the public highway. The dwelling was not erected in the position required by the Planning Permission and was erected 7.50 m south of its approved position.

Cotswold District Council could find no evidence to dispute the facts and agreed that the dwelling, as constructed, was materially different to that for which Planning Permission had been granted. A Lawful Development Certificate was issued in August 2015 and the occupancy condition was found to no longer apply.

#### 6.10 Tewkesbury Borough Council

Planning Permission was granted for an agricultural dwelling and new access track on land in to the north of Tewkesbury. The dwelling was constructed in 1967 to provide accommodation for an intensive poultry and market gardening enterprise. The dwelling and access track were not erected in the position required by the Planning Permission and instead were erected 8.00 m south west of the approved position.

Tewkesbury Borough Council could find no evidence to dispute the facts and agreed that the dwelling, as constructed, was materially different to that for which Planning Permission had been granted. A Lawful Development Certificate was issued in August 2013 and the occupancy condition was found to no longer apply.

#### 7.20 Redditch Borough Council

In 1963 Planning Permission was granted for a two-storey farmhouse to be erected on land to the south of Redditch. The dwelling is well screened from the public highway by a substantial mature hedge which has been in place since Planning Permission was granted. The dwelling is set well back on the plot, approximately 22 metres from the public highway.

The dwelling was not erected in the position required by the Planning Permission and was erected 5.32 m from its approved position. Redditch Borough Council could find no evidence to dispute the facts and agreed that the dwelling, as constructed, was materially different to that for which Planning Permission had been granted. A Lawful Development Certificate was issued in November 2015 and the occupancy condition was found to no longer apply.

#### 7.13 Bromsgrove District Council

In May 1963 Reserved Matters were approved for a detached dwelling to be erected on land to the east of Bromsgrove.

The dwelling was not erected in the position required by the Planning Permission and was erected between 6.98 m and 7.36 m from its approved position. Bromsgrove District Council could find no evidence to dispute the facts and agreed that the dwelling, as constructed, was materially different to that for which Planning Permission had been granted. A Lawful Development Certificate was issued in August 2016 and the occupancy condition was found to no longer apply.

## 7.20 Tewkesbury Borough Council

Planning Permission was granted for an agricultural dwelling on land just outside Tewkesbury. The dwelling was constructed in 1973 to provide accommodation for a horticultural enterprise. The dwelling is well screened from the public highway by a substantial mature hedge, which has been in place since Planning Permission was granted. The dwelling was not erected in the position required by the Planning Permission and instead was erected 7.8 m south west of the approved site.

Tewkesbury Borough Council could find no evidence to dispute the facts and agreed that the dwelling as constructed was materially different to that for which approval had been granted. A Lawful Development Certificate was issued in March 2014 and the occupancy condition was found to no longer apply.

## 7.23 Cotswold District Council

A substantial Cotswold stone farmhouse (c. 4,456 sq. ft. GEA) was constructed on the site in the early 1970s to support an intensive pig unit. The dwelling is situated on off a private driveway and is screened from the public highway by agricultural buildings and mature trees. The property is situated 42 metres from the public highway. The dwelling was not erected in the position required by the Planning Permission and was erected, approximately 20 degrees "out" and 10.59 m to the north west of the approved site.

Cotswold District Council could find no evidence to dispute the submitted facts and agreed that the dwelling as constructed was materially different to that for which Planning Permission had been granted. A Lawful Development Certificate was issued in December 2013 and the occupancy condition was found to no longer apply.

## 7.24 Cheltenham Borough Council

An agricultural dwelling was constructed on the site in 1991. The dwelling is situated in open countryside, with no near neighbours and in the Cotswold AONB. The property is accessed off a private driveway and is set back from the adopted highway 62 metres. The property is well screened from the highway by ancillary buildings and mature vegetation. The dwelling was not erected in the position required by the Planning Permission and was erected approximately 30 degrees out from the approved position and with a differing roof line.

Cheltenham Borough Council could find no evidence to dispute the submitted facts and agreed that the dwelling, as constructed, was materially different to that for which Planning Permission had been granted. A Lawful Development Certificate was issued in May 2012 and the occupancy condition was found to no longer apply.

## 7.20 Mid Devon District Council

The ridge height of the dwelling was found to be 2.24 m higher than the Planning Approval 4/22/82/894. The change was considered by Mid Devon District Council to be a material change and the dwelling as constructed was considered to be a different dwelling to that for which approval had been granted. As a result the Agricultural Occupancy Condition was found to no longer apply. A Lawful Development Certificate was issued on 11<sup>th</sup> May 2011.

## 7.20 Herefordshire Council

Planning Permission was granted for a single storey agricultural dwelling. The dwelling was constructed in 1978 and occupied from 1979 onwards. The dwelling was not erected in the position required by the Planning Permission and instead was erected 5.1 m to the east of the approved position.

Herefordshire Council could find no evidence to dispute the facts and agreed that the dwelling, as constructed, was materially different to that for which Planning Permission had been granted. A Lawful Development Certificate was issued and the occupancy condition was found to no longer apply.

## 7.20 Nether Alderley, Macclesfield

The application related to a converted barn located on the edge of a complex of buildings. The site was originally a dairy farm but active farming ceased in 1990. The subject property was created in 1991 from the conversion and extension of a two storey brick barn. The changes between the approved plans and the dwelling as constructed related to the erection of a chimney breast, single storey side extension and very minor alterations to the roof and porch.

The planning officer found that the dwelling had not been constructed in accordance with the approved plans and had been occupied for a period of over 4 years. A Lawful Development Certificate was issued.

## 6 MATERIAL CHANGE

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### 2.1 Material Amendments

Any amendment that cannot be treated as a “non-material amendment” will require a new freestanding Planning Permission, either by way of a “minor material amendment” to an existing Planning Permission or by way of a new permission.

The fact that there is a clear process for making ‘minor material amendments’ to an approved scheme shows that permission is required for even very minor changes.

Government Guidance on ‘Minor material amendments’ does not define what changes may be treated as minor material amendments, although the Government has confirmed that they agree with the definition proposed by WYG (White Young Green Planning and Design). This is not however a statutory definition.

“A minor material amendment is one whose scale and nature results in a development which is not substantially different from the one which has been approved.”

It is the responsibility of each Local Planning Authority to determine the definition of “material”. Whilst it is acknowledged that whether a difference is material or not is a subjective judgement, based on the fact and degree assessment, it is also acknowledged that many local authorities have produced guidance on the issue.

Wychavon District Council has clarified that the following would not be accepted as non-material.

- The application site area (red line) differs from the original application
- The application description differs from the original application
- The proposal would result in changes to the external details (e.g. facing materials or roof shape) that would materially alter the appearance of the building
- The amendment significantly increases the size of any part of the development
- The development moves more than 1 metre in any direction (our emphasis)
- The height of the building or structure is increased.
- If the amendment locates any part of the development closer to a neighbour unless the development as amended is in excess of 5 metres from the common boundary with the neighbour
- The amendment results in a fundamental change in the design of the building

Bristol City Council have confirmed that anything, but the most insignificant change would need to be submitted as a new Planning Application and as a general guide the following amendments would be considered material changes:

- The application site area (red line) differs from the original application.
- The application description differs from the original application.
- The proposal would result in changes to the external details (for example, facing materials or roof shape) that would materially alter the appearance of the building.
- The amendment significantly increases the size of any part of the development.
- The development moves more than 1 metre in any direction (our emphasis)
- The height of the building or structure is increased.

- The amendment locates any part of the development closer to a neighbour.
- The amendment results in a fundamental change in the design of the building.
- The amendment changes windows or doors in any elevation facing a neighbour which increases overlooking in any way.
- The amendment would result in a greater visual intrusion, loss of light or feeling of enclosure to neighbours.
- There were any relevant objections to the original proposal which would be compromised by the proposed amendment.
- There has been enforcement action taken, for example non-compliance with approved plans.

Cornwall Council have clarified that the following proposed changes may not be non-material if:

There would be no change to the application site boundary and the proposal would be located within it (red line boundary)

The amendment would not conflict with any conditions on the planning permission.

The proposal would not make worse any concerns raised by third parties when the original planning permission was considered.

The approved footprint / siting of the building will not be moved in any direction by more than 1 metre.

The proposal would not result in an extension to development already approved.

The amendments must not result in a fundamental change in the design of the building.

The height / volume of the building or extension must not be increased or significantly reduced.

The amendments must not result in a fundamental change in the design of the building.

The change does not amount to new works or elements which have not been considered by any environmental statement submitted with the original application.

Amendments to windows / doors / opening must not have any overlapping impact on neighbouring properties.

These criteria are designed to prevent amendments being accepted that would have a harmful impact. If the above cannot be met:

A minor material amendment application or  
A new full application may be made

## 6 SUMMARY OF CASE LAW AND LOCAL AUTHORITY DECISIONS

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2.1 The key findings from relevant Case Law and planning guidance are as follows:

- 1) Sage v Secretary of State confirmed that where building operations are not carried out both internally and externally, fully in accordance with the permission, the whole operation is unlawful.
- 2) An Appeal Court decision confirmed that if development has been carried out other than in accordance with the Planning Permission, it is unauthorised and unlawful and therefore any conditions attached to the permission can have no effect upon it.
- 3) A single unauthorised alteration to a development should not result in enforcement action against that particular part of the building, but against the whole dwelling.
- 4) An example where a dwelling was built with a higher ridge height than approved was found to be unlawful. This was the only discrepancy from the approved plans and was considered to be a material change by Mid Devon District Council. A CLEUD was granted.
- 5) The SoS and an Inspector found, in separate cases, that to be lawful, a development should be built wholly in accordance with the plans, both internally and externally.
- 6) An Inspector, in a successful Appeal against Carmarthenshire Council, found that a dwelling must be built in its approved position for planning permission to be lawfully implemented. The Inspector rejected the Council's argument that, as the property was still within the site boundaries the discrepancy was not material, and granted the Certificate of Lawful Existing Development, thereby confirming that the planning permission had not been implemented and had lapsed along with all of its conditions. His decision makes it clear that for Planning Permission to be lawfully implemented the dwelling must be built in line with the approved plan, and it is not sufficient for it to be sited generally somewhere within the site area.
- 7) An Inspector found that a dwelling which had been sited 5.5 metres from its approved location was, as a matter of fact and degree in a materially different place from where it was approved. The dwelling comprised a good sized four bedroom farmhouse, situated in open countryside with no near neighbours. The dwelling was situated at the end of a private driveway, 84 metres from the public highway and completely screened from public view. Despite the dwellings size, its distance from the highway and the fact that it was screened from the public highway, the property (as built) was considered by the Inspector to be materially different to that for which consent had been granted.
- 8) An Inspector overturned the decision of Bromsgrove District Council and found that a property that had been sited 8.02 metres from its approved location was in a materially different place, even though the dwelling was in open countryside, not visible from neighbouring properties and situated 221 metres from the adopted highway at the end of a private driveway.
- 9) In an Appeal Decision, the Inspector considered that a dwelling that had been built between 7.5 and 9.0 metres from its approved position, was not constructed in line with the Planning Permission and that the discrepancy was considerable and material. The dwelling was a good sized 4 bedroom house, situated some 58 metres from the public highway and well screened by agricultural buildings, trees and

substantial hedges. The Inspector considered that the discrepancies were material despite the scale and setting of the dwelling.

- 11) Numerous Local Authorities have considered the “wholesale shift” of a dwelling from its “as approved” location to be a material change. The discrepancies have varied from 2.51 metres to 47 metres and all properties have been located in open countryside and surrounded by agricultural land. In all cases the discrepancies were considered to be material and a CLEUD was granted.

The precedent has therefore been clearly established by the Court of Appeal, by Planning Inspectors and by Local Authorities that a development is not subject to any of the conditions imposed by the Planning Permission, if that Planning Permission has not been implemented fully in accordance with the plans, both internally and externally.

## 10 CONCLUSION

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The level of evidence provided with this Statement proves, that on the balance of probabilities, the development at Blue Bury Farm, Walkern Road, Watton at Stone, Hertfordshire, SG14 3RJ was not carried out in accordance with the approved plans. Planning Permission (Ref: 3/02/0763/OP and 3/03/0069/RP) was therefore never implemented and has lapsed in its entirety, along with all of the associated conditions.

The matter to be considered is whether the differences highlighted between what has been built and what was approved, are material or not. Having reviewed Case Law, Local Authority decisions and Appeal Decisions, it is considered that the discrepancy occurring in this instance is material. The approved position is clearly marked on the plan, however the dwelling was constructed between 5.62 and 5.81 metres from this approved position and as a result it is materially in the wrong place and therefore the whole scheme should be considered as development without Planning Permission.

The relevant Planning Permission was not implemented and as the Council have not taken enforcement action within the relevant time frame (4 years), the dwelling is now immune from enforcement action. This view is in line with the decision of the Inspector in the Malpass and South Staffordshire District Council (December 2017); Rolfe and Parkin and Sedgemoor District Council (July 2012); Reynolds and Taunton Deane District Council (March 2017); Davenport and Bromsgrove District Council (July 2015) and Phillips and Carmarthenshire Council (December 2014), which considered virtually identical circumstances to those occurring in this case.

Unless the Council have evidence to the contrary, there is no reason not to grant this application for a Certificate of Lawful Existing Development under section 191(1)(b) of the Town and Country Planning Act 1990 (as amended), is granted to confirm the following:

The dwelling standing at Blue Bury Farm, Walkern Road, Watton at Stone was not built in accordance with the approved plans and was built without the benefit of Planning Permission. It therefore initially represented development unauthorised by the Town and Country Planning Act 1990, however because the dwelling has now been substantially completed for more than 4 years, the dwelling is beyond the time limit for the Local Planning Authority to take any enforcement action, in accordance with Town and Country Planning Act 1990 (as amended).

The development carried out is therefore free from the encumbrance of the planning conditions imposed under Outline Planning Permission (Ref: 3/02/0763/OP) and Reserved Matters Consent (Ref: 3/03/0069/RP) and in particular the Agricultural Occupancy Condition which restricts occupation to:

- 3 The occupation of the dwelling hereby permitted shall be limited to persons:-
  - (i) obtaining at least the current minimum agricultural wage from employment in the locality in agriculture as defined in section 336 (1) of the Town and Country Planning Act 1990, or in forestry
  - (ii) who have reached retirement age, have retired from employment in the locality in agriculture or forestry
  - (iii) being resident dependants of person falling within (i) or (ii) above
  - (iv) being a widow or widower of persons falling within (i) or (ii) above



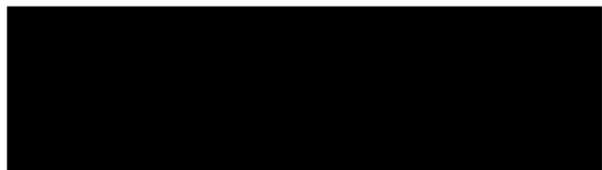
# ANNEX A – OUTLINE PLANNING PERMISSION (REF: 3/02/0763/OP)

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Town & Country Planning Act 1990

D E C I S I O N       N O T I C E



App no: 3/02/0763/OP  
(47)

AGRICULTURAL DWELLING.  
BLUE BURY FARM, WALKERN ROAD, WATTON AT STONE

In pursuance of their powers under the above mentioned Act and the Orders and Regulations for the time being in force thereunder, the Council hereby

GRANT OUTLINE PERMISSION SUBJECT TO CONDITIONS, as undermentioned,

for the development proposed in your application dated 12th April 2002 and received with sufficient particulars on 15th April 2002 and shown on the plans ~~as submitted~~ as amended accompanying such application.

- 
- 1 The development hereby permitted shall not be carried out otherwise than in accordance with detailed plans and drawings showing the siting, design and external appearance of the building(s), the means of access thereto and landscaping of the site, which shall have been approved in writing by the Local Planning Authority before any development is commenced.

Reason

To comply with the provisions of Article 3(1) of the Town and Country Planning (General Development Procedure) Order 1995.

- 2 (a) Application for approval in respect of all matters reserved in this permission shall be made to the Local Planning Authority within a period of 3 years commencing on the date of this notice.  
(b) The development to which this permission relates shall be begun by not later than whichever is the later of the following dates:
  - (i) the expiration of a period of 5 years commencing on the date of this notice
  - (ii) the expiration of a period of 2 years commencing on the date upon which final approval is given by





the Local Planning Authority or by the Secretary of State, or in the case of approval given on different dates, the final approval of the last such matter to be approved by the Local Planning Authority or by the Secretary of State.

Reason

To comply with the requirements of Section 92 of the Town and Country Planning Act 1990.

- 3 The occupation of the dwelling hereby permitted shall be limited to persons:-
- i) obtaining at least the current minimum agricultural wage from employment in the locality in agriculture as defined in Section 336(1) of the Town and Country Planning Act 1990, or in forestry
  - ii) who having reached retirement age, have retired from employment in the locality in agriculture or forestry
  - iii) being resident dependants of persons falling within (i) or (ii) above
  - iv) being a widow or widower of persons falling within (i) or (ii) above.

Reason

The proposed dwelling is situated in a rural area where the Local Planning Authority would not normally grant permission for such development and this permission is granted solely in order to fulfil an essential agricultural need, in accordance with policy RA5 of the East Herts Local Plan.

- 4 The existing bund shall be retained, and shall be landscaped in accordance with details required to be submitted in accordance with condition 1 above.

Reason

To minimise the visual impact of the dwelling.

- 5 Detailed plans, showing the existing and proposed ground levels of the site relative to adjoining land, together with the slab levels and ridge heights of the proposed buildings, shall be submitted to, and approved in writing by the Local Planning Authority prior to the commencement of development.

Reason

To ensure that the development is properly related to the levels of adjoining development in the interests of amenity.



East Hertfordshire  
District Council

3/02/0763/OP



- 6 The existing mobile home, on the adjoining land within the applicant's ownership, shall be removed, and the site landscaped in accordance with details required to be submitted in accordance with condition 1 above within one month of the first occupation of the dwelling permitted hereby.

Reason

To prevent the establishment of two dwellings on this site, contrary to Green Belt Policy as set out at RA2 and RA5 of the East Herts Local Plan.

This decision relates to plan number(s):  
2121-1

M.P. Rossington  
Assistant Director Development Control  
Wallfields  
Pegs Lane  
Hertford SG13 8EQ

Dated: 28th August 2002

Signed:

DEC5opac13/6/02/ab

HF JK

SEE ATTACHED NOTES

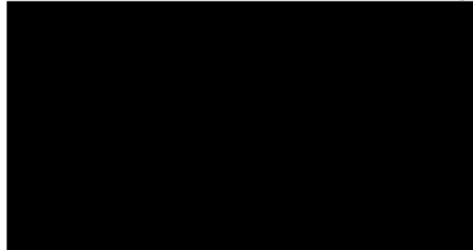


# ANNEX B – RESERVED MATTERS CONSENT (REF: 3/03/0069/RP)

---



D E C I S I O N       N O T I C E



App no: 3/03/0069/RP  
(47)

AGRICULTURAL DWELLING  
BLUE BURY FARM, WATTON AT STONE

In pursuance of their powers under the above mentioned Act and the Orders and Regulations for the time being in force thereunder, the Council hereby

GRANT APPROVAL TO THE DETAILS (reserved for approval in the outline permission granted for the development ref 3/02/0763/OP) SUBJECT TO CONDITIONS, as undermentioned,

for the development proposed in your application dated 15th January 2003 and received with sufficient particulars on 7th March 2003 and shown on the plans \*as submitted/~~as amended~~ accompanying such application.

- 
- 1 Prior to any building works being commenced, the external materials of construction for the building hereby permitted shall be approved in writing by the Local Planning Authority.

Reason

In the interests of the appearance of the development, and in accordance with Appendix 1(D) of the East Herts Local Plan.

- 2 No works or development shall take place until full details of both hard and soft landscape proposals have been submitted to and approved in writing by the Local Planning Authority. These details shall include, as appropriate:
  - (a) Proposed finished levels or contours
  - (b) Means of enclosure
  - (c) Car parking layouts
  - (d) Other vehicle and pedestrian access and circulation areas
  - (e) Hard surfacing materials
  - (i) Planting plans
  - (j) Written specifications (including cultivation and other operations associated with plant and grass





- establishment)
- (k) Schedules of plants, noting species, planting sizes and proposed numbers/densities where appropriate

(l) Implementation timetables

Reason

To ensure the provision of amenity afforded by appropriate landscape design, in accordance with policy BE8 of the East Herts Local Plan.

- 3 All hard and soft landscape works shall be carried out in accordance with the approved details and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised Codes of Good Practice. The works shall be carried out prior to the occupation of any part of the development or in accordance with the timetable agreed with the Local Planning Authority. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved, unless the Local Planning Authority gives its written consent to any variation.

Reason

To ensure the provision, establishment and maintenance of a reasonable standard of landscaping in accordance with the approved designs, in accordance with policy BE8 of the East Herts Local Plan.

Directive(s) :

- 1 This decision notice should be read with the outline planning permission dated 28 August 2002 reference: 3/02/0763/OP and you are reminded that the conditions attached to that permission apply to this development.

This decision relates to plan number(s) :

1	14B	2
14A		

M.P. Rossington  
Assistant Director Development Control  
Wallfields  
Pegs Lane  
Hertford SG13 8EQ

Dated: 23rd April 2003

Signed:

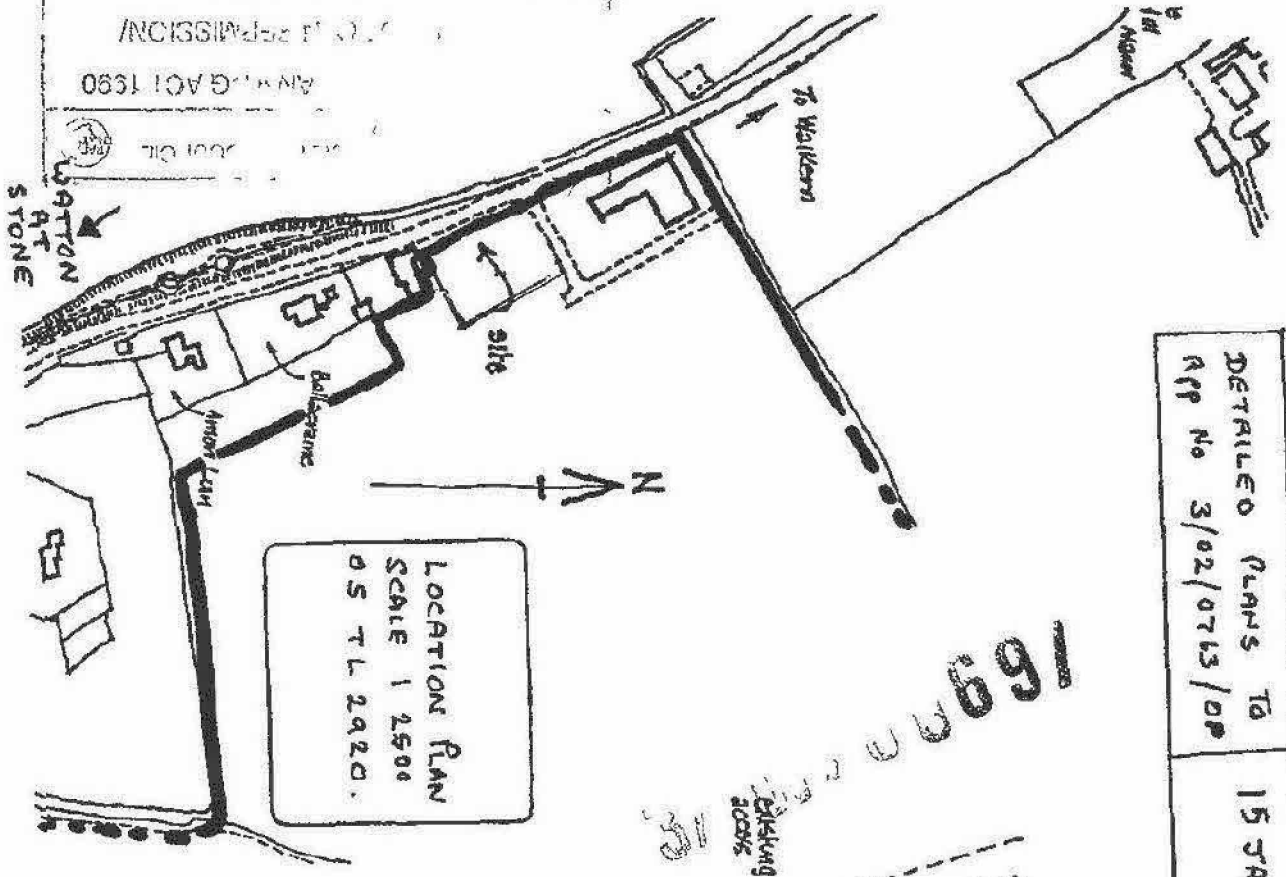
DEC5rpacl3/06/02ab

HF *JR*

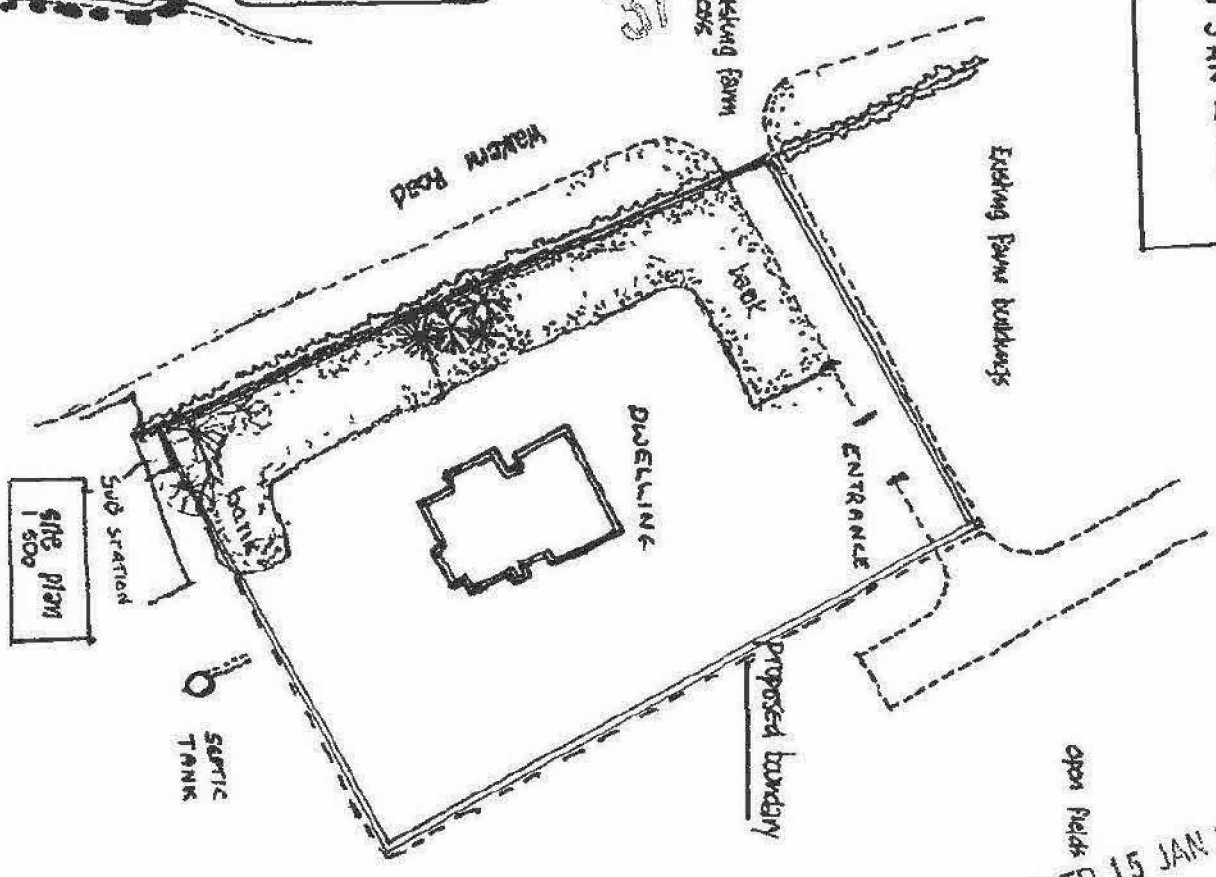
SEE ATTACHED NOTES



PLAN NO. 3/02/0713/DP  
 23/14/13 PERM NO. 3103/0069/RP  
 AN ACT 1990  
 APPROVAL



DETAILED PLANS TO  
 APP No 3/02/0713/DP  
 15 JAN 2003



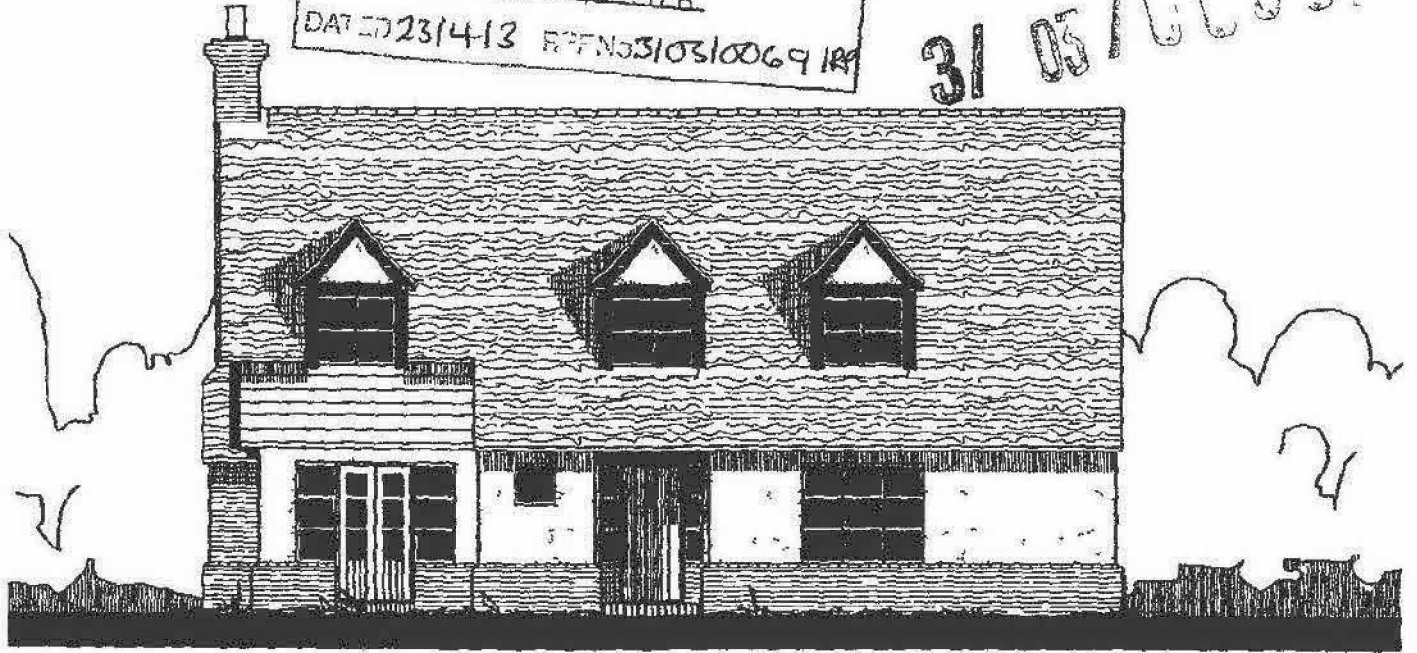
RECEIVED 15 JAN 2003



WATERLOO COUNCIL  
PLANNING & ACT 1990  
PERMISSION  
DATE 23/4/13 REF NO 310310069 1R

RECEIVED 15 JAN 2003

31 03 / 60091



FRONT ELEVATION



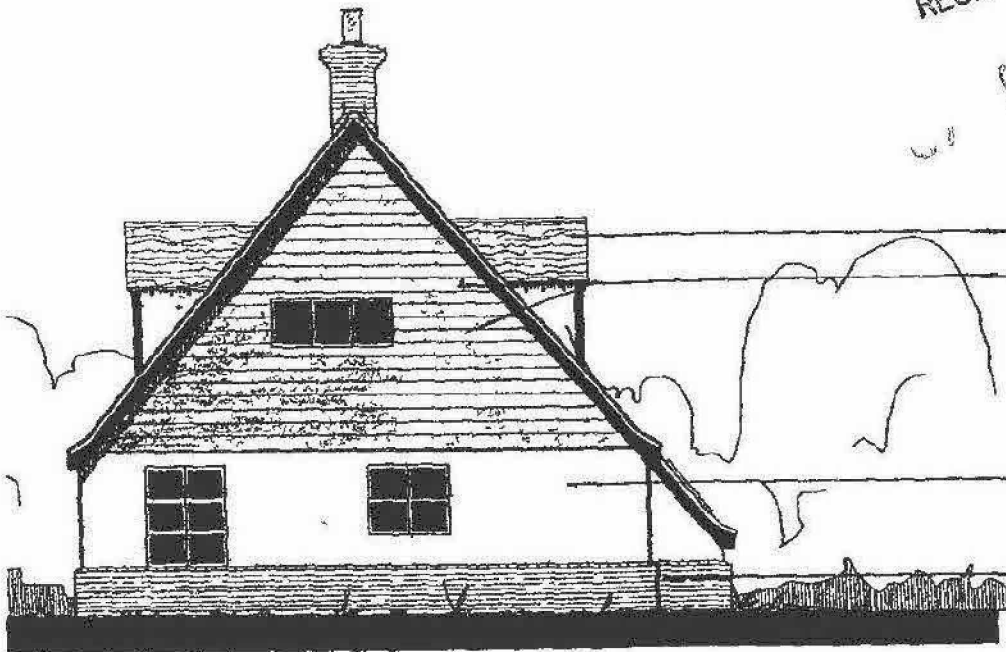
REAR ELEVATION

SCALE 1:100



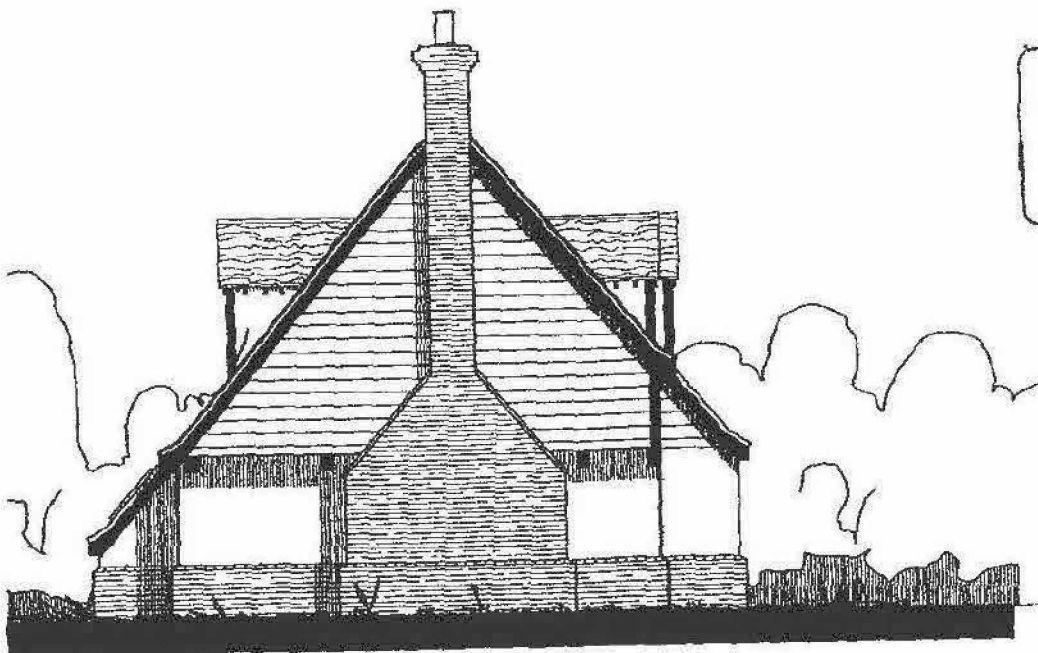
RECEIVED 15 JAN 2003

3103/00691



MATERIALS	
RECLAIMED CLAY TILES (R10)	
FEATHER EDGE BOARDING	
RENDER	
RECLAIMED RED BRICK	

SIDE ELEVATION



SCALE 1/100

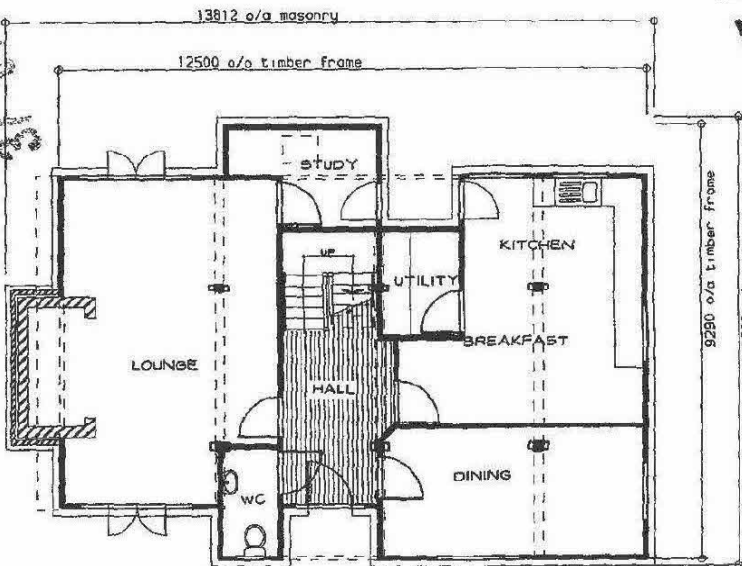
SIDE ELEVATION

EAST WERTFORDSHIRE DISTRICT COUNCIL		
PLANNING DEPARTMENT		
		011300
		10/01
- 2314/3 -		3103/00691/RP

RECEIVED 15 JAN 2003

16900130131

16900130131



GROUND FLOOR

BOILER INFORMATION TO BE FINALIZED BEFORE BUILDING  
REGISTRATION STAGE BY CLIENT  
FUEL TYPE - GAS/LIQUID/ELECTRIC  
BOILER TYPE - CONDENSING/COMBINATION/TRADITIONAL/SYSTEM ETC  
SEMPER EFFICIENCY MIN PER GAS / BOY LTR / PER DTL ET B O BY PATTON BASED ON ABOVE

16900130131  
16900130131  
16900130131

Checked by \*\*\* Date checked \*\*\*\*\*

Title  
CAXTON SH4  
\*\*\*\*

HERITAGE

Handing  
LOUNGE LEFT

Client Name  
[REDACTED]

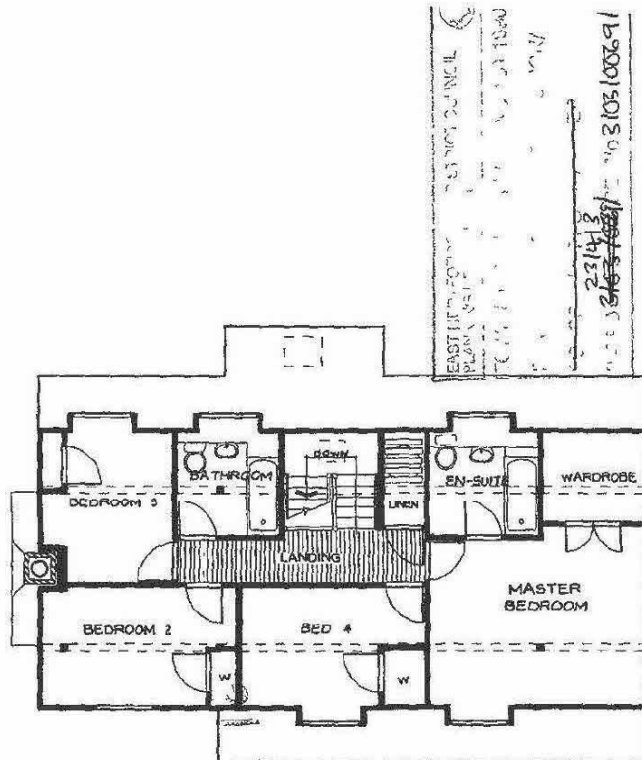
Drawn By MLP Date 07-JAN-2003

Scale 1:100 Size A3

Job No 02-312 Type P Rev A

Drawing No 1

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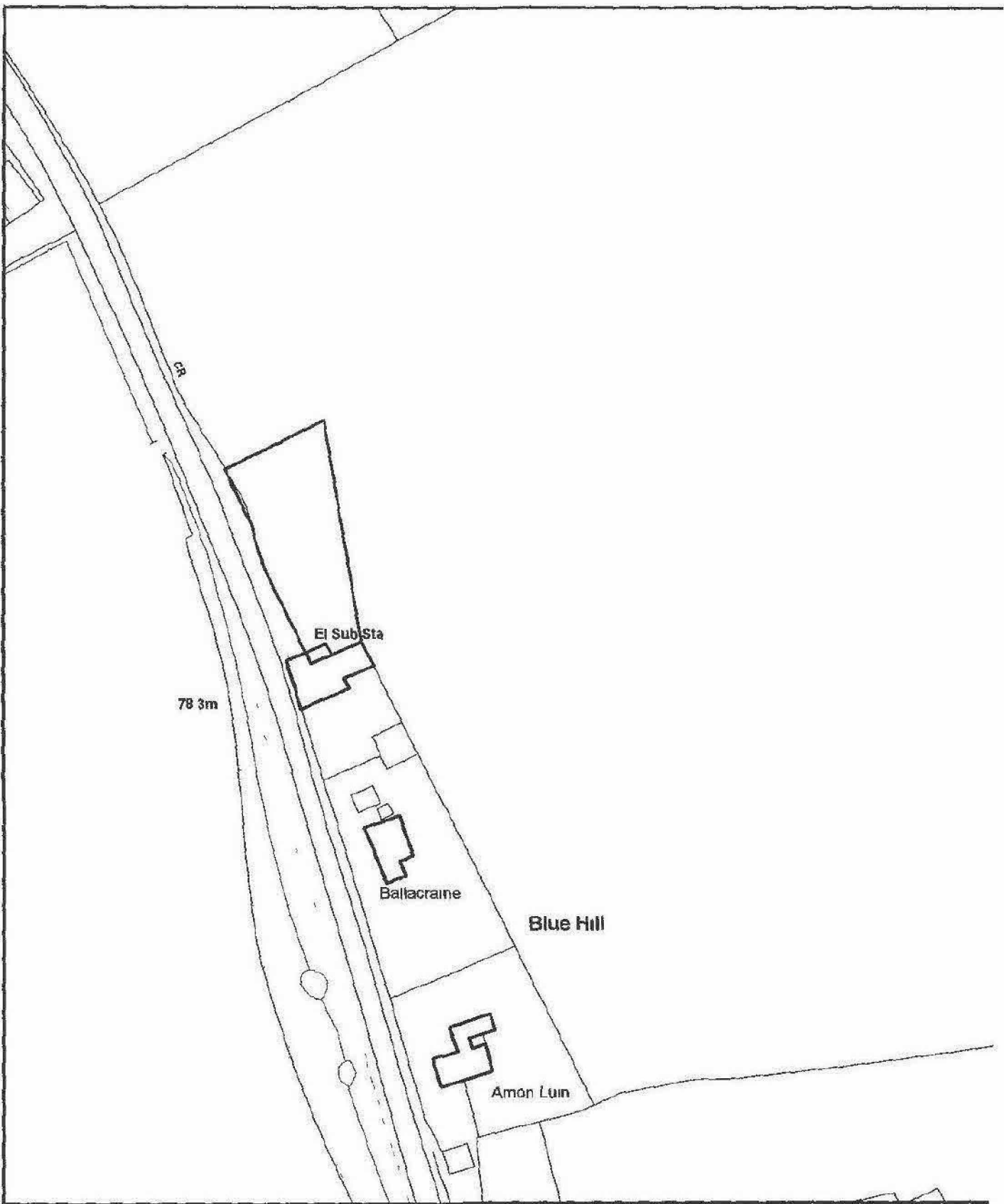
FIRST FLOOR

100691

RECEIVED 15 JAN 2003

EAST HAVEN PROPERTY CONSULTANTS  
 2314 8  
 192001201504  
 No 21031000

Checked by ***	Date checked *****	
Title CAXTON SH4 ****		
HERITAGE		
Handing LOUNGE LEFT		
Client Name [REDACTED]		
Drawn By MLP	Date 07-JAN-2003	
Scale 1:100	Size A3	
Job No 02-312	Type P	Rev A
Drawing No 2		
<small>This document is the copyright of Patton Ltd and is made available on the express condition that it shall not be used in connection with the erection of any building or the production of any components for such a building unless the building to be erected or the components are supplied by Patton Ltd.</small>		



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East Hertfordshire District Council  
 Planning & Property  
 Wallfields, Pegs Lane, Hertford SG13 8XD  
 Tel 01279 655261

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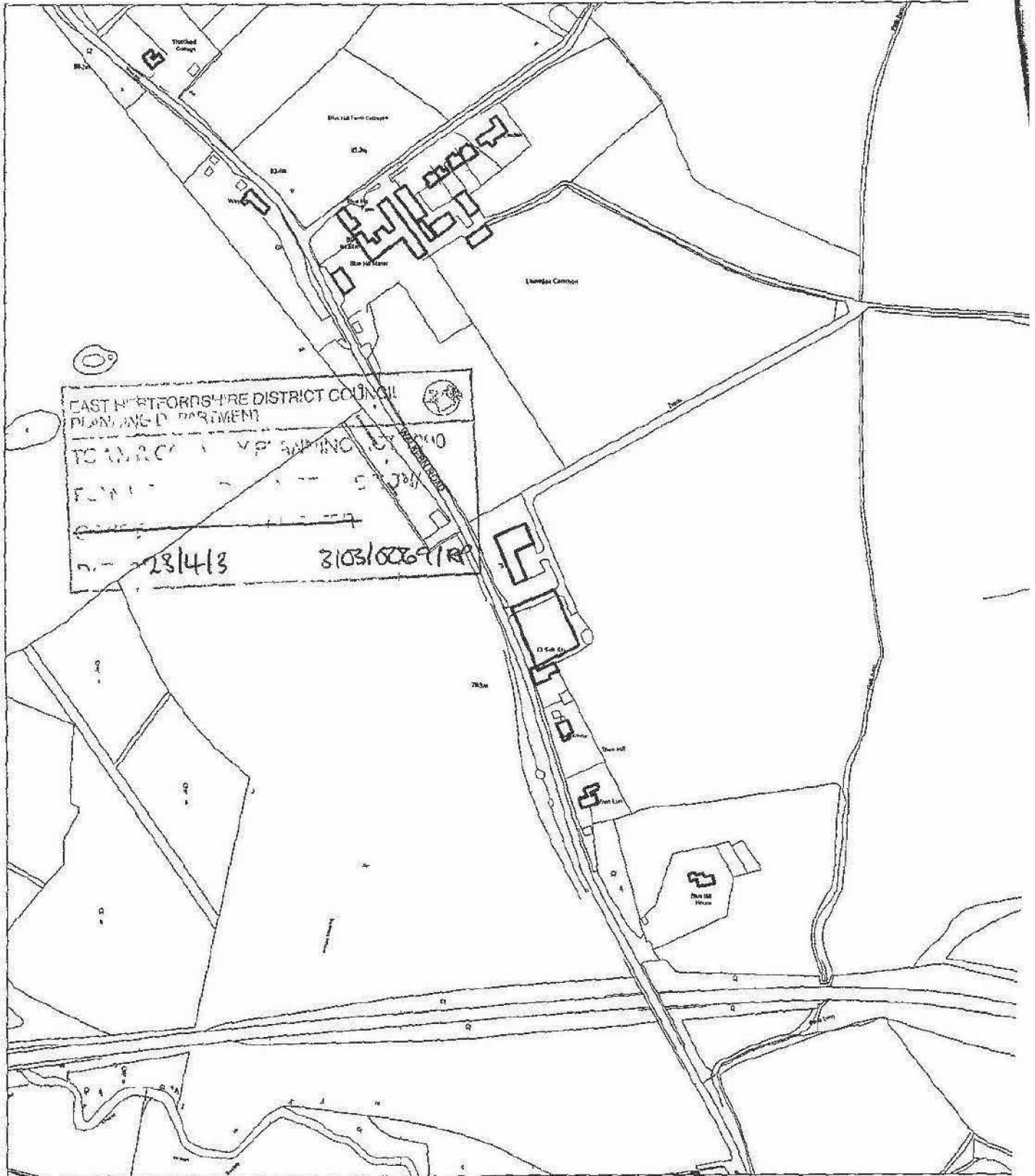
Name ,

Scale

OS Sheet

Date of print





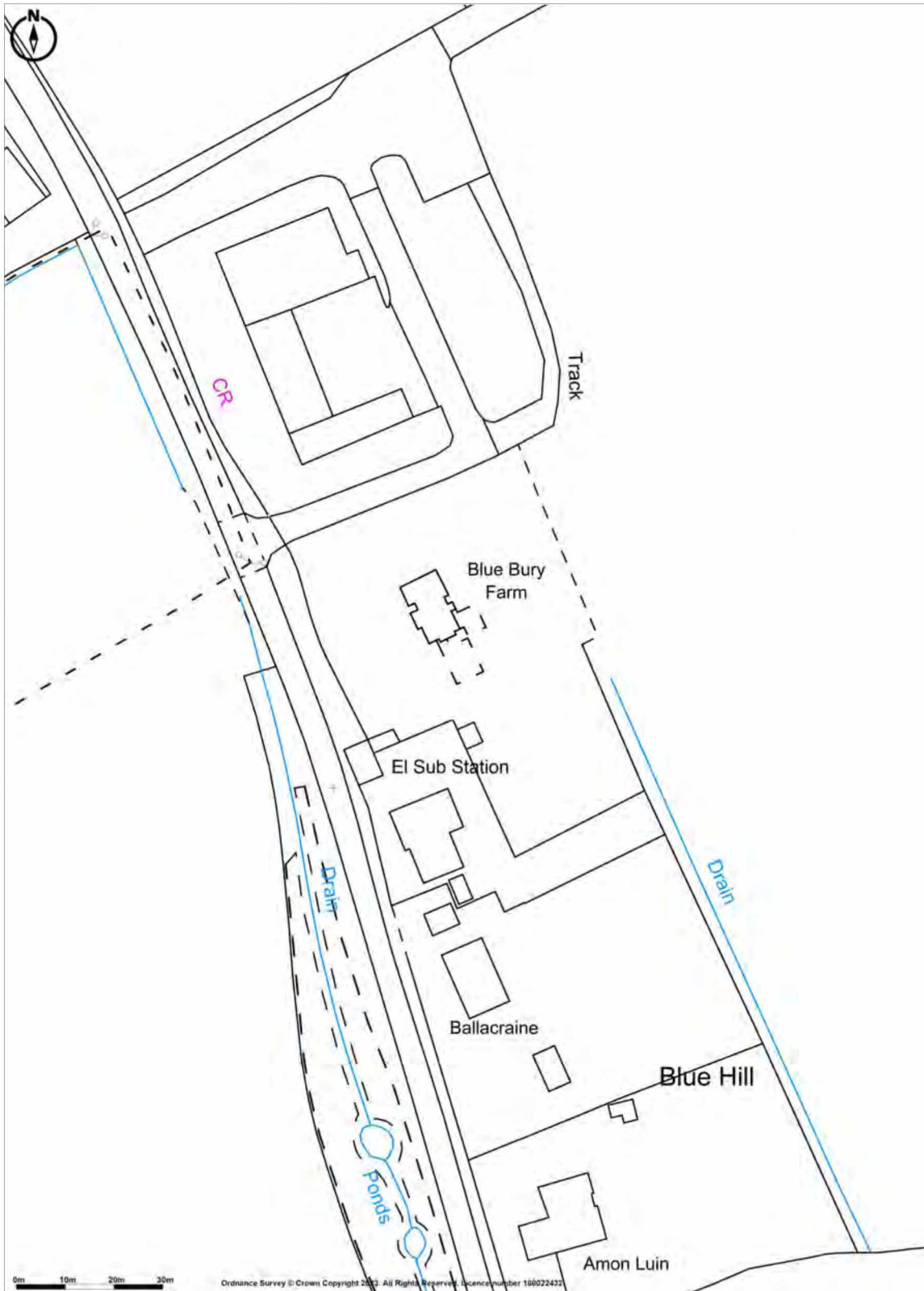
EAST NORTHFORDSHIRE DISTRICT COUNCIL  
 PLANNING DEPARTMENT

TO: MR C. J. WILKINSON  
 FROM: MR. J. WILKINSON  
 DATE: 28/4/13  
 REF: 3103/0006/1/R

N/S

## ANNEX C – PLAN SHOWING DWELLING AS BUILT

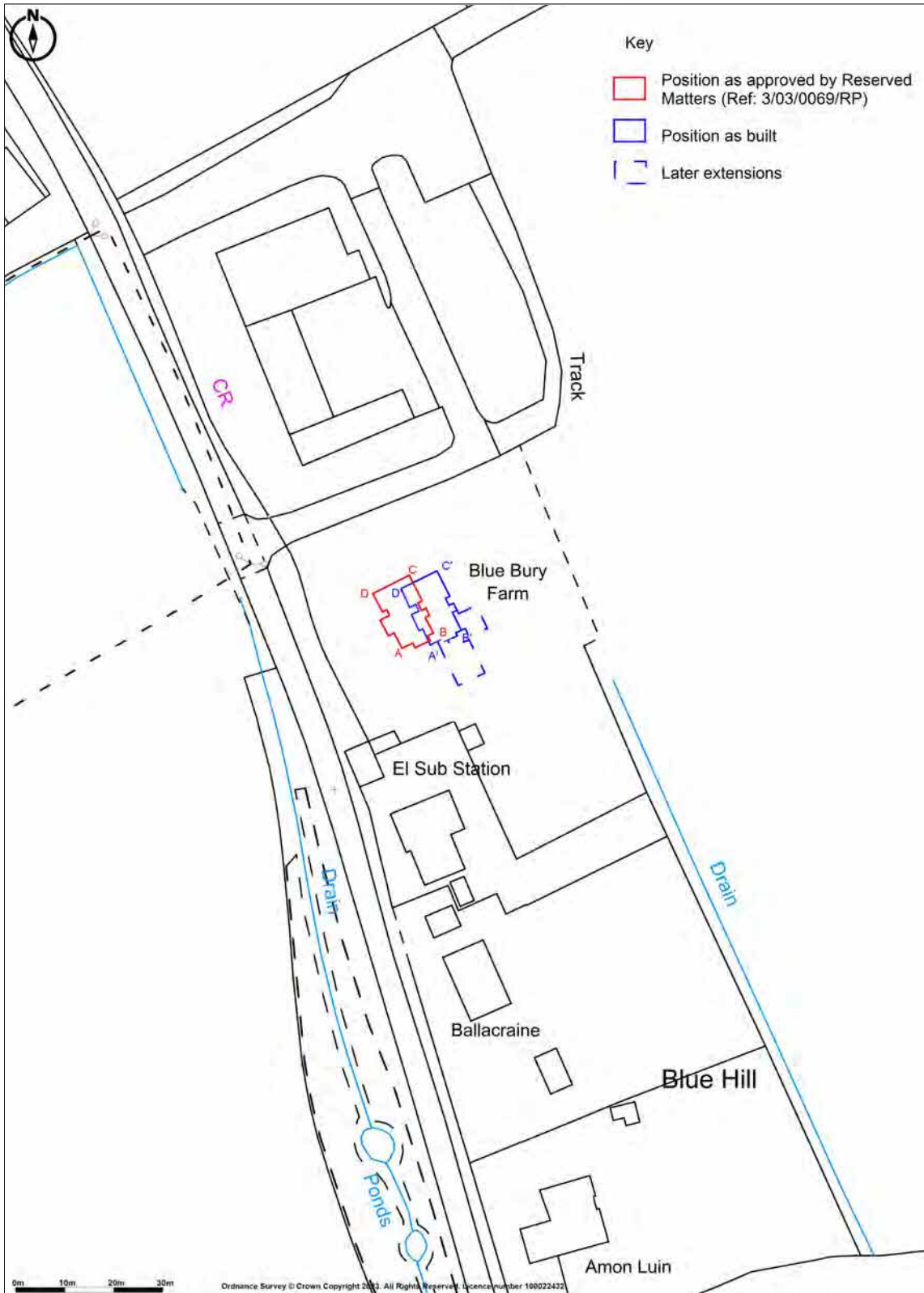
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# ANNEX D - COMPARISON OF THE DWELLING "AS APPROVED" AND "AS BUILT"

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# ANNEX E – STATEMENT OF TRUTH

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# Statement of Truth

We, Clive Andrew Roberts and Veronica Jane Roberts of Blue Bury Farm, Walkern Road, Watton at Stone, Hertfordshire, SG14 3RJ are making this Statement of Truth to support an application to East Hertfordshire District Council for a Certificate of Lawful Existing Development relating to operational development at Blue Bury Farm, Walkern Road, Watton at Stone, Hertfordshire, SG14 3RJ.


The facts in this Statement come from our own personal knowledge and as the owners and occupiers of Blue Bury Farm.

- a) We are the registered owners of Blue Bury Farm, Walkern Road, Watton at Stone, Hertfordshire, SG14 3RJ (the "*Property*") shown edged blue on the attached plan GWP1.
- b) The *Property* comprises a two-storey detached dwelling (the "*dwelling*") surrounded by 0.86 acres (0.35 ha) of gardens and grounds.
- c) I am aware that Outline Planning Permission was granted by East Hertfordshire Council on 28<sup>th</sup> August 2002, for the erection of an agricultural dwelling on land at Blue Bury Farm, Walkern Road, Watton at Stone (Ref: 3/02/0763/OP). Reserved Matters were approved on 29<sup>th</sup> April 2003 (Ref: 3/03/0069/RP). The *dwelling* was duly constructed and we purchased the *Property* on 4<sup>th</sup> July 2022.
- d) Having reviewed the approved plans and seen the results of the site survey, it is clear that the *dwelling* was not erected in the position shown on the plans approved by Reserved Matters (Ref: 3/03/0069/RP). Instead, the *dwelling* was erected in the position shown on the plan attached as Exhibit GWP1.

We believe that the facts and matters contained in this Statement are true.

Signed .....  ..... Date 27/06/2023

Clive Andrew Roberts

Signed .....  ..... Date 27/06/2023

Veronica Jane Roberts

Witnessed by .....  .....

Print name ASHLYN ROBERTS

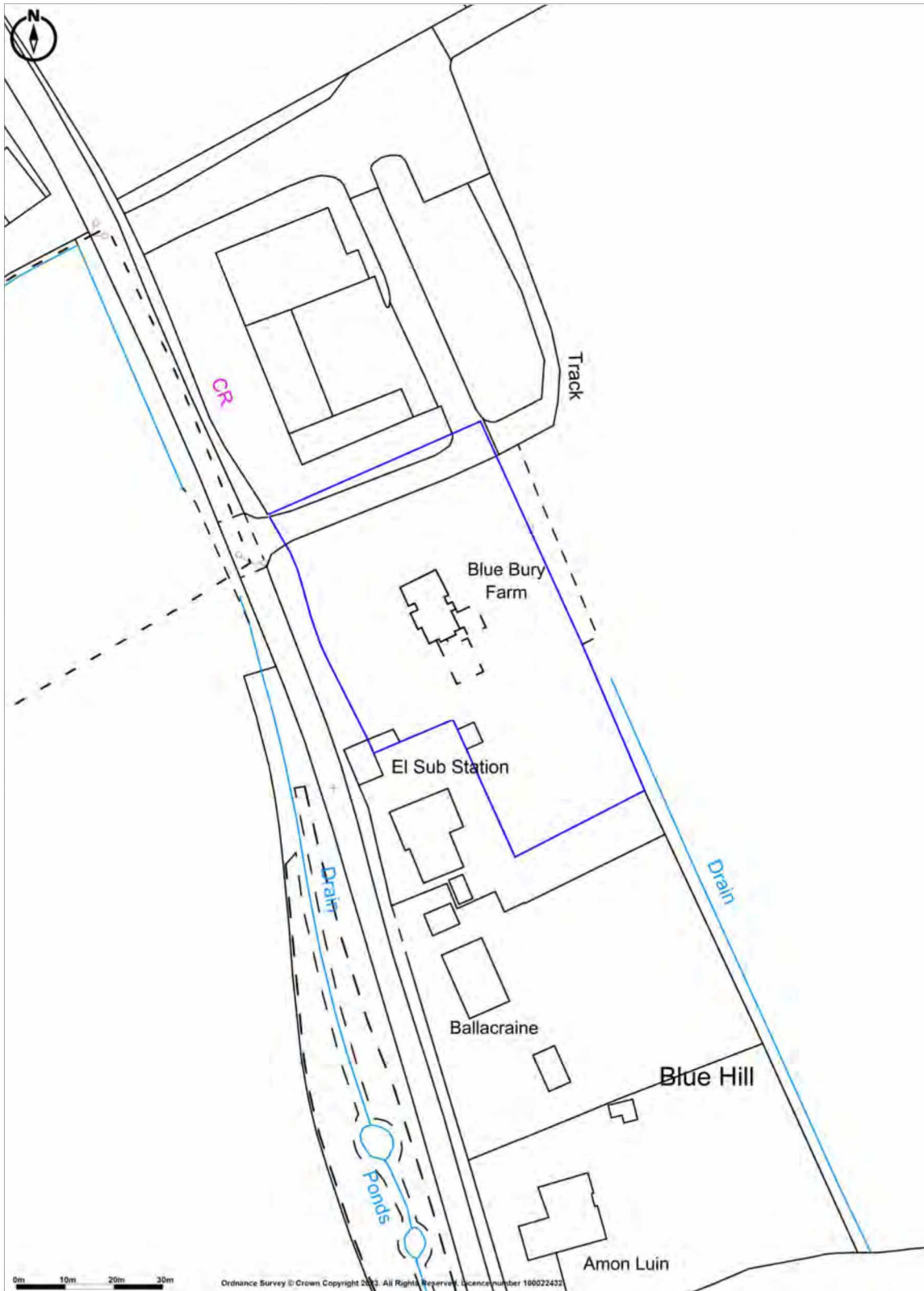
Address of BLUE BURY FARM

Witness WALKERN ROAD

WATTON AT STONE

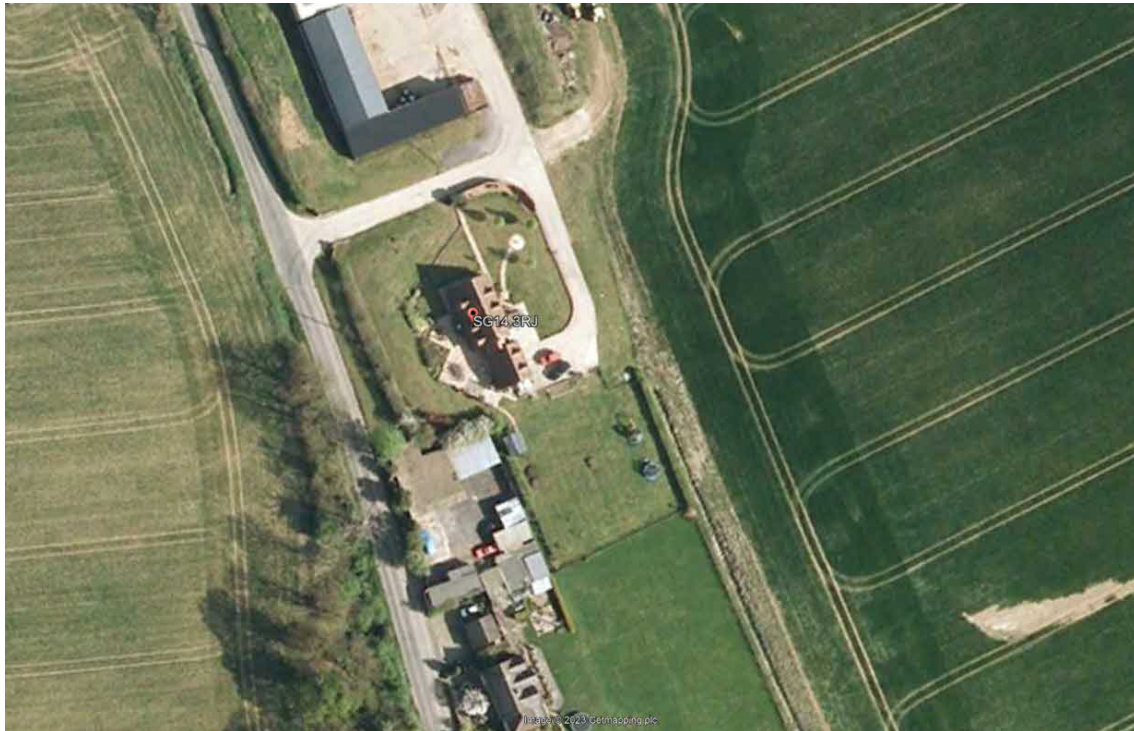
SG14 3RJ

EXHIBIT MARKED GWP1 referred to in the Statement of Truth of Clive Andrew Roberts and Veronica Jane Roberts



## ANNEX F – AERIAL PHOTOS

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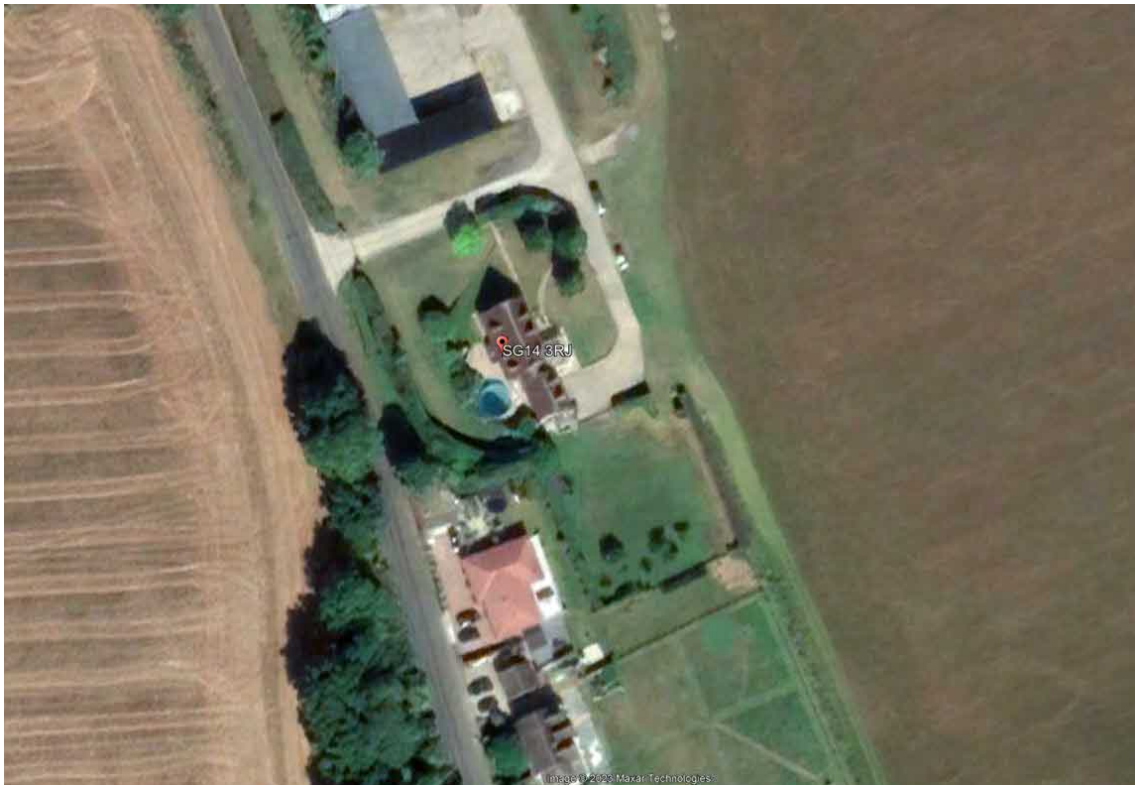
Google Earth image dated 01/01/2010



Google Earth image dated 26/03/2013



Google Earth image dated 25/06/2018



Google Earth image dated 09/08/2021



# ANNEX G – COUNCIL TAX RECORDS

**BETA** This is a new service – your [feedback](#) will help us to improve it.

English | [Cymraeg](#)

[< Back](#)

Property information for

### **BLUE BURY HOUSE, WALKERN ROAD, WATTON AT STONE, HERTFORD, SG14 3RJ**

Local Authority

Local authority  
reference number

Council Tax band

Improvement  
indicator

With effect from 1 April 2007

Mixed-use property

Court code



# ANNEX H – WYCHAVON DECISION W/23/00639/CLE

---

Planning Ref: W/23/00639/CLE  
Telephone: [REDACTED]

Please ask for : Robert Smith  
e-mail: [REDACTED]

22 May 2023

Mrs Abigail Baldrey  
Gateway Planning Consultants  
Highfield Farm  
Salt Way  
Astwood Bank  
B96 6NH

Dear Mrs Baldrey

**Applicant Name:** Mrs Susan Perry  
**Proposal:** Certificate of lawfulness for the existing use of residential dwelling without conditions imposed by Outline Planning Permission W/1685/80/O and Reserved Matters W/83/1321  
**Location:** Pennyrope, Defford Road, Pershore, WR10 1HU

I am writing to let you know the outcome of your application for a Certificate of Lawfulness, relating to the above.

We have **Approved** your application, and granted you a Certificate of Lawfulness.

If you have any questions relating to the Council's decision, please contact Robert Smith, on [REDACTED] or by email to [REDACTED]

Yours sincerely

[REDACTED]  
Robert Smith  
Planning Officer  
[REDACTED]

**W/23/00639/CLE****TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191****TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE)  
(ENGLAND)  
ORDER 2015: ARTICLE 39****CERTIFICATE OF LAWFUL EXISTING USE OR DEVELOPMENT****Agents Address:**

Mrs Abigail Baldrey  
Gateway Planning Consultants  
Highfield Farm  
Salt Way  
Astwood Bank  
B96 6NH

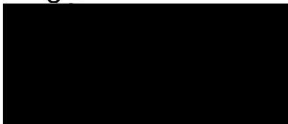
**Applicants Address:**

Mrs Susan Perry  
22 Loughmill Road  
Persnore  
WR10 1QB

1. Wychavon District Council of the Civic Centre, Queen Elizabeth Drive, Pershore, Worcestershire WR10 1PT HEREBY CERTIFY that on the 30/03/2023 the matter described in the First Schedule to this Certificate in respect of the land specified in the Second Schedule to this Certificate and outlined in red on the plan attached to this Certificate, was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason :-

That the development described in the First Schedule has been substantially completed for at least four years before the date of the application for this Certificate.

Signed:



Ciaran Power  
**Head of Development Management**

Date: 22 May 2023

Wychavon District Council  
Civic Centre  
Queen Elizabeth Drive  
Persnore  
Worcs  
WR10 1PT

1. FIRST SCHEDULE

Certificate of lawfulness for use as single residential dwelling without conditions imposed by Outline Planning Permission W/1685/80/O and Reserved Matters W/83/1321

SECOND SCHEDULE

Location: Pennyrope, Defford Road, Pershore, WR10 1HU

NOTES

1. This Certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990 (as amended).

2. It certifies that the matter 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 attached plan. Any matter which is materially different from that described, or which relates to other land, may render the owner or occupier liable to enforcement action.

**PLANNING SERVICES DELEGATED DECISION REPORT**  
**Planning Ref : W/23/00639/CLE**

Proposal: Certificate of lawfulness for the existing use of residential dwelling without conditions imposed by Outline Planning Permission W/1685/80/O and Reserved Matters W/83/1321

Site: Pennyrope, Defford Road, Pershore, WR10 1HU

Applicants name: Mrs Susan Perry

Recommendation: Certified

**Registration Date:** 30 March 2023

**8 week date:** 25 May 2023

**Extension of Time:**

**Site Notice expiry:**

**Earliest Decision date:** 27 April 2023

**Officer Site Visit:**

---

**Consultation Responses:**

**Pershore Town Council:**

No objection.

**Third Party Comments:**

None.

**Site Constraints :**

ODB - Outside SWDP Development Boundary - Distance: 0

SWDP - SWDP 5: Urban - Unsurveyed - Distance: 0

GEN1 - Agricultural Occupancy condition may apply: 80/01685 - Distance: 0

AQU - Minor Aquifer - Distance: 0

POL - Policy Case HLA - PAR/71/08/HOU. DEFFORD ROAD. . Affordable. Small site (EMP only) - Distance: 0

GEN1 - Agricultural Occupancy condition may apply: 83/01321 - Distance: 0

CIL - CIL008 - Non-Urban Area - Distance: 0

HIST - Historic Flood Map - Distance: 0

FLO2 - Flood Zone 2: Medium - Distance: 0

**Planning Site History :**

80/01685. HOUSE FOR OCCUPATION WITH HORTICULTURAL HOLDING. Defford Road Pershore. APL. Apr 24 1981

83/01321. APPROVAL OF RESERVED MATTERS FOLLOWING GRANT OF OUTLINE PLANNING PERMISSION W 80 1685 O DWELLING HOUSE AND GARAGE. Defford Road, Pershore. APL. Jan

18 1984

88/01621. ERECTION OF TWO PAIRS OF SEMI DETACHED DWELLINGS. Land in Defford Road, Pershore. REF. Sep 22 1988

88/01543. ERECTION OF NINE DETACHED DWELLING HOUSES. Land in Defford Road, Pershore. WDN. Sep 26 1988

89/01670. ERECTION OF NINE DETACHED HOUSES AND NEW ACCESS. Land at Defford Road Pershore. WDN. Oct 26 1989

91/00819. 18 BED NURSING HOME WITH ASSOCIATED PARKING. Site in Defford Road, Pershore. REF. Aug 29 1991

92/00187. PROPOSED 13 HOUSING UNITS WITH ASSOCIATED PARKING. Site in Defford Road, Pershore. REF. Apr 2 1992

W/11/00700/OU. Removal of agricultural occupancy condition attached to approval W/83/01321.. Pennyrope, Defford Road, Pershore, WR10 1HU. REF. Jun 10 2011

**Enforcement Site History:**

NA

**National Guidance**

National Planning Policy Framework (the Framework)  
Planning Practice Guidance (PPG)

**Statute:**

Section 171 B and 191 of the Town and Country Planning Act 1990 (as amended)

**Officer Report:**

**Site Description and summary of proposal/application**

This certificate of lawfulness for existing use is submitted in relation to Pennyrope, Defford Road, Pershore. This certificate seeks to establish the Lawfulness for existing use of residential dwelling without conditions imposed by Outline Planning Permission W/1685/80/O and Reserved Matters W/83/1321.

Accompanying this application is a planning statement prepared by Gateway Planning Consultants

**Background to the Proposal**

Under planning ref W/1685/80/O planning permission was given in outline for an agricultural worker dwelling with an occupation condition being condition 3 of outline planning permission granted for a dwelling at Ridgway Bank Nurseries.

Condition 3 stated that :-

*The occupation of the dwelling shall be limited to a person solely or mainly employed or last employed in the locality in agriculture as defined in section 290(1) of the Town and Country*

*Planning Act 1971, or in forestry (including any dependants of such a person residing with him) or a widow or widower of such a person.*

The Reserved Matters ref W/83/1321 was also approved with plans stamped as approved by the LPA 18/1/1984.

### Specific Proposal before us

The application looks to demonstrate that the property approved under planning permissions W/1685/80/O and W/83/1321 was not erected in the correct location and therefore the property erected is a separate planning entity, materially different to the planning approvals outlined.

On the basis of the above the application will need to demonstrate that the dwelling was erected in a materially different manner to the approved development and that the property as erected has been present for a period in excess of 4 years.

### Built location of the property

The evidence provided in the supporting statement outlines that the dwelling present on the site differs from the approved by using 4 different reference points;

Between points (A-A') the discrepancy is 5.60 metres

Between points (B-B') the discrepancy is 5.87 metres

Between points (C-C') the discrepancy is 5.46 metres

Between points (D-D') the discrepancy is 5.78 metres

In order for a certificate to be granted, the difference between the approved and as built dwellings must be material so that the development was unauthorised. It is not enough that there are minor changes that are inconsequential in planning terms. In this case this dwelling has another dwelling and buildings near to it and other reference points to mark from, such as the hard standing, therefore, it is possible to measure and gauge differences.

The footprint of the dwelling as approved does overlap the dwelling as built but there is a difference of between 5m-6m with the dwelling being built further South of the approved position. It is clear from the plans and aerial photographs the dwelling as built is closer to the Southern boundary of the site. As such this is considered to be a material difference in this instance between the house as approved and as built, so that the development would have been considered to be unlawful and would have been the exposed to enforcement action at the appropriate time. However, no such enforcement action was commenced or any correspondence related to the unauthorised nature of the development initiated by the Council within the required 4 year period.

On the basis of the above it is considered that the building was constructed in a materially different location to the approved dwelling and should therefore be considered as a separate planning entity unrelated to either or any of the relevant original planning permissions.

### Age of the dwelling constructed

The application has been provided with a number of aerial photographs dating back to 2005. The evidence provides a clear indication that the dwelling has been substantially completed for a period in excess of the 4 years. There is no evidence known or available to the Council which disputes the claims made within the application.

### Conclusion

In view of the above the application has demonstrated that the property was erected in a materially different location to the property approved under planning approvals W/1685/80/O and W/83/1321.



The property therefore has no formal planning permission and is not associated with any of the restrictive conditions present on the referenced planning approvals.

The application has proven that on the balance of probability the dwelling as erected has been constructed for a period in excess of 4 years and therefore in accordance with section 171 B and 191 of the Town and Country Planning Act 1990 (as amended) no enforcement action regarding erection of the dwelling can be taken.

**Recommendation:**

Please see attached Draft Decision Notice

**Member Involvement/Consultation: NO**

**CIL Liable ? : NO**

**Case Officer Initials :**

[Redacted]

**Date : 18.05.2023**

[Redacted]

Sean Herbert  
Date:19 May 2023



# ANNEX I – APPEAL DECISION: MALPASS & SOUTH STAFFORDSHIRE DISTRICT COUNCIL, DECEMBER 2017

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## Appeal Decision

Site visit made on 11 December 2017

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

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

Decision date: 15 December 2017

Appeal Ref: APP/C3430/X/17/3178669

Monkspath Farm, Bell Road, Trysull, Wolverhampton WV5 7JB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 [hereinafter "the 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 Mrs D Malpass, Mrs D Smith & Miss K Smith against the decision of South Staffordshire Council.
- The application Ref 16/01033/LUE, dated 24 November 2016, was refused by notice dated 1 February 2017.
- The application was made under section 191(1)(b) of the Act.
- The operation for which an LDC is sought is: "Residential dwelling without conditions imposed by permission SSDC/0913/95" [Source: section 8 of the application form].

### Decision

1. The appeal is allowed and attached to this decision is an LDC that describes the existing operation which is considered to be lawful. A plan that identifies the building, edged in red, is attached to the LDC.

### Preliminary matters

2. An accompanied site inspection<sup>1</sup> was scheduled to take place at midday on 11 December 2017. After I had arrived in the vicinity of the appeal site I was telephoned by The Planning Inspectorate's Case Officer to be advised that both main parties had expressed concerns about attending the scheduled inspection due to the snowy conditions. Emails were subsequently received from both main parties to indicate that they were content for me to do the visit on an unaccompanied basis, which I proceeded to do<sup>2</sup>. It was only subsequently that I saw the Council's email, which says: "Please also be advised that the Planning Officer has not taken measurements on site therefore does not have any evidence to dispute that the dwelling has been built in accordance with plan K14924/3. The Planning Officers argument is that the difference between the 'as proposed' position and the 'as built' position is not materially different". I have taken this position statement into account in dealing with this appeal.
3. The Planning Practice Guidance ['the Guidance'] advises that the Applicant is responsible for providing sufficient information to support an application for an LDC. It says: "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

<sup>1</sup> By reference to the questionnaire the reason for it being accompanied is said to be that the appeal site cannot be seen from public land rather than it being essential for the Inspector to check measurements [see question 2.b.].

<sup>2</sup> As a matter of courtesy I did briefly speak to Mrs Smith, who was at Monkspath Farm, to explain the agreed position of the Council and her Agent.

sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability”<sup>3</sup>. However it also makes clear: “Without sufficient or precise information, a local planning authority may be justified in refusing a certificate”<sup>4</sup>. Those sentiments apply equally to an Inspector at appeal stage and the evidential tests relate in substance to the operational development at issue in this appeal.

4. Section 10 of the application form indicates that the building works were substantially completed on “30/12/1997” and I have been given no reason to doubt this. Paragraph 5.3.1 of the Council’s delegated report records that it accepts that the building has been in situ for more than 4-years which, in context, must be read by reference to the date of the application, which is 24 November 2016. I propose to deal with this appeal on this basis.
5. The issue between the parties is whether the dwelling was built with or without the benefit of planning permission. It is agreed that planning permission was granted for an agricultural dwelling under the Council’s reference 0913/95<sup>5</sup> on 13 February 1996. I have been provided with a copy of that decision and note that it was granted subject to 8 conditions, including an agricultural occupancy condition [No 1]. The only other condition of any significance is No 2, which required samples of materials to be submitted to and approved by the Council. However the condition has no implementation clause and so it might have been discharged at the point that the Council gave its written approval. So whilst I have considered the implications of the condition I do not regard it to be a true condition precedent that goes to the heart of the planning permission. As such the matter in dispute is essentially whether the dwelling has been built in the right place, because there is no other condition that pertains to the dwelling<sup>6</sup>.

#### Main issue

6. The onus of proof falls on the Appellant to show that the dwelling was not built in accordance with planning permission SSDC/95/00913.

#### Reasons

##### A review of the evidence

7. The plans that have been submitted as part of the application subject of this appeal appear to show that the dwelling has been built further north than was permitted<sup>7</sup>. The south-west corner of the dwelling is said to be 7.1 m different and the south-east corner is said to be 6.87 m different, with the variation in the respective differences arising from a 0.61 degree rotation of the dwelling.
8. I have considered what weight should be given to the submitted plans. The Methodology says the ‘as constructed’ plan was produced following a full site survey by reference to external points and that the dimensions were taken in line with RICS measurement guidance. The accompanying Planning Statement says that the measurements were undertaken by a Chartered Surveyor. In the circumstances there is no reason to think that plan is anything but a faithful representation of what has been built and I attach it considerable weight. My view in this matter is confirmed by the Council’s position, as recited previously.

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<sup>3</sup> Source of quote: paragraph ID: 17c-006-20140306.

<sup>4</sup> Source of quote: paragraph ID: 17c-005-20140306.

<sup>5</sup> Referred to in the form SSDC/0913/95 in the description, which I propose to adopt elsewhere in my decision.

<sup>6</sup> The other conditions relate to peripheral matters such as landscaping, the access and foul drainage.

<sup>7</sup> The Planning Statement [page 7 of 25] and the delegated report [paragraph 5.4.6] both refer to the dwelling having been built south of its approved position. However that is not what the plans are telling me.

9. The plan in respect of which I have greater reservations is the 'as approved' plan. The Methodology states: "The original plan [singular] approved under SSDC/95/00913 was obtained...as a print out from Microfiche film. The only site plan available is a 1:2500 Location Plan. There is a scale ruler attached adjacent to the plan, however due to the scale these measurements were double checked to ensure a better degree of accuracy. As I could not guarantee that the plan had not been reduced or enlarged in the scanning process I checked the scale using dimensions which are known"<sup>8</sup>.
10. I have not been provided with any of the "accompanying plans"<sup>9</sup> that were permitted pursuant to planning permission SSDC/95/00913, but from this phrase it would appear that more than one plan was approved. This appears to give rise to a tension with the reference in the methodology to an "original plan". My view is consistent with the fact that what was permitted was a full grant of planning permission and so it stands to reason that the approved plans include something other than a 1:2500 scale location plan on the microfiche.
11. Although I have no reason to doubt there is no other plan showing siting relative to existing features, taking measurements from a plan of this scale might introduce a margin of error. To take an example, the measurements that have been taken include one of 27 m, but the comparison is then made to an actual measurement of 22.85 m. I would find it difficult to accept that it would even be possible to take a measurement to that degree of accuracy, i.e. 22.85 m, from a 1:2500 scale location plan. On this basis alone there appears to be scope to introduce a margin of error. This is, of course, before one allows for the acknowledged variation arising from the scanning/microfiche process.
12. Moreover implicit to the "Built as approved" measurement of 22.85 m is that the dwelling was built to the dimensions that were permitted. However because none of the approved plans have been provided I am unsure on what basis it is asserted that the permitted length of the rear of the dwelling was 22.85 m. I have no reason to doubt that this is an actual measurement<sup>10</sup> but the potential discrepancy arises from what was permitted. First none of those plans have been provided but second, assuming they exist, they would appear to be on the microfiche and subject to the same potential variation. Accordingly the entire basis on which the 'as approved' plan has been produced is questionable. In the circumstances I attach only moderate weight to the 'as approved' plan.
13. The difficulty I have is that the Council has not raised any of these arguments. It says the "...photographs of the dwelling as constructed appear to accord with the approved elevation plans in terms of appearance and size"<sup>11</sup>. The first point I take from this statement is confirmation that there is another plan, other than a 1:2500 location plan, which shows the approved elevations; this confirms my earlier assumption. However the more significant point is that implicit to this sentence is that the Council appear to accept that the dwelling has been built, in particular, to the right size. If there might be scope for any doubt the point is unambiguous from the second sentence in paragraph 5.4.6, which says: "The materials, appearance, height and size of the building are all

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<sup>8</sup> Source of quote: Appendix 9 to the Planning Statement.

<sup>9</sup> Source of quote: the face of the planning permission. The Agent's letter dated 23 June 2017 purports to list all the plans and drawings sent to the Council as part of the application, but does not list those plans, and the copy of the Planning Statement with which I have been supplied does not include them either [no copy in Appendix 1].

<sup>10</sup> Annotated on drawing No KI4924 3.

<sup>11</sup> Source of quote: paragraph 5.4.5 of the delegated report.

as approved". On that basis I consider that any potential ambiguity about whether the dwelling has been built as permitted cannot be sustained.

14. In the next paragraph the Council unambiguously says: "the dwelling has been built roughly 7.10 m south (at its furthest point) of its approved position"<sup>12</sup> [my emphasis]. It is evident from this terminology that the Council has accepted the magnitude of difference based on the methodology. In the circumstances, since it appears to be common ground that the siting is different, I intend to deal with this appeal on this basis despite my not insignificant concerns about how these figures have been calculated. In doing so, bearing in mind the scope for an appeal decision to set a precedent<sup>13</sup>, I wish to put down a marker that the concerns I have outlined might need to be critically assessed elsewhere.

#### Testing the evidence against legal principles

15. Having reviewed relevant case law<sup>14</sup>, the Council summarises what it takes to be the key legal principles in paragraph 5.4.4 of its delegated report. The key test is whether any differences between what has been built and what was approved are material. I agree the judgement of materiality in any particular case is one of fact and degree. This will depend on the circumstances of the case and so whilst a series of examples of LDCs granted by other Councils are relied upon I do not find these to be of much assistance to this particular case.
16. Drawing No KI4924 2 shows the comparison of the dwelling as approved under permission 0913/95 with that constructed. It is evident from this plan that, in line with the Lydeard Hill House appeal, there has been a wholesale shift in the footprint of the dwelling. I accept the Council's claim that the 'as built' footprint still overlaps the 'as approved' position in parts, but the degree of overlap is small, and significantly less than 50 %. No part of the erected building, such as the front projection, appears to wholly accord with the siting of what was permitted. Although the Council says that the different position would not have had other implications, for example in terms of proximity to neighbours, this appears to go beyond the fact and degree assessment that is required.
17. In Sage, Lord Hobhouse of Woodborough, giving the leading judgment, held that: "...if a building operation is not carried out, both externally and internally, fully in accordance with the permission, the whole operation is unlawful"<sup>15</sup>. The very notion of materiality determines that it is appropriate to apply a degree of common sense to the absolute language of this quote. However I cannot agree, as a matter of fact and degree, that a difference in siting of approximately 7 m can be said to be de minimis, as the Council claims. For the Appellants it is asserted that the Lydeard Hill House appeal related to a dwelling built 5.5 m further south-east than it should have been and this figure is not challenged. The fact that the evidence points to a more significant departure from what existed in that case, tends to support my conclusion in terms of materiality.
18. The Council draw comfort from the Handoll judgment, because it says in this instance the deviation from the approved plan would not have been clearly apparent from a cursory inspection. I accept that on the facts of that case the

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<sup>12</sup> Source of quote: paragraph 5.4.6 of the delegated report. Again this should be north, not south.

<sup>13</sup> Evident from the fact that reliance is placed on appeal decision APP/V3310/X/11/2165101 at Lydeard Hill House in Somerset in this appeal.

<sup>14</sup> Sage v SSETR [2003] UKHL 22 and Handoll & Suddick v Warner Goodman and Street (a Firm) & Others (1995) 70 P & CR 627.

<sup>15</sup> Source of quote: paragraph 23 of the transcript.

departure was significantly greater and of the order of 27.4 m, as the Council calculate. However this submission might be based on a quote from what Lord Lane said in the earlier case of *Kerrier DC v SSE* [1981] P & CR 284 [at 288], which was expressly disapproved in *Handoll*. Even if this is instead based on a factual distinction I disagree. Whilst acknowledging that the departure in that case was of a greater magnitude, I am satisfied the difference at issue here is material and the claim that it might not have been immediately evident from a cursory inspection, for example when walking the highway, does not alter that.

19. On the main issue I conclude that the Appellant has shown that the dwelling was not built in accordance with planning permission SSDC/95/00913. Since the planning permission was not implemented and the period for enforcement action against the building operation has expired, the development is immune from enforcement action and therefore lawful.

#### Other matters

20. I have not been provided with a conventional site plan that shows the land edged red. The document that is labelled "SITE PLAN - 226523 - monkspath location Plan.pdf" comprises a 1:7500 scale "Promap" on which the site is only identified with a big arrow, which I consider to be insufficiently precise for my purpose. However because I am certifying the lawfulness of the building operation I consider that it would be appropriate to utilise the area edged red on drawing No KI4924 3 entitled "Plan showing dwelling as constructed" for the purpose of the LDC. This has the advantage of showing precise measurements to the boundaries, which might not otherwise be capable of being taken from a scanned plan. Any consequential issue, such as the extent of curtilage, would become a matter for subsequent consideration if it ever became in issue.

#### Conclusion

21. For the reasons given, and having regard to all other matters raised, I conclude that the Council's refusal to grant an LDC for a residential dwelling without conditions imposed by permission SSDC/0913/95 at Monkspath Farm, Bell Road, Trysull, Wolverhampton WV5 7JB was not well founded. The appeal will succeed and I shall exercise the powers transferred to me in section 195 (2) of the Act.

*Pete Drew*

INSPECTOR



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# Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2015: ARTICLE 39

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IT IS HEREBY CERTIFIED that on 24 November 2016 the operation described in the First Schedule hereto in respect of the building specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Act, for the following reason:

1. The dwelling was substantially completed more than four years before the date on which the LDC application, the subject of this appeal, was made and because the dwelling was not built in accordance with planning permission Ref: SSDC/0913/95 no enforcement action may now be taken.

Signed

*Pete Drew*

Inspector

Date: 15 December 2017

Reference: APP/C3430/X/17/3178669

First Schedule

Residential dwelling without conditions imposed by permission SSDC/0913/95.

Second Schedule

Monkspath Farm, Bell Road, Trysull, Wolverhampton WV5 7JB

## NOTES

This certificate is issued solely for the purpose of Section 191 of the Act.

It certifies that the operation described in the First Schedule that has taken place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the Act, on that date.

This certificate applies only to the extent of the operation described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the Local Planning Authority.



## Plan

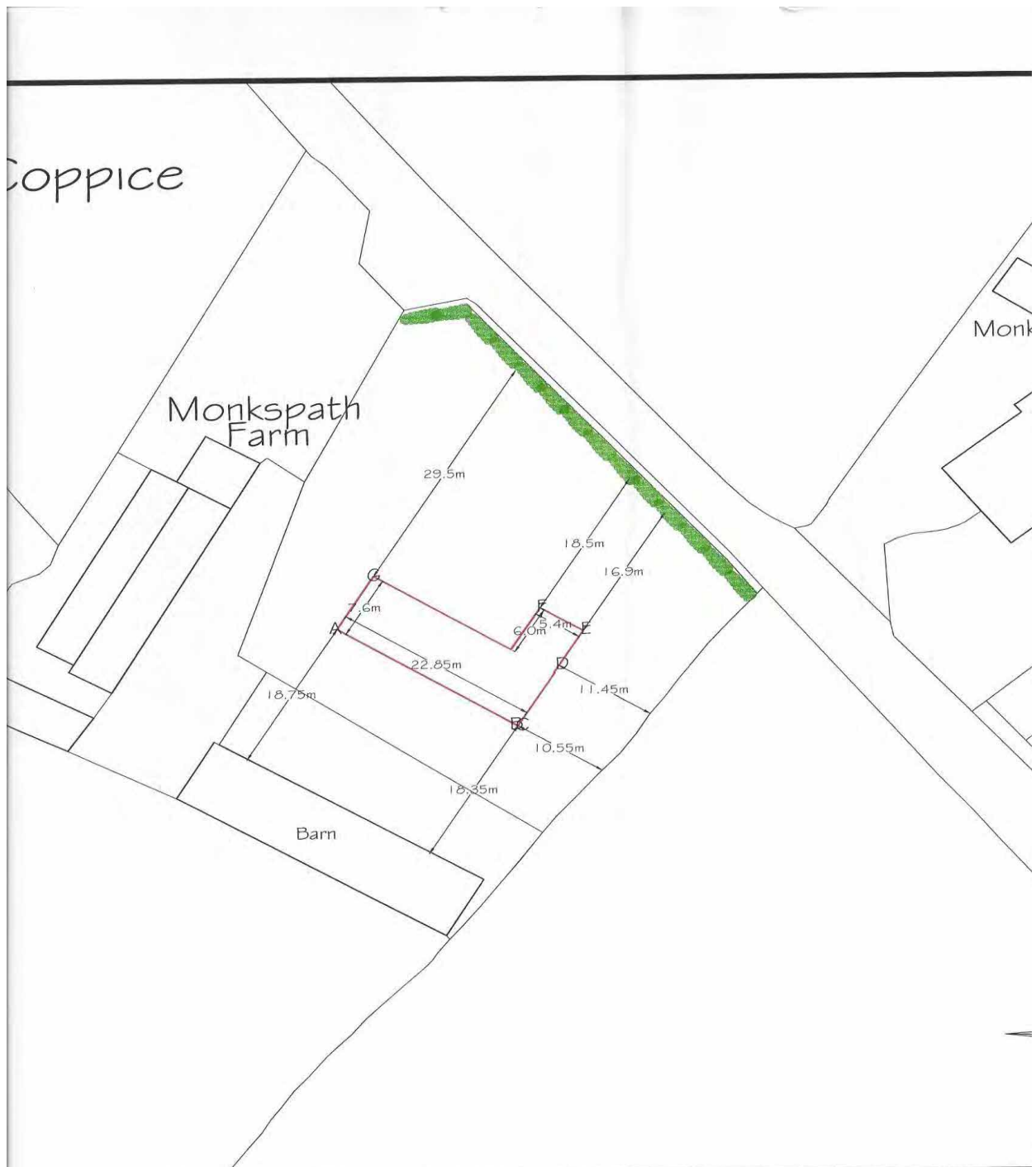
This is the plan referred to in the Lawful Development Certificate dated:

by Pete Drew BSc (Hons), Dip TP (Dist) MRTPI

Land at: Monkspath Farm, Bell Road, Trysull, Wolverhampton WV5 7JB

Appeal Reference: APP/C3430/X/17/3178669

Scale: Do not scale as original plan has been scanned which might cause variations.



# ANNEX J - APPEAL DECISION: L DAVENPORT & BROMSGROVE DISTRICT COUNCIL, JULY 2015

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# Appeal Decision

Site visit made on 13 July 2015

by P N Jarratt BA(Hons) DipTP MRTPI

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

Decision date: 28 July 2015

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Appeal Ref: APP/P1805/X/14/3000650

Badgers Bank Farm, New Road, Fairfield, Bromsgrove, Worcs., B61 9LP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 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 Mrs Leonora Davenport against the decision of Bromsgrove District Council.
  - The application Ref 14/0150, dated 15 January 2014, was refused by notice dated 21 May 2014.
  - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
  - The development for which a certificate of lawful use or development is sought is a residential dwelling without conditions imposed by B13140.
- 

## Preliminary matters

1. For the avoidance of doubt, I should explain that the planning merits of any future use or operations are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case, and on relevant planning law and judicial authority. The burden of proof rests with the appellant and the appropriate test of evidence is the balance of probabilities.

## Main Issue

2. I consider that the main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

## The Site and Relevant Planning history

3. The dwelling at Badgers Bank Farm is a detached chalet style dwelling set in its own gardens and accessed off a private drive.
4. Outline planning permission was granted in August 1985 for the erection of a bungalow subject to conditions, including an agricultural occupancy condition. (B13140). Approval of reserved matters was granted in July 1986 also subject to conditions (B14100).
5. An application to remove the agricultural occupancy condition in 2013 failed in the absence of evidence to establish there was no longer a need to retain the dwelling for agricultural workers.

### The case for the appellant

6. The appellant states that the dwelling, attached garage and driveway were not built in accordance with the plans approved under application B14100. It was therefore unlawful at the time of construction and the planning permission and its associated conditions have now lapsed in their entirety.
7. In particular, the appellant contends that the dwelling has been shifted from its proposed position some 8.02m to the SSE. Additionally there are other significant differences with the approved plans:
  - a) The access track from Mount Road was not constructed
  - b) Windows inserted in first floor on both side elevations
  - c) Additional door inserted in front elevation
  - d) Garage constructed with two single doors and not a double door.
  - e) Front door and side lights differ from that permitted
  - f) Additional window on ground floor rear elevation
  - g) Roof provides canopy over rear access to boot room
  - h) Door rather than window in rear elevation
  - i) Ridge height 0.48m higher than permitted
  - j) Chimney in utility room replaced with stainless steel flue
  - k) The front wall of the garage has been extended across the front elevation to enclose the coal and log stores and created instead a boot room.
  - l) Roof lights inserted in rear roof slope
  - m) Garage 15% larger than permitted and constructed to be 6.24m wide rather than 5.43m
8. There have been no significant external alterations to the property since it was built and the structure of the property exists today as it did in 1988<sup>1</sup>. As the dwelling was substantially completed more than four years before the application for an LDC it is immune from enforcement action.

### The case for the Council

9. In April 1988 the agent stated that the building had been constructed in accordance with the approved plans, albeit regarding building regulations.
10. The alterations to the external envelope of the dwelling are de minimis or non-material and the general layout and appearance of the building is not materially different to the 1986 approval. The access track has never been constructed and represents a failure to complete the development and not a deviation from the permission. The overall dwelling position does not deviate from the approved drawings. The size of the site and the nature of the site as open agricultural land would have made it difficult to establish an accurate reference point to start construction. As the 'as built' and 'as approved' overlap, along with the size of the plot and its isolated location means that the 'as built' position of the dwelling is not considered to be materially different.

### Reasons

11. This case rests on whether the differences between what has been approved and what has been built are material or not. This is a subjective judgement based on a fact and degree assessment dependent on the individual circumstances of the case.

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<sup>1</sup> This is confirmed in a Statutory Declaration by the appellant dated 10 January 2014.

12. In *Commercial Land*<sup>2</sup>, it was held that in assessing whether a material operation is 'comprised in the development' it is not sufficient to consider the differences between 2 plans but to consider the significance of the differences. Although this case deals with the issue of substantial completion rather than implementation, I consider the main point to be useful in this appeal.
13. The differences identified above in paragraph 7 (a) – (m) are not in dispute, only their materiality. I agree with the Council that the fact that the access track has never been constructed represents a failure to complete the development, rather than a deviation from the permission. The enlarged garage and increased ridge height would normally be material in an otherwise built up area with closer neighbours but in this location in open countryside the effects of these changes are not sufficiently significant in themselves to be determinative. The majority of the other changes are cosmetic and do not materially alter the appearance of the dwelling.
14. The most significant issue is the siting of the dwelling which the appellant states has been shifted by 8.02m and shown in the appellant's Appendix 5 of the Planning Statement. This is a very precise figure and because of the nature and small scale of the plans attached to the original permission and without a measured survey, I find it difficult to understand how this distance has been measured or whether it under-estimates the degree of overlap between the 'as built' and the 'approved' positions. Nevertheless, this degree of shift has not been disputed by the Council and it is evident from the submitted plans, aerial photographs and from observation on the site that the dwelling, as a matter of fact and degree, is in a different position to that approved. The degree of shift is not small but is of several metres which I regard to be significant and materially different, even though the building plot was originally in the corner of a field and some distance from its neighbours.
15. As a consequence, the dwelling has not been built in accordance with the approved plans but has been built without planning permission. As stated in *Handoll*<sup>3</sup>, if a development has been carried out other than in accordance with the planning permission granted it is unauthorised and unlawful, and therefore any conditions attached to the permission can have no effect on it. The relevant permission has not been implemented and the Council could have taken enforcement action any time up to 4 years after the development was substantially completed. This was not done and the development is immune from enforcement action.
16. I note that the Council has relied on an assurance that the building had been constructed in accordance with the approved plans under the building regulations but there is no guarantee that these would have been the same plans as approved through the planning permission.
17. I have also had regard to the various appeals and local authority decisions referred to by the appellant.

## Conclusions

18. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a lawful development certificate was not well-founded

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<sup>2</sup> *Commercial Land v SSTLGR* (2002)

<sup>3</sup> *Handoll v Warner, Goodman and Streat & East Lindsey DC* [1995] JPL 930 (CA)

and that the appeal should succeed. I will exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

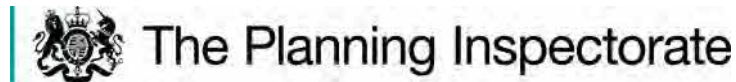
Formal decision

19. The appeal is allowed and attached to this decision is a lawful development certificate describing the extent of the existing operation considered to be lawful.

*P N Jarratt*

INSPECTOR





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## Lawful Development Certificate

APPEAL REFERENCE APP/P1805/X/14/3000650  
TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191 or 192  
(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2010: ARTICLE 35

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IT IS HEREBY CERTIFIED that on 15 January 2014 the operations described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and edged in black and red on the plan attached to this certificate was lawful within the meaning of section 192(1) of the Town and Country Planning Act 1990 as amended, for the following reason:

The dwelling as built is materially different to the dwelling permitted under planning permission references B13140 and B14100 such that the original permissions were not implemented. As the 'as built' dwelling was substantially **completed in excess of four years prior to the application for the LDC**, it is immune from enforcement action and the conditions imposed on the original permissions do not apply.

*P N Jarratt*

INSPECTOR

Date 28.07.2015

First Schedule

Residential dwelling without conditions imposed by Planning Permission B13140

Second Schedule

Badgers Bank Farm, New Road, Fairfield, Bromsgrove, Worcs., B61 9LP

## NOTES

1. This certificate is issued solely for the purpose of section 191 or 192 of the Town and Country Planning Act 1990 as amended.
2. It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

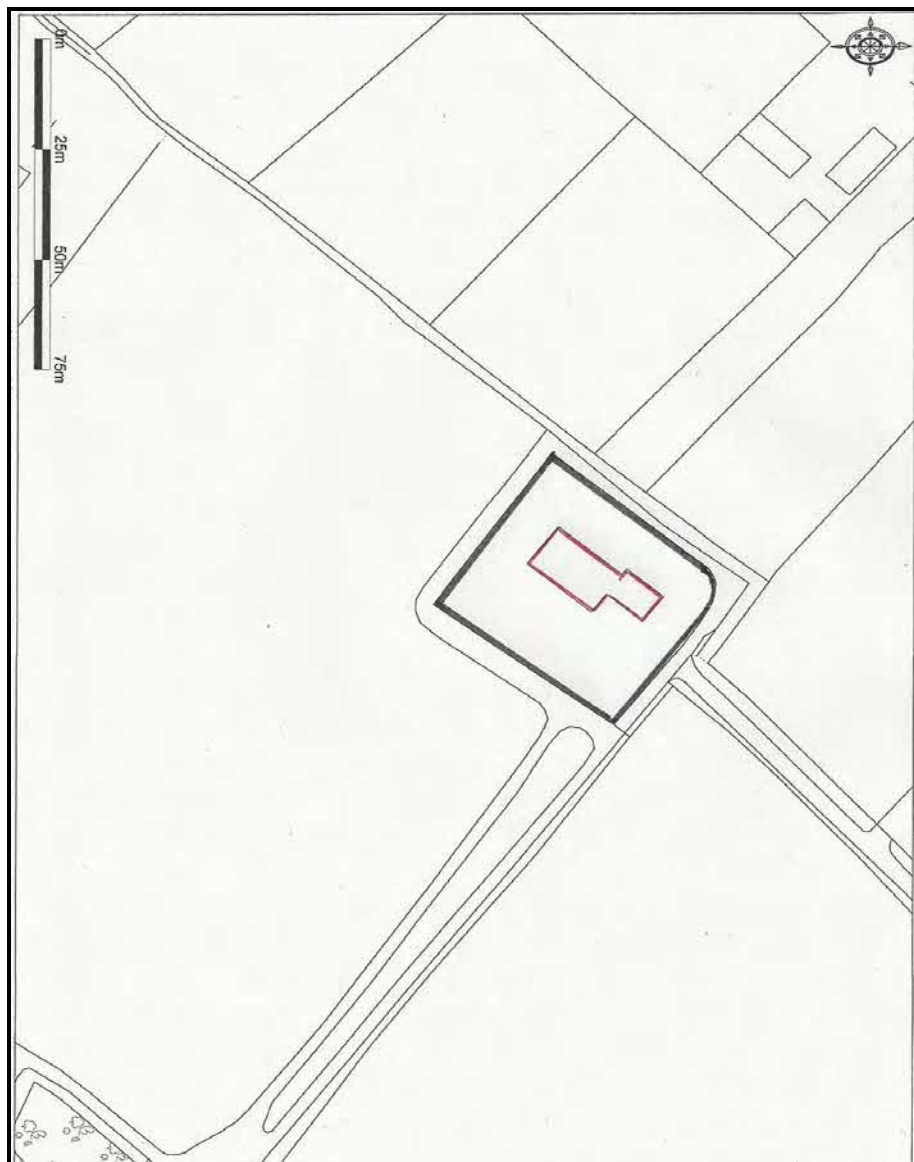
## Plan

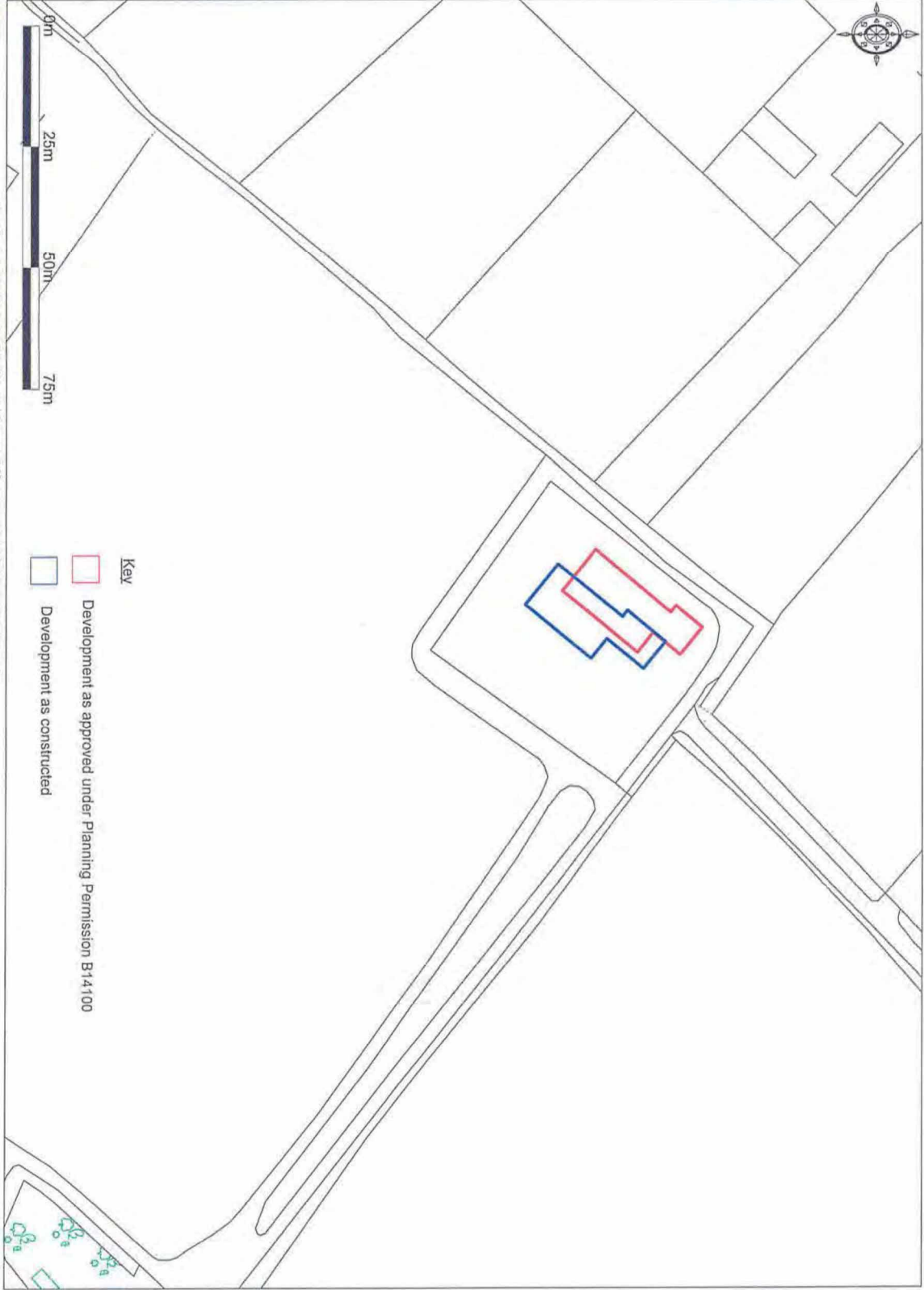
This is the plan referred to in the Lawful Development Certificate dated: 28.07.2015



by P N Jarratt BA(Hons) DipTP MRTPI  
Badgers Bank Farm, New Road, Fairfield, Bromsgrove, Worcs., B61 9LP  
Appeal ref: APP/P1805/X/14/3000650

Scale: Do not scale

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- Key
-  Development as approved under Planning Permission B14/100
  -  Development as constructed



Ordnance Survey © Crown Copyright 2014. All rights reserved. License number 100023432. Plotted Scale - 1:1250

# ANNEX K - APPEAL DECISION: PHILLIPS & CARMARTHENSHIRE COUNCIL, DECEMBER 2014

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## Penderfyniad ar yr Apêl

## Appeal Decision

Ymweliad â safle a wnaed ar 03/11/14

Site visit made on 03/11/14

gan James Ellis LLB (Hons) Cyfreithiwr  
Arolygydd a benodir gan Weinidogion Cymru

by James Ellis LLB (Hons) Solicitor  
an Inspector appointed by the Welsh Ministers

Dyddiad: 03/12/14

Date: 03/12/14

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Appeal Ref: APP/M6825/X/14/2220344

Site address: Llys Helyg, Drefach Felindre, Llandysul, Carmarthenshire SA44 5YL

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 195 of the Town and Country Planning Act 1990 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 D Phillips against the decision of Carmarthenshire County Council.
  - The application Ref: W/29174, dated 22 January 2014, was refused by notice dated 14 April 2014.
  - The application was made under section 192(1) (a) of the Town and Country Planning Act 1990 as amended ("the Act").
  - The use for which a certificate of lawful use or development is sought is use as a residential dwelling without any agricultural occupancy condition.
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### Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

### Main Issue

2. The main issue in this case is whether or not the dwelling which has been erected on the appeal site has the benefit of outline planning permission Ref: D4/21758 and reserved matters approval Ref: D4/22093 which sought to impose agricultural occupancy conditions on the dwelling.

### Reasons

3. A predecessor authority to the Council granted outline planning permission under Ref: D4/21758 on 14 January 1992 for the siting of an agricultural workers dwelling at Penllwyn, Felindre, Llandysul. Some matters were reserved and a number of conditions were imposed. Condition 1 states that: "The occupancy of the proposed dwelling shall be limited to a person solely or mainly employed in agriculture as defined by section 336(1) of the Town and Country Planning Act 1990 (including dependents of such person residing with him) or a widow or widower of such person on the holding as delineated on the application plan dated 03/10/91 the total area of which approximates to 110 acres as substantiated on the agricultural questionnaire as submitted on the 03/10/91".

4. Condition 7 attached to the outline permission went on to state that: "A detailed landscaping scheme for the whole site including the retention of any existing landscape features and the indication of species, size and number of trees and/or shrubs to be planted shall be submitted to and specifically approved in writing by the Local Planning Authority prior to the commencement of the development and shall, following approval of such a scheme, be implemented in the first planting season following commencement of the development or at such other time as may be specifically approved in writing by the Local Planning Authority".
5. On 17 March 1992, the Council's predecessor authority granted reserved matters approval under Ref: D4/22093 for the agricultural dwelling. The occupancy condition attached as condition 1 to the outline permission was repeated as condition 1 to the reserved matters approval and the landscaping condition attached as condition 7 to the outline permission was repeated as condition 6 to the reserved matters approval. Plans approved pursuant to the reserved matters approval clearly show the site of the approved dwelling within a compact plot.
6. The appellant is now contending that the dwelling (which I am told was constructed in the mid-1990s) does not have planning permission because of two factors. First of all, it is said that location of the dwelling is not as shown on the approved plans. The second factor is that landscaping conditions attached to the outline permission and the reserved matters approval (which the appellant considers to be conditions precedent) have not been complied with. I shall now examine the first factor, and then the second, should the need arise.

#### The location of the building

7. The appellant commissioned a report from Cleford Essex Associates Ltd on the layout of the appeal site. This found that the dwelling as constructed is in the order of 6.7 metres further west and 7.0 metres (at its maximum) further south relative to the road frontage than that shown on the site layout plan approved pursuant to the reserved matters application. The report also said that the building has been rotated approximately 18 degrees clockwise from that shown on the approved plan. A plan produced by Cleford Essex Associates shows that whilst a relatively small part of the dwelling as built overlaps with the approved dwelling, the bulk of the dwelling as built is divergent to the approved plan. This information has not been challenged by the Council.
8. The Council contends that the difference between the site of the dwelling as built and that shown on the approved plan is not material and that, consequently, the dwelling was built pursuant to the outline planning permission and the reserved matters approval, with the building being subject of the agricultural occupancy conditions. It sought reliance on a case in support of its argument, namely *Handoll and Suddick v Warner Goodman and Streat (a firm) and Others* (1995) 7 P&CR 627 and a reported appeal decision, namely *Westcott V Exmoor National Park Authority J.P.L.* 2014 1.251-8.
9. In *Handoll and Suddick*, the Court of Appeal held that the case of *Kerrier District Council v Secretary of State for the Environment* (1981) 41 P&CR was wrongly decided and that if a development does not comply in a material respect, or to a material extent, with the permission granted, an occupancy condition attached to that permission cannot apply to the unauthorised development. However, the Council drew a distinction between the dwelling in *Handoll and Suddick*, which was built some 90 feet (about 27.43 metres) from its approved site and on land away from that which

had the planning permission, and the building the subject of this appeal. In the reported appeal decision, the Inspector 'fairly acknowledged' the National Park Authority's belief that the differences between the permission and what was built, individually or cumulatively, were non-material, with the deciding factor being the significance of impact as a result of the differences. These differences were found to "fall within the normal tolerances and minor variations inherent to the construction process".

10. The Council says that from the case law and reported decision it is evident that whether a development has caused the permission to become a nullity would depend on the level of significance as to the impact as a result of the change, whether the change alters the heart of the consent, and whether the dwelling as built had been located outside the area which constitutes the land to which the permission relates. I will deal with these points in reverse order.
11. If a dwelling is located outside the area which constitutes the land to which the permission relates, this is indicative that the difference in location is material. However, this does not mean to say that if a dwelling is built within its plot (as shown on the approved plans) but in a different location to that shown on the approved plans, the difference in location would not be material. Logically, if this were not to be the case, a dwelling could be built anywhere within its plot and be found to comply with its planning permission.
12. The question of whether or not a pre-condition goes to the 'heart of the consent' is a well-known concept, but I am not convinced by the Council's point that whether a change 'alters the heart of the consent' is relevant to a situation, such as that before me, where a change in location is under consideration. It seems to me that the simple question to be asked is whether or not the change is material.
13. In the reported appeal decision, the Inspector found that there were a number of differences between the building that had been built and that which had the benefit of permission. Some differences related to design and height. There, the Inspector did consider the impact of the changes in terms of views from public vantage points. The alignment of a wall had also been changed, but by about 200-300mm, which the Inspector found to be insignificant. In this context, he did not refer to alignment in terms of impact.
14. However, from the above, I accept that it could be argued that impact could be a determining factor in some cases where a building has been built in a different location to that which has planning permission. In the case before me, the building has not been built on a different site as was the case in Handoll and Suddick and it is not 27.43 metres away from where it should be. On the other hand, there has not been a realignment of somewhere in the region of 200-300mm. The differences between the location of the building before me that has been built and that which received planning permission are set out in paragraph 7 above. To my mind, the differences are of such an extent that the change in location of the building is material, irrespective of whether or not the change has had an adverse impact on views towards the building from the public realm. To put it another way, I certainly do not regard the change in location as "falling within the normal tolerances and minor variations inherent to the construction process".
15. The Council says that when a planning application for an extension to the dwelling was approved under Ref: W/28021 in 2013, the change in position was noted but considered to be minor and that no action was necessary. This adds little, if any,



weight to the Council's detailed submissions to which I have already referred. After having regard to those submissions, I have taken a different view from the Council on the question of materiality.

16. I therefore find, as a matter of fact and degree, that the building the subject of application Ref: W/29174 was not constructed with the benefit of outline planning permission Ref: D4/21758 dated 14 January 1992 and approval of reserved matters Ref: D4/22093 dated 17 March 1992. Consequently, the building is not bound by the agricultural occupancy conditions attached to the outline planning permission and the reserved matters approval. It follows that at the date of application Ref: W/29174, the building could have been used as a residential dwelling without any agricultural occupancy condition.

Breaches of conditions

17. I do not now need to go on and consider the breaches of the landscaping conditions as I have already found that at the date of application Ref: W/29174, the building could have been used as a residential dwelling without any agricultural occupancy condition.

Conclusion

18. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed use of Llys Helyg, Drefach Felindre, Llandysul, Carmarthenshire SA44 5YL as a residential dwelling without any agricultural occupancy was not well founded and that the appeal should succeed in this respect. I will exercise the powers transferred to me under section 195(2) of the Act.

*James Ellis*

Inspector

## Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE)  
ORDER 1995: ARTICLE 24

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IT IS HEREBY CERTIFIED that on 22 January 2014 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate would have lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

'The dwelling on the land was constructed more than 4 years before the date of the application without the benefit of outline planning permission Ref: D4/21758/4 on issued by the Council's predecessor authority on 14 January 1992 and reserved matters approval Ref: D4/22093 issued by the Council's predecessor authority on 17 March 1992. Consequently, the conditions attached to the outline planning permission and the reserved matters approval (including the agricultural occupancy conditions) do not apply to the dwelling.'

Signed

*James Ellis*

Inspector

Date: 03/12/14

Reference: APP/M6825/X/14/2220344

First Schedule

Use as a residential dwelling without any agricultural occupancy condition

Second Schedule

Land at Llys Helyg, Drefach Felindre, Llandysul, Carmarthenshire SA44 5YL

NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use/operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful on the certified date and, thus, was/were 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 use/operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.
4. The effect of the certificate is subject to the provisions in section 192(4) of the 1990 act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



## Plan

This is the plan referred to in the Lawful Development Certificate dated:

by James Ellis LLB (Hons) Solicitor

Land at: Llys Helyg, Drefach Felindre, Llandysul, Carmarthenshire SA44 5YL

Reference: APP/M6825/X/14/2220344

Scale: Not to scale





# ANNEX L - APPEAL DECISION: T ROLFE & D PARKIN & SEDGEMOOR DISTRICT COUNCIL, JULY 2012

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## Appeal Decisions

Site visits made on 11 and 22 June 2012

by **Gareth Symons BSc(Hons) DipTP MRTPI**

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

Decision date: 24 July 2012

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**Appeal A: APP/V3310/C/12/2168366**

**Appeal B: APP/V3310/C/12/2168367**

**Lydeard Hill House, Aisholt, Spaxton, Somerset, TA5 1AR**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Tom Rolfe (2168366) & Ms D Parkin (2168367) against an Enforcement Notice (EN) issued by Sedgemoor District Council.
- The Council's reference is E/45/00122.
- The notice was issued on 15 December 2011.
- The breach of planning control alleged in the notice is, in short, failure to comply with condition No 4 of a planning permission Ref: 45/99/00008 granted on Appeal (Ref: APP/V3310/A/00/1036445/P2) on 19 May 2000.
- The development to which the permission relates is a detached agricultural dwelling house (200 sq m gross floor area) and associated garage/workshop to form a part of Quantock Poultry Farm. The condition in question is No (iv) which states that: The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or forestry, or a widow or widower of such a person, and to any resident dependants. The notice alleges that the condition has not been complied with in that the dwelling is being occupied by persons who are not solely or mainly employed or, being no longer employed, were last employed in the locality in agriculture as defined.
- The requirements of the notice are: Cease the occupation of the dwelling by persons other than those solely or mainly working in the locality in agriculture or forestry, or a widow or widower of such a person and any resident dependants.
- The period for compliance with the requirements is 12 months.
- Appeals A and B are proceeding on the grounds set out in section 174(2)(b) and (d) only. Although a fee was paid within the specified period on Appeal A for the application for planning permission deemed to have been made under section 177(5) of the Act as amended, the Appellant has confirmed that he does not wish this to be considered.

**Summary of Decision: The appeals are allowed and the EN is quashed as set out in the Formal Decisions section below.**

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**Appeal Ref: APP/V3310/X/11/2165101**

**Lydeard Hill House, Aisholt, Spaxton, Somerset, TA5 1AR**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 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 Tom Rolfe against the decision of Sedgemoor District Council.
- The application Ref: 45/11/00021/DRT, dated 15 July 2011, was refused by notice dated 10 November 2011.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is an agricultural workers dwelling.

**Summary of Decision: The appeal is allowed and a LDC is issued in the terms set out in the Formal Decisions section below.**

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**Application for Costs**

1. An application for a partial award of costs made by Sedgemoor District Council against Mr Tom Rolfe and Ms D Parkin is the subject of a separate Decision.

**Procedural Matters**

2. Under section 7 of the original form submitted to the Council for the LDC application it is indicated that the certificate is sought for an existing use. However, the Appellant's case is that the dwelling and the garage were not built in accordance with outline planning permission Ref: 45/99/00008 (reserved matters, Ref: 45/01/00007, were approved on 27 June 2001). Both buildings have existed for more than four years meaning that they are now immune from enforcement action and are now lawful. On this basis the requirement of condition (iv) of the outline permission, which is to occupy the dwelling only for agricultural or forestry purposes, does not apply. It seems to me that the LDC should therefore have been submitted as "an existing operation" under S191(1)(b) of the 1990 Act. I shall treat the application as having been made in this way.
3. Furthermore, the LDC application has been described as "an agricultural workers dwelling". However, given the nub of the Appellant's case, what the LDC should really be for is "a dwelling and associated garage" thus removing the reference to agricultural workers. I shall consider the appeal accordingly.
4. These are minor matters that do not affect the cases of either party.

**The LDC Appeal**

**Main Issue**

5. The Appellant has referred to differences between what has been built and the approved planning drawings. These differences are relied on to show that, in effect, planning permission, Ref: 45/99/00008, was not implemented. As such the house and garage were unauthorised development, they have now gained immunity from enforcement action, are now lawful, and thus not encumbered by the agricultural occupancy condition. This is the main issue.

**Material Differences**

6. Circular 11/95 *The Use of Conditions in Planning Permissions* refers at paragraph 29 to how an otherwise legally sound condition may prove unenforceable because it is imposed on a grant of planning permission for the carrying out of operations which have not been carried out in accordance with the approved plans. Reference is made to the Court of Appeal judgement *Handoll and Others v Warner Goodman and Streat and Others (1995)* which overturned a prior Divisional Court judgment.
7. Both cases concerned a planning permission for the erection of a dwelling subject to an agricultural occupancy condition. The footnote to paragraph 29 states, in part, that "*The apparent consequences of the Court of Appeal's judgement in the Handoll case are that (1) where the operational development*



*is carried out in a way which differs materially from approved plans, it amounts to development without planning permission; and (2) any conditions imposed on the planning permission for those operations are unenforceable because the particular planning permission has not been implemented. Authorities should ensure, in any case where planning permission has been granted for the carrying out of operations subject to conditions, that the operations do not materially differ from the approved plans”.*

8. The ‘test’ to be applied is whether any differences between what has been built and approved are material or not. This is a subjective judgement based on a fact and degree assessment dependant on the individual circumstances of the case. I shall look at the differences in this case against this background.
9. The approved and the built footprints for the house do not match. The house is further over to the southwest than it should be such that the front of the house only just overlaps with where the rear wall should have been. This is a wholesale shift over of the house. The Council say that had the original developer requested to re-site the house it would have been dealt with as a minor amendment to the approved drawings. However, this did not happen and I also disagree with this approach. The house is, as a matter of fact and degree, in a materially different place from where it was approved and that should have been subject to a fresh planning application.
10. The consequence of the above is that despite some minor alterations to the house design, such as to eaves and ridge heights that were sought and approved in 2001, and compliance with other conditions such as landscaping details, the house was not built in accordance with the approved plans. The development applied for included a garage. As the development being carried out was done in one operation and the house was materially in the wrong place, this meant that the whole scheme was development without planning permission. The relevant planning permission was not implemented. The Council could have taken enforcement action any time up to four years from when the development was substantially completed in 2002. That was not done and the development is now immune from enforcement action.
11. The development carried out is therefore free from the encumbrance of condition (iv) of planning permission Ref: 45/99/00008 which required the house to be occupied only by a person solely or mainly working, or last working, in the locality in agriculture or forestry. Other scheme differences brought to my attention by the Appellant are not significant.
12. The Council has referred to the case of *Commercial Land v Secretary of State for Transport, Local Government and the Regions and the Royal Borough of Kensington and Chelsea 2003*. This involved an LDC appeal regarding whether a planning permission granted in 1983 for the erection of a sixth floor on a five floor block of flats had been lawfully implemented or not. The Inspector dismissed the appeal on the basis that the walls erected on the roof differed from the approved plans and as such had not implemented the permission. One reason why that decision was quashed was that the Inspector was obliged to consider not only the differences between the works and the plan, but also the significance of the differences, such as similarities and the degree of compliance with the plans, which he had failed to do. I see that I have applied myself to the significance of the differences in this appeal and found that the house position is materially different. I am not in conflict with the approach of the *Commercial Land* case which is also consistent with the *Handoll* judgement.

13. The judgement of *Kerrier DC v Secretary of State for the Environment 1980* is noted. However, the circumstances of the *Kerrier* case are different from the current appeal. It was found in *Kerrier* that the planning permission had been implemented for the purpose of an agricultural occupancy condition, even though it was also agreed that the dwelling had been built without planning permission. In this appeal there is disagreement about whether the planning permission was implemented or not. *Kerrier* also predates the more recent *Handoll* judgement and advice in Circular 11/95. The *Kerrier* case has little weight. With regard *J Tooney Motors Ltd and Intacab Ltd v Secretary of State for the Environment and Basildon DC (Court of Appeal) 1982*, this also predates *Handoll* and the circumstances of the case are distinguishable from the development subject of the current appeal. The *Tooney* case has little weight.
14. In view of the above, having regard to all other matters raised, the LDC appeal succeeds and I am obliged to issue a LDC for a dwelling and associated garage.

#### **EN Appeals – Ground (b)**

15. An appeal on this ground is that the breach of control alleged in the EN has not occurred as a matter of fact. The alleged breach in this case is non-compliance with an agricultural occupancy condition. However, in view of my findings above, the condition pertained to development that has not been carried out. Therefore, as a matter of fact, there has been no breach of the condition. Consequently the ground (b) appeals must succeed and the EN should be quashed. The ground (d) appeals do not therefore fall to be considered.

#### **Formal Decisions**

##### **APP/V3310/C/12/2168366 & APP/V3310/C/12/2168367**

16. The appeals succeed and it is directed that the EN should be quashed.

##### **APP/V3310/X/11/2165101**

17. It is directed that the original application description should be deleted and replaced with “a dwelling and associated garage”. Subject to this modification, the appeal is allowed and attached to this decision is a LDC describing the existing operations which I consider to be lawful.

*Gareth Symons*

INSPECTOR



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## Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2010: ARTICLE 35

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**IT IS HEREBY CERTIFIED** that on 15 July 2011 the operations described in the First Schedule hereto, hatched in black, in respect of the land specified in the Second Schedule hereto, edged in black, on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The dwelling and associated garage were not built in accordance with planning permission Ref: 45/99/00008 and they had existed for more than four years at the time of the LDC application. As such no enforcement action may be taken in respect of them.

*Gareth Symons*

INSPECTOR

Date: 24 July 2012

Reference: APP/V3310/X/11/2165101

### ***First Schedule***

Dwelling and associated garage

### ***Second Schedule***

Land at Lydeard Hill House, Aisholt, Spaxton, Somerset, TA5 1AR

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



## Plan

This is the plan referred to in the Lawful Development Certificate dated: 24 July 2012

by **Gareth Symons BSc(Hons) DipTP MRTPI**

**Land at: Lydeard Hill House, Aisholt, Spaxton, Somerset, TA5 1AR**

**Reference: APP/V3310/X/11/2165101**

Scale: Do not scale.





206.72  
206.81

207.04

207.13  
Paving

CL 207.15  
MH

+207.21

Grass

207.18

207.07

MH  
CL 207.25

207.12

+207.10

HOUSE

Ridge  
+215.32

FFL  
+207.45

206.98

Paving

207.20

207.00

Ramp

207.02

+207.08

Concrete

207.13

207.19

207.13

207.19

207.12

207.20

207.35

+207.41

Eave 209.70

207.11

GARAGE

Ridge  
212.73

17.12

+207.10

206.99

7.18

207.12

Tank

C/B Ft 1.80

207.05

18

18

20

206