



**The Town and Country Planning Act 1990 (as amended)
Certificate of Lawful Use/Development – Section 191**

Supporting Statement

To establish the Lawful Use (occupation) of Dwelling House in Breach of Agricultural Tie condition imposed upon planning permission reference 77/243

at

Court Vale, Upham, Cheriton Fitzpaine, EX17 4HH



Google image of Court Vale circa 2009

Introduction

XL Planning Ltd are instructed to submit a Certificate of Lawful Use/Development (CLEUD) on behalf of the owner/occupier (the applicant) of the dwelling known as 'Court Vale' Upham, Cheriton Fitzpaine, EX17 4HH under the provisions of section 191(1) (c) of the Town and Country Planning Act 1990, to determine whether the use of land and occupation of the (C3 dwelling house) in breach of a planning condition would be considered as lawful for planning purposes.

The application site concerned is known as Court Vale, Upham, Cheriton Fitzpaine, EX17 4HH. The site is identified and outlined in red on the submitted site plan (SLP) The use of the dwelling house (Use Class C3), the subject of this application, is controlled by way of a planning condition relating to occupation. That condition is more commonly known as an agricultural tie condition.

A local planning authority can grant a certificate confirming that, and specifically in relation to this application that:

T. 01884 38662

- (a) an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under the provisions of section 191 of the Town and Country Planning Act 1990.

Section 191 Town & Country Planning Act 1990 states; at (2)

For the purposes of this Act uses and operations are lawful at any time if—

- (a) No enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because *the time for enforcement action has expired* or for any other reason); and
- (b) They do not constitute a contravention of any of the requirements of any enforcement notice then in force.

This application is submitted under the provisions of Section 191(1) (c):

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, they may make an application for that purpose to the local planning authority specifying the land and describing the use, operations, or other matter.

The authority is required to consider only whether the breach of condition (*the other matter*) is lawful. If so, the breach of condition can be considered as lawful in the sense that it cannot be enforced against and so the unrestricted C3 use continues. It is accepted that the condition would remain on the planning permission unless and/or until it is varied or removed by way of a planning application.

In relation to the time limits for enforcement action; Section 171B (1) of the Town & Country Planning Act 1990 relates to enforcement time limits and states.

Where there has been a breach of planning control consisting of 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.

OR

(3) *In the case of this application* in relation to any other breach of planning control, for example a material change of use of land and/or buildings or a breach of a planning

T. 01884 38662

condition, no enforcement action may be taken after the end of the period of **ten years** beginning with the date of the breach.

This supporting statement provides information and evidence in accordance with guidance as set out within the Department for Communities and Local Government - Planning Practice Guidance in relation to Lawful Development Certificates. (Revised 6th March 2014)

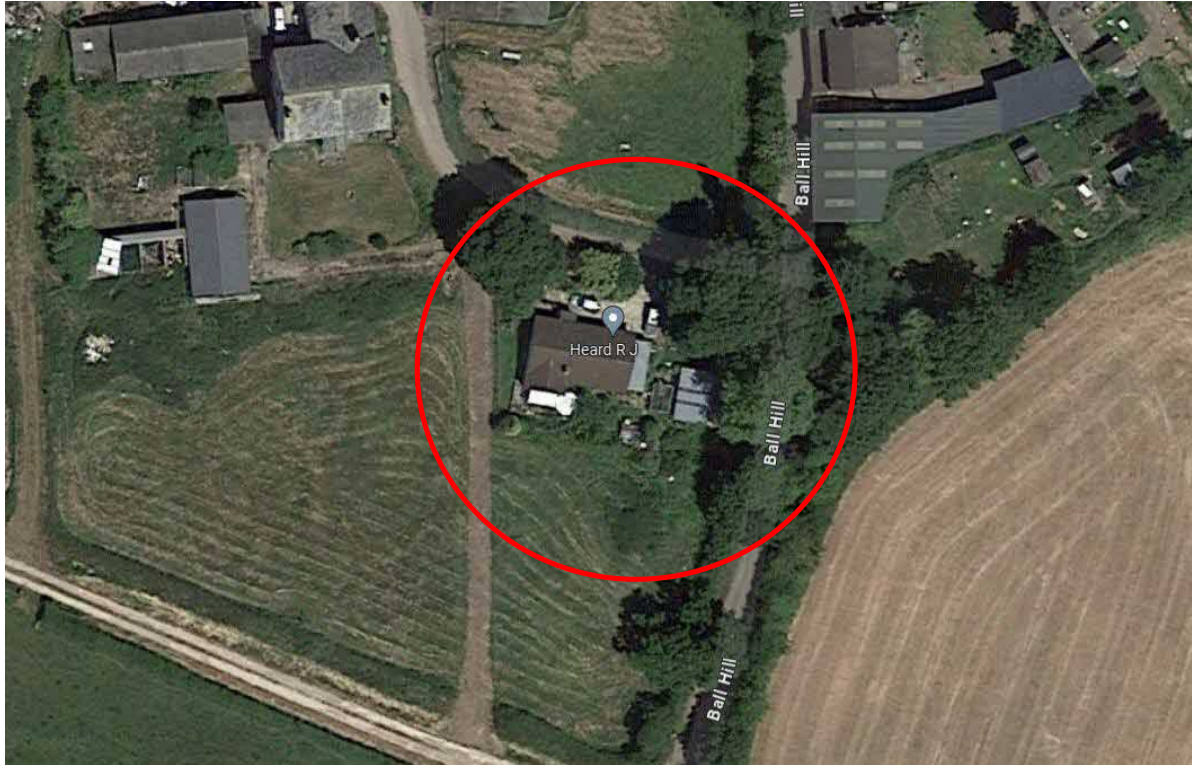
If the local planning authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate. Where an application has been made under section 191. The applicant in this case understands that the statement in a lawful development certificate of what is lawful relates only to the situation on the land at the date of the certificate application.

In addition, in the case of *F W Gabbitts v SSE and Newham BC [1985] JPL 630* the Court held that the applicant's own evidence does not need to be corroborated by "independent" evidence to be accepted. If the LPA have 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".

A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is, or would be lawful. Planning merits are not relevant at any stage in this application, or any subsequent appeal process.

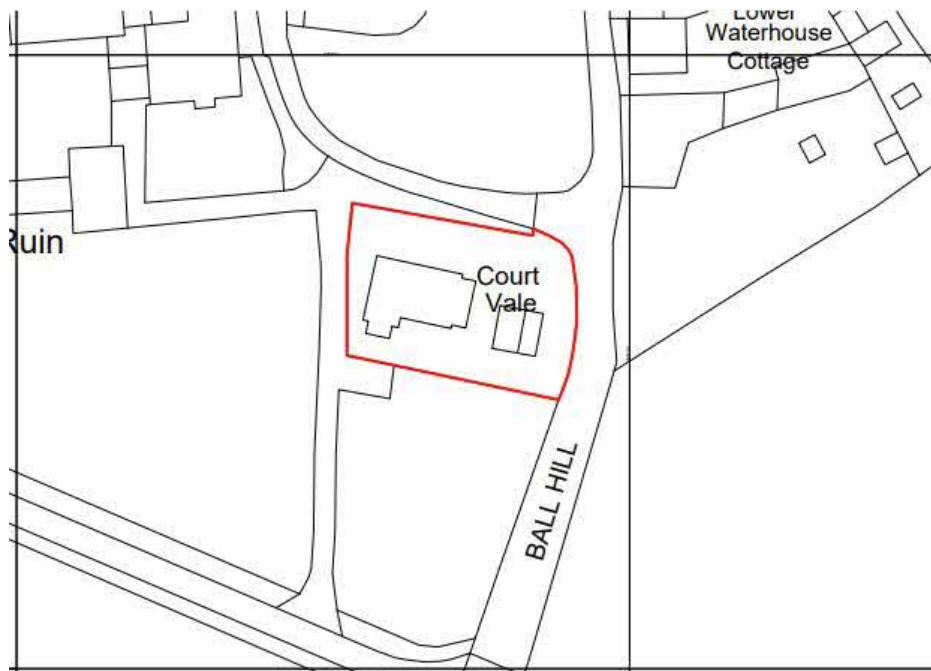
Site and surrounding area

The site the subject of this application is located 1.6 miles north east of Cheriton Fitzpaine, Devon. The dwelling house is a detached single storey dwelling surrounded mainly by agricultural land. (See Ariel photo below).



'Court Vale' EX17 4HH

For the purposes of this application the site (dwelling house) is identified and outlined in red on the submitted Site Location Plan (SLP) See below.



T. 01884 38662

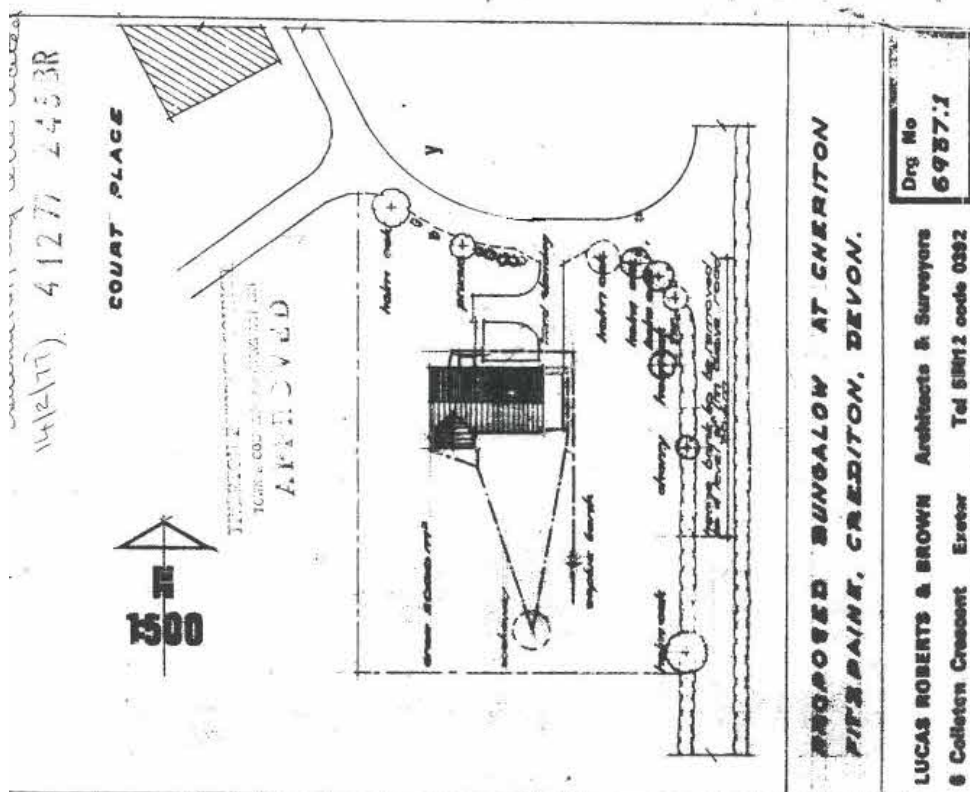
Planning History

The Mid Devon District Council online planning shows no planning history in relation to Court Vale. The planning records for the property pre-date the electronic planning records. The two relevant historical planning applications are:

76/1245 Outline application for the erection of an agricultural bungalow, Court Place, Cheriton Fitzpaine – Approved 23rd December 1976

77/243 The erection of an agricultural bungalow with garage, Court Place, Cheriton Fitzpaine – Approved 1st April 1977

Planning Permission was granted in the 1970's for an agriculturally tied dwelling house Planning permission ref. 77/243. Condition (b) of this permission states "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 (including any dependants of such a person residing with him or her) or a widow or widower of such a person."



Copy of the site location plan approved as part of application 77/243 (orientated to north)

T. 01884 38662

There is no Local Planning Authority (LPA) evidence or record of planning enforcement action, or the service of any planning enforcement notice, in relation to this property or its occupation.

The case for the Issue of a Certificate

To ascertain if the failure to comply with the restrictive condition constitutes a breach of planning legislation the following needs to be considered.

Section 171A (1) (a) and (b) of the Town & Country Planning Act 1990 states; for the purposes of this Act—

- (a) Carrying out development without the required planning permission; or
- (b) Failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.

However, Section 171B of the same legislation refers to immunity time limits and states at.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

This application relates to the non-compliance with the agricultural tie Condition imposed upon Planning Permission 77/243 and would be considered to fall within 171B (3) above. Therefore, the ten (10) year immunity period applies.

The Town & Country Planning Act 1990 Section 191 also states; uses and 'operations' are lawful at any time if.

- (a) No enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) They do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Lawfulness of a 'use' or development (as in this case) is not dependent upon an LDC or Planning Permission. This was confirmed in relation to the lawfulness of an existing use or development by the judgment of the High Court in *Hillingdon LBC v SSCLG (2008) EWHC 198 (Admin)*.

T. 01884 38662

This judgment indicated that ‘that for the purposes of the Town & Country Planning Act 1990 ‘uses’ of land and operations are lawful at any time if no enforcement action may be taken in respect of them. “*whether or not an LDC has been issued under Sections 191 or 192 of the 1990 Act*”.

The current tenant of Court Vale is Mr [REDACTED] Mr [REDACTED] has rented the property from the owner, Mr Richard Heard and has an agreement to purchase the property once this Certificate of Lawfulness application has been determined, assuming that the Certificate of Lawfulness is granted. The previous tenants of the property were Mr [REDACTED] and Miss [REDACTED] Mr [REDACTED] and Mis [REDACTED] were responsible for paying the relevant Council Tax for the property and the Council Tax reference is [REDACTED] the records held by Mid Devon District Council Council Tax department will be able to provide confirmation of payment by these previous tenants. Neither Mr [REDACTED] Mr [REDACTED] nor Mis [REDACTED] complies with the agricultural tie, having never been employed in agriculture. The owner of Court Vale has made a statutory declaration and exhibited supporting evidence that states neither the current tenant nor the previous tenants (who lived in the property for 12 years from 1st May 2011 and 7th September 2023) have complied with the restrictive condition. The restrictive agricultural occupancy condition has therefore not been complied with for a period in excess of 12 years and 3 months.

The restrictive planning permission was obtained in the 1970’s by the applicant’s father, Mr Heard senior (Now deceased).

The applicant (Mr Richard Heard) acquired the dwelling house from his father following his death and the property is now registered in his name with the Land Registry.

At no point during the relevant ten (10) year period has the property been occupied by any person who ‘complied’ with the restrictive agricultural tie condition. The respective submitted statutory declaration confirms this fact. The applicant understands that in the event a certificate was to be granted that the restrictive condition is not removed. In that any future ‘compliance’ with the condition would result in that condition becoming enforceable again. A certificate only states that continued ‘non-compliance’ is lawful.

T. 01884 38662

As mentioned previously. No enforcement action has been taken, and no enforcement notice is in force. There has been no intention to conceal the unauthorised use and occupation, or the breach of the agricultural tie condition.

Should the LPA require clarification on any matter, or further evidence then the applicant will be more than willing to assist.

The Evidence

The evidence base in relation to this application constitutes the following material and documentation:

- Site Location Plan (SLP) indicating location of the dwelling house subject of this application.
- Statutory Declaration – Richard Heard in relation to the historical occupation of the dwelling house.
- Documentary Evidence referred to within the above SD including a copy of the tenancy arrangement between [REDACTED] and the applicant, a copy of the 1977 planning permission decision and associated site location plan a copy of the tenancy agreement between Mr [REDACTED] Mrs [REDACTED] and the applicant.

Conclusion

Having regard to the matters set out above, evidence, and material factors, such as case law, as well as evidence on site, and the fact that no known enforcement action has been undertaken historically in relation to any unauthorised development or use. It is considered, that on the balance of probability, the Local Planning Authority (LPA) have been provided with the evidence to support the issue and grant of a Certificate of Lawful Use/Development (CLEUD) under the provisions of Section 191 Town & Country Planning Act 1990. That certificate to state that the dwelling house subject to the restrictive agricultural tie condition has been occupied continually for a period in excess of ten (10) years in 'non-compliance' with the agricultural tie condition imposed upon planning permission; 77/243 and as a result that any continued occupation in non-compliance would be immune from planning enforcement action.

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