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# APPLICATION FOR A CERTIFICATE OF LAWFULNESS RELATING TO THE CONSTRUCTION OF THE DWELLING KNOWN AS HARVOSE

HARVOSE,
HARLYN ROAD,
ST MERRYN,
PADSTOW,
CORNWALL,
PL23 8SF

# ON BEHALF OF CHARLIE BROWN, DAWN GRIMSHAW AND KAREN BENNETT

Our ref: 23248

DECEMBER 2023











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### 1. EXECUTIVE SUMMARY

- 1.1.1 Laurence Associates is retained by Charles Brown, Dawn Grimshaw and Karen Bennett (the Applicants) to progress an application for a Certificate of Lawfulness of Existing Use or Development, relating to the construction of the dwellinghouse known as Harvose, Harlyn Road, St. Merryn, Padstow, PL28 8SF.
- 1.1.2 Under the Town and Country Planning Act 1990 (as amended), henceforth referred to as the TCPA 1990, section 191 provides for anyone to apply to the Local Planning Authority (LPA) for a Certificate of Lawfulness for an Existing Use or Development (CLEUD).
- 1.1.3 This Certificate of Lawfulness relates to planning application 6/78/2280/OOP MER 142, which granted consent for the outline permission for 'erection of a bungalow'. The decision was issued on 20<sup>th</sup> March 1979.
- 1.1.4 Condition 3 of this planning decision notice states: 'The development hereby permitted shall be carried out and completed in every respect in accordance with the detailed plans and particulars approved pursuant to the foregoing conditions.'
- 1.1.5 Following the approval of the outline consent, a reserved matters application was approved on the 21<sup>st</sup> April 1979, under planning application reference number 6/79/0957/000 MER 142.
- 1.1.6 The decision notice for the reserved matters application stated that: 'The conditions contained in Decision Notice No. 6/78/2280/OOP MER 142 in so far as the same are still operative and capable of taking effect, will continue to apply to the development permitted thereby'.
- 1.1.7 This certificate of lawfulness application shows that the dwelling as constructed is materially different from the planning permission granted, so in effect the permission has not been implemented. The dwelling has also been constructed outside of the redline boundary on the approved site plan drawing.



- 1.1.8 Accordingly, the development is immune from enforcement action by virtue of s. 171B(1) of the Town and Country Planning Act 1990 (as amended) and therefore, lawful by virtue of s. 191(3) of the same Act.
- 1.1.9 Consequently, because the dwelling known as 'Harvose' was not constructed in accordance with the planning permission[s] [6/78/2280/OOP MER 142 and 6/78/2280/OOP MER 142], it was unlawful when built so none of the conditions imposed on that planning permission apply or can be enforced.
- 1.1.10 Relevant case law has been referred to and an explanation provided as to its particular relevance in this case. Aerial imagery of the site along with the original approved plans are shown to evidence that the dwelling was not constructed in accordance with the approved plans, and has been constructed outside of the redline boundary area.
- 1.1.11 For the reasons set out, it is considered that the issuing of a Certificate of Lawfulness is appropriate.
- 1.1.12 This application has been formally submitted in order to regularize the position for potential future legal enquiries.



# 2. BACKGROUND

- 2.1.1 The application site comprises the dwellinghouse known as 'Harvose', at the address Harvose, Harlyn Road, St Merryn, Padstow, PL28 8SF.
- 2.1.2 Outline permission was granted under application reference 6/78/2280/OOP MER 142 on the 20<sup>th</sup> March 1979 for the construction of a bungalow. A reserved matters application reference 6/79/0957/000 MER 142, was approved on the 21<sup>st</sup> April 1979.
- 2.1.3 The approved drawings under the reserved matters application (6/79/0957/000 MER 142) include a 'revised site plan', 'proposed elevations' and an 'outline plan', all of which are attached to this statement in the appendices. These plans do not have plan numbers as far as can be identified.
- 2.1.4 This certificate of lawfulness application is twofold. Firstly, the case is made that the planning permission was not implemented and the building was built without planning permission, and secondly, that because the dwelling was built without planning permission, the development is not subject to any conditions.
- 2.1.5 Satellite imagery captured of the site from 2001 shows how the dwelling has not been constructed in the approved location shown on the approved plans (both satellite imagery and the approved plans are included in the appendices for reference). As such, the dwelling differs from the details of the permission. There is a materially significant change to the siting and position of the dwelling from that approved under the planning permission[s]. This statement demonstrates that the departure from the approved plans is both material and to a material extent.
- 2.1.6 In addition, the evidence provided shows that the current bungalow was erected outside the boundary of the red line on the 1979 permission. To make this clearer, appendix b shows the site from 2001 and the approved plan, contrasted over one another. The overlaying of the two images shows the dwelling is not within the redline boundary on the approved plan.



- 2.1.7 The dwelling has been constructed in excess of the relevant four years to make the development immune from enforcement action, and so in accordance with Section 171 B (1) of the TCPA 1990, where there has been a breach of planning control consisting in the carrying out without planning permission of a building, 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. It is said that the permission and its conditions do not apply to the development that has been constructed and, due to the passage of time since it was substantially complete, it is now immune from enforcement action under section 171B(1) of the 1990 Act.
- 2.1.8 As the development was not built as approved and the planning permission was not implemented it is free from any conditions.



# 3. EVIDENCE

- 3.1.1 The application is accompanied by the relevant planning documents including the decision notice and approved drawings.
- 3.1.2 Satellite imagery is shown which identifies the construction of the dwelling in a location at the site, which is not as approved on the drawings. The satellite imagery also provides evidence that the breach of conditions has occurred in excess of 4 years.
- 3.1.3 In addition, the google earth satellite imagery from 2001 showing the dwelling as constructed, has been overlayed with the site plan approved as part of the planning application. The key identifiable features of the area including the highway junction, and the agricultural building development to the east of the application site have been lined up and positioned so as to allow for a correct and accurate comparison.
- 3.1.4 The comparison between the two layers in appendix b, shows clearly how the constructed dwelling deviates from the approved site plan and is not within the red boundary development line on the approved site plan.
- 3.1.5 This evidence, when considered against the legal provisions and appropriate case law set out below, is sufficiently clear and unambiguous to prove that the planning permission was not implemented at the site, and the building as constructed differs from the details of the permission.

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#### CASE LAW & LEGAL PROVISIONS

### 4.1 RELEVANT LEGISLATION

- 4.1.1 For the purposes of the application, the relevant parts of Section 191 of the TCPA 1990 are as follows:
  - (1) If any person wishes to ascertain whether—
    - (a) Any existing use of buildings or other land is lawful;
    - (b) Any operations which have been carried out in, on, over or under land are lawful; or
    - (c) Any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.
  - (2) For the purposes of the 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 no constitute a contravention of any of the requirements of any enforcement notice then in force.
- 4.1.2 In relation to the time for taking enforcement action, the relevant parts of Section 171B of the Act specifies that: -
  - (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.'

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- 4.1.3 In accordance with the legislation, this application provides the evidence required by Section 191 of the TCPA.
- 4.1.4 For the avoidance of doubt, the application is proceeding on the basis that the relevant period for taking enforcement action is four years. The dwelling has not been implemented in accordance with the planning permission, and so has been constructed without planning permission.

### 4.2 RELEVANT CASE LAW AND APPEAL DECISIONS

- 4.2.1 The leading case on this matter is Handoll and Suddick v Warner Goodman and Streat (A firm) and Others [1995]. The issue for the Court of Appeal was whether the agricultural occupancy condition applied to the building. The Court of Appeal held that the development did not comply in a material respect, or to a material extent with the permission granted, so the planning permission was not implemented. Therefore any conditions attached to that permission cannot apply to the development. The development was considered to be unauthorized and therefore not subject to the agricultural occupancy condition.
- 4.2.2 This decision of Court overruled the High Court decision in Kerrier DC V Secretary of State for the Environment [1981].
- 4.2.3 Subsequent to this significant decision, there have been similar cases, and it is appropriate to consider the case: appeal reference APP/E2001/X/3224843 Westlands, East Riding of Yorkshire. The Inspector referred to the position that case law has established 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 on it. In this appeal case, the Inspector concluded that planning permission had not been implemented and therefore the building is not bound by the agricultural occupancy condition attached to the outline permission. The Council could have taken enforcement action any time up to 4 years after the development was substantially completed. This was not the case and the development is



therefore immune from enforcement action. Consequently, at the date the Lawful Development Certificate application was made, the building could have been used as a residential dwelling without any agricultural occupancy condition.

- 4.2.4 This is also supported by the appeal case: reference APP/N1215/X/13/2190232, Retsel Cottage (Appeal B) East Lawn Farm, where the Inspector found that because the building was built larger than approved, it was by virtue built without planning permission, and following the Handoll Judgement (referenced above), the development was not subject to any conditions.
- 4.2.5 In a recent appeal decision for Appeal reference: APP/Y1138/X/22/3294056 Pixton Woodlands, dated February 2023, the above mentioned case law (Handoll 1995; Retsel Cottage 2013) is used and cited in the decision making process by the Inspector, thus showing that the cases listed above are still prevalent and applicable for this case. The case law highlighted in this statement is at the time of writing, the leading and established case law, and should be used in the decision-making process.
- 4.2.6 Similar to the other cases listed above, in the Pixton Woodlands appeal, the inspector concluded that the construction of the new dwellinghouse as built was materially different to that permitted, so the original permission was not implemented. As it was substantially completed more than four years prior to the LDC application, it is immune from enforcement action under s171(B)(1) of the Act.
- 4.2.7 This Lawful Development Certificate seeks to apply the same reasoning as the case law and appeals referenced above, whereby, the dwelling at the site was not constructed in accordance with the planning permission, so the dwelling is unlawful, and the original permission was not implemented. As it was completed more than four years prior to this application, it is immune from enforcement action. As a result, none of the conditions imposed on that planning permission apply or can be enforced.



4.2.8 The appeal decision, appeal reference: APP/E2001/X/14/2219902, Moat Farm assesses whether or not a dwelling is lawful regarding the construction of a dwelling outside of the red line boundary. The appeal was allowed, and the Inspector found the dwelling did not constitute an implementation of the permission.



### 5. CONCLUSIONS

- 5.1.1 The evidence in this case is clear and unambiguous. It has been demonstrated on the balance of probabilities that the construction of the dwellinghouse known as 'Harvose', as built, is materially different to that permitted under planning permission reference 6/78/2280/OOP MER 142 and 6/79/0957/000 MER 142, such that the original permission was not implemented. As it was substantially completed more than four years prior to this Lawful Development Certificate application, it is immune from enforcement action under s171(B)(1) of the Act. In accordance with the Handoll [1995] case, because the dwelling was unlawful when built, subsequently none of the conditions imposed on that planning permission apply or can be enforced.
- 5.1.2 National Planning Practice Guidance was published on 6<sup>th</sup> March 2014 (cancelling the previous Circular 10/97 Enforcing Planning Control). In the section on lawful development certificates, it states at paragraph 006 that 'the applicant is responsible for providing sufficient information to support an application...' and that '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 sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability'.
- 5.1.3 For these reasons, it is submitted that the dwelling is lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 [as amended], and is immune from enforcement action under s171(B)(1) of the Act. A Certificate should be issued in line with the provisions of s. 191(5) of the same Act.
- 5.1.4 Should any further points arise from this submission, I would ask that the matters are referred back to this company, as agents for the applicant, before any formal decision is made on the application.



# 6. APPENDICES

Appendix A - Google Earth satellite imagery from 2001

Appendix B - Overlayed google earth satellite imagery from 2001 with the approved site plan from permission 6/79/0957/000 MER 142

Appendix C - Decision notice from permission 6/78/2280/OOP MER 142

Appendix D - Outline plan from permission 6/78/2280/OOP MER 142

Appendix E - Decision notice from permission 6/79/0957/000 MER 142

Appendix F - Approved plans from permission 6/79/0957/000 MER 142

# Appendix A





# Appendix B

Satellite image from Google Earth 2001 compared with the approved plan from permission 6/79/0957/000 MER 142, contrasted upon one another. Overlay of the images shows that the constructed dwelling is not within the approved boundary line.



# Appendix C

#### County of Cornwall

## NORTH CORNWALL DISTRICT COUNCIL

# 6/78/2280/00P MER.142

# TOWN AND COUNTRY PLANNING ACT, 1971

### TOWN AND COUNTRY PLANNING GENERAL DEVELOPMENT ORDER 1977

Notice of Conditional Outline Permission for Development

To Mrs. H. A. Rutherford,

of Harvose, St. Merryn,

Padstow.

THE NORTH CORNWALL DISTRICT COUNCIL, being District Planning Authority, HEREBY GRANT permission under paragraph (2) of Article 5 of the Town and Country Planning General Development Order 1977 on an outline application dated the 17th day of

October 19 78 for development of the land situate at

Harvose, St. Merryn, in the parish of St. Merryn (0.S. SW 8674-8774 Pt.0049) namely, erection of a bungalow.

as shewn on the accompanying plan(s) SUBJECT to the following conditions:

- 1. The approval of the Council shall be obtained to the siting, design and external appearance of the proposed building(s), and to the means of access thereto, before any development is commenced.
- 2. Detailed plans and particulars in connection with the matters referred to in the preceding condition shall be submitted to the Council for approval within 3 years from the date of this permission.
- 3. The development hereby permitted shall be carried out and completed in every respect in accordance with the detailed plans and particulars approved pursuant to the foregoing conditions.
- 4. The development hereby permitted shall be begun not later than whichever is the later of the following dates
  - (i) the expiration of five years from the date of this permission, or
  - (ii) the expiration of two years from the final approval of the matters referred to in condition 1 or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- 5. The occupation of the dwelling hereby permitted shall be limited to a person wholly or mainly employed, or last so employed, locally in agriculture, as defined by Section 290(1) of the Town & Country Planning Act 1971, or in forestry or a dependant of such a person residing with him, including a widow or widower of such a person.

Please see attached sheet .....

for the following reasons:

- 1. In accordance with the requirements of Article 5 of the Town and Country Planning General Development Order 1977.
- 2. & 4. In accordance with the requirements of s.42 of the Town and Country Planning Act, 1971.

3. To ensure satisfactory development.

5. The site is within a rural area in which it is intended to provide primarily for Your ATTENTION is drawn to the NOTES OVERLEAF. the needs of agriculture.

Dated this

20th

day of

March <u>1</u>9 79

Priory House, Bodmin.

Dec. 5

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#### NOTES

- (1) This decision does not relieve the applicant of the obligation to obtain any necessary building regulation or other approval of the District Council in whose area the land is situated and to comply with any general statutory provisions in force in the area.
- (2) If the applicant is aggrieved by the decision of the district planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment, in accordance with section 36 of the Town and Country Planning Act 1971, within six months of receipt of this notice. (Appeals must be made on a form which is obtainable from the Department of the Environment, Caxton House, Tothill Street, London, S.W.1). The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the district planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order. (The statutory requirements include sections 70 and 77 of the Town and Country Planning Act, 1971).
- If permission to develop land is refused, or granted subject to conditions, whether by the district planning authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Council of the county district in which the land is situated a purchase notice requiring that council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act, 1971.
- (4) In certain circumstances, a claim may be made against the district planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in section 169 of the Town and Country Planning Act, 1971.



THE SECRETARY
DEPARTMENT OF THE ENVIRONMENT
TOLLGATE HOUSE
HOULTON STREET
BRISTOL BS2 9DJ

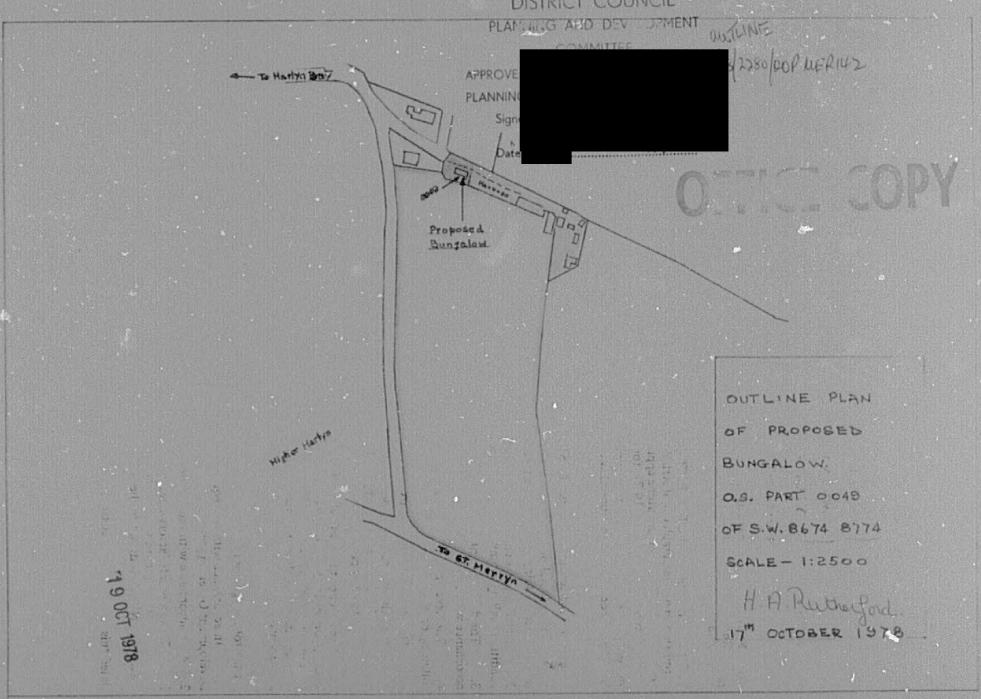
- 6. Within two months from the date of occupation of the dwelling hereby permitted, the existing caravan shall be removed from the site to the satisfaction of the Local Planning Authority and no caravan whatsoever shall thereafter be sited within the site or land within the applicant's tenure, without the express consent of the Local Planning Authority.
- 7. This permission shall not be exercised by any person other than the applicant.

#### Reasons:-

- 6. To ensure a satisfactory form of development.
- 7. The development is approved solely on the grounds of the special circumstances of the applicant.

# Appendix D

# DISTRICT COUNCIL



# Appendix E

Application & Decision No.

County of Cornwall

# 6/79/0957/000 MER NORTH CORNWALL DISTRICT COUNCIL

TOWN AND COUNTRY PLANNING ACT, 1971

TOWN AND COUNTRY PLANNING GENERAL DEVELOPMENT ORDER

Notice of Approval of Matters Reserved by Outline Permission

To Mrs. H.A. Rutherford (per L.P. Irons, 50 Church Street, Padstow).

of "Harvose", St. Merryn.

THE NORTH CORNWALL DISTRICT COUNCIL, being the District Planning Authority, HEREBY APPROVE the matters contained in your application dated the 19 79, and the plan(s) submitted therewith, in respect of the April "Harvose", St. Merryn in the parish of St. Merryn, development of land situate at (0.S. SW 8674-8774 part 0049) namely, erection of bungalow-

for which permission was granted on an Outline Application on the 19 79 (Decision Notice No. 6/78/2280/00P MER 142 day of

The conditions contained in the said Decision Notice No. 6/78/2280/00P MER 142 in so far as the same are still operative and capable of taking effect, will continue to apply to the development permitted thereby.

Your ATTENTION is drawn to the NOTES OVERLEAF.

Dated this

day of

Priory House, Bodmin.

Dec. 2

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# Appendix F

