

Graham Gover Solicitor

10 Southernhay West

Exeter EX1 1JG

grahamgover.co.uk



Statement in Support of an Application for a
Certificate of Lawful Use

Pond House, Church Lane, Dogmersfield,
Hook, Hampshire RG27 8TA

for Gary and Karen Martin



1. Introduction

- 1.1. I am a solicitor in private practice specialising in town planning, and a Legal Associate of the Royal Town Planning Institute (LARTPI). I have specialised as a legal town planning practitioner since the late 1980s, working in both the public and private sectors.

- 1.2. This document supports an application for a Certificate of Lawful Use in respect of the garden land at Pond House and has been necessitated by the decision of Hart District Council to refuse a planning application made under reference 20/00908/FUL. The lawful use claimed for the application site is as garden land in association with the use of Pond House as a dwellinghouse (Use Class C3).

2. Lawfulness

2.1. The application site is shown outlined in red on the Site Plan submitted with the application. It comprises two parts: the northern section, which extends northwards from the northern elevation of Pond House to the apex of the broadly triangular garden area; and the southern section, which includes the land to the sides and to the south of Pond House.

2.2. Section 191 of the 1990 Act defines lawfulness in the following terms:

(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.

2.3. No enforcement notice is in force for which the use would be in breach.

2.4. No enforcement action may be taken in respect of the claimed lawful use because:

- a) The application site was lawfully in use as garden land prior to its severance from Ormersfield House;
- b) The application site's use as garden land (C3) did not involve development when it was severed from Ormersfield House; and
- c) The use of the southern part of the application site has the benefit of planning permission for use as garden land (C3).

3. Evidence of Use as Garden Land

- 3.1. Ormersfield House is a dwellinghouse formerly owned and occupied as such by Robert and Jane Glossop. Robert Glossop has provided a Statement of Truth in support of this application for a Certificate of Lawful Use, in which he describes the use of the application site as garden land in association with Ormersfield House for the period of their ownership from 1969 to 2016. It is presumed that Ormersfield House was built with the benefit of planning permission and that the land comprised in its garden was included in that permission. Whether or not that is so is of no consequence, since the evidence is that Ormersfield House's garden (including the application site) had been used as such for more than ten years and there has been no change of use or abandonment of that use¹.
- 3.2. The continuous use of the application site is taken up by the Applicant, Gary Martin, in his Statement of Truth. The application site's use as garden continued under his ownership; and according to the Land Registry, the application site was severed from Ormersfield House in 2018. This is the land edged with a green line to the west and a red line to the east on the Title Plan for Pond House contained in Appendix 1 of this Statement.
- 3.3. Matthew Utting, the Planning Consultant who first acted for Robert and Jane Glossop and then for Gary Martin, has also provided a Statement of Truth in support of this application, as to the use of the application site as garden.
- 3.4. For reasons that are dealt with later, the Statements of Truth provided by Robert Glossop, Gary Martin and Matthew Utting also confirm when read together that the application site has not been put to any agricultural use since 1969.

¹ *Bernard John Panton and Allan Wentworth Farmer v. Secretary Of State For Environment, Transport and Regions and Vale Of White Horse District Council* [1998] EWHC Admin 1138 (16th December, 1998)

4. Severance

4.1. The evidence is that the application site was in garden use (C3) first in connection with Ormersfield House and subsequently in connection with Pond House. The severance of garden land that remains in the same use is not development that requires planning permission. This should be self-evident from the definition of development given by section 55 of the 1990 Act. The subdivision of a dwellinghouse is development that requires planning permission (s55(3)(a)), but the subdivision of garden land is not, and is therefore not a material change of use.

4.2. This is also confirmed by the case of *The Queen on the Application of Whiteknights Consultants Limited v The First Secretary of State, Berwick-upon-Tweed Borough Council*². The case was predominantly engaged with the interpretation of policy that sought to prevent the severance of garden land to allow the creation of a new dwellinghouse. Sullivan J stated at paragraph 13:

Any planning policy has to be construed in the light of the statutory framework contained in the Act. A local planning authority has no power to prevent the sub-division of garden land as such. The local planning authority, and the policies it sets out in the Local Plan, is concerned with the control of development, the making of a material change of use, or the carrying out of operational development such as the construction of new dwellings. A landowner may choose to sell off part of his or her garden to, for example, a company controlled by some other person, or by himself and/or his spouse, but so long as the land continues to be used as a garden, or as long as no use is made of it and the landowner simply allows the grass to grow tall, no material change of use will have taken place. Therefore, there will have been no development which could sensibly be the subject of any policy in a local plan.

4.3. The act of severance *per se* is not development, and once the completion and use of the lawful dwellinghouse began, there was likewise no development (i.e. material change of use) of the land. This is precisely the situation that pertained at Ormersfield House, when garden land at the property was sold by Robert and Jane Glossop to Gary and Karen Martin, together with land that had the benefit of planning permission granted under ref. 11/00259/FUL for what is now Pond House.

² [2004] EWHC 633 (Admin) Mr Justice Sullivan 8 March 2004

5. Relevant Planning History

- 5.1. Subsequent to planning permission being granted under ref. 11/00259/FUL for the change of use and conversion of a domestic garage at Ormersfield House into what is now Pond House, there have been two planning applications made for Gary Martin and relevant to the present application site, as follows:
- a) Application ref. 17/02018/LDC, for “Use of land for purposes incidental to the use of the dwelling, installation of equipment associated with the habitation of Pond House”; and
 - b) Application ref. 20/00908/FUL, for “Change of use of land associated with Pond House, Church Lane, Dogmersfield, Hook, Hampshire, RG27 8TA to a residential garden extension”.
- 5.2. Application ref. 17/02018/LDC was for a Certificate of Lawful Development, but the Planning Statement prepared by the Agent reads more like one in support of a planning application for development, supported by a claim that the present application site comprised garden land. The application was not at all robust in its claim that the application site was in lawful use as Class C3 garden land and was not supported at all by substantial evidence of the same.
- 5.3. The application was refused on 17 November 2017, and its Case Officer makes the following comment in her delegated report:
- Analysis of historic planning records for both Ormersfield House and Ormersfield Farm appear to indicate that land under the ownership of Ormersfield House includes the former courtyard outhouses, however, ownership does not define use class. There are also records on file which identify the land as part of Ormersfield Farm. The distinction between what constitutes residential land and what constitutes agricultural land is therefore unclear.*
- 5.4. The “historic planning records” are not identified, nor have they ever been produced to Gary Martin in connection with application ref 17/02018/LBC or application ref. 20/00908/FUL.
- 5.5. Application ref. 20/00908/FUL was refused on 18 September 2020. The Agent handling the application provided a Planning Statement in support of the proposal; and in correspondence with the application’s Case Officer, dealt with the existing use of the application site and the planning policy context for the proposed change of use. The Agent did not regard the application site as in agricultural use or as ever having been so; and that was not the underlying purpose of the application. The application as determined was for a change of use of land to facilitate an enlargement of Pond House’s garden and I have discussed this matter at length with the Agent and it is evident from his continued involvement with this present application for a Certificate of Lawful Use that he agrees with and supports my legal and planning reasoning in support of the same.

5.6. I have also read correspondence between the Agent and the Case Officer for application ref. 20/00908/FUL, wherein the Agent suggested that the application site could at worst be in 'nil' use. However, the evidence that has now been submitted with this present application makes it clear that the application site is or has ever been in agricultural use or passively in a 'nil' use. For the purpose only of clarity, Gary Martin is not claiming *in this present application* that the land to the north of Pond House is within its curtilage, since curtilage is not a use of land.

5.7. Of more significance is the reasoning of the Case Officer who dealt with application ref. 20/00908/FUL. In her delegated report, she makes the following comment:

In the process of the current application, information has been submitted which the applicants assert supplies evidence of the residential use of the land. In the absence of an appeal against the refused LDC or gaining an updated LDC confirming a change from agricultural use, the opinion of the Council's legal advisors was sought by the case officer. Their response was that although there is a statement associated with planning application 18/00802/FUL that the land has been used for residential purposes, it is possible that the land could still have an agricultural use status. They have not seen anything that would appear to suggest a change of status of the land, although they understand it has not particularly been used in the last few years.

5.8. Application ref. 20/00908/FUL was refused principally on policy grounds, predicated on there being a material change of use from (in the opinion of the Case Officer) an agricultural use to a residential garden. I would respectfully point out that the Local Planning Authority's evidence for an agricultural use was hypothetical rather than actual - "it is possible that the land could still have an agricultural use status" (emphasis added) - and one can speculate whether the same opinion would have been reached had the Authority been presented with the same evidence that now supports this present application.

5.9. The Case Officer's response to application ref. 20/00908/FUL may in part be based on past comments made by Robert Glossop in relation to historic agricultural use of land associated with Ormersfield House. I refer in particular to the following comments in the delegated report for application ref. 17/02018/LDC:

An examination of Certificate A of this application form shows that it was signed by the applicants, and includes the statement 'None of the land to which the application relates is, or is part of, an agricultural holding.' ...None of the listed evidence was supplied by the applicants, however, a search of Council records discovered the site/block/location plans and application form referred to.

Application 97/00434/FUL was the re-submission of a previously granted approval, 86/13697/FUL. Examination of this case revealed that the location for the garages was referred to on the application form as a 'disused farm yard'. The applicants for this application were the same applicants as the applicants for the 1997 application, the site outlined was the same and present/previous use of the land was described as 'private house and garden', the date that the land/building was used as being '1800' and the last previous use

as a 'farm yard'. Further, the cover letter for this application, submitted by Peter Luck & Associates Architects, confirms that the proposed garages "...are sited within a complex of existing and recently demolished buildings and within a dis-used farmyard."

This appears to suggest that the owners and their architects perceived the land as being both residential and agricultural, completing the application form for 97/00494/FUL in terms of the intended residential use of the garages. There is no planning record of a change of use application for the land in question between 1986 and 1997, or indeed at any time until the approved application in 2011, which crucially did not include the area of land to the north of the approved garage block.

5.10. I would respectfully suggest that:

- a) These statements are not consistent with a description of the land being then in agricultural use; and
- b) This has no bearing on the present application because the comments above were made in relation to land that was the subject of application 97/00434/FUL, which has more recently been superseded by the lawful implementation of permission ref. 11/00259/FUL for the dwelling now known as Pond House.

5.11. The Ownership Certificate A signed by Robert Glossop for application ref. 97/00434/FUL stated that no part of the application site was then in agricultural use. That use was described consistently in the past tense as a previous use of the land. Robert Glossop has stated in evidence submitted in support of this present application that he was in any event not referring to the use of the land to the north of what is now Pond House and has never asserted its agricultural use.

6. Conclusion

- 6.1. In summary, it is contended that the use of the application site as garden in association with Pond House is lawful because no enforcement action may be taken against it:
- a) With regard to the part of the site to the south of Pond House, because it has planning permission for that use, and
 - b) With regard to the part of the site to the north of Pond House, because its use as residential garden land (C3) is not a change of use from the time before it was severed from Ormersfield House as part of that property's garden.
- 6.2. The evidence in support of this application does not appear as sworn Statutory Declarations but as Statements of Truth, and for reasons set out in Appendix 2, has the same evidential weight.
- 6.3. If the Local Planning Authority is minded to refuse this application it must possess and produce to the Applicant or his representatives evidence that contradicts or makes less than probable the evidence submitted with this application. The comment "*it is possible that the land could still have an agricultural use status*" (emphasis added) made in relation to application ref. 20/00908/FUL would indicate a lack of evidence of actual agricultural use at some time in the last ten years. The comment may be based on a legal reason, but law does not operate in an evidential vacuum.
- 6.4. The Local Planning Authority is respectfully requested to grant the application.

Graham Gover Solicitor

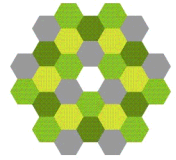
7 December 2020

Appendix 1

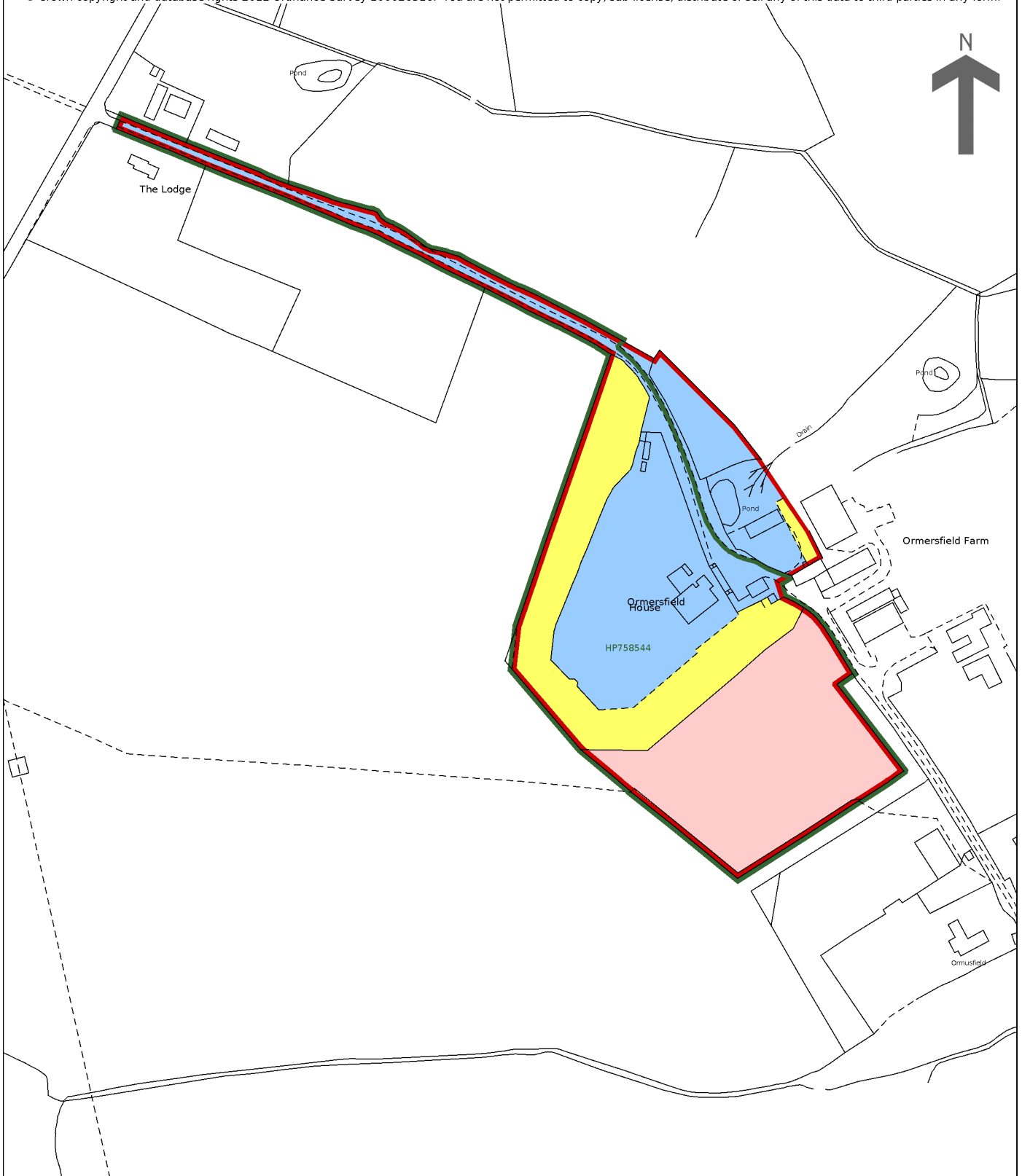
Land Registry Title Plan for Pond House

HM Land Registry
Official copy of
title plan

Title number **HP747451**
Ordnance Survey map reference **SU7852SW**
Scale **1:2500**
Administrative area **Hampshire : Hart**



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Appendix 2

Evidence Submitted with the Application

- 1.1. Government advice has consistently confirmed that the obligation that rests on the applicant to prove their case, but now how this must or may be achieved. The present guidance, for example, reads:

Who is responsible for providing sufficient information to support an application?

The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

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.

In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.

Paragraph: 006 Reference ID: 17c-006-20140306

Revision date: 06 03 2014

- 1.2. The evidence must be sufficient and sufficiently precise and unambiguous, but there is no prescription as to how or in what form the evidence must be presented.
- 1.3. It is customary, but not mandatory, for evidential statements to be sworn and in the form of a Statutory Declaration because of the penal consequence of failing to tell the truth in such a declaration. The offence and penalty are set by section 2 of the Perjury Act 1911:

2. False statements on oath made otherwise than in a judicial proceedings.

If any person—

(1) being required or authorised by law to make any statement on oath for any purpose, and being lawfully sworn (otherwise than in a judicial proceeding) wilfully makes a statement which is material for that purpose and which he knows to be false or does not believe to be true; or

(2) wilfully uses any false affidavit for the purposes of the Bills of Sale Act 1878, as amended by any subsequent enactment,

he shall be guilty of a misdemeanour, and, on conviction thereof on indictment, shall be liable to penal servitude for a term not exceeding seven years or to imprisonment, [...] for a term not exceeding two years, or to a fine or to both such penal servitude or imprisonment and fine.

- 1.4. Penal servitude (or hard labour) was abolished in 1948.
- 1.5. The current pandemic has eliminated ready access to solicitors for the purpose of swearing documents. In response, the government has enacted legislation to work around the restrictions so caused, whereby Statements of Truth may replace a Statutory Declaration or Affidavit where the latter was required.
- 1.6. In all civil proceedings that are governed by the Civil Procedure Rules, where evidence is presented to the court it must be accompanied by a Statement of Truth which includes a contempt statement. The form of the Statement of Truth verifying a witness statement should be as follows (and provided in the language of the witness statement):

'I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.'

- 1.7. There is no equivalent jurisdictional change for applications for Certificates of Lawful Use or Development. However, the Act has always provided that it is an offence punishable by imprisonment to fail to tell the truth in connection with an application for a Certificate. Section 194 provides:

(1) If any person, for the purpose of procuring a particular decision on an application (whether by himself or another) for the issue of a certificate under section 191 or 192-

(a) knowingly or recklessly makes a statement which is false or misleading in a material particular;
(b) with intent to deceive, uses any document which is false or misleading in a material particular; or
(c) with intent to deceive, withholds any material information,
he shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable-

(a) on summary conviction, to a fine not exceeding the statutory maximum; or
(b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.

- 1.8. In the present application in relation to land at Pond House, the evidence given in support of the application by Messrs Glossop, Martin and Utting is given as follows:

1. It is given in the form of a Statutory Declaration and signed.
2. It is accompanied by a Statement of Truth that declares:
 - a. The witness is aware of the consequences of failing to tell the truth in the declaration which includes punishment of up to two years
 - b. The facts are true to the best of the witness's knowledge and belief.

- 1.9. The punishment for perjury and failing to tell the truth in connection with a Certificate application is the same – up to two years' imprisonment.

- 1.10. The Local Planning Authority should therefore give the content of the witness statements in support of this present application the same weight as if the evidence had been given in the form of a sworn Statutory Declaration.