

Our Ref: [REDACTED]  
Your Ref: n/a  
Email: [REDACTED]  
Date: 27 November 2023

Uttlesford District Council  
Planning Department  
London Road  
Saffron Walden  
Essex CB11 4ER

Dear Sir/Madam,

## **CERTIFICATE OF LAWFULNESS IN RELATION TO IMPLEMENTATION OF CONSENT UTT/1246/99/FUL AT HARVEY HOUSE, FINCHINGFIELD ROAD (FORMALLY PART OF HEMPSTED HALL)**

Firstplan is instructed by Mr Blake and Ms Harrington to submit the enclosed Certificate of Lawful Existing Use or Development (CLEUD) in relation confirm that that a lawful start has been made under the planning permission ref: UTT/1246/99/FUL and remains extant.

This is on the basis that the development that formed the subject of the planning permission was commenced within the time limit and therefore it is lawful for our client to build that development out.

This application comprises of:

- Completed Form
- Site location plan
- Decision Notice ref: UTT/1246/99/FUL
- Decision Notice ref: UTT/1247/99/LB
- Appendices:
  - **Appendix 1:** Application Form Ref: UTT/1246/99/FUL
  - **Appendix 2:** Approved Plan Ref: UTT/1246/99/FUL
  - **Appendix 3:** Officer Report ref: UTT/1246/99/FUL
  - **Appendix 4:** As Existing Plan ref: UTT/0614/05/FUL
  - **Appendix 5:** Google Earth Satellite Images

### **Planning History**

The most relevant planning history for the site includes the following:

- Listed building consent was granted on 21 December 1999 for the *“conversion of hall to form three dwellings, associated internal and external works, erection of single storey side”* (ref: UTT/1219/99/LB)

Planning permission was granted on 31 December 1999 for the “conversion of hall to form three dwellings, creation of link to outbuildings to form garage, demolition of four bay” (ref: UTT/1218/99/FUL)

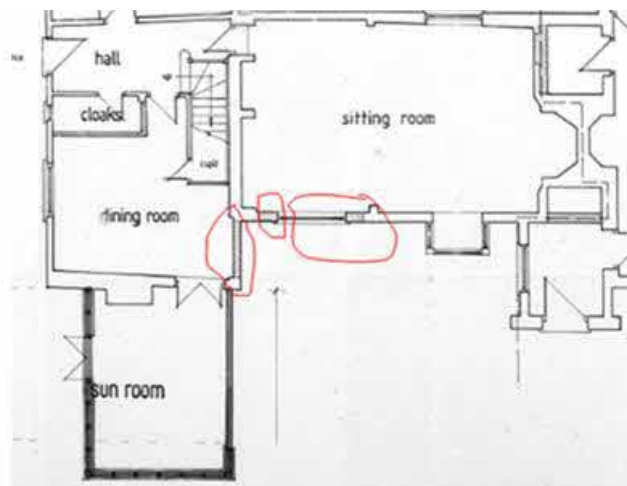
Planning permission and listed building consent was granted on 01 December 1999 for a single storey rear extension and associated works to Plot 3 (refs: UTT/1246/99/FUL and UTT/1247/99/LB). Whilst these consents were permitted slightly in advance of consents UTT/1219/99/LB and UTT/1218/99/FUL, they had been submitted shortly after them and clearly referred to the proposed layouts of the conversion.

Planning permission and listed building consent were granted on 8 Jun 2005 for “One and a half storey side extension” (refs: UTT/0614/05/FUL and UTT/0615/05/LB).

## Background information

Following the grant of UTT/1246/99/FUL and UTT/1247/99/LB the conservatory was demolished, as shown on the Google Earth Image.

Other works shown on the plans were also undertaken including the subdivision of the units, the insertion of the casement windows and infilling of a previous doorway (highlighted on the plan below for reference). These additional works are shown on both UTT/1246/99/FUL and UTT/1247/99/LB, and UTT/1219/99/LB and UTT/1218/99/FUL. Indeed, the two sets of consents tie together neatly, so both can be implemented at the same time without impacting on the validity of each other.



## Assessment of Lawfulness

### i) The Statutory Framework

The application itself is made pursuant to S192(1)(b) of the TCPA 1990, which allows for a certificate to be issued by the Local Planning Authority to determine if a proposed operation (in this instance the continued implementation of UTT/1246/99/FUL ) would be lawful.

The statutory framework covering "lawfulness" for lawful development certificates is set out in section 191(2) of the Town and Country Planning Act 1990 (as amended) ("the Act"). In summary, uses or operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason) and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Planning Practice Guidance on Lawful Development Certificates states that if the local planning authority has no evidence itself, nor 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 version of events is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. It further states that "a lawful development certificate may be granted on the basis that there is an extant planning permission for the development; however, that development still needs to comply with any conditions or limitations imposed on the development by that grant of permission, except to the extent specifically described in the lawful development certificate."

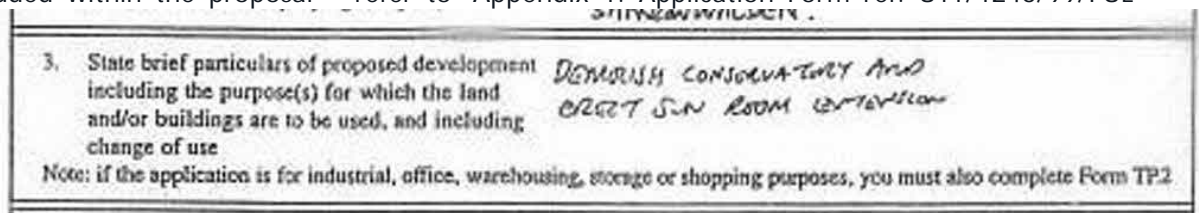
Section 56 of the Town and Country Planning Act 1990 ("the Act") defines the circumstances in which development will be taken to be initiated. Section 56(1)(a) provides that the development will be begun when the building operations start. Subsections (2) and (3) further provide that the date of commencement of development for the purposes of satisfying the time-limit condition imposed under section 91 is to be the earliest date on which any "material operation comprised in the development" begins to be carried out. A "material operation" in section 56(4) means, inter alia, any works of construction in the course of the erection of a building and any work of demolition of a building.

In some cases, because there is a condition which expressly prohibits any development taking place before a particular requirement has been met the failure to comply with the condition will mean that any work which is carried on before the condition is satisfied will be unlawful and incapable of constituting the commencement of development. However, that is not the case here. There was no condition requiring something to be done prior to the implementation of the permission.

ii) Case to be Made

It is appreciated that the onus of proof lies with the applicant to prove the contention that a material operation comprised in the development. It is readily apparent that the works permitted 1 December 1999 included the demolition of the rear conservatory. The demolition of this structure was therefore "comprised in the development" and was capable of being a "material operation" under section 56(4)(a). The evidence held in the following locations:

The application form specifically notes at question 3 that the demolition of the conservatory was included within the proposal – refer to 'Appendix 1: Application Form ref: UTT/1246/99/FUL'



The approved plan (7A) specifically annotates 'Demolish conservatory shown dotted' – refer to 'Appendix 2 – Approved Plan ref: UTT/1246/99/FUL'

The Officers Report notes the demolition of the conservatory in the planning considerations – refer to 'Appendix 3: Officer Report ref: UTT/1246/99/FUL'

**PLANNING CONSIDERATIONS:** This application relates to a Grade II listed hall to the north east of Hempstead. The application is for the demolition of an existing conservatory and the erection of a sun room.

There have been subsequent approvals which note that the conservatory has been demolished. As previously mentioned, planning permission and listed building consent was granted on 8 June 2005 for a utility and bedroom extension (refs: UTT/0614/05/FUL and UTT/0615/05/LB). The application appears to have been submitted in April 2005 (per Uttlesford District Council website published date). The "as existing" drawings submitted with the application are dated 5 November 2004 which

is 4 years 11 months from the granted of the 1999 permission. "As existing" plan drawing no. 04/116/01 show the house without the conservatory as existing. It also shows the two sections of wall infilled and the casement window on the elevation – refer to '**Appendix 4: As Existing Plan ref: UTT/0614/05/FUL**'

- A Google Earth Image dated 01/01/2000 shows the conservatory demolished - refer to '**Appendix 5: Google Earth Satellite Images**'

Construction of the new sun room could only begin once the original conservatory had been demolished and the description of development on the forms and on the approved plan for the 1999 permission reflects this. As such, in accordance with Section 56 sub-paragraph (4) (aa) any work of demolition of a building would be the implementation of the planning permission.

It is also relevant to make reference to the corresponding listed building consent also granted on 01 December 1999 under ref: UTT/1247/99/LB – the works authorised within the planning permission are substantially the same as in the listed building consent. The listed building consent too did not include any pre-commencement conditions that could preclude the development starting.

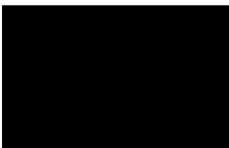
It is therefore correct to conclude that the development permitted by the 01 December 1999 planning permission was begun prior to the expiration of the five-year period referred to in Condition 1 of the permission.

## **Conclusions**

The evidence presented is overwhelmingly in favour of the Certificate being granted. The test in law is on the 'balance of probability' and this is achieved easily with the evidence available as identified within this letter.

We trust these documents are sufficient for you to confirm your approval and we look forward to hearing from you in this regard.

Yours faithfully,



KATE MATTHEWS  
Director

Enc.