25.07.02

Earliest Decision Date:
~~21st~~ June 2002
26

Officer:
Sue Wheatley

Ref No: **0201431CLUED** Parish: **Brampton**

Proposal: **Certificate of lawful development for retention of dwelling without occupancy restriction**

Location: **7 River Lane Brampton Huntingdon Cambridgeshire PE28 4PU**

Grid Ref: EASTING: 521538.400 Code: **Lawful Development Cert (S191)**
NORTHING: 270126.800

Applicant:	Agent:
Mr B Whitmee **C/O Agent**	**D H Barford + Co** **Howard House** **17 Church Street** **St. Neots** **Cambs PE19 2BU** Phone: **213811**

Registered: **30th May 2002**

Expiry: **25th July 2002**

Site Notice Exp:

Press Notice Exp:

Constraints:

Area of Best Landscape

Adjacent to Conservation Area

Land liable to flooding

Footpath

Tree Preservation Order

Recommendations

Parish Obj. Y / N

Representations: Y / N

Application Number:0201431CLUED

Certificate

Town and Country Planning Act, 1990: Section 191 and 192
(as amended by Section 10 of the Planning Compensation Act, 1991)

Town and Country Planning (General Development Procedure) Order 1995: Article 24

Mr B Whitmee
C/o D H Barford + Co
Howard House
17 Church Street
St. Neots
Cambs PE19 2BU

The Huntingdonshire District Council hereby certify that on the 22nd May 2002 the operation described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged 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(s):

The dwellinghouse has been substantially complete for more that 4 years.

Signed S. R. Ingram (Councils Authorised Officer)
On behalf of Huntingdonshire District Council
Date 3rd December 2003

First Schedule

Certificate of lawful development for erection of dwellinghouse

Second Schedule
7 River Lane
Brampton
Huntingdon
Cambridgeshire
PE28 4PU

Huntingdonshire
DISTRICT COUNCIL
Pathfinder House St Mary's Street Huntingdon PE29 3TN

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 operation specified in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the specified date and thus was not liable to enforcement action under section 172 of the 1990 Acton that date.

3. 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 *use/operation/matter which *is/are materially different from *that/those described or which relate/s* to other land may render the owner or occupier liable to enforcement action.

4. *The effect of the certificate is also qualified by the provisions in section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described 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 relevant to determining such lawfulness.

Huntingdonshire
DISTRICT COUNCIL
Pathfinder House St Mary's Street Huntingdon PE29 3TN

HUNTINGDONSHIRE DISTRICT COUNCIL

0201431CLUED

OFFICER REPORT

Case No: 0201431CLUED Lawful Development Cert (S191)

Proposal: Certificate of lawful development for retention of dwelling without occupancy restriction

Location: 7 River Lane Brampton Huntingdon

Applicant: Mr B Whitmee

Grid Ref: 521538 270127

DESCRIPTION OF SITE AND APPLICATION

This application site is located in River Lane Brampton which runs alongside Frosts Garden Centre.

The application as originally submitted was for a certificate of lawfulness for the retention of a dwelling which was built and occupied more than 4 years ago.

Planning permission was originally granted for a dwelling in 1990 subject to an agricultural occupancy condition and a section 52 agreement(ref 87/1017).

When the application was submitted the applicant advised that it was being made on the grounds that condition 3 (landscaping)of the above permission was not complied with and that therefore the property was not erected in accordance with the terms of the planning permission(ref 87/1017). In addition, reference was made to the fact that construction had commenced prior to materials having been approved.

Clarification was sought regarding this ground and the applicant has confirmed that the application is for an existing operation (the erection of the building) under section 191(1)(b).

NATIONAL GUIDANCE

NA

PLANNING POLICIES

NA

PLANNING HISTORY

Outline consent for dwelling(87/1017) and reserved matter approval for dwelling (91/1350)

CONSULTATIONS

Head of Legal and Estates - Advises, based on advice from Counsel (two separate opinions), that a certificate can now be issued under Section 191(1)(b)

REPRESENTATIONS

NA

SUMMARY OF ISSUES

The first issue to be considered is whether the permission for the dwelling has been implemented.

Work started on the house in April 1992. This was before materials had been agreed and prior to the submission of a landscape scheme. Materials were however subsequently approved but a landscape scheme has never been submitted. The advice from Counsel is clear on this point. The permission has not been implemented and has now lapsed, as has the related S52 Agreement as it was specifically tied to the planning permission.

The second issue which therefore needs to be considered is whether this unauthorised development is immune from enforcement action.

The following two conflicting legal opinions have been provided to the Council's Solicitor:

* One Counsel advises that on the assumption that the building has been used as a dwellinghouse there has been a material change of use without planning permission, and that this breach is not subject to the 4 year rule but instead to the 10 year rule. His argument is based on the fact that as there is no planning permission there is no permission for the use of the land or buildings for residential purposes. His advice is that it is still open to this Authority to take enforcement action. An option he suggests could be to under enforce; to require that for the future the residential use of the property be limited to agricultural occupancy.

* In the second opinion Counsel advise that the 4 year rule is applicable

The applicant has submitted a further legal opinion which argues that the 4 year rule is the applicable time period.

10 years has now passed since the occupation of the dwellinghouse. Whilst it is not conclusive, rating records suggest the property was first occupied on 1 October 1993. Any enforcement action would therefore need to be taken before the beginning of October. However in the light of the conflicting legal opinions it was concluded that there was no guarantee that this would be successful and the it is not expedient to take enforcement action.

BACKGROUND PAPERS:

CONTACT OFFICER:
Enquiries about this report to **Sue Wheatley Development Control Team Leader 01480 388490**

RECOMMENDATION

SUMMARY OF CONDITIONS.

D|H|Barford+Co
CHARTERED SURVEYORS + PLANNING CONSULTANTS

Howard House . 17 Church Street . St. Neots
Cambridgeshire . PE19 2BU . **Tel: 01480 213811**
Fax: 01480 406911 . Web: www.barfords.co.uk
email: general@barfords.co.uk

Mrs. S. Wheatley,
Development Control Leader,
Planning Services,
Huntingdonshire District Council,
Pathfinder House,
St.Mary's Street,
St.Neots,
Cambs.,
PE29 3TN.

Your ref: 02/01431/CLUED
Our ref: ACB/W-044
Date: 24th November, 2003

Dear Mrs. Wheatley,

RE: CERTIFICATE OF LAWFUL DEVELOPMENT FOR RETENTION OF DWELLING WITHOUT OCCUPANCY RESTRICTION : NO.7 RIVER LANE, BRAMPTON, HUNTINGDON, CAMBS., PE28 4PU.

Further to our recent site meeting, I am enclosing herewith a revised location plan (two copies) showing the extent of the agreed residential curtilage of No.7 identified edged red.

With the benefit of the attached, I trust you will now be able to issue the Certificate without further delay.

Yours sincerely,

ANDREW BARFORD MRTPI.,
D.H. BARFORD + CO.
E-mail: abarford@barfords.co.uk

Encs.

User/ACB/W-044

PS | OPERATIONAL SERVICES | TL
PM | PLANNING DIV | CK
DCM | 25 NOV 2003 | REPLY
BCM | RECEIVED | OFF
OM

HUNTINGDONSHIRE DISTRICT COUNCIL

INTERNAL MEMORANDUM

FROM : THE HEAD OF LEGAL & ESTATES	**TO : OPERATIONAL SERVICES DEVELOPMENT CONTROL FAO: SUE WHEATLEY**
MY REF: CENS.CM.jaw.L/PO/49	
PLEASE ASK FOR : COLIN MEADOWCROFT	**YOUR REF : SW/02/01431/CLEUD**
EXT NO : 8021	**DATE : 03 November 2003**

CERTIFICATE OF LAWFULNESS
7 RIVER LANE, BRAMPTON

Further to my e-mail of 14 October, I attach hereto a copy of a letter recently received from Barford & Co, together with a copy of my acknowledgement.

When the Certificate is issued, please would you forward a copy to me for my file.

Colin

Mr C Meadowcroft
HEAD OF LEGAL & ESTATES



FP

29 OCT 2003

DH Barford+Co
CHARTERED SURVEYORS + PLANNING CONSULTANTS
Howard House . 17 Church Street . St. Neots
Cambridgeshire . PE19 2BU . **Tel: 01480 213811**
Fax: 01480 406911 . Web: www.barfords.co.uk
email: general@barfords.co.uk

Mr. C. Meadowcroft,
Head of Legal & Estates,
Huntingdonshire District Council,
Pathfinder House,
St.Mary's Street,
Huntingdon,
Cambs.,
PE29 3TN.

Your ref:
Our ref: MLP/ACB/W-044
Date: 28th October, 2003

Dear Mr. Meadowcroft,

RE: CERTIFICATE OF LAWFULNESS : 7 RIVER LANE, BRAMPTON.

I write in respect of the above application dated 20th May, 2002 which, as you are aware, has been the subject of various discussions and correspondence and there has been an outstanding issue whether a 4-year or 10-year period is relevant.

Reviewing my file, I note the Council accepts that as from 28th October, 2003 the subject property will have been occupied for a period of 10 years. In the circumstances that the 10-year rule has also now been satisfied, we assume there is no reason why the Council cannot now issue the Certificate of Lawful Development without further delay.

I would be grateful if you can confirm how the Council now intends to progress this matter so that we can update our client on the situation.

Yours sincerely,

MARTIN PAGE,
D.H. BARFORD + CO.
E-mail: mpage@barfords.co.uk

cc: Mr. R.A. Jameson.

User/ACB/W-044

OPERATIONAL SERVICES
PLANNING DIV.
04 NOV 2003
RECEIVED
TL
ACK
REPLY
OFF

Mr Martin Page
D H Barford & Co
Howard House
17 Church Street
St Neots
Cambs
PE19 2BU

Our Ref: CenS.CM.jaw.L/PO/49
Your Ref: MLP/ACB/W-044

03 November 2003

Dear Mr Page

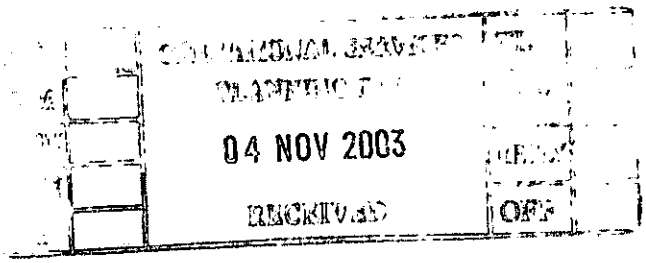
CERTIFICATE OF LAWFULNESS
7 RIVER LANE, BRAMPTON

Thank you for your letter of 28 October.

I believe that Sue Wheatley is in the process of preparing a Certificate and have passed a copy of your letter to her for information.

Yours sincerely

Mr C Meadowcroft
Head of Legal & Estates
LEGAL AND ESTATES
☎ (01480) 388021
Fax (01480) 388087
DX 80929 Huntingdon-1
e-mail Colin.Meadowcroft@huntsdc.gov.uk



HUNTINGDONSHIRE DISTRICT COUNCIL

INTERNAL MEMORANDUM

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MY REF: CENS.CM.DST.L/PO/49	**FAO: SUE WHEATLEY**
PLEASE ASK FOR : COLIN MEADOWCROFT	**YOUR REF : SW/02/01431/CLEUD**
EXT NO : 8021	**DATE : 11 March 2003**

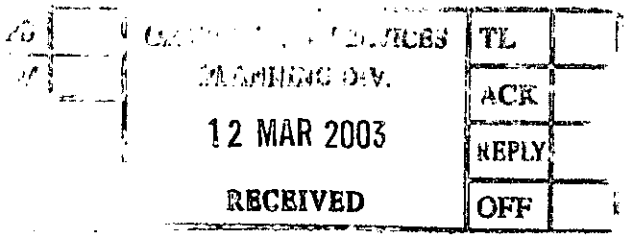
CERTIFICATE OF LAWFUL DEVELOPMENT FOR RETENTION OF DWELLING WITHOUT OCCUPANCY RESTRICTION
7 RIVER LANE, BRAMPTON, HUNTINGDON, CAMBRIDGESHIRE

Following on from our meeting with Martin Page, I have received further representations from Jameson & Hill and I attach a copy of their letter of 20 February 2003, together with my acknowledgement.

When I have had the opportunity to consider the matter further, I will arrange a meeting to discuss it with you.

Colin

Mr C Meadowcroft
HEAD OF LEGAL & ESTATES



HUNTINGDONSHIRE DISTRICT COUNCIL

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Mr C Meadowcroft
HEAD OF LEGAL & ESTATES

Jameson & Hill

SOLICITORS

R. A. Jameson, LL.B.
S. J. Battersby, LL.B.
N. A. Evans, LL.B.
A. D. J. Royce, LL.B.
A. Singh, LL.B.

72-74 FORE STREET
HERTFORD SG14 1BY
Tel: (01992) 554881
DX 57908 HERTFORD
Fax: (01992) 551885
Also at:
60-62 High Street, Ware SG12 9DA
126 Turners Hill, Cheshunt, EN8 9BN

Your ref: CenS.CM.jaw.L/PO/49 Our ref: RAJ/lcb/Whitmee/020108 Date 20th February 2003

Mr C Meadowcroft
Head of Legal Services
Huntingdonshire District Council
DX : 80929 Huntingdon-1

rj@jailforest.co.uk

Dear Colin

CERTIFICATE OF LAWFUL DEVELOPMENT FOR RETENTION OF DWELLING WITHOUT OCCUPANCY RESTRICTION
7 RIVER LANE, BRAMPTON, HUNTINGDON, CAMBRIDGESHIRE

As you know I have been advising Martin Page of DH Barford in the above matter. I have to hand now a copy of Malcolm Grant's advice of the 24th December 2002. That refers to an earlier advice of the 24th October 2002 and I have not seen that. I have also seen Malcolm Grant's further e-mail advice of the 28th January 2003.

I do have to say that I take the firm view that Malcolm Grant is clearly wrong on this issue.

In the first place Malcolm Grant's approach is to suggest that the Council has a choice in these sort of cases. He suggests that where the construction of the dwelling without planning permission or the use of a pre-existing building for use as a single dwellinghouse takes place on land which was not previously part of a residential curtilage then the Council has an option in any enforcement proceedings to allege a material change of use from the previous use to residential. He seems to suggest that by making that allegation in the Enforcement Notice the 4 year rule set out in Section 171B(2) of the Act is somehow circumvented. That is quite clearly not the case.

The very wording of the Act itself confirms this. Section 171B(2) confirms that where there has been a breach of planning control consisting in the change of use of any buildings to use as a single dwellinghouse, the 4 year rule applies. Section 171B(3) goes on to say that in the case of **any other breach of planning control**, the 10 year rule applies. Thus once the 4 year rule under Section 171B(2) bites there is no option for the Council then to allege a material change of use under the 10 year rule, as Malcolm Grant appears to be suggesting.

HUNTINGDONSHIRE DISTRICT COUNCIL
21 FEB 2003
CHIEF EXECUTIVE'S DEPARTMENT

One result of Malcolm Grant's interpretation is that it would only ever be possible to take the benefit of the 4 year rule in Section 171B(2) where the pre-existing use of the planning unit was residential. There is absolutely no support for that view whatsoever either in statute or in case law. As I say Section 171B(2) talks of "the change of use of **any** building to use as a single dwellinghouse". It does not say the change of use of any building within a residential planning unit. The very use of the word "any" demonstrates that it matters not what sort of building we are talking about and what the use of the land or building was before it was converted to a residential use.

All the case law points clearly in the same direction:-

(1) In your letter to Martin Page of the 29th January 2003 you draw his attention to an extract from the report of the Newbury case (1995 JPL 329) and you draw attention to the second and third sentences in the commentary at the end (at page 338) which you say you believe supports the stance adopted by the Council. With respect it does not support that view at all. The extract goes on to say *"The problem that the Deputy Judge had to grapple with is whether the Murfitt/Perkins line of cases has established that after 4 years have elapsed enforcement action can still be taken to require the building to be demolished as the material change of use was dependent on there being a building in the first place. This must be wrong as it would mean that the 4 year rule was for most purposes meaningless as it could be trumped by the 10 year rule for associated material changes of use"*. That is exactly the point that we are making to you. That Newbury case involved the construction of a tennis court on what had formerly been agricultural land. The tennis court was operational development and subject to the 4 year rule. The Council tried to say that there was a material change of use of the land from agricultural to residential. The Judge found that that was not an argument open to the Council. Both the 4 year operational development rule and the 4 year change of use of any building to a single dwellinghouse would be rendered virtually useless if it was open to a local planning authority to bring enforcement proceedings relating to the underlying change of use of the land.

(2) I am enclosing a copy of the case *Stanway v Secretary of State for the Environment Transport and the Regions* and *South Glamorgan County Council* (2001 JPL 1063). That case, in principle, deals with exactly the same issue. Stables were granted planning permission but were occupied residentially. The Council issued an Enforcement Notice alleging material change of use from "horsiculture" to a mixed use of horsiculture and residential. A lot of the debate went along the lines of whether the accommodation had been provided was residential accommodation as opposed to "use as a single dwellinghouse" but again the Judgment proceeded on the basis that if it was use as a single dwellinghouse it was not open to the Council to pursue a material change of use under the 10 year rule. That again was a case where 4 years had expired, but 10 years had not.

(3) In paragraph 6 of Malcolm Grant's advice of the 24th December 2002 he points out that in the case that we referred you to more than 10 years had elapsed in any event. With respect the decision is specifically stated to be a decision based on the 4 year rule in Section 171(B)(1) and (2). Paragraph 9 of the Inspector's decision states *"Since that use had continued for more than 4 years, it had also become immune by virtue of Section 171(B)(2) of the 1990 Act"*.

Finally can I say that the position we are now in is that as a result of our clear advice to our client he appears now to be threatened with enforcement proceedings. I can find absolutely nothing to suggest that the Council is right and the matter seems to be quite clear. If our client is served with an Enforcement Notice, albeit on the basis of "under enforcement" then we shall of course appeal. I need to make it clear at this stage that in any such proceedings we shall make an application for full costs against the Council, having explained at this stage in detail why we believe the Council is wrong in law. At the very least, if you are still unconvinced, I would ask that the Council takes another opinion from Planning Counsel at a different set of chambers, and puts all the material before that Counsel including our own representations.

I look forward to hearing from you.

Yours sincerely

Robert.

R A JAMESON
JAMESON & HILL

Enc

26. In those circumstances, *R. v. Westminster C.C. ex parte Ermakov* 1996 2 All E.R. 302, does not fall to be considered. For the sake of completeness, in so far as such a witness statement could be used itself to found a challenge, I do not consider that what the Inspector says in para. 7 of his Witness Statement is in any way at odds with his Decision Letter.

27. For all those reasons, this application is dismissed.

Comment. The essence of a precedent argument is that the development proposed may in itself be unobjectionable, but allowing that scheme would make it difficult to refuse other similar proposals and the cumulative effect of all the developments would be harmful. In addition to the authorities cited in the judgment, a useful case on the topic is *Collis Radio Limited v. Secretary of State for the Environment* (1975) 29 P. & C.R. 390.

A precedent argument relies on the possible actions of other developers and landowners in circumstances (namely the grant of permission for the scheme) which have not yet arisen. Firm evidence, such as other potential developments being held off pending the determination of the instant application, would be rare. What matters is that there is something in the circumstances that can base the concern. Mr Ouseley Q.C. concluded that the inspector had sufficiently explained himself in a case where the facts speak for themselves.

The court also commented on the role of witness statements from Inspectors, or presumably the Secretary of State. A statement can explain what material was before the inspector and its context, but not elaborate the reasoning. This accords with the duty to give reasons in the procedural rules. The decision's reasoning must be adequate and intelligible, if so it is sufficient. If it is not adequate and intelligible, a witness statement should not be able to cure the defect.

Commentary by Richard Harwood.

Stanway v. Secretary of State for the Environment, Transport and the Regions and South Glamorgan County Council (Queen's Bench Division, Mr Nigel Macleod sitting as a Deputy High Court Judge, November 16, 2000)[3]

Material change of use—whether change of use was to use as a single dwelling house or mixed use—the planning unit—section 171B of the Town and Country Planning Act 1990

The site in question was granted planning permission in 1992 for a stable building and access in a field. The conditions attached to the permission included a condition that the permitted stable building should be used for the stabling of privately owned horses only and should not be used as a riding school, livery stabling or for any business use or commercial purposes. The stables were constructed in 1992 and from December 1992 the appellant's partner lived in the stables. An application to extend the stables for use as a dwelling house was refused and dismissed on appeal in 1993. A plan of the living accommodation showed it to have a bedroom, bathroom, WC, kitchen, living room and two strorerooms. It was plumbed to a cess pit. An enforcement notice was issued on March 9, 1998 with the breach of planning control alleged in the notice being a material change of use of the land from stables for horses to a mixed use of stables for horses and a residential use. The appellant appealed against the enforcement notice, the grounds of appeal being those set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 (the Act). The Inspector upheld the enforcement notice and corrected the breach of planning control alleged to "without planning permission a material change of use of the land to a mixed use for the grazing and stabling of horses and a residential use". The Inspector, in his decision letter stated that discussion of the planning unit was of much relevance. He noted the appellant's view, which was that the dwelling house had been established in the stables and was a discrete unit in planning terms, lacking any curtilage or associated land and not possessing significant links with the use related to horse grazing. He also noted the council's view that a mixed use of land had arisen when the residential use was introduced into part of the stable block. The Inspector recorded the acceptance that the planning unit (some three hectares) encompassed the entire unit of occupation. In

[3] *P. Wadsley* (Shoosmiths, Nottingham); *D. Forsdick* (Treasury Solicitor).

paragraph 5 of his decision letter, the Inspector examined the ties between the residential use and the use for "horsiculture" and in paragraph 6, he expressed his reservations about the suitability of the accommodation for residential purposes. He then concluded that for all these reasons, but especially those concerned with the relation of the use to the "horsiculture" use, the development amounted to a change to a mixed use including a use for residential purposes. The development had not led to the formation of a single dwelling house, resulting in the creation of a separate planning unit and it therefore followed, that having regard to the provisions of section 171B of the Act, that the appropriate period against which ground (d) of the appeal should be considered was ten and not four years. In paragraph 15 of his decision letter, when the Inspector considered the Local Plan Policy in the context of ground (a) of the appeal, that is, whether planning permission should be granted, he stated that the residential element of the composite use had only a tenuous link with the grazing and stabling of horses and concluded that the residential use was neither inextricably nor essentially associated with "horsiculture" so as to amount, in total, to a use appropriate to a rural area. The appellant appealed against the Inspector's decision under section 289 of the Act. The appeal was primarily concerned with ground (d), that is, the limited periods within which enforcement proceedings could be taken against particular types of development.

Held,

1. It was common ground that residential use was not the same as use as a single dwelling house and that a relevant statutory question to be determined in the present case was whether the use constituting the breach of planning control was or was not use as a single dwelling house. In *Gravesham Borough Council v. SSE* (1982) 47 P. & C.R. 142, it was held that whether a building was or was not a dwelling house was a question of fact and that a distinctive characteristic of a dwelling house was its ability to afford to those who used it the facilities required for day-to-day private domestic existence; that not every case was to be determined by having regard only, or even primarily, to the use to which a building was in fact put, nor was the duration or frequency of the use always relevant, and, in general, little, if anything, turned on it. However, the *Gravesham* case was not intended to exclude other approaches to determining questions of fact provided that other approaches complied with statutory or other requirements. In the present case the Inspector was presented with various arguments on fact that he was entitled to accept and make planning judgments on. In the circumstances of the present case, he had not transgressed any principles set out in *Gravesham* in doing so.
2. However the overriding and determinative concern was the fundamental apparent conflict which could be seen between paragraphs 6 and 15 of the Inspector's decision letter. It was not easy to understand these two apparently conflicting stances. For example, it was not easily seen how a tenuous link or slender involvement could especially justify a mixed use between the two tenuously linked uses. Overall the conflict was self-evident. It could be the case that explanation could be given, but that was not to be seen in the decision letter. The fact that the Inspector was dealing with different grounds of appeal did not provide explanation, as these were underlying bases of fact and degree underlying planning judgments. Accordingly, the Inspector had not given clear or sufficient reasons, looking at the decision letter overall, for his conclusion on a substantial and determinative issue in the appeal, namely, his conclusion in paragraph 6 that the development amounted to a change to mixed use, and that it had not led to the formation of a single dwelling house. Furthermore, in the absence of sufficient and adequate reasons, these conclusions appeared perverse.
3. Matter remitted to the Secretary of State for his redetermination.

The following judgment was given.

1. **Mr Nigel Macleod Q.C.:** This is an appeal under section 289 of the Town and Country Planning Act 1990 against the decision of the first defendant's inspector to dismiss the claimant's appeal against an enforcement notice issued by the second defendant.

2. The enforcement notice was issued on March 9, 1998, with the breach of planning control alleged in

the notice being a material change of use of land from stables for horses to a mixed use of stables for horses and a residential use.

3. In upholding the enforcement notice, the inspector corrected the breach of planning control alleged to "without planning permission a material change of use of the land to a mixed use for the grazing and stabling of horses and a residential use".

4. The grounds of appeal against the enforcement notice were those in section 174(2)(a), (d), (f) and (g) of the 1990 Town and Country Planning Act. Ground (a) is that planning permission ought to be granted in respect of the matters constituting the breach, but I am primarily concerned with ground (d); that is, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. This ground is related to the limited periods within which enforcement proceedings may be taken against particular types of development.

5. It is sufficient to say that the site is at Tynbridge, Wick Lane, Bitton where in January 1992, permission was given for a stable building and access in a field at Bitton, the conditions for which included a condition that the permitted stable building should be used for the stabling of privately owned horses only and should not be used as a riding school, livery stabling or for any business use or commercial purposes. It seems from the claimant's statement that the stables were constructed in 1992 and that her partner, Mr Jenkins, has lived in the stables since December 1992. Mr Jenkins's statement confirms this. Apparently an application to extend the stables for use as a dwelling house was refused and dismissed on appeal in 1993. A plan of the living accommodation shows it to have a bedroom, bathroom, WC, kitchen, living room and two storerooms. It is plumbed to a cess pit.

6. Under section 171A of the Town and Country Planning Act 1990, the carrying out of development without the required planning permission is a breach of planning control giving rise to liability to enforcement action by the service of an enforcement notice. In the case of development by a material change of use, by section 171B(2), if the change is of use of any building (which, of course, includes part of a building) to use as a single dwelling house, the period for taking enforcement action is four years from the change or breach. If the breach is by making any other material change of use, by section 171B(3), the period for taking enforcement action is ten years from the change or breach.

7. As the use for residential purposes commenced in 1992—that is, less than 10 years, but more than four years before issue of the enforcement notice—it is apparent that it is crucial to determine correctly the nature of the material change of use, and this is at the heart of the challenge in the present case.

8. The inspector concluded that the development by material change of use amounted to a change to a mixed use, including a use for residential purposes. Accordingly the ten-year period applied and the time for enforcement action was not expired. It was this finding as to the characterisation of the change of use which is under challenge before me.

9. The inspector's reasoning is to be found in paragraphs 4 to 6 of his decision letter. In paragraph 4 the inspector stated that discussion of the planning unit was of much relevance. He noted that the appellant's view was that a dwelling had been established in the stables and this was a discrete unit in planning terms, lacking any curtilage or associated land and not possessing significant links with the use related to horse grazing. He also noted the council's view that a mixed use of land had arisen when the residential use was introduced into part of the stable block. Reference was made to continuing links between the component uses and also to shared elements. He also recorded the acceptance that the planning unit (some three hectares) encompassed the entire unit of occupation. He then went on as follows:

"5. For the Council it was claimed that the residential element has certain ties with the use for 'horsiculture'. The appellant claimed that the unit had been established in order to address concerns about security of horses and the contents of the building. It was agreed that some facilities, notably water and electricity supplies were shared by the uses although the appellant's planning witness suggested that it was not absolutely necessary for stables to possess such facilities. Clearly there is a single vehicular access and drive serving both uses and certain areas of land about the building are shared, in particular for parking and for storage of various items. On my inspection I saw two vehicle bodies, situated close to the building, that were in use for storage purposes incidental to the uses, one predominantly for hay, the other for a range of domestic items and a mower. I also inspected the domestic area of the building and I saw that the layout accorded with that indicated on the plan accompanying a letter dated April 9, 1999 from the appellant's planning consultant to the Council."

10. That plan showed the accommodation which I have already explained. Returning to paragraph 5:

"The remainder of the building is in use as a loose box and a further loose box is currently used for storage of hay and other items.

6. Doubt has been cast by the Council regarding the suitability and completeness of the conversion for residential occupancy. On my inspection I saw that bathroom and kitchen facilities were operational and rooms were furnished. Nevertheless I too have significant reservations about the suitability of the accommodation for residential purposes. It was said that occupation had begun in December 1992 but the accommodation is still severely lacking in natural light and ventilation. At best this amounts to single very small high level windows in some rooms. As far as I could see, the lounge totally lacks any direct light, ventilation or view of the outside world. Moreover it appeared to me that the structure and specification of the building itself remained more appropriate to a stable than to a use for residential purposes. In particular the former stable doors remained in situ but had been lined out inside the building. For all these reasons, but especially those concerned with the relation of the use to the 'horsiculture' use, I conclude that the development amounts to a change to a mixed use including a use for residential purposes. It has not led to the formation of a single dwellinghouse, resulting in the creation of a separate planning unit. It follows, having regard to the provisions of Section 171B of the 1990 Act that the appropriate period against which the ground (d) appeal should be considered is ten years and not four years."

11. Against that background, I turn to the arguments. It is common ground that residential use is not the same as use as a single dwelling house and that a relevant necessary statutory question to be determined in the present case was whether the use constituting the breach of planning control was or was not use as a single dwelling house. It is found by the inspector, in terms, in paragraph 6 of his decision letter that the material change of use was not a change to use as single dwelling house.

12. Mr Wadsley appeared for the claimant. His case was that the inspector applied the wrong test in determining this necessary statutory question. He helpfully referred me to a number of cases, but the essential points can be simply seen from two of these cases.

13. First, and principally, relied upon by Mr Wadsley is *Gravesham Borough Council v. SSE* (1982) 47 P. & C.R. 142, where an analysis of the approach to the question of whether or not a building was a "dwelling house" was given by McCullough J., in consideration of matters under the 1977 Town and Country Planning General Development Order. This analysis has had approval from the Court of Appeal and is apt for consideration of the relevant question in the present case. The case is well known

15. At this stage I particularly draw attention to two points from those judgments. First, that the matters for consideration are questions of fact and degree; secondly, I draw attention to the 'useful working rule' which refers to a separate use, both *physically and functionally*.

16. Mr Wadsley argued that, in reaching his conclusion, the inspector did not apply the Gravesham approach; he should have considered whether the living accommodation was capable of being a single dwelling house, and should have done that by having in mind that a definitive characteristic of a dwelling house is its ability to afford to those who use it the facilities for day to day private domestic existence. Had he used this approach, the only proper factual conclusion to which he could have come was that the building was capable of being a dwelling house, and thence reached a favourable conclusion for the claimant.

17. Instead of taking this approach, Mr Wadsley said, the inspector took into account a number of matters which were not appropriate for determining the relevant legal question.

18. Among the points he made were that, as referred to in paragraph 5 of the decision letter, the sharing of facilities could not have helped the inspector because this is quite normal in dwelling houses; and that the vehicle bodies were used for separate purposes. With regard to paragraph 6, Mr Wadsley said that suitability is not the test and did not accord with the *Gravesham* approach; that there were acknowledged dwelling houses which did have limited light and ventilation; that the question for consideration should not be specification, but should be facilities; that it can be inferred that if he had found there to be a single dwelling house, he would have found there to be a separate planning unit.

19. By reference to the plan in the papers, Mr Wadsley indicated that there was clear physical separation between the residential use and other use on the site.

20. He also indicated that there was no link between the functions of dwelling and "horsiculture", which in the present case appears to mean the grazing and stabling of horses. Reference was made to paragraphs 13, 14 and 15 of the inspector's decision letter. In accordance with the *Burdle* case, therefore, the uses should have been separated.

21. In paragraph 15 of his decision letter, the inspector considers Local Plan Policy KLP36, in the context of ground (a)—should planning permission be granted. Policy KLP36 is summarised by the inspector in paragraph 10 of his decision letter as providing that within the green belt, planning permission will not be given except in very special circumstances for the change of use of existing buildings for purposes other than agriculture, forestry, outdoor recreation, cemeteries, crematoria, institutions standing in extensive grounds or other uses appropriate to a rural area.

22. Paragraph 15 of the decision letter reads as follows:

> "In my view relevant policy is therefore policy KLP36 in addition to the later national advice in PPG2. KLP36 refers to changes of use and sets out purposes for which a permission to change a use may be justified. None of the stated purposes apply in this case with the possible exception of 'uses appropriate in a rural area'. Undoubtedly a use for 'horsiculture' is appropriate but it seems to me that the residential element of the composite use has only a tenuous link with the grazing and stabling of horses. The occupier of the accommodation works elsewhere and his main function is to provide a presence on the site at night. Evidence as to any other involvement with horses was slender. The evidence suggested to me that the occupation had as much to do with the personal circumstances and convenience of the occupier and the appellant as with the wellbeing of horses. I conclude that the residential use is neither inextricably nor essentially associated with 'horsiculture' so as to amount, in total, to a use appropriate to a rural area. I further conclude that the residential use returns counter to policy KLP36."

23. I will return to the detail of this paragraph later.

24. In response to Mr Wadsley Mr Forsdick, for the first defendant, says that *Gravesham* was not relevant for the exercise which the inspector was carrying out in paragraphs 4 to 7 of his decision letter; that is, seeking to deal with functional and physical activities within the planning unit, which was all he had to do. He found that there was not functional and physical separation, and so concluded a mixed use.

25. Mr Forsdick identified functional links which had been claimed in the papers on behalf of the claimant—for example, "would be of advantage to have someone living on site", "the animals need attending to", "vulnerability of horses and their related facilities to theft, vandalism and injury", "to protect premises the subject of break-ins", "very concerned for the safety and wellbeing of horses kept there". Reference to these claims was made by the inspector at the beginning of paragraph 5 of his decision letter.

26. So Mr Forsdick says that the functions link was the limited use of security.

27. He further pointed out that the decision letter was directed to the informed reader, who would know all the matters put to the inspector. Mr Forsdick drew attention to the factors which the local planning authority had put forward in support of its case of dual use—common supply of utilities, common access, interrelationship between 'horsiculture' use and residential use, and another appeal decision where dual use was found in respect of stable and residential use.

28. Against that background, said Mr Forsdick, the inspector can be seen to be accepting the security links, physical links, and overlapping of use in his paragraphs 4–5. So, as a question of fact and degree, the inspector found physical and functional links which entitled him to conclude that there was a dual use. The inspector had seen the site and was entitled to reach his conclusion.

29. I agree with Mr Forsdick on these matters. I do not consider that the *Gravesham* case was intended to exclude other approaches to determining questions of fact provided that other approaches do comply with statutory or other requirements. In the present case the inspector was presented with various arguments on fact which he was entitled to accept and make planning judgments upon. In the circumstances of the present case, I do not find that he transgressed any principles set out in *Gravesham* in doing so. To a great extent Mr Wadsley's arguments were, notwithstanding their attractive presentation, simply seeking to revisit findings of fact which it is not appropriate for this court to do.

30. However, the overriding and determinative concern which I have about this case is the fundamental apparent conflict which I see between paragraphs 6 and 15 of the decision letter.

31. It will be recalled that in paragraph 6 the inspector said that, for all the reasons he gave, but "especially those concerned with the relation of the use to the horsiculture use" he was led to conclude that the change was to mixed use.

32. However, in paragraph 15, where he is considering uses appropriate to a rural area, he finds horsiculture appropriate, but then the residential link becomes "tenuous", and, "beyond a presence on site", any involvement with horses is said to be slender. Emphasis is placed upon personal circumstances and convenience, and there is a finding that the residential use is neither inextricably nor essentially associated with "horsiculture".

33. I do not find it easy to understand these two apparently conflicting stances. For example, it is not easily seen how a tenuous link or slender involvement can especially justify a mixed use between the two tenuously linked uses. But overall in my judgment the conflict is self-evident. It may be the case that explanation could be given. But this is not to be seen in the decision letter. The fact that the

inspector was dealing with different grounds of appeal does not provide explanation, as these are underlying bases of fact and degree underlying planning judgments. Accordingly, I find that the inspector has not given clear or sufficient reasons, looking at the decision letter overall, for his conclusion on a substantial and determinative issue in the appeal, namely, his conclusions in paragraph 6 that the development amounts to a change to a mixed use, and that it has not led to the formation of a single dwelling house. Furthermore, in the absence of sufficient and adequate reasons, these conclusions appear perverse.

34. Therefore the claim succeeds.

35. This matter therefore has to be remitted for the Secretary of State for his redetermination.

Comment. The factual background to this case is by no means unusual. Consequently many planning authorities adopt a sceptical approach to planning applications that seek permission for residential development that would normally be refused but for some "horsicultural" link. The justification that is sometimes pleaded in support is that the interests of good animal husbandry dictate that a residential unit should be permitted. A common problem that this case illustrates is that, in the event of permission being refused but the development proceeding nonetheless, it can then be difficult to establish whether or not the introduction of an unauthorised residential use amounts to a change of use to a mixed use or to the creation of an entirely separate residential planning unit. Having argued unsuccessfully that a residential element was needed in the interests of animal welfare, it may appear inconsistent to suddenly change horses and argue that the residential unit is entirely divorced from the stables use.

Resolving this problem is neither easy nor peripheral for it goes to the root of the question of what is the relevant immunity period, four years or 10? In this case the inspector appears to have ridden both horses. In the early part of his decision he concluded that there was a clear link between the two uses so as to form a mixed use. However, when later considering the local plan policy background, which favoured such horsiculture development, that link suddenly became tenuous. There was no explanation for this apparent conflict in approach and the court considered that the two conclusions appeared perverse.

Commentary by Martin Edwards.

R. on the Application of Cadbury Garden Centre v. North Somerset District Council

(Court of Appeal, Aldous L.J., Schiemann L.J., Brooke L.J., October 26, 2000)[4]

Change of use—agricultural use—retail of plants on site—exercise of discretion in judicial review

Planning permission was granted by North Somerset District Council (the Council) in December 1998 to "replace existing old buildings and build a new canopy (open-sided structure) for growing and sale of plants at Greenholm Nurseries (Greenholm)". An application for judicial review was made by Cadbury Garden Centre (the respondent) who had their business nearby. Greenholm put up the structure but Cadbury did not ask for an injunction and the building had been up for nearly two years without eliciting other complaints. The 1998 permission was granted on the basis that a permission granted by the Council's predecessor council, Woodspring District Council (WDC) in 1991 (following an application dated April 14, 1986) (the 1991 permission) covered the area on which the building had been built. The 1991 permission included the following particulars: Ordinance Survey reference sheet ST 4364 (1975 Edition); Plot No. 8259; Position and Nature of proposed retail sale of plants . . . as described in the plans and drawings submitted as amplified by letter dated December 17, 1986 and plan enclosed therewith, as amended by letter dated November 23, 1987 and as amplified by letter and plan received on October 6, 1988. The permission was subject to the following conditions: The goods to be retailed shall be limited to plants grown on site plus those additional items specified in the section 106 agreement (Condition 2); No additional buildings shall be erected outside that part of the site defined [as] the sales area on the plan dated December 17, 1986 (Condition 3). The

[4] *T. Straker* Q.C. (Messrs Sharpe Pritchard, London); *C. Lockhart-Mummery* Q.C. and *D. Abraham* (Messrs Burges Salmon, Bristol).

reason given for the imposition of the two conditions was "in the interests of visual amenity". Probably due to local government re-organisation, the application, the plans and drawings submitted with it and the amplificatory letters and plans referred to were not available. However there was available the section 106 agreement referred to in the permission (the first agreement). This was dated October 31, 1991, the date of the permission, and was made between the owners of plot 8259 on sheet 4364 of the 1975 Ordnance Survey, the highway authority and WDC. The fourth recital stated that WDC had agreed to grant simultaneously with the exchange of the first agreement planning permission in the form annexed thereto for the retail sale of plants on part of the land (the Development) subject to the conditions specified in the First and Second Schedules and the specimen planning certificate 0965/86 annexed thereto.

The owners covenanted with WDC, notwithstanding anything in the Town and Country Planning Act 1971, for themselves and their successors to the land to comply with the conditions referred to or contained in the Second Schedule and the specimen planning permission, and in Clause 4, WDC agreed with the owner to grant simultaneously with the completion of the agreement, planning permission for the Development in the form annexed thereto. The Second Schedule provided that the only goods sold on at or from the land should be plants (including trees shrubs seeds bulbs pot and other house plants, alpine and herbaceous plants and plant material including roots and vegetables and flowers from any source or nurseries including Greenholm Nursery), composts for all types of plants including peat, fertilisers and pesticides, pots and containers for all types of plants and canes stakes and plant ties. The Second Schedule also stated that the extent of the structure and areas to be used in connection with the sale and display of goods should be first agreed with and approved by WDC and to provide such car park spaces for both operational and customer use as should be required and approved by WDC. The list of goods that could be sold was increased by a second agreement concluded in 1993. There were also available reports made to committees of WDC about the site between April 1986 and March 1992. The report dated March 12, 1990 stated that the applicant wished to obtain consent for a larger sales area than originally envisaged. It also stated that plans submitted with the original application indicated the formation of a sales area immediately to the back of the car park of approximately 35m in depth whereas the plans incorporated into the latest draft section 106 agreement indicated that the sales area that had been installed was in fact 80m deep and that Greenholm requested this be authorised by way of a major amendment. The report also considered that the enlarged sales area would not have an adverse impact on visual amenity. Although the committee approved the enlarged sales area, which was shown in the plan annexed to the section 106 agreement, by an oversight no reference was made to the 1990 plan on the face of the planning permission. With regard to the 1998 permission, the Council were advised that the erection of the new building did not present any threat to visual amenity and that the erection of this building did not conflict with any planning policies applicable to the land. In the officer's report to the planning sub-committee on December 10, 1998 the Council were advised that the new building would be sited on the part of the site reserved for retailing under the section 106 agreement and a little later in the report that the new structures were to be sited entirely within the area authorised for retail sales under the previous planning approvals granted for the site. The respondent sought judicial review of the grant of planning permission. Dyson J. quashed the decision to grant planning permission. He found that the planning permission of October 31, 1991 did not permit retail use on the whole site even though the Ordinance Survey reference given was the plot number 8259, which was the entire site. The plan of December 17, 1986, that was incorporated, showed that the sales area was limited to a part of the entire site, and the planning permission and section 106 agreement limited the goods to be retailed to plants grown on the site and a small range of ancillary horticultural products. In his view, the retail user permitted by the planning permission was plainly ancillary to the main permitted user of the site, which remained what it always had been, namely, agriculture. The Council appealed to the Court of Appeal.

Held,

1. There were two separate questions that needed to be addressed: (1) what goods were allowed to be sold under the planning permission and (2) on what area of land were they allowed to be sold? So far as the type of goods was concerned, it was clear from the Second Schedule of the first agreement that there was no restriction in that agreement on the sale of plants not grown on the

application site and in so far as the judge took a different view, he had fallen into error. With regard to the 1991 planning permission, despite the opening words of Condition 2, it was clear from the concluding words of that condition that the planning permission comprised anything to be sold under the section 106 agreement. The second agreement did not affect the ambit of the 1991 planning permission. So far as the area of land covered by the planning permission was concerned, the planning permission covered the whole site and not merely the area described on the plan as the sales area. There was no reason to suppose that application was only made in relation to part of the site for the following reasons: (1) the permission referred to plot 8259 rather than to part of plot 8259; (2) Condition 2 in its reference to plants grown on the site was probably referring to a part of the site other than the sales area; (3) Condition 3 referred to "that part of the site defined on [and that must mean "as"] the sales area on the plan" which implied that the site was larger than the sales area; (4) the land referred to in the first agreement was the whole of the site. The correctness of this conclusion corresponded with the reports to the committee that were made prior to the issue of the 1991 permission.

2. There was nothing in either the planning permission or the first agreement to prevent Greenholm from using the sales area exclusively for the sale of imported plants. In those circumstances the judge was wrong to hold that the land was agricultural land for the purposes of planning policies notwithstanding, as he had held, "no agricultural/horticultural use whatsoever had taken place at the site since 1991 and the only use which had taken place was a retail use". If in 1986 it had been intended to use the site purely for agricultural purposes, there would have been no need for the 1986 application. The Council's officers correctly advised the Council that the erection of this building on the sales area did not conflict with planning policies.
3. With regard to the question, "how large was the sales area", it was clear from the material in front of the court that it was only in March 1990, well after the date of the 1986 plan but before the grant of the 1991 permission, that Greenholm requested planning consent for a larger area than was originally envisaged. The committee acceded to Greenholm's request for that larger area. It was agreed that the footprint of the building that had been erected pursuant to the 1998 permission was inside the larger area. It also seemed clear that part of the building was outside the site shown on the 1986 plan. The committee were therefore probably wrongly advised that it was all within the sites of the previous planning approval.
4. Where an administrative decision had been reached by a body which took into account a factual error the decision would normally be quashed, but the court had a discretion to refuse the remedy of quashing. There were a number of reasons for the residual discretion not to quash, the only one relevant in the present case was that, the court could feel confident that the administrative authority would have reached the same decision even if it had been aware of the true facts. The reason for the imposition of Condition 3 was the interests of visual amenity. There was no suggestion that the respondent's visual amenities had been adversely affected by the erection of the building. There was no evidence from anyone else that their views had been spoiled. Indeed there was no suggestion that the replacement building, albeit larger than what was there before, was not a visual improvement. The whole of the site had at the time of the decision in 1998 planning permission for retail linked activity, subject to the conditions in the planning permission and the first agreement. Even after the challenge by the respondent, no individual linked himself with the challenge and it was now too late for any individual to complain of loss of views. Although conscious of the danger of the court substituting itself for the decision-taker, the discretion had to be exercised in the light of an assessment of what was at stake for the person seeking the quashing of the permission. Here all that had been shown to have gone wrong was something that might have been relevant in a visual context in relation to which the respondent had expressed no concern. The court was satisfied, particularly in the light of the history of the matter, that it could exclude the possibility that had the position been accurately represented to the Council, the decision would have been different.
5. Appeal allowed.

The following judgments were given.

1. **Lord Justice Aldous:** Lord Justice Schiemann will give the first judgment.

2. Lord Justice Schiemann: This is an appeal from a decision of Dyson J. in a planning matter. He was asked to quash the grant of planning permission by North Somerset Council and did so. The permission was granted in December 1998 and was "to replace existing old buildings and build a new canopy (open-sided structure) for growing and sale of plants at Greenholm Nurseries, Smallway, Congresbury." Straightaway an application for judicial review was made by the respondent, Cadbury Garden Centre, who have their business nearby. Undeterred Greenholm put up the structure. Cadbury did not ask for an injunction. The building has been up for nearly two years without eliciting other complaints.

3. It is common ground that the 1998 permission was granted on the basis that a permission granted by North Somerset's predecessor council—Woodspring District Council—in 1991 covered the area on which the building has been built. The bulk of the argument is concerned with the ambit of the 1991 permission.

4. This read as follows:

> "THE DISTRICT COUNCIL WOODSPRING ... HAVE GRANTED CONDITIONAL PERMISSION ... to the application of Mr RJR Vanderplank ... dated 14th April [1986] in accordance with the following particulars:—
>
> Parish CONGRESBURY
>
> Ordinance Survey references Sheet ST4364 (1975 Edition)
>
> Plot No[s] 8259
>
> Position and Nature of Proposal Retail sale of plants at Smallway, Congresbury as described in the plans and drawings submitted as amplified by letter dated 17/12/86 and plan enclosed therewith, as amended by letter dated 23/11/87 and as amplified by letter and plan received on 6/10/88.
>
> Permission is granted subject to the following condition[s].
>
> (1) ...
>
> (2) The goods to be retailed shall be limited to plants grown on site plus those additional items specified in the Section 106 Agreement."

5. Condition 3 is:

> "(3) No additional buildings shall be erected outside that part of the site defined [as] the sales area on the plan dated 17 December 1986."

6. The reason given for the imposition of those two conditions is "in the interests of visual amenity".

7. Unfortunately there are not before the court, probably because they got lost in local government reorganisation, the application, the plans and drawings submitted with it and the amplificatory letters and plans referred to. We do have however the section 106 agreement referred to in the permission. That is dated October 31, 1991—the date of the planning permission. It is made between the owners of a site which can be identified as plot 8259 on sheet 4364 of the 1975 Ordnance Survey and the Highway Authority and Woodspring District Council which is referred to as the council. It is clear from the recitals that the Highway Authority was anxious to secure various improvements so that the extra traffic generated by the development could be safely accommodated. Much of the agreement is concerned with that. But we are not. The parts with which we are concerned are the fourth recital, which reads:

> "The Council has agreed to grant simultaneously with the exchange of this agreement planning

sales area immediately to the back of the car park of approximately 35 metres in depth. Plans incorporated into the latest draft Agreement indicate that the sales area that has now been installed is in fact 80 metres deep. The applicant requests that this be authorised by way of a Major Amendment."

14. I read the next paragraph because it is relevant later on in this judgment:

"It is considered that the enlarged sales area will not have an adverse impact on visual amenity given that the additional space is used for the open storage of plants in pots. Thus, for most times of the year, the area presents the appearance of a densely planted nursery."

15. It follows that the plan submitted with the original application showed a sales area immediately to the back of the car park approximately 35m deep. The plan incorporated into the latest draft agreement in March 1990 was said to have indicated that the sales area that was installed was in fact 80m deep. This expanded sales area is shown on the plan now on page 88 of the court bundle, which was annexed to the section 106 agreement when it was finally executed on October 31, 1991.

16. The plan attached to the planning file at the council's offices is at page 179 of the court papers. It is probably also at page 48, since the plan at page 48 contains the same measurements, so far as they are legible, and the same features and descriptions as the plan on page 179. If there was any dispute about this, we should certainly prefer the plan on page 179, which is directly confirmed by the relevant principal planning officer, Mr Cole, and was not disputed in the applicant's evidence in reply. In contrast, the more illegible plan on page 48 is indirectly attested to by Mr Lloyd, the applicant's managing director, who was given this document by his solicitor, who had inspected the relevant planning file.

17. The plan on page 179 shows that the distance from the back of the car park to the road was variously 41m and 37m. The distance from the "front line retail sales area" to "the rear line retail sales area" is about 80m (50 + 23 + 3 + 3: the last figures are indistinct). A comparison with the plan on page 88 shows the same retail sales area in both, and the buildings within the sales area at approximately the same places within the area in both. I have no doubt, in these circumstances, that this is the plan mentioned in the report dated March 12, 1990 which was approved by the committee on that occasion as a major amendment. It cannot be the plan submitted in 1986 with the area only 35m deep and Mr Lloyd's plan at page 146 of the bundle shows that that area covers less than half of the area Mr Lloyd says has been used since 1991 for sales.

18. It follows that although the committee approved the enlarged sales area, which is shown in the plan annexed to the section 106 agreement, by an oversight no reference was made to the 1990 plan on the face of the planning permission, even though it was this plan which was placed in the relevant council file and was open to public inspection.

19. The submissions before the judge, which broadly speaking have been repeated in front of us, and his conclusions on them appear from the following passage in the judgment under appeal.

"Mr Lockhart-Mummery submits as follows.

Historically (and, indeed, prior to the grant of planning permission in December 1998) the lawful planning use of the site was as an agricultural field. In planning terms, the agricultural use includes the use for horticulture or as nursery grounds. The subject site, in due course, came to be used as nursery grounds.

After the grant of planning permission, on October 31, 1991, the lawful use of the site, while

remaining in a primary or dominant use as a nursery (agriculture), became what is generally described as a retail nursery, namely a horticultural/agricultural use where sales of plants grown on site are made to the general public at the site, together with ancillary sales of horticultural sundries.

Although no agricultural/horticultural use whatever has taken place at the site since 1991, and the only use which has taken place is a retail use, the lawful use of the site in planning terms, and for the application of relevant planning policies, remained as previously described, namely horticultural/agricultural use with ancillary retail use.

The structure permitted by the 1998 permission not only is not, but physically (owing to its enclosing materials) cannot be, used for any horticultural/agricultural purpose (*e.g.* the growing of plants). although not appreciated by the Council, the permission—if allowed to stand—would change the primary use of the land from agricultural to retail.

Mr Lockhart-Mummery submits, uncontroversially, that the Council was under a duty to have regard to the relevant planning policies. This imported a duty to understand them, and to understand the legal and factual matrix obtaining at the site, so that the policies might properly be applied. The Council was also under a duty to determine the application in accordance with those policies, unless material considerations would outweigh such determination.

He submits that the Council failed to appreciate, and/or to consider, that the lawful use of the site was agricultural/horticultural with ancillary sales of horticultural sundries. It failed to consider, or to appreciate, that it was granting planning permission for a change of use from agricultural to retail, including the erection of a building solely for retail purposes. He further submits that the application of Policy C1 of the Structure Plan would have led to a refusal of the application, unless outweighed by other material considerations. This statutory duty was ignored by the Council since it was advised by its Planning Officer that there was 'no conflict' with retail policy in the development plan.

Moreover, the Council failed to apply Policy WRA/S1 of the Local Plan, by which retail development would not normally be permitted in the area of the site. It failed apply Policy WRA/S4, since the goods for sale could not be limited to produce grown or reared on the holding, and retailing could not be subsidiary to the agricultural/horticultural activity. Further, the Council failed to apply Policy S/5 of the Deposit Local Plan since the majority of the retail area could not be given over to produce grown on the site.

On behalf of the Council, Mr Straker Q.C. submits that there is a simple and complete answer to Mr Lockhart-Mummery's principal arguments. He contends that the grant of October 31, 1991 gave planning permission for the retail sale of plants on the site, subject to the conditions contained in the section 106 of agreement of the same date. The planning permission allowed that limited retail use on the whole of the site. This was a class A1 use.

This existing planning permission was a vitally material consideration which the Council was entitled, and indeed obliged, to take into account when determining the application for planning permission in December 1998. Thus, submits Mr Straker, there was no change of use from agriculture/horticulture to retail, and the fundamental premise on which Mr Lockhart-Mummery's main arguments rest is misconceived. The use was, at all material times, a retail use.

I prefer the arguments of Mr Lockhart-Mummery. The planning permission of October 31, 1991 did not permit retail use on the whole site, even though, as Mr Straker points out, the Ordinance Survey reference given is the plot number 8259, which is the entire site. The plan of December

17, 1986, that was incorporated, showed that the sales area was limited to a part of the entire site, and the planning permission and the section 106 agreement limited the goods to be retailed to plants grown on the site and a small range of ancillary horticultural products. In my view, the retail user permitted by this planning permission was plainly ancillary to the main permitted user of the site, which remained what it always had been, namely, agricultural. Agriculture includes horticulture (see section 336(1) of the 1990 Act)."

20. It will be seen that the judge accepted Cadbury's premise that even after the grant of the 1991 permission the only lawful use of "the site" was agricultural albeit that within that lawful use was comprised the right to sell produce grown on the land. I am unable to agree. There are two separate questions which can be addressed in this context: (1) what goods are allowed to be sold under the planning permission and (2) on what area of land are they allowed to be sold?

21. So far as the type of goods is concerned, it is in my judgment clear from paragraph 1(1) of the Second Schedule of the first agreement that there is no restriction in that agreement on the sale of plants not grown on the application site. In so far as the judge took a different view, I am afraid that he fell into error. Turning to the 1991 planning permission, despite the opening words of condition 2, it is in my view clear from the concluding words of that condition that the planning permission comprises anything to be sold under the agreement. I consider that the second agreement does not affect the ambit of the 1991 planning permission.

22. So far as the area of land covered by the permission is concerned, doing the best I can with the limited material now available and in the absence of the plans referred to, I consider that the permission covered the whole 3.77 hectare site and not merely the area described on the plan as the sales area. The judge in his judgment, in the second paragraph of the judgment, says that:

> "On April 14, 1986, application was made for planning permission for 'retail sale of plants' on part of the site."

23. Again I think he was under a misapprehension here. There is no reason to suppose that application was only made in relation to part of the site. I come to that conclusion because (1) the permission refers to plot 8259 rather than to part of plot 8259; (2) condition 2 in its reference to plants grown on the site is probably referring to a part of the site other than the sales area; (3) condition 3 refers to "that part of the site defined on [and that must mean 'as'] the sales area on the plan" which implies that the site is larger than the sales area; (4) "the Land" referred to in the first agreement is the whole of the 3.77 hectares. I am comforted as to the correctness of this conclusion by looking at the reports to the committee which were made prior to the issue of the 1991 permission document, and in particular a report dated July 9, 1986 which starts "The proposal concerns an agricultural field of 3.3 hectares." That said, the council, by virtue of clause 2 of the Second Schedule to the agreement and the second condition, retained control as to the precise location of the sales area and the structures to be put on the site.

24. I turn now to the 1998 permission under challenge. Greenholm wished to replace a number of structures on what they thought was the sales area with a permanent building. They were not asking for any alteration in the goods they were permitted to sell under the first agreement as varied by the second agreement. There is a dispute as to whether they were right in what they considered to be the extent of the sales area: they thought it rather larger than the council. I shall revert to that dispute later in the judgment. For present purposes I assume they were right in what they thought.

Conflict with the Development Plan

25. The council were advised that the erection of this building did not present any threat to visual amenity and that part of the advice has not been challenged in front of the courts. More significantly the

council were advised that the erection of this building did not conflict with any planning policies applicable to the land. It is the correctness of this advice which Mr Lockhart-Mummery challenges.

26. The crucial policies are set out in the judgment at pages 8 and 9. In particular I refer to Policy C1 of the Structure Plan which provides:

> "The use of agricultural land for any form of development not associated with agriculture normally will not be permitted . . ."

27. The Draft Local Plan, Policy WRA/S1, provides, so far as material:

> "Development within Classes A1 ... of the current Town and Country (Use Classes) Order normally will not be permitted outside the village fences as defined on the inset maps."

(The site is indeed outside such village fences.)

28. Policy WRA/S4 provides:

> "In deciding whether to approve planning applications for use of land for the sale of goods from agricultural/horticultural units the district council will require to be satisfied that: . . .
>
> (iii) the goods for sale will be limited to produce grown or reared on the holding and retailing will be subsidiary to the agricultural/horticultural activity."

29. Those last three were from the Local Plan. There is a Deposit Draft Local Plan which provides, in Policy S/5:

> "Planning permission for the use of land or buildings for the sale of goods from agricultural/ horticultural units will be granted provided that: . . .
>
> (iii) a majority of the retail area is given over to produce grown on the site and the remainder to consist of either produce grown elsewhere or garden related ancillary goods."

30. It is to be observed that each of these policies is concerned with changes of use rather than the erection of buildings.

31. The judge took the view that the sales area was agricultural land. It appears that he came to that view because he understood that the sale of plants was limited to plants grown on the larger site. However, as I have indicated, I consider that he fell into error in this regard. There was nothing in either the planning permission or the first agreement to prevent Greenholm from using the sales area exclusively for the sale of imported plants. In those circumstances the judge was in my view wrong to hold that the land was agricultural land for the purposes of planning policies notwithstanding, as he held, that "no agricultural/horticultural use whatsoever has taken place at the site since 1991 and the only use which has taken place is a retail use."

32. It has been observed that if in 1986 it had been intended to use the site purely for agricultural purposes, there would have been no need for the 1986 application. As Lord Widgery C.J. said in *Wood v. Secretary of State for the Environment* [1973] 1 W.L.R. 707 at 709, in a case which raised the same sort of questions:

> "The importance of the fact that the sales included home-produced produce and imported produce is, of course, that the sale of home-produced produce on a holding of this kind is a use incidental to the agricultural activity, whereas the bringing in and selling of somebody else's produce is, as the Secretary of State put it in this case, a use quite separate from the agricultural use of the land."

33. I consider that the council's officers correctly advised the council that the erection of this building on the sales area did not conflict with planning policies.

34. How large is the sales area?

35. In the officer's report to the planning sub-committee on December 10, 1998 the council were advised that the new building would be "sited on the part of the site reserved for retailing under the section 106 agreement" and, a little later, that "The new structures are to be sited entirely within the area authorised for retail sales under the previous planning approvals granted for the site. It is therefore considered that 'roofing over' an open sales area in the manner proposed will not conflict with retail policy in either the development plan or the Draft Local Plan." Mr Lockhart-Mummery challenges the correctness of that advice. It may be right so far as the first agreement is concerned but, he submits, that the planning permission expressly forbids the erection of buildings outside the sales area as defined on the 1986 plan and, he submits, that area was smaller than the area ultimately permitted under the first agreement.

36. The judge did not have to decide the point but indicated that if he had to he would have decided it against Mr Lockhart-Mummery.

37. I am afraid that I again differ from the view taken by the judge. My reason for taking a different view is this. It is clear from the material in front of us that it was only in March 1991, well after the date to the 1986 plan but before the grant of the 1991 permission, that Greenholm requested planning consent for a larger area than originally envisaged. I have already read the relevant part of the committee report. The committee acceded to Greenholm's request for that larger area.

38. It is agreed in front of us that the footprint of the building which has been erected pursuant to the 1998 permission is inside the larger area. It seems clear that part of that building is outside the site shown on the 1986 plan. I would therefore accept that the committee probably were wrongly advised that it was all within the sites of previous planning approvals. I use the word "probably" because of the uncertainty and the missing documents.

39. The point is one of the highest technicality in the sense that what the officer was seeking to convey was that the planning committee had no objection to the larger sales area as witness the amendment of the draft first agreement secured by Greenholm in March 1990. That was clearly correct. What may have gone wrong in the interim period of five years between the submission of the original plan and the issue of the 1991 planning permission was that the drafting of the planning permission did not clearly reflect the amendment which had been secured to the draft first agreement.

40. Assuming that the committee were wrongly advised on this point and should have been told that what was proposed conflicted with condition 3 of the 1991 planning permission, should this court quash the grant of the 1998 permission? This is not an aspect which the judge below had to consider and so we approach the exercise of discretion afresh.

41. The law is not in dispute. Where an administrative decision has been reached by a body which took into account a factual error the decision will normally be quashed, but the court has a discretion to refuse the remedy of quashing—see Wade & Forsyth *Administrative Law* 8th edn. pages 688-690 and *Simplex GE (Holdings) v. Secretary of State for the Environment* 57 P. & C.R. 306. The reason for the normal rule is that it is the administrative authority which is given the task of evaluating the significance of facts and reaching a conclusion in the light of that evaluation. The court must beware of substituting itself for the decision-taker appointed by Parliament. There are a number of reasons for the residual discretion not to quash—the only one presently relevant is that, even conscious of the danger of

substitution, the court may feel confident that the administrative authority would have reached the same decision even if they had been aware of the true facts.

42. I note the following.

43. 1. The report dated December 10, 1998 contained the following passage on page 118:

"In respect of the design qualities of the buildings it was noted from the site inspection that existing buildings on site are of poor quality with numerous small unkempt temporary structures utilised for offices and storage. Whilst the new structures are of a simple agricultural design incorporating curved roof structures clad in fabric, they are considered appropriate to their rural location and would not be prominent when viewed from close vantage points along Smallway. They would be perceived as a significant structure from the vantage point on Cadbury Hill mentioned in the Parish Council comment. However from this distance they will blend into the landscape and would not be perceived as a dominant structure in the way that the new Cadbury Garden Centre buildings will appear.

It is therefore considered that there will be no objections to the proposals having regard to design policies contained in the development plan and the (Deposit Version) Local Plan."

44. 2. The council's planning officer deposes in an affidavit sworn on September 15, 1999:

"The construction of the permitted building has attracted no complaints. I have closely considered the advice I would tender to the Council in case the Court held the resolution to grant and that granted planning permission were legally defective. For this purpose I have visited the site, for example I took the photographs, and studied the plans. I would not advise the Council that enforcement action should be taken and I am not aware of any suggestion (save from the Applicant in these proceedings) that it would be expedient or desirable on grounds of proper planning to demolish the building."

45. The reference to expediency is no doubt a reference to section 172 of the Town and Country Planning Act 1990 which authorises service of an enforcement notice. This passage is by no means conclusive since it is the council, not the officer, who has the last say.

46. 3. The council is appealing the quashing of the decision. Again by no means conclusive—there may be reasons related to costs or other matters for such a decision to appeal.

47. 4. The reason for the imposition of condition 3 was the interests of visual amenity to quote the cant phrase. There has been no suggestion before us that Cadbury's visual amenities have been adversely affected by the erection of the building. There is no evidence from anyone else that their views have been spoilt. Indeed there is no suggestion that the replacement building, albeit larger than what was there before, is not a visual improvement.

48. 5. The whole of the 3.77 hectare area of the site had at the time of the decision in 1998, as I have indicated, planning permission for retail linked activity—subject to the conditions in the planning permission and the agreement. The agreement of course operates independent of planning and provides its own policing regime.

49. 6. Even after the challenge had been launched by Cadbury, no individual linked himself with that challenge and it is now too late for any individual to complain of loss of views.

50. Conscious as I am of the danger of the court substituting itself for the decision-taker, the discretion must be exercised in the light of an assessment of what is at stake for the person seeking the quashing of

the permission. Here all that has been shown to have gone wrong is something which might be relevant in a visual context in relation to which the challenger has expressed no concern. I am satisfied, particularly in the light of the history which I have recited, that the court can exclude the possibility that had the position been accurately represented to the council the decision would have been different.

51. In those circumstances I would allow this appeal, set aside the order of the judge and refuse the applicant the relief sought.

Comment. In this case, "Store Wars" arrived in North Somerset. But this was not a battle between food retailing giants but a challenge by Cadbury Garden Centre to development by Greenholm Nurseries. It did though produce a decision more interesting than many of the PPG 6 arguments in the retailing cases.

The High Court, the Court of Appeal and the parties had to grapple with a planning history in which many of the relevant documents had been mislaid. The sharp divergence between the tribunals may be in part explained by the difficulties in interpreting a consent in such circumstances. However, Mr Straker Q.C.'s "simple and complete answer" on behalf of the Council that in 1991 planning permission was given for retail use of the whole site, was the answer. The planning permission presupposed that the retail activities were a material change of use and not merely ancillary to agricultural/horticultural use. Given the breadth of the permitted sales that approach was correct.

The Court of Appeal noted that Cadbury did not ask for an injunction when Greenholme erected the challenged canopy. The basis for such an injunction is problematic. If judicial review of a planning permission is successful, the planning permission would be quashed and any development purportedly carried out under it would be without planning permission. A third party does not have a cause of action against a developer in those circumstances. If Greenholme had erected the canopy without applying for planning permission, Cadbury could not apply to court for an injunction against Greenholme. The local planning authority could apply for injunction against the developer even before the planning permission has been quashed (see *Fenland District Council v. Rueben Rose Properties Ltd* [2000] P. & C.R. 376) but would not do so if it is defending the judicial review and contends that the permission is valid. A third party could bring relator proceedings for an injunction in the name of, and with the consent of, the Attorney General but these are extremely rare in planning. Restraint of a breach of planning control always requires government consent and generally government action. A power of the court on judicial review to order a developer not to proceed would have to rely on the jurisdiction of the Court to prevent the object of proceedings being frustrated by a third party's act. Once a planning permission is quashed, the local planning authority can take enforcement action which will usually be capable of removing the permanent effects of development.

The Court of Appeal held that the council were probably in error in 1998 by failing to appreciate that the 1991 permission referred to a plan containing a smaller retail area than the one the Council had approved. They considered the point to be technical as the 1998 report was seeking to convey that the development now proposed was within the retail area previously supported by the authority. The Court therefore declined to quash the permission. The general approach is sensible. Committee reports are often long and detailed and like any similar long document, (*e.g.* skeleton argument, judgment, proof of evidence) are liable to contain factual errors. Many of those errors would not be sufficiently important to merit raising in representations to the committee, let alone on judicial review. It is therefore necessary to consider whether particular factual errors render the decision unlawful and whether the decision ought to be quashed on account of them.

The matters noted by the Court of Appeal on this point need to be considered in the 'no change of decision' context rather than as free-standing points. A planning officer's view on the likely action by the council if the decision is quashed should be considered by the Court with great care. It can be self-serving, or as Mandy Rice-Davies said, "He would, wouldn't he?". That the council may be appealing the quashing of planning permission cannot make their case on discretion any stronger on the appeal than it was at first instance.

Schiemann L.J. said, "the discretion must be exercised in the light of an assessment of what is at stake for the person seeking the quashing of the permission." He noted that the council's error affected the erection of the canopy rather than the principle of retail sales and that any impact would be visual. This dictum ought to be read with the final sentence of that paragraph and its context in this case. The learned judge concluded that the council's decision would be the same. At the heart of a judicial review is the belief that planning permission should not have been granted. Whether the particular legal error is of intimate concern to the claimant is unimportant if the decision may be changed in the claimant's favour on re-determination. For example, a town centre retailer may seek judicial

review of planning permission for an out of centre retail development on the consideration of retail impact and effects on residential amenity. PPG 6 issues will affect the retailer, residential amenity will not. If the grant of permission was unlawful because of a residential amenity issue, the retailer can still seek a quashing. If permission is refused on re-determination, the retailer will avoid the impacts of the development. So there is plenty at stake for the retailer in the lawfulness of the residential amenity consideration. It must also be remembered that the impact of a decision on a person is not critical to the Court's intervention in judicial review. As Sedley J. said in *R. v. Somerset County Council and ARC Southern Limited, ex parte Richard Dixon* [1997] J.P.L. 1030 at 1037:

> "Public law is not at base about rights, even though abuses of power may and often do invade private rights; it is about wrongs—that is to say misuses of public power"

Commentary by Richard Harwood.

Kinnersley Engineering Limited v. Secretary of State for the Environment, Transport and the Regions (Queen's Bench Division, Mr. Duncan Ouseley Q.C. sitting as a Deputy Judge of the Queen's Bench Division, October 11, 2000)[5]

Section 174(2) of the Town and Country Planning Act 1990—planning unit—protecting existing use rights from the effect of enforcement notice— adequacy of reasons

An enforcement notice dated February 12, 1999 was served by Malvern Hills District Council (the Council) on Kinnersley Engineering Limited (the claimant). The enforcement notice concerned four former agricultural buildings grouped around a yard. Two other buildings, which were not the subject of the enforcement notice, completed the buildings around the yard. One of these buildings (P) had the benefit of planning permission granted in March 1988 for use as engineering workshops and the other (Q), which was in effect part of P, was used as offices and lavatories in connection with P. Access to all the buildings was taken off the yard (U). Building O was a Dutch barn, R was a small tractor shed, S an enclosed Dutch barn-type building and T was a post war agricultural building. The enforcement notice alleged that buildings R, S, T and O had been used for storage purposes in connection with various manufacturing activities and that U had been used for "manufacture, fabrication and repair of machinery and vehicles, storage in connection therewith and the parking of motor vehicles and the storage of a touring caravan". The requirement of the notice was that those activities should cease within three months.

The claimant appealed under grounds (a), (b), (c), (d) and (f) of section 174(2) of the Town and Country Planning Act 1990 (the Act) and the appeal was dealt with by way of an inquiry. The appeal was dismissed on all grounds. In relation to ground (b), in paragraph 19 of her decision letter, the Inspector stated that

> "While it may be that there are occasions when some engineering work associated with the permitted use of building P as an engineering workshop has been carried out in building O and in the yard U . . . and some cannibalising takes place of items stored in buildings S, T and O, I conclude on the balance of probability . . . that these are occasional and sporadic activities and do not amount to a material change of use."

She went on to state that, "I do however conclude from the evidence . . . that the use of the yard U for the manufacture, fabrication and repair of machinery and vehicles, storage in connection therewith and the parking of motor vehicles and the storage of a touring caravan has occurred as a matter of fact." In paragraph 52, the Inspector stated that any use being made of buildings O, R, S and T and the yard U for non-agricultural purposes at the relevant date, other than ancillary parking, loading and unloading in connection with the use of building P for engineering purposes, amounted to no more than a *de minimis* use. The Inspector concluded in paragraph 22 that the planning unit was the whole of the appeal site owned by the claimant apart from buildings P and Q, which constituted a separate planning unit. She accepted however that the yard U could lawfully be used for certain activities ancillary to building P, namely loading and unloading of materials and equipment, and employee car parking.

[5] *A. Aylesbury* (Gordan Bancks & Co., Pershore, Worcestershire); *T. Comer* (Treasury Solicitor).

SW

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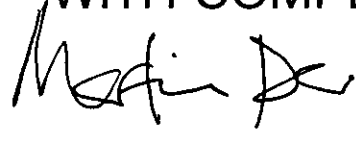

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Mr. C. Meadowcroft,
Head of Legal & Estates,
Huntingdonshire District Council,
Pathfinder House,
St.Mary's Street,
Huntingdon,
Cambs.,
PE29 3TN.

Your ref: CenS.CM.jaw.L/PO/49
Our ref: MLP/W-044
Date: 12th February, 2003

Dear Mr. Meadowcroft,

RE: CERTIFICATE OF LAWFULNESS : 7 RIVER LANE, BRAMPTON.

I write further to my recent meeting with yourself and Mrs. Wheatley regarding the above matter.

As we discussed, I confirm I have forwarded the further information you provided to Robert Jameson for his consideration and to see whether there are any additional references we can draw on that provide clarification in relation to the issues involved. I will respond as soon as I have Robert's further views.

Yours sincerely,

COPY

MARTIN PAGE,
D.H. BARFORD + CO.
E-mail: mpage@barfords.co.uk

cc: Mrs. S. Wheatley.

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F.A.O MRS S. WHEATLEY
H.D.C. PLANNING.

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Martin B

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Your ref:
Our ref: CenS.CM.jaw.L/PO/49
Date: MLP/W-044
5th February, 2003

Mr. C. Meadowcroft,
Head of Legal & Estates,
Huntingdonshire District Council,
Pathfinder House,
St.Mary's Street,
Huntingdon,
Cambs.,
PE29 3TN.

Dear Mr. Meadowcroft,

RE: CERTIFICATE OF LAWFULNESS : 7 RIVER LANE, BRAMPTON, HUNTINGDON.

I confirm the arrangements for our re-scheduled meeting at your offices on Tuesday, 11th February at 11.00 a.m.

In advance of the meeting, I have been giving further consideration to the matter and specifically your letter dated 29th January, 2003.

COPY

As regards the second part of the Council's argument that you outline, I draw to your attention that the wording in Section 171B(2) refers to a *'Change of use of any building to use as a single dwellinghouse'*. The inclusion of the word 'any' surely implies that all buildings benefit from the provision of Section 171B(2) irrespective of the former use of the land. The implication of the position you take is that the '4-year rule' would only apply for the change of use of a building on land that is already within a residential curtilage, but this is not stated in Section 171 or the commentary in the Planning Encyclopaedia.

Noting the extract from the JPL that accompanies your letter and the second and third sentences that you draw attention to, I have to say that whilst these highlight the potential issues that can arise between the 4 and 10-year rules, they do not support the Council's position and in my view, the final sentence is specifically applicable to the stance you are taking i.e. *'This must be wrong, as it would mean that the 4-year rule was for most purposes meaningless, as it could be trumped by the 10-year rule for associated material changes of use'*.

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Continued ...../

Mr. C. Meadowcroft,
Huntingdonshire District Council.

MLP/W-044
5th February, 2003

I would also add that a situation where the circumstances are similar to the matter we are discussing has recently been reported in the planning magazine 'Development Control Case Book Forum', and I refer you to the attached extracts with the relevant parts highlighted. The situation relates to the change of use of a building which was not within an existing residential curtilage and the advice is that both the living accommodation and the curtilage benefit from the 4-year rule, rather than the 10-year rule in respect of a change of use. The most recent response is initialled 'MG' and I wonder whether this is Malcolm Grant?

Yours sincerely,

MARTIN PAGE,
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ccs: Mrs. S. Wheatley.
Mr. R.A. Jameson.
Mr. B. Whitmee.

User/MLP/W-044

TELECOMMUNICATIONS

Mast construction permitted near protected tree

Prior approval sought by telecommunications company Hutchison 3G UK for the construction of a 15m mast in Berkshire has been allowed even though the construction works would take place within 7m of a protected horse chestnut tree.

The council claimed that it was necessary to ensure that no works were undertaken within an 8m radius of the tree to protect its roots. The appellant argued that this could be reduced where development within the remainder of the protected area was unlikely. Since the balance of the area comprised open space, there was little likelihood that further construction works would occur during the remaining lifetime of the tree, the company argued.

The inspector agreed that the tree was a fine specimen that should be preserved. However, he noted that the specialist evidence suggested that the tree could be protected provided that construction works were undertaken by hand without the use of heavy equipment.

DCS No: 39456750; **Inspector:** David Harmston; Written representations.

WASTE DEVELOPMENT

Embankment restoration conditions upheld

An inspector has concluded that various conditions imposed on a planning permission allowing mineral extraction from a disused railway embankment in Nottinghamshire were justified in order to preserve the character and appearance of a nearby village.

The conditions required a scheme of restoration and landscaping to be submitted, approved and implemented. However, the appellant argued that the steepness of the sides of the embankment and a lack of soil cover meant that it was impossible to plant trees successfully, and claimed that the embankment should be allowed to regenerate naturally.

The inspector did not agree with this submission. He used his own experience to conclude that tree planting on slopes of between one-in-three and one-in-four were possible provided that due care and appropriate planting techniques were employed. In upholding the notice, he concluded that the restoration of the site was important because it would take many years for the land to regenerate.

DCS No: 55284857; **Inspector:** Martin Joyce; Hearing.

Waste transfer station deemed to be unlawful

An enforcement notice alleging that a building and civil engineering contractor's depot was being used as a waste transfer station and skip hire business and for the parking of refuse collection vehicles has been upheld by the secretary of state after it was decided that the use was not immune from enforcement action and was harmful to the landscape.

The site was located within the High Weald area of outstanding natural beauty in Sussex. The appellants claimed that there had been no breach of planning control because an established use certificate granted in 1977 allowed the use alleged in the notice.

This contention was rejected by the appointed inspector. He did accept that section 57(4) of the Town and Country Planning Act 1990 would allow the resumption of a previous use if that use had been lawful. However, he ruled that the use authorised by the established use certificate was not lawful ten years prior to the issuing of the enforcement notice because it had been superseded by another mixed use, which similarly had not acquired immunity under the ten-year rule.

In examining the planning merits, the inspector concluded that the development harmed the area of outstanding natural beauty and no assessment had been undertaken of alternative sites. Any benefits associated with recycling waste did not outweigh this harm, he concluded. The secretary of state agreed.

DCS No: 32932346; **Inspector:** David Baldock; Inquiry.

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New queries

Planning permission was granted more than 12 months ago for a number of flats in two separate blocks. Development has commenced but has not been completed. It is proposed to construct a link between the two blocks at first-floor level to provide an extra bedroom for two of the flats. The local planning authority is unwilling to accept the application as a minor amendment and a planning application for the link has been submitted. Is the council correct in requesting that the fee should relate to the whole development, as the majority of the flats remain unchanged, rather than just the proposed new link? *JH.*

Circular 31/92 states that to qualify for exemption, a variation to a permission has to be for the same character or description of development. The courts have held that whether or not developments are of the same character is a question of fact for the local authority. This allows discretion to be exercised, so it is difficult to conclude that the authority in this case was acting so unreasonably that its decision could be successfully challenged. A common-sense view might be that if no additional planning considerations are raised by amendments, such as amenity, design, density, parking or highways matters then it is reasonable for a local authority to allow a free submission. *GH.*

Temporary permission for a residential caravan was granted for a six-month period from April to October 2002. In May 2002 a lawful development certificate (LDC) application in respect of the same use was refused. Is it possible to make an application for an LDC at a time when the use applied for happens to be lawful? Secondly, if the temporary permission would have effectively regularised the breach of control, would a new breach and a new ten-year time period commence upon expiry? *MH.*

An application under section 191 of the Town and Country Planning Act 1990 to determine the lawfulness of an existing use relates to the position on the date that such an application is made. In May 2002 the stationing of this caravan was lawful by virtue of the temporary permission, and I would have thought that a certificate would strictly have to be issued in those terms.

However, it might have been possible to apply for a certificate of proposed use under section 192 to cover this situation. In this case, an application could have been made for the siting of the caravan as from November 2002. I do not have any case evidence to endorse the legal acceptability of such an approach.

As to the other point you raise, there is court authority for the proposition that a fresh breach of control would occur after the expiry of the limited-period permission on the basis that a new chapter in the planning history of the site had begun. It would then be open for a local planning authority to enforce against breach of the limited-period condition, a new set of circumstances entirely. *GH.*

I have submitted a lawful development certificate application to convert a barn and its curtilage to a two-bedroom cottage with garden. My client moved onto the site seven years ago and lived in a caravan before moving into the barn five years ago. One of the first tasks undertaken was to mow the grass and create a garden area. The local authority is now insisting that my client's application be determined in two parts – an application using the four-year rule for the barn itself and an application using the ten-year rule for the garden area. It has conceded that a narrow strip around the property and land for access and parking can be included with the dwelling. I can find no legal authority for this proposition and the authority has offered none. Can the authority make a case for this arbitrary dissection of the planning unit? *AH.*

A similar query was tackled in *Forum* last year (*Planning*, 6 September 2002, p19). I cannot identify a court or appeal case to have tackled this particular point, but my feeling is that this authority's approach, although no doubt springing from the best possible planning motives, may be legally spurious. I can only advise you to stick out for the curtilage that your client wants, let the authority refuse the application and then appeal. *GH.*

My organisation is involved with an activity that appears to be undertaken under 28-day temporary use rights given by part 4 of the General Permitted Development Order (GPDO). The operator has indicated that he intends to undertake the activity for up to 28 days each year for the next three years. I seem to remember reading somewhere that in such a circumstance the activity could be considered a permanent use, albeit carried out on an intermittent basis, requiring planning permission. Could you help? *MS.*

A mere statement of intent to carry on a use within the ambit of a permission given by the GPDO is no basis on which to require planning permission or instigate enforcement action. However, there are court cases to show that enforcement action may be taken against a use ostensibly relying on part 4 permitted development rights where the local authority has reasonable cause to consider that the use is not intended to be temporary. These are described in *Development Control Practice* 4.3424. *GH.*

local ratepayer. However, the inspector stated that in accordance with *Ex parte Benham-Crosswell v Secretary of State for the Environment, Transport and the Regions [2001]*, the appellant had to show that he had occupied the site under a licence at the time the notice was issued in order to establish his right of appeal.

A further claim by the appellant that he had established title through adverse possession by virtue of some 20 years of uninterrupted occupation was also rejected. The inspector agreed with the council that in accordance with the judgement in *London Borough of Bromley v Morritt [1999]*, no right of adverse possession could be acquired over land that was a public right of way. Consequently, the appeal could not proceed and was invalid, the appellant having insufficient legal standing to appeal against the notice.

DCS No: 39781413; **Inspector:** Sean Slack; Inquiry.

Retail use of photographic studio accepted

A proposal to use a former chapel and Sunday school building in south Wales for retail purposes has been allowed after an inspector accepted that it would not prejudice highway safety or residential amenity.

The site had been last used as a photographic studio, which the inspector agreed fell within class B1 of the Use Classes Order. He noted that lawful resumption of the B1 use could generate a large number of traffic movements, particularly from service and delivery vehicles. While accepting that the new use might lead to greater parking demand, the inspector also accepted that some on-street parking is a fact of urban life and that no material harm would arise.

DCS No: 39234927; **Inspector:** Peter MacDonald; Inquiry.

TREES AND HEDGEROWS

New hedge required following flagrant breach

A hedgerow replacement notice served at a farm in Norfolk has been upheld after an inspector ruled that there had been a "flagrant breach" of the regulations when the original hedge was removed.

The local authority accepted that the original hedgerow had not been important historically, but was unable to conclude that it had not met the relevant landscape and wildlife criteria for protection. The council made it clear that it wished to deter further breaches of the regulations through the unauthorised removal of hedges.

The appellant claimed that the 80m hedge dated from the 1930s and was of poor quality and "gappy", having little wildlife importance. The inspector noted that the owner had not checked to see whether permission for its removal was required and that, once removed, no proper assessment could be made. This flagrant breach of regulations designed to protect important hedgerows justified a replacement hedge, he held.

DCS No: 31794919; **Inspector:** David Harrison; Hearing.

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Development Control Casebook Forum

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New queries

I would be interested in an opinion as to the extent of rights to extend, alter or improve barns once they have been approved for residential use. I believe it is common practice for local authorities to remove permitted development rights under various classes within part 1 of the General Permitted Development Order (GPDO) 1995. My specific query is with regard to restricting the later addition of windows. *RB.*

There is no doubt that once a barn is lawfully occupied for residential purposes it becomes a dwellinghouse for the purposes of the GPDO, and the various classes of permitted development which go with that status a[illegible] Since such conversions are permitted as exceptions to normal rural restraint policies and on the basis that the works involved would not unduly harm the original character of the barn and its setting, it is almost universal practice for local authorities to remove any permitted development rights that could compromise this position by condition.

These restrictions normally extend to most of the rights contained in part 1 and, if the circumstances justify it, may also embrace the erection of fences as permitted by part 2. The insertion of additional openings in a barn conversion is one of the main problems that concern councils. The removal of part 1, class A and B rights will ensure that express permission is required for such works in the future. *GH.*

A development consistent with the permitted development criteria under part 1, class D of the GPDO has been erected in front of an integral garage door. The design of the development is such that the existing door can be retained and a new door installed forward of the retained one. Are there any grounds for concluding that the structure is not a porch for the purposes of the order but an extension to the garage? *DR.*

I imagine that the crunch in this case is that if the structure is not a porch it would not be permitted development because it projects forward of the dwelling and fronts a highway. I find it difficult to imagine that this structure could be termed a porch in the ordinary meaning of the word as being an enclosure to protect the entrance to a building. It is also difficult to suppose that the authors of the GPDO conceived a garage door as being an external door of a dwellinghouse. *GH.*

Previous queries

AH asked (*Planning*, 17 January, p23) whether a local planning authority can separate the domestic curtilage of a converted barn in issuing a lawful development certificate (LDC) sought in respect of its residential conversion.

When considering any change of use, the planning unit must be identified. The judgement in *Burdle v Secretary of State for the Environment [1973]* indicates that all land in single occupation for the same purpose is to be treated as a single planning unit. Clearly, garden land is used solely for purposes incidental to the enjoyment of the dwellinghouse as such; therefore it forms part of the same planning unit and must be included in the LDC.

The garden land has clearly been within the curtilage of the dwellinghouse throughout the four-year period, in which connection see *Collins v Secretary of State for the Environment [1989]*, *Dyer v Dorset County Council [1989]* and *Skerritts of Nottingham v Secretary of State for the Environment, Transport and the Regions [1999]*. The LDC application must be dealt with as submitted, referring to the whole of the planning unit including the domestic curtilage. The four-year rule applies to the whole planning unit and the LDC application should be determined accordingly. *MG.*

TF asked (*Planning*, 15 November 2002, p21) about the legal position where a local authority grants permission for works to a listed building that enjoys ecclesiastical exemption. GH replied that in his opinion the works were properly authorised. MH responded (*Planning*, 3 January, p17) that in the case of a Church of England building there would remain the need to obtain consent through the faculty procedure.

■ Surely there is not a choice between the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Ecclesiastical Exemption Order 1994. If a proposal is for the alteration of an exempt ecclesiastical building, then the only relevant legislation is the 1994 order. You are correct that the local authority cannot now enforce against the works, but nevertheless the relevant denominational authority could take enforcement action under its own powers. This being the case, the "consent" issued by the council is an irrelevance. *IS.*

■ MH is quite right. Cases have shown that a faculty will only be granted for works that affect the character of a listed building if there are exceptional circumstances showing a necessity for such change. In addition to the factors that a local planning authority looks for, this jurisdiction also decides whether the change is necessary for the pastoral well-being of the parish. That factor would not be considered, at least not directly, by a council. Even with the listed building consent obtained in the case referred to, works to a Church of England building would still be unlawful without a faculty authorisation and the church has powers to deal with offending works. *NB.*

WV asked (*Planning*, 3 January, p17) about the enforcement situation where cars are being displayed for sale using the public highway. GH replied that in such a case the highway authority should be invited to use its powers under the Highways Act.

My authority has not taken action in such a case but did have a persistent problem with the parking of cars, lorries and scrap vehicles on a wide highway verge. Although there was long correspondence with the county council, it was unable or unwilling to take effective action as landowner and highway authority. As a result, enforcement notices were served on both the operator and the county council. Apart from occasional lapses, it appears to have concentrated the mind. *BM.*

JH asked (*Planning*, 17 January, p17) whether an additional fee should be requested where a link between two approved blocks of flats is proposed.

As the initial permission was granted more than 12 months ago, the applicant would not be able to claim an exemption. *DW.*

SW

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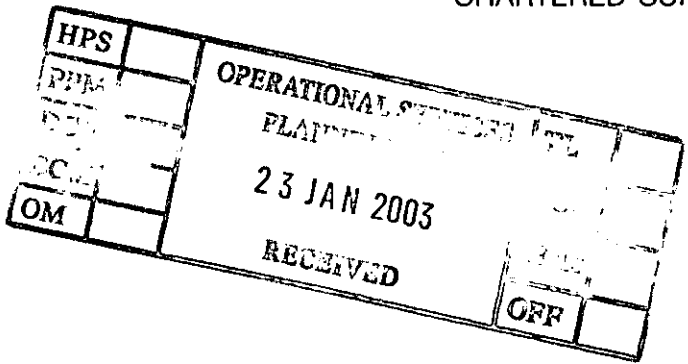

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Mr. C. Meadowcroft,
Head of Legal & Estates,
Huntingdonshire District Council,
Pathfinder House,
St.Mary's Street,
Huntingdon,
Cambs.,
PE29 3TN.

Your ref: CenS.CM.jaw.L/PO/49
Our ref: MLP/W-044
Date: 20th January, 2003

FAX AND POST

Dear Mr. Meadowcroft,

RE: CERTIFICATE OF LAWFULNESS : 7 RIVER LANE, BRAMPTON, HUNTINGDON.

Thank you for your letter dated 16th January, 2003 and I confirm the arrangements for the meeting at your office at 2.45 p.m. on Monday, 27th January to review the matter.

COPY

Having had an opportunity to consider your letter and discuss this with Robert Jameson, I have to say we are at a loss to understand your position. You accept the erection of the building involved operational development that occurred more than 4 years ago and this is now exempt from enforcement action. However, in the absence of an implemented planning permission, we understand you consider that on completion the building would have existed without an authorised use and the subsequent occupation of the building by our client would have 'triggered' a change of use to a residential dwelling that can be enforced against within a period of 10 years. Surely this trigger is the situation specifically referred to in Section 171B(2) of the Act? Furthermore, I refer you to Page 2-3596 of the Encyclopaedia of Planning at P171B.11 which states *"where an unauthorised dwellinghouse use has been initiated, subsection (2) grants immunity from enforcement action upon the expiry of four years from the breach rather than 10. It is paralleled in the requirement of Section 173 that a Stop Notice must not prohibit the use of a building as a dwellinghouse".*

The implication of the position you appear to be adopting is that where a dwelling has been constructed without planning permission and no enforcement notice has been served within four years, that building cannot then be occupied if the use of the land prior to the construction of the dwellinghouse was other than residential, unless planning permission is granted. I am advised there is absolutely nothing in case law to suggest that that is correct and it is not a view Robert Jameson has heard suggested previously. I also point out this situation is addressed at Page 9047 at 9.53 of the Planning Law Practice & Precedent (see attached), which indicates the Council is unable to enforce against the residential use of our client's property.

HPS
23 JAN 2003
CM

Continued ...../

Mr. C. Meadowcroft,
Huntingdonshire District Council.

MLP/W-044
20th January, 2002

No doubt you will be able to clarify your position when we meet.

Yours sincerely,

MARTIN PAGE,
D.H. BARFORD + CO.
E-mail: mpage@barfords.co.uk

Encs.

ccs: Mrs. S. Wheatley.
Mr. R.A. Jameson.
Mr. B. Whitmee.

User/MLP/W044

which the Minister had stated an intention not to impose the four-year rule on conversions of single dwelling-houses to multi-occupation; nevertheless they took the view that the requirements of **Pepper v. Hart** had not been met and set aside the parliamentary material put before the Court accordingly.[4]

1. A "building" includes any part of a building s.336.
2. For an article on these rules in relation to dwelling-houses and flats, see [1994] J.P.L. 579.
3. [1993] J.P.L. 564.
4. For the history of the debate settled in the Court of Appeal, see **Van Dyke v. Secretary of State for the Environment** [1992] J.P.L. 356 (at first instance), **Worthing Borough Council v. Secretary of State for the Environment** [1992] J.P.L. 353, and **Doncaster Borough Council v. Secretary of State for the Environment** [1992] J.P.L. 359.

[THE NEXT PARAGRAPH IS 9.53]

9.53 **Immunity: *enforcement against the use where building immune.*** It is perhaps surprising to find that one of the most fundamental questions relating to enforcement remained undecided until comparatively recently. In **Newbury District Council v. Secretary of State for the Environment and Mallaburn**[1] the question arose whether enforcement action could be taken against *the use* of a building, in the case in question a dwelling-house, once time had expired in respect of the building itself. The four-year rule would apply to the erection of the dwelling-house concerned, but could the local planning authority serve an enforcement notice against those occupying the building thereafter on the basis that the 10-year rule applied?

The first point to observe is that section 75(3) does not apply unless planning permission has been granted. That subsection reads:

> "Where planning permission is granted for the erection of a building, the grant of permission may specify the purposes for which the building may be used. If no purpose is so specified, the permission shall be construed as including permission to use the building for purposes for which it is designed."

Where no permission has been granted, subsections 75(2) and 75(3) do not apply. If the only breach that can be enforced against is a material change of use, the steps that can be required in any enforcement notice are those steps required in order to achieve wholly or partly one of the purposes set out in section 173(4), namely to restore the land to its condition before the material change of use took place and not to its condition before a separate but associated operational development was carried out. On that basis enforcement action would not lie.

In the **Newbury** case the operational development concerned is the construction of a tennis court; the alleged change of use in the enforcement notice was the use of land as a tennis court. Applying the four-year rule, no enforcement notice could require the removal of the tennis court; unlike the **Murfitt**[2] case it is not a development ancillary to a change of use but operational development in its own right. To hold otherwise would, in effect, extend the four-year rule in respect of operational development to 10 years.

1. [1995] J.P.L. 329.
2. See para. 9.43 above.

9.54 **Immunity: *further enforcement action.*** The time limits set out in the new provisions,[1] do not prevent further enforcement action being taken by the local planning authority in certain circumstances. Those are:

(a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

Huntingdonshire
DISTRICT COUNCIL
Pathfinder House St Mary's Street Huntingdon PE18 6TN
Central Services

Planning Division
for Sue Wheatley

General Enquiries Tel **01480 388388** Fax **01480 388099**
mail@huntsdc.gov.uk **www.huntsdc.gov.uk**

with compliments

Mr Martin Page
D H Barford & Co
Howard House
17 Church Street
St Neots
Cambs PE19 2BU

Our Ref: CenS.CM.jaw.L/PO/49
Your Ref: MLP/ACB/W-044

16 January 2003

Dear Mr Page

CERTIFICATE OF LAWFULNESS - 7 RIVER LANE, BRAMPTON, HUNTINGDON

I refer to your letter of 14 January.

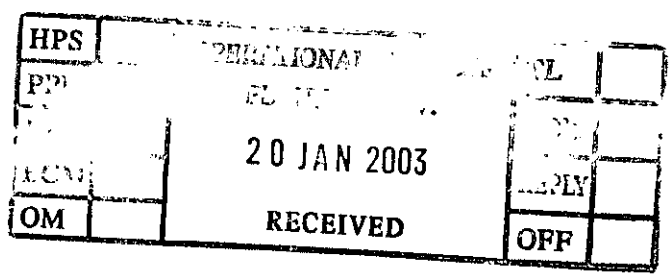
You are correct that the Council accepts the building itself is immune from enforcement action and entitled to a Certificate Of Lawfulness to that extent.

With regard to the appeal decision, I had already referred this to Counsel (Professor Malcolm Grant), who advises that the distinguishing feature between that case and the present is the timing of the proceedings. In the appeal decision, the construction of the dwelling house was complete by 1990 and the application for a Certificate of Lawful Use made in 2001. More than 10 years had, therefore, elapsed and the development was lawful both by virtue of the lapse of 4 years from the carrying out of operational development and 10 years from the making of a material change in use of the land.

In your client's case, the material change in use has occurred within the last 10 years i.e. in October 1993 when the building was occupied as a dwelling.

As indicated above, the Council was about to issue a Certificate of Lawfulness in respect of the building, but I understand from the last paragraph of your letter that you may wish to meet and discuss the matter before the Council does so. If so, please contact either myself or Sue Wheatley to arrange a mutually convenient time. If you do not contact us before the end of January, I will assume that you are happy for the Council to issue a Certificate.

Yours sincerely



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cc: Planning Division - FAO Sue Wheatley

F.A.O Mrs. S. Wheatley.

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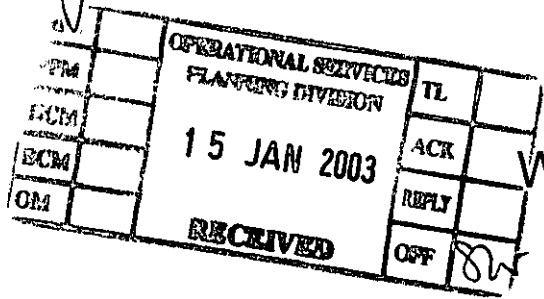

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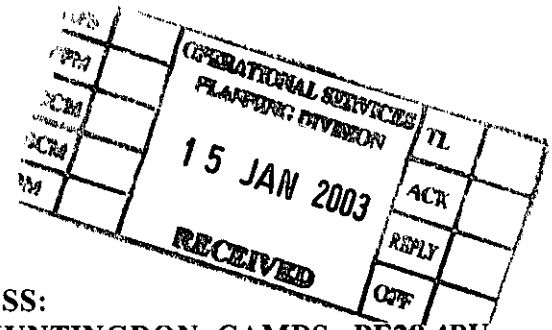
Mr. C. Meadowcroft,
Head of Legal & Estates,
Huntingdonshire District Council,
Pathfinder House,
St.Mary's Street,
Huntingdon,
Cambs.,
PE29 3TN.

Your ref:
Our ref: MLP/ACB/W-044/P
Date: 14th January, 2003



Dear Mr. Meadowcroft,

RE: CERTIFICATE OF LAWFULNESS:
7 RIVER LANE, BRAMPTON, HUNTINGDON, CAMBS., PE28 4PU.

I write in respect of the above and subsequent to a recent telephone conversation with Mrs. S. Wheatley, and your own recent conversation with my colleague, Andrew Barford.

We understand that whilst the Council accepts the building itself is immune from enforcement action and entitled to a Certificate of Lawfulness, consideration is still being given to whether the occupation of the property would be unrestricted.

To assist your further consideration of the matter, we enclose herewith a copy of an appeal decision relating to a comparable situation where a Certificate of Lawfulness was sought for a dwelling not subject to an agricultural occupancy condition, on the grounds that the dwelling had not been built in compliance with the relevant conditions, and therefore the permission had not been implemented and the agricultural condition on the permission had never applied. In that instance, although the Council accepted that the operational development involved in building the bungalow had been unlawful, their view was that enforcement action could still be taken against the failure to comply with the occupancy condition. However, you will note the appeal was allowed and furthermore, an award of costs was granted to the appellant. In reaching his decision, the Inspector found that as the development was carried out in breach of 'conditions precedent', the agricultural occupancy condition imposed on the outline permission had never applied to the appeal dwelling (Paragraph 8). Furthermore, the Inspector considered that since the permission was not implemented, no enforcement action could be taken against any use of the dwelling as a single dwelling-house by any particular category of resident, including those not employed in agriculture, because such uses would remain within the same C3 Use Class (Paragraph 9).

Continued ...../

Mr. C. Meadowcroft,
Huntingdonshire District Council.

MLP/ACB/W-044/P
14th January, 2003

In the light of the above, we consider the fact the agricultural occupancy condition on our client's property has not been breached for a period of ten years is irrelevant.

We trust that with the benefit of the attached you will now be satisfied that it is appropriate to issue a Certificate of Lawful Development to the effect that 7 River Lane can be retained as a single dwellinghouse and furthermore, as planning permission reference 87/1017 was not implemented, the property is not subject to an occupancy condition.

In the event there are any matters arising from the above or the attached you wish to discuss please do not hesitate to contact me and in the event you are of the view it is not appropriate to issue a Certificate along the above lines, I would be grateful for the opportunity to discuss this with you further.

Yours sincerely,

MARTIN PAGE,
D.H. BARFORD + CO.
E-mail: mpage@barfords.co.uk

Enc.

ccs: Mrs. S. Wheatley
Mr. B. Whitmee.

User/ACB/W-044P

Appeal Decision

CASE COPIED BY
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by Richard W Pratt

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A person appointed by the Secretary of State for Transport, Local Government and the Regions

Date: **30 APR 2002**

Appeal ref: APP/W1145/X/01/1075263
Land at Garden Cottage Nursery, Frithelstock Stone, Torrington

- The appeal is made under section 195 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991.
- The appeal is brought by Mr and Mrs T Rogers against Torridge District Council's refusal to grant a lawful development certificate (LDC).
- The appellants' agents are Toller Beattie, solicitors, whose reference is RWG.GP.RO373/1.
- The Council's reference is SWM/LAH/1/1056/2001.
- The application was made under section 191(1)(a) of the 1990 Act, as amended.
- The application was dated 8 June 2001 and was refused by the Council on 5 September 2001.
- The existing development for which a LDC is sought is use as a dwelling not subject to an agricultural occupancy condition.

Summary of decision: The appeal is allowed and a Certificate of Lawfulness describing the existing use which I consider to be lawful is attached to this decision.

Procedural matters

1. During the course of the appeal, the appellants made an application for an award of costs against the Council. This is the subject of a separate decision.

The background and main issue

2. I have considered the written representations made in support of the appeal, together with those of the Council. Since all the representations have been made available to both parties, I do not intend to summarise them in detail.

3. There appeared to be no dispute about the factual background to the appeal. Outline planning permission, reference 1/1303/85, was granted on 25 February 1986 for the construction of a dwellinghouse and installation of septic tank for agricultural purposes. Among the imposed conditions were condition 3, an agricultural occupancy condition, and condition 4, which provided that, before any other operations were commenced, land between the site access and the road should be lowered, to improve visibility. Approval of various reserved matters was granted on 4 October 1988, reference 1/1570/88, subject to further conditions. Condition 2 required the provision of visibility splays at the junction with the classified road, and condition 5 stated that no other part of the approved development should be commenced until the visibility splays had been provided. It appeared to be accepted by both parties that no works to install the splays, or to improve visibility at the junction, had ever been undertaken. The dwelling had been occupied since its completion in 1990.

4. The basis of the appeal was that, because the dwelling had been built without first complying with the relevant visibility conditions, it was not authorised by the outline permission or the reserved matters approval. Consequently, the permission had not been implemented, and the agricultural occupancy condition had never applied. The bungalow had been occupied as a

single dwellinghouse for more than four years, and its use and construction were now lawful, by virtue of the time-limits for the taking of enforcement action in section 171B(1) and (2) of the 1990 Act. Although the Council accepted that the operational development involved in building the bungalow had been unlawful, their view was that enforcement action could still be taken against failure to comply with the occupancy condition, which did not relate to operations.

5. The main issue seems to me to be, first, the extent to which the planning permission granted for the dwelling was in fact implemented, in view of the failure to comply with the visibility conditions, and then the subsequent effect on the Council's ability to take enforcement action in respect of the occupancy condition. In LDC appeals, the onus of proof is entirely on the appellant to show that, on the balance of probability, the use applied for was lawful at the application date.

Reasons

6. On the first point, the appellants drew attention to the Court of Appeal's judgments in the cases of *Oakimber v Elmbridge BC* [1992] JPL 48, and *F G Whitley & Sons v SSW* [1992] JPL 856. These cases established the principle that, with certain exceptions, development carried out in breach of conditions was not authorised by the planning permission. The Council suggested that the present case would amount to an exception, but did not indicate exactly how. The Courts have identified various exceptions to the *Oakimber* and *Whitley* principle, for example where a developer has done all he can to comply with the condition; where the condition has been complied with in substance, but the formalities have not been completed; where approval required as a preliminary to development has been given retrospectively, as in *Whitley*; or where an authority has agreed that development can begin without complying with the condition, as in the case of *Sheath v SSETR & Mid-Devon DC*, to which reference was made. Since there appears to be no evidence that any of these exceptions arose in this case, however, my view is that the general principle should apply in the present appeal.

7. In these circumstances, I consider that the planning permission consisted of both the outline permission and the later approval of reserved matters. Condition 4 of the outline permission, and condition 5 of the reserved matters approval, were clearly "conditions precedent", requiring certain preliminary works to be completed before the main development was begun. Since the Council accepted that these preliminary works were never carried out, I agree with the appellants that the dwelling did not have the benefit of planning permission. Consequently, since the building was unauthorised, the permission previously granted for its construction was not implemented.

8. On the second point, I do not agree with the Council's argument that, even though the operations involved in erecting the dwelling were unlawful, the permission was implemented to the extent that the occupancy condition took effect. In my opinion, the Court of Appeal's judgment in the case of *Handoll v Warner Goodman & Streat* [1995] JPL 930, to which the appellants referred, confirmed that, if a planning permission was not implemented, any conditions attached to it were of no effect, and could not be the subject of enforcement action. My view is that this principle would apply both where the development was unauthorised because it was materially different to what was permitted, as in *Handoll* itself, or because it was carried out, as here, in breach of "conditions precedent". I therefore conclude that the agricultural occupancy condition imposed on the outline permission in this case has never applied to the appeal dwelling.

9. Since the permission was not implemented, the fact that the original developer intended the dwelling to be used in connection with agriculture, and that permission was granted on that

basis and couched in those terms, is not relevant. The Council accepted that the construction of the bungalow is now immune from enforcement action, and the evidence submitted during the appeal indicated that, since its completion in 1990, it has also been occupied as a single dwellinghouse. Since that use had continued for more than four years, it had also become immune, by virtue of section 171B(2) of the 1990 Act. At the date of the LDC application, therefore, the bungalow had a lawful use as a single dwellinghouse, unrestricted by the terms or conditions of any planning permission. While the Council could still, of course, take enforcement action against a future material change of use of the property, for instance, to offices, a hotel, or any other commercial or business use, no action could be taken against any use of the property as a single dwellinghouse, whether as a permanent family home, or as holiday or rented accommodation, or against occupation by any particular category of resident, including those not employed in agriculture because, whether or not a change in the nature of the use as a single dwellinghouse amounted to a material change in its use, such uses would remain within the same use class (C3) in the Schedule to the Town and Country Planning (Use Classes) Order 1987. Thus, no development would be involved in those circumstances, by virtue of section 55(2)(f) of the 1990 Act.

10. My overall conclusion is that, because the conditions precedent were not complied with, the appeal property was built without planning permission, and was not subject to the agricultural occupancy condition; however, at the LDC application date, its use as a single dwellinghouse was immune from enforcement action, and therefore lawful. The Council's refusal was therefore not well-founded, and the appeal succeeds accordingly.

Formal decision

11. For the reasons given above, in exercise of the power in section 195(2) of the 1990 Act, as amended, which has been transferred to me, I hereby allow the appeal and grant a lawful development certificate for the existing use of Garden Cottage Nursery, Frithelstock Stone, Torrington, as a single dwellinghouse, not subject to an agricultural occupancy condition. A certificate to this effect, also identifying the relevant use class in which the lawful use falls, is attached to this letter.

Right of appeal against the decision

12. This decision is issued as my determination of the appeal before me. Particulars of the right of appeal against my decision to the High Court are enclosed for those concerned.

RICHARD W PRATT

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CHARTERED SURVEYORS + PLANNING CONSULTANTS

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Mrs. S. Wheatley,
Development Control Team Leader,
Huntingdonshire District Council,
Pathfinder House,
St.Mary's Street,
Huntingdon,
Cambs.,
PE29 3TN.

Your ref: 02/01431/CLUED
Our ref: ACB/W-044/P
Date: 6th January, 2003

Dear Mrs. Wheatley,

RE: CERTIFICATE OF LAWFUL DEVELOPMENT FOR RETENTION OF DWELLING : 7 RIVER LANE, BRAMPTON, HUNTINGDON, CAMBS.

I write further to our recent telephone conversation in respect of the above, and understand you are currently awaiting the further comments of the District Solicitor, Colin Meadowcroft.

Bearing in mind the length of time the application has been outstanding, I understand you will now be seeking to expedite the matter and unless you advise otherwise, we look forward to receipt of a favourable decision within the next few weeks.

However, in the event there are any difficulties, no doubt you will advise accordingly.

Yours sincerely,

Andrew Barford.

ANDREW BARFORD MRTPI.,
D.H. BARFORD + CO.
E-mail: abarford@barfords.co.uk

User/ACB/W-044

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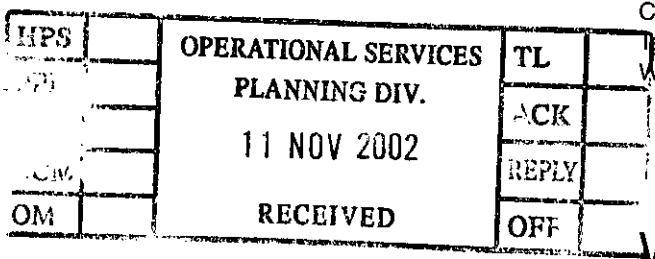

WITH COMPLIMENTS

Martin.

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Mr. C. Meadowcroft,
Head of Legal & Estates,
Huntingdonshire District Council,
Pathfinder House,
St.Mary's Street,
Huntingdon,
Cambs.,
PE29 3TN.

Your ref:
Our ref: CENS.CM.jaw.L/PO/49
Date: MLP/W-044
5th November, 2002

Dear Mr. Meadowcroft,

RE: CERTIFICATE OF LAWFUL DEVELOPMENT FOR RETENTION OF DWELLING WITHOUT OCCUPANCY RESTRICTION : 7 RIVER LANE, BRAMPTON, HUNTINGDON, CAMBS., PE28 4PU.

COPY

Thank you for your letter dated 1st November, 2002 regarding the above.

Referring to the third paragraph of your letter, I note the point you are making. Of course, in the first instance, the issue is whether the conditions on the 1990 permission were complied with. If the Council accepts they were not, then the determination is whether the building was erected without planning permission and I am in agreement we are seeking a Certificate under Section 191(1)(b). I would ask you to consider the issue of a Certificate on this basis.

As regards the final paragraph, the situation is that the building was built by Mr. Whitmee and he has occupied it since its completion. However, it is also true that in occupying the property, Mr. Whitmee has not satisfied the criteria of being a person 'solely or mainly or last employed in the locality in agriculture'.

From the Council's file you will be aware that the need for the agricultural dwelling was justified on the grounds of an intention to relocate an existing enterprise and furthermore, that whilst the agricultural enterprise would not in normal situations have been viable, the nature of Mr. Whitmee's business enabled him to achieve 'added value' by being able to sell direct to consumers. Following the grant of planning permission, Mr. Whitmee commenced the construction of a house with a genuine intention of relocating a viable agricultural enterprise, but unfortunately circumstances changed due to a downturn in farming and the introduction of EU legislation that led to closure of local abattoirs. This resulted in an increase in transport and slaughter costs, which impacted on the ability to achieve 'added value' and the viability of the enterprise. Therefore, despite good intentions, Mr. Whitmee was never able to achieve the viable relocation of the agricultural enterprise. These circumstances meant that Mr. Whitmee had to obtain a livelihood by means other than agriculture. Although Mr. Whitmee is now retired, the consequence is that since occupying the dwelling, he has not satisfied the criteria of being a person solely or mainly or last employed in agriculture.

Continued ...../

OPERATIONAL SERVICES
PLANNING DIV.
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Partners: D.H.Barford FRICS, I.J.Watson BSc FRICS, M.L.Page DipEP MRTPI
P.A.Halmshaw BSc (Hons) MRICS, S.A.Robinson BSc (Hons) MRICS
Associate:
A.W.Birks BSc

Mr. C. Meadowcroft,
Huntingdonshire District Council.

MLP/W-044
5th November, 2002

I hope the above clarification is helpful and that you are now able to proceed with the favourable consideration of the application.

Yours sincerely,

MARTIN PAGE,
D.H. BARFORD + CO.
E-mail: mpage@barfords.co.uk

ccs: Mrs. S. Wheatley.
Mr. B.R. Whitmee.

Enc.

User/MLP/W-044

Huntingdonshire

DISTRICT COUNCIL

Pathfinder House St Mary's Street Huntingdon PE18 6TN

Central Services

Mrs. Dwyer

FAO Sue Wheatley

General Enquiries Tel 01480 388388 Fax 01480 388099

mail@huntsdc.gov.uk www.huntsdc.gov.uk

with compliments

Mr Martin Page
D H Barford & Co
Howard House
17 Church Street
St Neots
Cambs PE19 2BU

Our Ref: CenS.CM.jaw.L/PO/49
Your Ref: MLP/ACB/W-044

01 November 2002

Dear Mr Page

CERTIFICATE OF LAWFUL DEVELOPMENT FOR RETENTION OF DWELLING WITHOUT OCCUPANCY RESTRICTION - 7 RIVER LANE, BRAMPTON, HUNTINGDON

I refer to your letter of 18 October sent to Mrs Wheatley in Planning, a copy of which has been passed to me.

I apologise for the delay in dealing with the application, but the Council should be in a position to progress the matter in the near future, subject to clarification of a number of issues.

Firstly, it appears to the Council that the application form does not specify the correct head in section 5, which indicates the application is for an existing operation in breach of a condition. It is the Council's understanding, however, that the applicant's case is based on the argument that the building has, in effect, been erected without planning permission i.e. for an existing operation under Section 191(1)(b), rather than the failure to comply with the condition attached to the planning permission which is Section 191(1)(c).

If you agree, then any certificate issued will be on that basis.

In terms of the letter from Jameson & Hill dated 30 January 2002, which accompanied the application, it is stated in the final paragraph on page 3 that "the dwelling has never been occupied by a person solely or namely or last employed in the locality in agriculture".

According to the Council's rating records, the property has been occupied since 1st October 1993 by the applicant, Mr Whitmee, who at the time of the planning permission was understood to be involved in agriculture. Please would you confirm whether or not the Council's understanding is correct in these regards.

Yours sincerely

Mr C Meadowcroft
Head of Legal & Estates
LEGAL AND ESTATES
☎ **(01480) 388021**
Fax (01480) 388087
DX 80929 Huntingdon-1
e-mail Colin.Meadowcroft@huntsdc.gov.uk

cc: Planning Division
FAO Mrs S Wheatley – 02/01431/CLEUD

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Mrs. S. Wheatley,
Development Control Team Leader,
Planning Services,
Huntingdonshire District Council,
Pathfinder House,
St.Mary's Street,
Huntingdon,
Cambs., PE29 3TN.

Your ref:
Our ref: MLP/W-044
Date: 18th October, 2002

Dear Mrs. Wheatley,

RE: CERTIFICATE OF LAWFUL DEVELOPMENT FOR RETENTION OF DWELLING WITHOUT OCCUPANCY RESTRICTION : 7 RIVER LANE, BRAMPTON, HUNTINGDON, CAMBS., PE28 4PU.

I write with reference to our recent telephone conversation enquiring about the progress of the above and understand that the matter is still being reviewed by the District Solicitor, Colin Meadowcroft.

As I explained, a case including virtually identical issues to those we have put forward on behalf of our client has been reported in the Planning Magazine and for your consideration, I am attaching the relevant extract.

Referring to the attached, it is evident the Inspector accepted that the failure to comply with the 'conditions precedent' meant that the dwelling was not authorised by the planning permission and since the dwelling was built and occupied more than four years ago, no enforcement action could be taken. As a consequence, he concluded the dwelling was not restricted by the occupancy condition. With regard to our client's situation, it follows that as the 'conditions precedent' were not complied with, the planning permission was not implemented and consequently the Section 106 was not triggered.

I hope the attached will be helpful and we look forward to receiving your response at the earliest, as the application has now been with the Council for approaching five months.

Yours sincerely,

MARTIN PAGE,
D.H. BARFORD + CO.
E-mail: mpage@barfords.co.uk

Enc.

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pied by a permanent structure and associated curtilage".

While accepting that part of the site contained permanent buildings, he did not agree that the previous uses were urban in nature. Much of the land had been used for grazing and exercising horses and livestock, which in his view could not be thought of as an urban use. It was more closely related to outdoor recreation and agriculture, he opined. Nor did he accept that the site was in an urban area, since it lay on an exposed fringe of the village beyond the defined settlement boundary.

He ruled that the presumption against inappropriate development in the green belt remained paramount and was not outweighed by the need to maximise the use of previously developed land and buildings in sustainable locations. He accepted that the presence of a school, church, shop and pub and local bus services was sufficient to define the settlement as a reasonably sustainable location.

LPA: North Somerset Council; **Date:** 2 May 2002; **Inspector:** Stephen Pratt; **DCS No:** 33786343; Written representations.



PHOTO: WESTMINSTER CITY COUNCIL

Westminster: use of site for car park found unlawful and judged to undermine sustainable transport strategy

HOUSING: CONVERSION

Conversion of public house to bedsits found to accord with guidance on mixed uses

An inspector has granted permission for the conversion of a vacant pub in Weston-super-Mare to 12 bedsits, citing the support given by PPG3 on housing for the recycling of underused buildings in town centres.

The site was in a mixed area of commercial, residential and retail uses. The inspector noted that PPG3 advises local authorities to take a more flexible approach to density, car parking and overlooking on town centre sites. Although some of the bedsit windows would overlook a rear yard rather than the main street, she did not feel that this rendered the scheme unacceptable. Noting that people are "hugely different", she accepted that some might prefer a quieter outlook to the bustle of the street.

In granting planning permission, she awarded partial costs in favour of the appellant, Cadogan House Investment Properties Ltd, over a council objection based on a lack of off-street car parking. She rejected the council's concerns about the threat of on-street parking and highway danger, judging that the highly accessible location of the site and the type of units to be provided suggested that owners would not be encouraged to have cars.

She noted that one of the council's witnesses had stated in a "commendably direct" manner that there were no highway safety issues. She noted that the council had taken its decision contrary to officer advice and that no member of the council had appeared at the public inquiry to support this reason for refusal. This amounted to unreasonable behaviour and justified a costs award, she judged.

LPA: North Somerset Council; **Date:** 29 April 2002; **Inspector:** Gyllian Grindey; **Date:** 29 April 2002; **DCS No:** 32281449; Inquiry.

Agricultural occupancy condition found not to apply to unauthorised dwellinghouse

An inspector has issued a lawful development certificate allowing the use of a dwelling in Devon without complying with an agricultural occupancy condition, after finding that the local planning authority had missed its opportunity to take enforcement action.

In addition to the occupancy condition, the terms of a 1986 outline permission required improvements to the site's access before development commenced. These requirements were reinforced in the reserved matters approval. The appellants argued that failure to comply with these "conditions precedent" meant that the dwelling which had been built was not authorised by the planning permission and that there was therefore no restriction regarding its occupancy.

The appellants relied upon the Court of Appeal judgements in *Oakimber v Elmbridge Borough Council [1992]* and *FG Whitley & Sons v Secretary of State for Wales [1992]* in which it was held that development carried out in breach of conditions is not authorised by the planning permission. The council cited *Handoll v Warner Goodman & Streat [1995]*, which confirmed that if a permission is not implemented any conditions imposed upon it have no effect.

The inspector accepted the appellants' argument and rejected the council's case that the occupancy condition still applied. Since the building had been built in 1990 and had been used as a dwellinghouse for more than four years, he accepted that no enforcement action could be taken and that it was therefore lawful.

LPA: Tonridge District Council; **Date:** 30 April 2002; **Inspector:** Richard Pratt; **DCS No:** 32980203; Written representations.

Coachhouse held to be in mixed use rather than a single dwellinghouse

The use of a coachhouse to the rear of a large Victorian building in Colchester has been held not to comprise a single dwelling but rather a mixed residential and commercial use which did not benefit from the four-year rule for achieving immunity against enforcement action.

The building contained a toilet and shower room; a massage mat; a changing area with a sofa bed; a table, a television; a washing machine; a cooker and a fridge. The appellant acknowledged that it had been used as a studio for shiatsu massage and counselling, but claimed that the primary use was residential. The council had served an enforcement notice alleging that the building was in use as a single dwellinghouse and had refused to grant a lawful development certificate.

The inspector judged that each of the principal uses occupied about 50 per cent of the floor area and were inextricably linked. The building as a whole, he concluded, functioned as a single planning unit consisting of a mixed use which was subject to the ten-year rule for achieving enforcement immunity. Since the mixed use had commenced in 1996 it could not be regarded as lawful, he ruled. He upheld the enforcement notice.

LPA: Colchester Borough Council; **Date:** 8 May 2002; **Inspector:** David Harrison; **DCS No:** 34621155; Inquiry.



PHOTO: EDINBURGH CITY COUNCIL

Edinburgh: change of use from pub to enterntainment venue permitted on grounds of minimal noise increase

LEISURE AND ENTERTAINMENT

Entertainment venue judged acceptable despite small increase in noise and activity

A reporter has accepted that change of use of a pub in a

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Director of Planning,
Huntingdonshire District Council,
Pathfinder House,
St. Mary's Street,
Huntingdon,
Cambs. PE18 6TN

Your ref: NC/LR/87/1017
Our ref: IJW/W-046
Date: 4th March 1991

For the attention of Mr. N. Coleman

Dear Sir,

RE: RIVER LANE, BRAMPTON - AGRICULTURAL DWELLING

Thank you for your letter of the 20th February 1991 dealing with our queries on the above.

As we mentioned in our subsequent telephone conversation, the principal problem that we have is to avoid an open ended commitment to expenditure.

We would therefore like to confirm that if the following work is carried out the Director of Planning's consent will be given to allow the building works to the house to commence.

A separate detailed application for the house will shortly be made.

The justification for the house is to support the pig breeding stock which has formed the back bone of our client's business, and our client has decided that rather than keep the farrowing sows in an intensive unit he would now prefer to use less intensive methods but still maintain the breeding levels.

The justification was from an activity which was based on 12 no. breeding sows. This can be accommodated by subdividing the land with fencing and erecting 12 no. pig arks on the land. The pig arks are transportable and can be moved around to rest the ground. The barn that is currently being erected will be used predominantly for storage of hay, straw, etc., and may accommodate a milling machine and other equipment necessary for preparing the feed for the animals.

Can we therefore have confirmation that when the barn is completed, and the pig arks are on the site ready for occupation, that the consent will be given. You will appreciate that we cannot put the pig arks on the site and put pigs in occupation before there is a dwelling to support them for security purposes.

Yours faithfully,

D.H. BARFORD + CO.

D.H.Barford F.R.I.C.S. I.J.Watson B.Sc. F.R.I.C.S. Associate: A.W. Birks B.Sc.

D H Barford + Co
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Cambridgeshire · PE19 2BU
Telephone: Huntingdon (0480) 213811

Your ref:
Our ref MLP/W-044
Date: 17th June, 1991

D.N. Potter ESq. FRICS., MRTPI.,
Director of Planning,
Huntingdonshire District Council,
Pathfinder House,
St. Mary's Street,
Huntingdon,
Cambs., PE18 6TN

For the attention of Mr. N. Coleman.

Dear Sir,

RE: RIVER LANE, BRAMPTON - AGRICULTURAL DWELLING.

We write with reference to the above, in the hope that you may now be able to respond to our letter dated 16th April 1991, a copy of which we attach.

Bearing in mind the length of time this matter has been outstanding, we would be grateful for your urgent consideration of the matter and a response as soon as possible.

We look forward to receiving your observations.

Yours faithfully,

D.H. Barford & Co.

D.H. BARFORD + CO.

D.N. Potter Esq. FRICS., MRTPI.,
Huntingdonshire District Council - W-044.

16th April, 1991

Referring to the assurances you seek in your letter of the 3rd April, 1991, we would therefore respond as follows:

1. The storage building is already on the site. The pig-arks are moveable structures which will be sited as soon as the stock is moved onto the land.

2. The existing building together with the pig-arks will be sufficient to support our Clients established farming enterprise based at Highlands Farm, comprising of 12 breeding sows with their progeny and 12 cattle. Evidence has already been produced to establish this enterprise is viable and this has been confirmed by the Authority's professional advisers and accepted by the District Council, when resolving to grant Planning Permission..

Bearing in mind the length of time this matter has been outstanding, you will appreciate that our Client feels the Authority is frustrating his efforts to carry on his livelihood and we hope therefore that you will be able to respond confirming it is now in order to proceed with the erection of the house.

We look forward to receiving your early advice.

Yours faithfully,

D.H. BARFORD + CO.

D.N. Potter Esq. FRICS., MRTPI.,
Director of Planning,
Huntingdonshire District Council,
Pathfinder House,
St. Mary's Street,
Huntingdon,
Cambs., PE18 6TN.

NC/CRB/87/1017
MLP/W-044
16th April, 1991

For the attention of Mr. N. Coleman.

Dear Sir,

RE: RIVER LANE, BRAMPTON - AGRICULTURAL DWELLING.

We write in response to your letter dated 3rd April, 1991 concerning the above and the subsequent meeting with Mr. Coleman and our Mr. Page on Thursday, 11th April.

In the light of the matters discussed, we write clarifying our Clients proposals for relocating his agricultural enterprise, in the hope that you will be able to confirm you are satisfied our Client has fulfilled the requirements of the Section 52 Agreement and that he can now proceed with the erection of the agricultural dwelling.

You will be aware that since the Planning application was submitted in 1987, a number of factors have changed that have caused our Client to reconsider the agricultural operation and the relocation proposals.

Specifically, as a consequence of the Town and Country Planning General Development Order 1988, our Client now requires Planning Permission for the erection of a building for the accommodation of livestock, as the holding is within 400 metres of a dwelling. Secondly, there is now a demand for produce reared under more traditional farming techniques, as opposed to intensive farming.

Because of the above factors you will be aware our Client has decided that rather than house the pig unit in a purpose-built building, the stock will be reared with a pig-ark system. The only building/structures the operation will require is 12 moveable pig arks (1 per breeding sow) and the existing barn which will be used for storage and the preparation of animal feed.

Continued ...../

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D.N. Potter Esq. FRICS., MRTPI.,
Director of Planning,
Huntingdonshire District Council,
Pathfinder House,
St. Mary's Street,
Huntingdon,
Cambs., PE18 6TN.

Your ref:
Our ref: MLP/W-044
Date: 5th July, 1991

For the attention of Mr. N. Coleman.

Dear Sir,

RE: RIVER LANE, BRAMPTON - AGRICULTURAL DWELLING.

We refer to the above matter and the recent conversation between Mr. Coleman and the writer.

We confirm that the cattle which form part of the existing enterprise will be housed during the winter in the existing structure on the land which is to be improved. We do not refer to the recently erected storage building.

In the circumstances, we trust you will now be able to issue a letter confirming the erection of the dwelling house can commence, in accordance with the requirements of the Second Schedule of the Section 52 Agreement.

Bearing in mind the length of time this matter has been outstanding and the various exchanges of correspondence, we must request your urgent attention to the matter.

Yours faithfully,

Martin Page

MARTIN PAGE,
D.H. BARFORD + CO.

D. H. Barford & Co.,
Howard House,
17 Church Street,
St. Neots,
Huntingdon,
Cambs.
PE19 2BU.

Mr. N. Coleman

Ext.2485

NC/CRB/87/1017

IJW/W-046

3rd April 1991

Dear Sirs,

RIVER LANE, BRAMPTON - AGRICULTURAL DWELLING.

I write with reference to the above and your letters of 4th March and 26th March 1991.

I note the contents of your letter dated 4th March 1991 and would refer you to the third paragraph of my reply to you dated 20th February 1991. In essence, I consider I will be in a position to certify that "suitable agricultural buildings" have been erected when I am assured that:

a) the buildings have been erected, and

b) they are clearly intended to be used for and be sufficient to support a viable agricultural purpose.

I have no doubt that when the above state has been reached, you will notify me in due course.

Yours faithfully,

K. D. Clarke
Assistant Director of Planning

D.M. Barford & Co.
Howard House,
17, Church Street,
St. Neots,
Cambs.
PE19 2BU

Mr. M. Coleman

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HC/LP/87/1017

IJW/W-044

20th February, 1991

Dear Sirs,

B.R. WHITMEE, RIVER LANE, BRAMPTON.

I refer to your letter of the 21st January, 1991 referring to the above planning application.

You will be aware from the approved planning application, referenced above, and the Section 52 Agreement, that the essence of the consideration of the erection of a dwelling on this site relates to the need for the dwelling to be associated with an agricultural activity in order to overcome the basic objection to the erection of development within the countryside.

The provisions of the Section 52 Agreement indicate that "suitable agricultural buildings have to be erected on the said land", before the erection of the dwelling house is commenced. The essence of the provisions in the Agreement is generally to ensure that the dwelling is only erected when the agricultural pig unit is sufficiently equipped with appropriate building infrastructure to enable the pig unit to commence operations. At the present time, I am unable to confirm that this point has been reached and am therefore unable to certify in writing that any agricultural dwelling could be commenced on site.

I would, of course, be perfectly happy to consider a detailed planning application for an agricultural dwelling in accordance with the provisions of the outline consent and the Section 52 Agreement. Whilst appreciating your clients difficulties with respect to the relocation of the farming enterprise, it remains clear that the justification for the dwelling lies only with the agricultural use associated with it. Should you wish to discuss the matter further, I would be pleased if you would contact Mr. Coleman of my Development Control Section.

Yours faithfully,

K.D. Clarke,
Assistant Director of Planning.

Mr. B.R. Whitmee,
1, Croft Close,
Brampton,
Huntingdon,
Cambs.

Mr. M. Coleman

[illegible]x2485

[illegible]

20th February, 1991

Dear Sir,

RIVER LANE, BRAMPTON - AGRICULTURAL DWELLING.

With reference to your recent telephone conversation with Mr. Coleman of my Department and his previous site visit, I would now advise you as follows.

I consider that a dwelling based upon the Eastgate design would appear to be the best suited of the three designs suggested, as its features relate well and to some extent reflect the recently constructed dwellings design features nearby.

The siting of the proposal will of course need to be as indicated in the outline planning permission previously granted in 1990. Should a different site be proposed, further consideration by means of a planning application and possible amendment of the Section 52 Agreement would need to be made. For your clarification, the barn which is in the course of erection at the present time should not be used for the housing of livestock as it lies within 400m of a protected building (ie. dwelling), without planning permission being obtained as previously advised by letter to your agents D.H. Barford on the 2nd February, 1990.

With respect to your suggestion of the provision of end-on parking onto River Lane, I feel that the proposal would be likely to result in irregular vehicle movements caused by the need for vehicles to reverse in or out of parking spaces onto the highway, to the detriment of highway safety. In addition, I note the proposal would be likely to lead to the loss of hedgerow and as such I would not wish you to pursue the proposal further.

I enclose, as requested, the plans handed to me at our previous site meeting. Should you wish to discuss the matter further, I would be pleased if you would contact Mr. Coleman of my Development Control Section.

Yours faithfully,

K.D. Clarke,
Assistant Director of Planning.

D H Barford + Co

CHARTERED SURVEYORS

Howard House · 17 Church Street · St. Neots
Cambridgeshire · PE19 2BU
Telephone: Huntingdon (0480) 213811

The Director of Planning,
Huntingdonshire District Council,
Pathfinder House,
St. Mary's Street,
Huntingdon,
Cambs.
PE18 6TN

Your ref:
Our ref: IJW/W-044
Date: 21st January 1991

Dear Sir,

RE: B.R. WHITMEE - RIVER LANE, BRAMPTON
PLANNING CONSENT REFERENCE: 87/1017 DATED 2ND FEBRUARY 1990

We refer to discussions that have taken place between our client, Mr. B.R. Whitmee, and Mr. Coleman of your office, and subsequent discussions between our Mr. Page and Mr. Coleman.

You will be aware that one of the conditions attached to our client's Section 52 Agreement is the need to commence work at River Lane to show intent to move the base of the farming enterprise to that locality before you will grant planning consent for a house.

The position our client now finds himself in is that the work on the A1/M1 Link is now substantially complete and the continued use of Hylands Farm for his business is now a considerable problem particularly as there are certain aspects of the works that are being delayed. On the other hand our client is having to commit himself to building a new barn and carrying out other improvement works at River Lane.

It has become clear from negotiations with the District Valuer that an early decision in respect of a compensation claim is not in the offing and this places our client in a very difficult position vis a vis the River Lane development.

The costs of completing the concrete frame barn at River Lane, which Mr. Coleman is fully aware of, is going to be in the order of £25,000. This will include the erection of the frame, concreting of the floor, bricking up 6'0" all round for external walls, plastic-coated green side cladding, drainage system, 2 no. sliding doors, and generally fitting out.

There is no certainty that our client will be able to cover all these costs from compensation. Our client proposes to keep the stock in pig arks which will be spread around the site in fenced areas. This is not a form of intensive farming and the breeding numbers will be consistent with the former practice at Hylands Farm.

Our client does not wish to be placed in the position where he finds himself having expended this money and then does not receive the appropriate consent for the erection of a house, and we would now

The Director of Planning
Huntingdonshire District Council

21st January 1991

ask you to formally indicate that you will be willing to consider a detailed application by our client for a house to be constructed on the site and give consent for that house on the clear understanding that our client can start the construction work now that he has committed himself to the barn which we have described above.

You will appreciate that our client is not in a position to expend further money without this assurance.

In 1982 our client received an assurance from Mr. Campbell that he would receive sympathetic treatment in a planning application for a bungalow at Hylands Farm after our client had concreted the floor of a 60'0" x 40'0" barn, built pig pens and laid on electricity, etc., etc. Having expended substantial sums of money at that time Mr. Campbell was not able to fulfil his promise. Our client is reluctant to be placed in a similar situation again.

We therefore trust that you will be able to give us the assurance that we require, and in view of the urgency to re-locate to this site we should be grateful if you could respond to this letter by return.

Yours faithfully,

D.H. BARFORD + CO.

c.c. Mr. B.R. Whitmee

D.H. Barford & Co.
Howard House,
17, Church Street,
St. Neots,
Cambs.
PE19 2BU

Mr. N. Ward

403813

NJW/LR/87/1017

IJW/W-044

2 February, 1990

Dear Sirs,

ERECTION OF AGRICULTURAL DWELLING AND ASSOCIATED BUILDINGS, PT. OS 219, RIVER LANE, BRAMPTON, CAMBS.

I refer to the above and attach a copy of the District Council's decision notice in respect of the planning application submitted for the erection of the dwelling.

As requested in your letter dated 23rd January, 1990, I am able to confirm that there are no objections to the siting of the proposed agricultural building. I am not aware, however, of any relevant consent for the erection of the building and assume from the content of your letter dated 22nd May, 1987 that the building is to be erected in accordance with the provisions of the Town and Country Planning (General Development) Order. In this respect, you should be aware that the GDO, 1988 does not confer planning permission for the erection of any building that is to be used to house livestock if it lies within 400 metres of the curtilage of any protected building (ie dwelling not related to the holding). It would, therefore, appear that planning permission is required for the building if it is to replace your clients existing animal rearing enterprise at Ellington.

Turning to the second point raised in your letter you may wish to be aware that some limited funding may be available for the layout of the suggested car park. This will depend upon the extent to which your client is prepared to offer public access across his land and over what period of time. If you are able to clarify this point, I may be able to consider the matter as part of the Ouse Valley Recreation Project.

I trust the above information is of assistance but for the avoidance of doubt, this letter does not constitute a determination under Section 53 of the Town and Country Planning Act, 1971.

Yours faithfully,

Director of Planning.

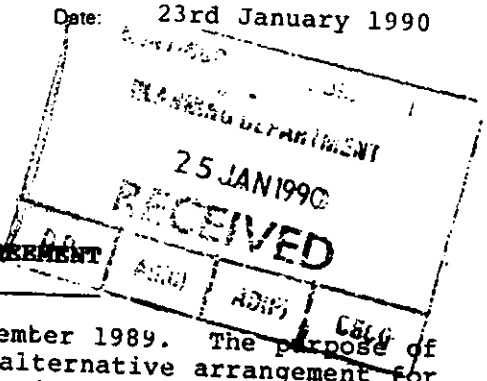
D|H|Barford+Co

CHARTERED SURVEYORS

Howard House · 17 Church Street · St. Neots
Cambridgeshire · PE19 2BU
Telephone: Huntingdon (0480) 213811

Director of Planning,
Huntingdonshire District Council,
Pathfinder House,
St. Mary's Street,
Huntingdon,
Cambs.
PE18 6TN

Your ref: DNP/AT/1017/87
Our ref: IJW/W-044
Date: 23rd January 1990



Dear Sir,

RE: B.R. WHITMEE - DRAFT SECTION 52 AGREEMENT
LAND AT RIVER LANE, BRAMPTON

Further to your letter of the 20th December 1989. The purpose of this letter is to write and record an alternative arrangement for the agricultural building in accordance with what was discussed at our meeting on-site.

Our client proposes to relocate the agricultural building measuring about 60'0" x 50'0", with a lean-to on the side for a further 10'0", in the place shown approximately on the attached sketch drawing.

Our client will make available a strip of land as a walkway linking River Lane to the Golf Course, which will be given unofficial public access for countryside purposes at his discretion. In the event of the public abusing this access it will be closed up. In addition, space will be made available for 4 no. cars to park adjacent to the agricultural buildings in the manner shown.

Would the Council be able to make any contribution towards the cost of kerbing and setting out this car space under any Countryside Grants, etc?

We trust that this re-arrangement is in order and if we do not hear from you, our client will take steps to commence the building works in discharge of conditions already imposed by the existing consents.

Yours faithfully,

D.H. BARFORD + CO.

Enc.

Please read the accompanying notes before completing any part of this form.

Form 1

H 1017 / 87

HUNTINGDONSHIRE DISTRICT COUNCIL
Cambridgeshire

APPLICATION FOR PLANNING PERMISSION

Town and Country Planning Act 1971

6 Completed copies of this form and 6 copies of each plan should be submitted to the Director of Planning, Planning Department, Pathfinder House, St. Mary's Street, Huntingdon, Cambs. PE18 6TN

For office use only

Ref.

PART 1

All questions must be answered. Failure to do so may result in the application being returned.

1. Applicant *(in block capitals)*	*Name*	MR. B.R. WHITMEE
	Address and Tel. No.	1 CROFT CLOSE, BRAMPTON, HUNTINGDON, CAMBS.
Agent *(if any) to whom correspondence should be sent*	*Name*	D.H. BARFORD + CO.
	Address and Tel. No.	HOWARD HOUSE, 17 CHURCH STREET, ST. NEOTS, CAMBS. PE19 2BU (0480) 21381 (IJW/W-044)
2. Particulars of proposals for which permission or approval is sought.		
(a) i Full address or location of land to which this application relates.	i	Land comprising Part O.S. 219 - 1925 Edition Ordnance Survey, River Lane, Brampton, Cambs.
ii Site area or dimensions.	ii	About .1 of a hectare
(b) i Brief particulars of proposed development including the purpose (s) for which the land or buildings are to be used.	i	Erection of Agricultural Dwelling.
ii Is the application for industrial, office warehousing, storage or shopping purposes? If yes, see NOTE 4 and complete PART 2.	ii	N/A
(c) State whether applicant owns or controls any adjoining land and if so, give its location. (See NOTE 6).		Yes - surrounding 10 acres of rough pasture and lakes.
(d) i State the connection (if any) of the proposed development with agriculture or horticulture.	i	See attached letter.
ii If there is a connection, state your main occupation and the total area of the holding.	ii	-
(e) State whether the proposal involves– i The erection of a new building (s).	i	Yes.
ii If residential development, state number of dwelling units proposed and type if known, e.g. houses, bungalows, flats.	ii	House or Bungalow.
iii Alterations and extensions of a building (s).	iii	No.
iv Change of use of land or buildings.	iv	Yes.
v Construction of a new access to a highway (State whether vehicular or pedestrian)	v	No.
vi Alteration to an existing access to a highway. (State whether vehicular or pedestrian)	vi	Yes.
vii Demolition of a building	vii	No.

		For office use only
3. Particulars of Application (see notes 2 and 3) State whether this application is for - i Outline planning permission ii Full planning permission iii Approval of reserved matters following the grant of outline permission. If yes, state date and reference number of previous permission — Date / Number iv Renewal of a temporary permission If yes, state date and reference number of previous permission. — Date / Number	i Yes. ii – iii – iv –	
4. Particulars of Present and Previous Use of Buildings or Land. i Present use of buildings/land ii If vacant (a) the last previous use (b) When such use ceased	i Rough pasture. ii (a) N/A (b) N/A	
5. Additional Information (a) State materials proposed to be used on external elevations. (Trade names of materials and colours should be given).	i Walls N/A ii Roof(s) N/A	
(b) Does the proposed development involve the topping and lopping or removal of any trees or hedges. If yes, indicate accurately the position on the submitted plan(s).	No	
(c) i How will surface water be disposed of? ii How will foul sewage be dealt with?	i Soakways. ii Modern septic tank system.	
6. Plans List drawings and plans submitted with the application. NOTE: The proposed means of enclosure, the materials and colour of the walls and roof, landscaping details etc. should be clearly shown on the submitted plans, unless the application is in outline only.	6 No. Location Plans.	

I/We hereby apply for

*(a) planning permission to carry out the development described in this application and the accompanying plans, and in accordance therewith.

[redacted]

*Delete whichever is not applicable.

Date 22ND MAY 1987

Signed [signature]

On behalf of B.R. WHITMEE
(insert applicant's name if signed by an agent)

TO AVOID DELAY SUBMIT IN ALL CASES

1 The appropriate number of forms and plans

2 One copy of the appropriate certificate declaring your interest in the land or buildings, which are the subject of this application.

If you wish to submit additional information to support your application, you may do so in a covering letter.

HUNTINGDON DISTRICT COUNCIL H1017/87

SCHEDULE OF INFORMATION REQUIRED TO ACCOMPANY AN APPLICATION FOR PERMISSION TO ERECT AN AGRICULTURAL DWELLING

Application No....INC/285/85.....

Name and address of applicant....MR. P.R. WHITMER

1 CROFT CLOSE, BRAMPTON, HUNTINGDON, CAMBS.

Location and name of holding....FIELD - RIVER LANE, BRAMPTON, HUNTINGDON, CAMBS.

1. What is the area of the holding?

(i)	The area of land owned by the applicant	18.....acres
(ii)	The area of land subject to an agricultural tenancy	.....acres
(iii)	The area of land held on an annual grazing licence	c.10.....acres
(iv)	The total area	28.....acres

2. Is it planned to acquire or dispose of agricultural land, and if so how much and where?

Not at present.

3. What is the area of the holding under different crops?

(i)	Cereals	8.....acres
(ii)	Roots	.....acres
(iii)	Fodder	.....acres
(iv)	Fruit	.....acres
(v)	Horticultural crops	.....acres
(vi)	Permanent pasture	Remaining..acres
(vii)	Other	.....acres

4. Is it planned to increase or decrease the areas devoted to particular crops? Please specify.

Not at present.

5. How many stock are there on the holding?

(i)	Cattle - Milk	.....
	- Beef	20-30 .....
	- Other	.....
(ii)	Pigs	2-6 farrowing sows
(iii)	Sheep	.....
(iv)	Poultry	.....

6. Is it planned to change significantly the numbers of any stock? Please specify.

No

7. What existing buildings are there on the holding (excluding houses)?

Pole Barns; Stock Yard; Milling Store; Hay and Straw Barn; and, Farrowing Yards at Hylands Farm, Ellington, Huntingdon, Cambs.

8. Is it planned to erect more buildings. If so, what type and where?

Yes - remove buildings from Hylands Farm, Ellington to River Lane, Brampton.

9. What is the existing workforce on the holding (including the applicant where appropriate)?

	Occupation	Age	Full-time/Part-time
1.			
2.			
3.			
4.			
5.			
6.			

10. Where do they live at present (including the applicant's own place of abode), and are the properties owned, leased or rented?

1 CROFT CLOSE, BRAMPTON, HUNTINGDON, CAMBS.

11. How many dwellings does the applicant own, on the holding or elsewhere?

TEMPORARY CARAVAN AT HYLANDS FARM, ELLINGTON, HUNTINGDON, CAMBS.

12. Are there plans to increase or reduce the workforce?

NO

13. Is the proposed dwelling required to house the owner, an existing worker or an additional one?

REQUIRED FOR OWNER.

14. If existing, in what way is the present accommodation inadequate or unsuitable?

DOES NOT ENABLE PREMISES TO BE SUPERVISED.

15. If for owner occupation, is there an alternative site on the holding?

NO.

16. What is the agricultural reason for the house to be located in the site specified in the application?

FOR SECURITY PURPOSES AND TO BE CLOSE TO STOCK.

17. Have other means of providing this accommodation been investigated (in nearby villages, etc.)? If these have not proved satisfactory, why is this.

FOR REASONS STATED IN NO. 16.

18. Are any of your existing or retired workforce on the Council's housing waiting list?

N/A

Roger Pitt Designs,
The Mill House,
Bolnhurst,
Beds.
MK44 2ER

Mr. D. Hincks

442211

DBH/LR/91/1350

9 December, 1991

Dear Sirs,

ERECTION OF AGRICULTURAL DWELLING AND GARAGE,
PT. OSP 210, TIVER LANE, BRIGHTON,

I refer to your recent planning application in respect of the above development, and have pleasure in enclosing the formal decision notice.

I also enclose a copy of the response from the National Rivers Authority and would draw your attention to the conditions contained therein. In particular, you should note the definition of the flood plain and I would advise you that insufficient information has been supplied to discharge Condition 5 of the outline consent. I would be grateful to receive the proposed floor and ground levels of the dwelling at your earliest convenience.

During the consultations on this proposal, the County Director of Transportation made the following comments:

1. The entrance to the site should be provided with 2 metre by 2 metre visibility splays in which there should be no obstructions over a height of 600mm.

2. The permanent space to be provided on site for the parking of vehicles should be retained exclusively for that purpose.

3. The access to the highway should be laid out and constructed to the satisfaction of the Local Planning Authority before the occupation of the property commences.

I look forward to receiving your confirmation of these points at your earliest convenience.

Yours faithfully,

Director of Planning.

ROGER PITT
DESIGNS

THE MILL HOUSE
BOLNHURST
BEDFORD MK44 2ER

Tel ; COLMWORTH 278

8th. October, 1991.

The Assistant Director of Planning,
Huntingdonshire District Council,
Pathfinder House,
Huntingdon,
Cambs.
PE18 6TN.

For the attention of Miss Cole.

Dear Sir,

Agricultural Dwelling, River Lane, Brampton.

Further to your letter of 2nd. October and our telephone conversation today, I enclose 6 copies of the revised drawing showing the correct application site edged pink and other land in the ownership of the applicant edged blue.

I trust you will find this in order,

Yours faithfully,

Roger Pitt Designs.

Roger Pitt Designs,
The Mill House,
Bolnhurst,
Beds.

Miss D. Cole

442234

DNC/LR/INC 359/91

2nd October, 1991

Dear Sir,

TOWN AND COUNTRY PLANNING ACT, 1990
AGRICULTURAL DWELLING, RIVER LANE, BRAMPTON.

I refer to Miss Cole's telephone conversation with you on 27th September, 1991. As Miss Cole explained, the application submitted on 26th September cannot be treated as an approval of reserved matters application as the proposed dwelling is not on the site approved under the outline permission dated 2nd February, 1990, a copy of which is enclosed.

It is open to you to either change the siting of the dwelling to that permitted or to amend the new application to a 'Full'. In this event, there would need to be amendments to the Section 106 Agreement or a new Agreement.

It may also be necesrary to request a fresh 'agricultural appraisal' to support the application.

Yours faithfully,

K.D. Clarke,
Assistant Director of Planning.

Please read the accompanying notes before completing any part of this form. Form 1

HUNTINGDONSHIRE DISTRICT COUNCIL
Cambridgeshire

APPLICATION FOR PLANNING PERMISSION

Town and Country Planning Act 1990

6 Completed copies of this form and 6 copies of each plan should be submitted to the Director of Planning, Planning Department, Pathfinder House, St. Mary's Street, Huntingdon, Cambs. PE18 6TN

For office use only

Ref.

PART 1

All questions must be answered. Failure to do so may result in the application being returned.

1. Applicant *(in block capitals)*	*Name*	Mr. B.Whitmee.
	Address and Tel. No.	c/o Agent.
Agent *(if any) to whom correspondence should be sent*	*Name*	Roger Pitt Designs,
	Address and Tel. No.	The Mill House, Bolnhurst, Beds. Colmworth 278, 023062
2. Particulars of proposals for which permission or approval is sought.		
(a) i Full address or location of land to which this application relates.	i	Pt. OSP 219, River Lane, Brampton.
ii Site area or dimensions.	ii	
(b) i Brief particulars of proposed development including the purpose (s) for which the land or buildings are to be	i	Erection of an agricultural dwelling and garage.
ii Is the application for industrial, office warehousing, storage or shopping purposes? If yes, see NOTE 4 and complete PART 2.	ii	No.
(c) State whether applicant owns or controls any adjoining land and if so, give its location. (See NOTE 6).		No.
(d) i State the connection (if any) of the proposed development with agriculture or horticulture.	i	The dwelling will be occupied by a person mainly employed
ii If there is a connection, state your main occupation and the total area of the holding.	ii	locally in agriculture.
(e) State whether the proposal involves– i The erection of a new building (s).	i	Yes.
ii If residential development, state number of dwelling units proposed and type if known, e.g. houses, bungalows, flats.	ii	One dwelling house.
iii Alterations and extensions of a building (s).	iii	No.
iv Change of use of land or buildings.	iv	No.
v Construction of a new access to a highway (State whether vehicular or pedestrian)	v	Yes.
vi Alteration to an existing access to a highway. (State whether vehicular or pedestrian)	vi	No.
vii Demolition of a building	vii	No.

P/P/58

		For office use only
3. Particulars of Application (see notes 2 and 3) State whether this application is for: -		
i Outline planning permission	i No.	
ii Full planning permission	ii No.	
iii Approval of reserved matters following the grant of outline permission. If yes, state date and reference number of previous permission — Date / Number	iii Yes.	
iv Renewal of a temporary permission If yes, state date and reference number of previous permission. — Date / Number	iv 2/2/90. 87/1017.	
4. Particulars of Present and Previous Use of Buildings or Land.		
i Present use of buildings/land	i Agricultural.	
ii If vacant (a) the last previous use	ii (a)	
(b) When such use ceased	(b)	
5. Additional Information		
(a) State materials proposed to be used on external elevations. (Trade names of materials and colours should be given).	i Walls Facing brickwork, type and colour to be agreed. ii Roof(s) Interlocking concrete tiles, type and colour to be agreed.	
(b) Does the proposed development involve the topping and lopping or removal of any trees or hedges. If yes, indicate accurately the position on the submitted plan(s).	No.	
(c) i How will surface water be disposed of?	i To soakaways.	
ii How will foul sewage be dealt with?	ii To septic tank.	
6. Plans List drawings and plans submitted with the application. NOTE: The proposed means of enclosure, the materials and colour of the walls and roof, landscaping details etc. should be clearly shown on the submitted plans, unless the application is in outline only.	6 copies of general plan.	

We hereby apply for

[redacted] to carry out the development described in this application and the accompanying plans, and in accordance therewith.

OR *(b) approval of details of such matters as were reserved in the outline permission specified herein and are described in this application and the accompanying plans.

[redacted] to retain buildings or works already constructed or carried out, or a use of land already instituted as described on this application and the accompanying plans.

*Delete whichever is not applicable.

Date 25/9/91.

Signed R.J. Smith.

On behalf of Mr. B.Whitmee.

(insert applicant's name if signed by an agent)

TO AVOID DELAY SUBMIT IN ALL CASES

1 The appropriate number of forms and plans

2 One copy of the appropriate certificate declaring your interest in the land or buildings, which are the subject of this application.

If you wish to submit additional information to support your application, you may do so in a covering letter.

HUNTINGDONSHIRE DISTRICT COUNCIL

OPERATIONAL SERVICES DIRECTORATE

INTERNAL MEMORANDUM

From:	**PLANNING DIVISION**	**To:**	**COLIN MEADOWCROFT**
Officer:	**SUE WHEATLEY ☎ Ext: 8490**	**Your Ref:**	
My Ref:	**SW/02/01431/cleud**	**Date:**	**19 September 2002**

CERTIFICATE OF LAWFUL DEVELOPMENT FOR RETENTION OF DWELLING WITHOUT OCCUPANCY RESTRICTION

Attached are copies of outline planning permission and reserved matter approval. I am sorry that they are of such poor quality.

I have also attached copies of correspondence in respect of the approval of materials.

The only information I can find in respect of landscaping is what is shown on the submitted plan. This shows a number of trees and the note states " new tree planting, crab apples, flowering cherries and mountain ash". It would appear however that a landscape scheme was not submitted.

I have also enclosed a copy of the Building Control Inspection Notes.

Sue Wheatley

INSPECTION RECORD

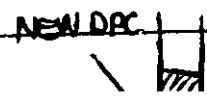
.TION NO: P92-059 PLOT NO: A

.tage	Ref.	Date	Y/N	Remarks
Comm	1	1/4/92		Crushed concrete hardcore compacted for raft foundation. Told owner he need to submit plans & calcs for this amendment.
O/Sr Reinforcem	2	27-4-92	No	Reinforcement to raft provided over whole area. Noted the following:- 1) The reinforcement to the rear (North East) wall of the sun lounge is not as the engineer's drawings. 2no T12's used to inside of toe instead of 2no T16's as shown on section A-A. 2) Reinforcement to raft beam shown between sun lounge and lounge not as plan. (see section C-C) 2 no T12's used to bottom of beam instead of 2no T16's. 3) Addition link not provided to toe beam as section A-A. (it does not appear to be providing any structural function). 4) hardcore and soil to be removed from area of reinforcement to allow adequate cover. Informed builder that confirmation reqd hour.

INSPECTION RECORD

CATION NO: P92.0059. PLOT NO: ~~15~~ +

Stage	Ref.	Date	Y/N	Remarks
A	3	29-4-92	y	Letter & fax from Engineers S. Johnson Assoc, stating remedial works required. Points 1, 2, & 3 satisfied although further site visit required.
Q: & Reinforcement	4	30-4-92	y	Additional T12 bars provided as requested. Small amount of spoil & stone to be removed from area of reinforcement prior to concrete being placed.
D.P.C	5	9/6/92	Y	D.P.C being bedded. NOTE. WINDOWS BEING REARRANGED IN SUN LOUNGE OK UNDER BUILDING REGS BUT TOLD OWNER MUST NOTIFY PLANNERS. ALSO COMBUSTION AIR DUCT MISSED UNDER OVERSITE HEREFORE MUST BE PROVIDE VIA AIRBRICK OR SIMILAR. //
D.PC	6	30/6/92	N	VERTICAL DPC to BAYS IN INCORRECT POSITION SPOKE to BUILDER to BE ALTERED AS AGREE ON DIAG.



INSPECTION RECORD

APPLICATION NO: P920059 PLOT NO: A1

Stage	Ref.	Date	Y/N	Remarks
D.PC.	7	30/6/92		ALTERATIONS to WINDOWS & Brickwork GABLES MUST GET PLANNING PERMISS OK UNDER B.K. PROVIDE Bathroom is STILL MECHANICALLY VENTED. //
Joist	8	27/7/92	Y	Floor joists & R.S.J. a plan to first floor //
R	9	18/8/92	Y	Brick & blockwork up to roof awaiting roof trusses
Roof	10	18/9/92	Y	Roof installed as plan all wallplate & lateral restraint straps fitted. Roof venting on top of fascia.
DRAINS 1	11	18/11/92	y	Foul drains provided as marked red on dwg no 1035/A. Plastic pipes and chambers in a pea shingle surround. Layout different to submitted drawings. Klargester and associated pipework still to be provided. RH.
Drains 1	12	19-11-92	y	Storm drains provided to front of the property. Plastic pipes in pea shingle. RH. //
R	13	15/12/92	Y	No further progress property boarded up. //
R	14	25/1/93	Y	All doors & windows fitted. no access into property. //
R	15	3/2/93	Y	NO Further progress

INSPECTION RECORD

APPLICATION NO: P920059. PLOT NO: A1.

Stage	Ref.	Date	Y/N	Remarks
R	16	5/3/93	Y	General inspection building ready for plastering. //
Pt	17	12-3-93	Y	No contraventions noted // Rd.
Pt	18	5/3/93	Y	Septic tank installed filter drains still required told Mr Whitmee AWA & NRA involved on filters //
Rt.	19.	7.6.93	Y	Works still under construction. Mechanical fans and ducting is satisfactory. Ck.
Rt.	20.	20.7.93	Y	Second fixing still in progress. //
Rt	21	16-8-93	Y	All waste pipes & traps inspected satisfactory // co.
Pentio	22	28/9/93	No	No access to bldg - Shell appears complete but internal works still o/c //
Drains	23	28/10/93	Y	Drains tested & found to be satisfactory.
Comp	24	28/10/93	Y	All works complete no visual deffects. //

HUNTINGDONSHIRE DISTRICT COUNCIL

Planning Department
Pathfinder House
St Mary's Street
Huntingdon
Cambs PE18 6TN

D.N. Potter FRICS MRTPI
Director of Planning

Tel: Huntingdon (0480) 456161
Fax: Huntingdon (0480) 414764

MR. B. WHITMEE
C/O ROGER PITT DESIGNS
THE MILL HOUSE
BOLNHURST
BEDS MK44 2ER

Please ask for
Mr Rose
Please dial direct
(0480) 442243

Our ref: P920059

08 APR 92

Dear Sir/Madam

BUILDING REGULATIONS APPLICATION

PROPOSAL: NEW 4 BED DWELLING

AT: RIVER LANE
BRAMPTON

I refer to your amended details received on 01 APR 92 concerning the above matter.

RAFT FOUNDATIONS

The works proposed are acceptable under the Building Regulations 1985 and can be approved as an amendment to the original permission P920059 dated 06 FEB 92.

Copies of the approved amended drawings are enclosed with this letter.

This permission is for Building Regulation purposes only, and any necessary amendment to the Planning approval must be obtained before work commences.

Yours faithfully

Chief Building Control Officer

Local Authority

Mr. B. Whitmee,
1, Croft Close,
Brampton,
Huntingdon,
Cambs.

Mr. D. Hincks

442211

DMH/LR/91/1350

19th September, 1991

Dear Mr. Whitmee,

ERECTION OF A DWELLING, RIVER LANE, BRAMPTON

Thank you for your letter of the 16th August, 1991 relating to the above development.

I am confirm that the roof tile as detailed in your letter is acceptable, and hereby advise you that the relevant requirement of Condition 6 of the above planning consent is hereby discharged.

Yours sincerely,

Director of Planning.

1, Croft Close,
Brampton,
Hunts.,
Camba. PE18 8QJ

18th August 1992

HUNTINGDONSHIRE DISTRICT
COUNCIL
PLANNING DEPARTMENT
20 AUG 1992
RECEIVED
D.P. | DM | AD(P) | CBCB

Dear Mr. Hinks,

River Lane, Brampton

Regarding site meeting at River Lane, Brampton, I am writing to confirm the tiles to be used for the new dwelling are clay peg tiles, Hawthorn Heather mixture. I have received another 12 sample tiles from stock and they match the tiles we discussed.

Thank you for your visit,

Yours sincerely,

B R Whitmee

B. R. Whitmee

Mr. B. Whitmee
1 Croft Close,
Brampton,
Huntingdon,
Cambs. PE18 8TJ

Mr. D. Hincks

442212

DMH/MP/91/1350;
87/1017

22nd April 1992

Dear Mr. Whitmee,

[redacted]

I refer to your letter of the 22nd April, 1992, relating to the materials for the above development.

I am confirm that the bricks chosen are acceptable and will satisfactorily discharge the relevant requirements of Condition No.6 of planning permission 87/1017.

I look forward to receiving details of the proposed roof materials in due course.

Yours sincerely,

Director of Planning

30/4

Huntingdonshire District Council

CAMBRIDGESHIRE

Application No: 87/1017

TOWN AND COUNTRY PLANNING ACT, 1971

OUTLINE PLANNING PERMISSION

To Mr. S. R. Whitmee,
C/O D. H. Barford & Co.,
Howard House,
17 Church Street,
St. Neots,
Cambs. PE19 2BU

Huntingdonshire District Council in pursuance of powers under the above-mentioned Act, hereby PERMIT

Erection of an agricultural dwelling, at: Pt. OSP. 219, River Lane, Brampton

in accordance with your application received on 29 MAY 1987

and the plans, drawings and documents which form part of the application, subject to the conditions specified hereunder:

1. The permission hereby granted is an outline permission under Article 5(2) of S.I. 1977 No.289 and an application for the approval of the Local Planning Authority to the following matters must be made not later than the expiration of 3 years beginning with the date of this permission:- (a) the layout of the site; (b) the number, siting, design, height and external appearance of the building(s);(c) the landscaping of the site; (d) the means of access from the site to the highway.

2. The development to which this permission relates must be begun not later than whichever is the later of the following dates:-(a) the expiration of 5 years from the date hereof; or (b) the expiration of 2 years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

3. Before any development is commenced on the site, a landscaping scheme shall be submitted to and approved by the Local Planning Authority. This scheme shall list the numbers, species and sizes of the trees and shrubs which are to be planted and include a plan indicating the treatment of all ground surfaces, the materials to be used and the disposition of the various elements.

Dated: 02 FEB 1990 (Continued)

Planning Department, Pathfinder House, St. Mary's Street, Huntingdon, Cambs. PE18 6TN.

The Director of Planning

Huntingdonshire District Council

CAMBRIDGESHIRE

Application Number: 0[illegible]17

TOWN AND COUNTRY PLANNING ACT, 1971

OUTLINE PLANNING PERMISSION (Continued)

4. All planting, seeding or turfing, comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

5. The minimum ground floor level of any building involved in the development must be at least 11.5 metres ODN.

6. Details of the type and colour of all materials to be used for the external surfaces of the building(s shall be submitted to and approved by the Local Planning Authority, before the commencement of the development to which this permission relates.

7. An adequate space shall be provided within the site to enable vehicles to enter and leave in forward gear.

8. An adequate space shall be provided within the site to enable vehicles to park clear of the public highway.

9. The permanent space to be reserved on the site for turning and parking shall be provided before the use commences and thereafter maintained.

10. 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 of the Town and Country planning Act, 1971, or in forestry, or a dependant of such a person residing with him or her or a widow or widower of such a person.

The reasons for the Council's decision to grant permission for development subject to compliance with the conditions hereinbefore specified are:

1. To enable the Local Planning Authority to control the development in detail and to comply with Section 42 of the Town and Country Planning Act, 1971.

Dated: 02 FEB 1990 (Continued)

Planning Department, Pathfinder House, St. Mary's Street, Huntingdon, Cambs., PE18 6TN

- 2 -

The Director of Planning

Huntingdonshire District Council

CAMBRIDGESHIRE

Application Number: 8/1017

TOWN AND COUNTRY PLANNING ACT, 1971

OUTLINE PLANNING PERMISSION (Continued)

---

2. To enable the Local Planning Authority to control the development in detail and to comply with Section 42 of the Town and Country Planning Act, 1971.

3. To enhance the appearance of the development.

4. To ensure that the work is carried out within a reasonable period.

5. To prevent the buildings flooding

6. To ensure a satisfactory external appearance and grouping of materials.

7. To minimise interference with the free flow and safety of traffic on the adjoining public highway.

8. To minimise interference with the free flow and safety of traffic on the adjoining public highway.

9. To minimise interference with the free flow and safety of traffic on the adjoining public highway.

10. The site lies in an area within which the Local Planning Authority would not normally grant permission for residential development. This permission is therefore granted only because of special agricultural need and the premises should accordingly only be occupied by persons connected with agriculture.

Notes to Applicants

1. This permission is related to an Agreement entered into by the applicant and the Huntingdonshire District Council under Section 52 of the Town and Country Planning Act, 1971.

Dated: 02 FEB 1990

The Director of Planning

Planning Department, Pathfinder House, St. Mary's Street, Huntingdon, Cambs. PE18 6TN

F//P016

Mr. D. Hincks

442212

DNH/RP/91/1350;
87/1017

Mr. B. Whitmee
1 Croft Close,
Brampton,
Huntingdon,
Cambs. PE18 8TJ

29th April 1992

Dear Mr. Whitmee,

ERECTION OF DWELLING, RIVER LANE, BRAMPTON

I refer to your letter of the 22nd April, 1992, relating to the materials for the above development.

I can confirm that the bricks chosen are acceptable and will satisfactorily discharge the relevant requirements of Condition No.6 of planning permission 87/1017.

I look forward to receiving details of the proposed roof materials in due course.

Yours sincerely,

Director of Planning

30/4

DH

1, Croft Close,
Brampton,
Hunts.,
Cambs. PE18 8TJ

1350 H4

22nd April 1992

Dear Mr. Hinks,

letter drafted 29/4. Just.

Re: River Lane, Brampton

Regarding our meeting at Huntingdon District Council Planning Department on 22/4/92 to discuss bricks, I confirm that Penine Pastone Buff rustic on main structure and Stratford Red Rustics for corners, doors and window edging.

Thank you for your time and co-operation.

Yours sincerely,

B R Whitmee

B. Whitmee

Mr. Hinks,
Planning Dept.,
Huntingdon District Council,
St. Mary's Street,
Huntingdon.

Met Mr Whitmee on site and discussed materials. Agreed that those quoted above are acceptable

Just 27/4

FILE

D|H|Barford+Co

CHARTERED SURVEYORS

Howard House · 17 Church Street · St.Neots
Cambridgeshire · PE19 2BU
Tel: 0480 213811 Fax: 0480 406911

Your ref: NC/LR/87/1017
Our ref: MP/W-044
Date: 31st March, 1992

D.N. Potter Esq. FR[illegible], MRTPI.,
Director of Planning
Huntingdonshire District Council,
Pathfinder House,
St. Mary's Street,
Huntingdon,
Cambs., PE18 6TN.

For the attention of Mr. N. Coleman.

Dear Sir,

RE: AGRICULTURAL DWELLING - RIVER LANE, BRAMPTON.

We thank you for your letter dated 27th March, 1992 confirming that our Client is able to start work on the construction of the house, subject to the outstanding works being completed.

Our Client fully understands the requirements and we confirm that within three months, the livestock shelter will be reclad and all materials and compounds removed from the site, although as we advised in our letter of the 17th March, 1992, one compound will be retained for the security of materials and equipment required in connection with the building of the new house.

Yours faithfully,

Martin Page

MARTIN PAGE,
for D.H. BARFORD + CO.

D.H. Barford & Co.,
Howard House,
17, Church Street,
St. Neots,
Huntingdon,
Cambs. PE19 2BU

Mr. K. Coleman

4[illegible]131 x 2485

[illegible]

27th March, 1992

Dear Sirs,

AGRICULTURAL DWELLING, RIVER LANE, BRAMPTON

I refer to your letter of the 17th March, 1992 and faxed communication of 26th March, 1992, regarding the above dwelling, and Covenant 3 of the Second Schedule of the relevant Section 52 Agreement.

I would confirm that in view of the situation Mr. Whitmee finds himself in, I am prepared to confirm that work can commence on the erection of the dwelling, only on the strict understanding that the refurbishment of the Shelter is completed and the remaining materials and compound removed within a period of 3 months from the date of this letter, and that failure to meet this requirement could result in me confirming that suitable agricultural buildings have not been constructed and that all work on the agricultural dwelling should cease immediately.

I would be grateful if you would confirm in writing that Mr. Whitmee understands and accepts the above prior to any work on the construction of the dwelling being started.

Yours faithfully,

Director of Planning.

92 11108 0480406911 0480406911

1, Croft Close,
Brampton,
Hunts.,
Cambs. PE18 8TJ

25th March 1992

Dear Mr. Page,

Re: River Lane, Brampton

Could you please explain to Mr. Colman that I am not trying to pull a fast one over him, wanting to start work on the house foundations. I hired a 360° tracked digger to clean out the barns ready for laying the floors, also for digging up concrete and rubbish that the AWA left behind. It costs £120 every time I hire the digger for transportation, so while the digger is on site I would like to dig the foundations out for the house so I can concrete the barn foundations for the dividing walls, at the same time as the house. also the reinforced steel for the footings will go rusty if I do not use it soon. I have explained my predicament to Mr. George Howitt.

Yours sincerely

B. L. Whitmee

Mr. M. Page,
Barford & Co.,
St. Mary's Street,
St. Neots,
Hunts.

...SHIRE DISTRICT
...RTMENT
26 MAR 1992
CBCO

D|H|Barford+Co

CHARTERED SURVEYORS

Howard House · 17 Church Street · St.Neots
Cambridgeshire · PE19 2BU
Tel: 0480 213811 Fax: 0480 406911

D.N. Potter Esq. FRICS., MRTPIO.,
Director of Planning,
Huntingdonshire District Council,
Pathfinder House,
St. Mary's Street,
Huntingdon,
Cambs., PE18 6TN.

Your ref:
Our ref: MLP/W-044
Date: 17th March, 1992

HUNTINGDON
13 MAR 1992

For the attention of Mr. N. Colman.

Dear Sir,

RE: AGRICULTURAL DWELLING - RIVER LANE, BRAMPTON.

We refer to the above matter and the recent telephone conversation between Mr. Colman and the writer.

We understand that before you can issue a letter confirming the erection of the new house can commence, you require the following two outstanding matters to be resolved;

1. The recladding of the existing livestock wintering structure, and;

2. The removal of all materials including the compounds, so that the land can be used for agriculture.

As explained in the recent telephone conversation, Anglian Water were due to vacate the land in November last year but because of a further new main project and the difficulty of obtaining a storage area, our Client has allowed Anglian Water to continue with the use of the land. In view of your advice however, Anglian Water have now been instructed to vacate the land and remove all materials. Our Client will however retain one of the compounds for his personal use for the security of materials and equipment required in connection with the building of the new house.

With regard to the recladding of the building, our Client is in a difficult situation where, at the moment, funds are not available for the work and the release of funds is dependent on the Authority issuing the letter confirming the erection of the new house can start. Our client is, in effect, in a 'Catch 22' situation.

Continued ...../

D.M. Potter Esq. FRICS., MRTPI.,
Huntingdonshire District Council - W-044. 17th March, 1992

To enable the matter to proceed, we wonder whether you are able to issue the letter in accordance with the requirements of Clause 3 of the Second Schedule of the Section 52 Agreement, but subject to an understanding that within three months our Client will ensure the outstanding two points are resolved.

We would welcome your urgent consideration to the above proposal which would enable our client to proceed with the erection of the new house, re-organising his agricultural holding and get on with his business.

We await your advice.

Yours sincerely,



[illegible] Whitwell.

File 87/1017

D H Barford + Co

CHARTERED SURVEYORS

Howard House · 17 Church Street · St.Neots
Cambridgeshire · PE19 2BU
Tel: 0480 213811 Fax: 0480 406911

Your ref.
Our ref MLP/W-044
Date: 15th January, 1992

D.M. Potter Esq. FRICS., MRTPI,
Director of Planning,
Huntingdonshire District Council,
Pathfinder House,
St. Mary's Street,
Huntingdon,
Cambs., PE18 6TN.

For the attention of Mr. N. Colman.

Dear Sir,

RE: RIVER LANE, BRAMPTON.

We write further to our letter of the 26th November, 1991 and in the hope that you may now be able to respond.

You will be aware that the Authority has granted Reserved Matters Approval for the farmhouse and our Client is, in the circumstances, anxious to put arrangements in hand for construction work to start. Before doing so however, we require the appropriate confirmation that our Client is free to start in accordance with the requirements of the Section 52 Agreement.

We look forward to hearing from you as soon as possible.

Yours faithfully,

For D.H. Barford + Co.

FILE 87/1017

D|H|Barford+Co

CHARTERED SURVEYORS

Howard House · 17 Church Street · St.Neots
Cambridgeshire · PE19 2BU
Tel: 0480 213811 Fax: 0480 406911

Your ref: NC/RP/87/1017
Our ref: MLP/W-044/W-022A
26th November, 1991

HUNTINGDONSHIRE DISTRICT COUNCIL
PLANNING DEPARTMENT
27 NOV 1991
RECEIVED
D.P. | AD(S) | AD(P) | CBCO

D.N. Potter Esq. FRICS., MRTPI.,
Director of Planning,
Huntingdonshire District Council,
Pathfinder House,
St. Mary's Street,
Huntingdon,
Cambs., PE18 6TN.

For the attention of Mr. N. Colman.

Dear Sir,

RE: RIVER LANE, BRAMPTON.

We thank you for your letter dated 28th August, 1991 in connection with the above.

In the light of the earlier correspondence, we write in the hope that with the imminent grant of Planning Permission for the house details, you are able to issue a letter confirming the erection of the new house can commence, in accordance with the requirements of Clause 3 of the Second Schedule of the Section 52 Agreement.

Referring to the outstanding matters, we w respond again to the points you raise in the final paragraph of your letter dated 19th July, 1991:

1. The Reserved Matters application for the farmhouse was submitted on the 11th October (Reference 1350/91) and we understand that by the time you are in receipt of this letter, consent will have been issued.

2. Anglian Water Contractors have vacated the site.

3. In view of the acceptance in your letter of the 28th August that the existing livestock wintering structure is to be retained, we would welcome confirmation that together with the existing storage building and pig arcs which will be located on the land, adequate provision is made for agricultural buildings.

We look forward to receiving your advice at the earliest convenience, as you will understand our Client is anxious to proceed as soon as possible.

Yours sincerely,

ADVISED. M.PAGE
IF S.TURNING.

Martin Page

[illegible]
for D.H. Barford + Co.

D.H.Barford & Co.
Howard House,
17 Church Street,
St. Neots,
Cambs.
PE19 2EU

Mr. N. Coleman

Ex.2405

MC/RP/87/1017

MLP/W/044

25th August 1991

Dear Sir,

RIVER LANE, BRAMPTON

I write with reference to your letter of 6th August, 1991 and note the contents of paragraphs numbered one and two.

With reference to your contentions relating to the livestock wintering structure, I would comment as follows.

On the basis of the facts contained in your letter, principally that the shelter building has an established agricultural use for livestock/wintering purposes, and provided the building as re-clad is not materially different, then I consider no further planning consent would be required.

You will appreciate that the above is an informal officer comment and does not constitute a determination under Section 64 of the Town and Country Planning Act 1990.

Yours faithfully,

K.B.Clarke
Assistant Director of Planning

D H Barford + Co

CHARTERED SURVEYORS

Howard House · 17 Church Street · St.Neots
Cambridgeshire · PE19 2BU
Tel: 0480 213611 Fax: 0480 406911

D N Potter Esq FRICS, MRTPI
Director of Planning
Huntingdonshire District Council
Pathfinder House
St Mary's Street
Huntingdon
Cambs
PE18 6TN

Your ref:
Our ref: MLP/W-044
Date: 6th August 1991

Dear Mr Potter

RE: RIVER LANE, BRAMPTON

We thank you for your letter dated 19th July 1991 and were pleased to note the comments in your final paragraph.

In the light of the confirmation that, subject to resolving three outstanding points, you will be in a position to issue a letter stating development can commence, we can respond as follows:

1. Plans are in hand for the submission of a Reserved Matters Application for the erection of a dwelling, as per the Eastgate design which you acknowledged in your letter dated 20th February 1991 would be suitable. The house will be erected within the site granted Planning Permission on 2nd February 1990 under reference 87/1017. It is intended to submit the Application within the next few weeks.

2. Anglian Water Contractors will be vacating the site during September.

3. Referring to the Agricultural Buildings, it is intended the existing agricultural building erected close to River Lane will be used for storage of equipment and animal foods.

   The pig arcs are moveable structures and will be placed on the land shortly before the pigs are moved onto the holding and the enterprise becomes operational.

   Referring the the building for the housing and wintering of cattle we note your comment that works to the structure would require Planning Permission. However, we have given the matter further consideration and in discussion with our client further facts have emerged which we would ask you to consider. The framework structure we refer to was erected on the land in about 1976 and was used as a shelter for livestock up until approximately two years ago. On closer examination of the building you will note there are the remains of animal faeces within the framework.

Cont'd ....

Until approximately four months ago the building was clad in rusting corrugated iron which was in a poor condition. The rusting cladding, which remains on the site, was removed in order to be replaced and to improve the appearance of the building. Other than replacing the cladding no alterations to the building were or are intended. Because of the uncertainty which emerged in respect of the use of the framework structure for housing and wintering livestock and whether this would require Planning Permission, our client has postponed completing the works.

In view of the above facts, it is intended to replace the cladding as works of maintenance which do not materially effect the external appearance of the building and consequently will not involve development as defined in Section 55(2)(a)(ii) of the Town and Country Planning Act 1990. As the building already has a history for housing of livestock its use in connection with the proposed enterprise does not, in our view, warrant a further Planning Application.

In view of the difficulties that have emerged for our client in trying to get the agricultural enterprise relocated and the frustrations which have been experienced, we hope you will be able to take a positive view in respect of our clients' intentions and unless we hear from you to the contrary within the next two or three weeks it is intended to proceed on the above understanding, as our client is understandably anxious to get matters moving.

We await your advice.

Yours faithfully

D.H. Barford & Co.

D H BARFORD & CO

D.M. Bamford & Co.,
Howard House,
17, Church Street,
St. [illegible],
Huntingdon,
Cambs.
PE19 2BU

Mr. P. Coleman

45[illegible]485

NC/[illegible]

YLP/W-0[illegible]4

19th July, 1991

Dear Sirs,

RIVER LANE, BRAMPTON - PROPOSED AGRICULTURAL DWELLING

I write with reference to the above and Mr. Coleman's letter dated 3rd April, 1991 and your recent correspondence and copy letter received on the 17th June, 1991, and your latest letter received on the 5th July, 1991. The contents of your letter dated 16th April and 5th July, 1991 refer to the agricultural operation as now proposed by your client. I note both your reference to the pig-ark system of pig rearing to be undertaken on the site and to the intention to rear cattle on the site using an existing structure on site for the housing and wintering of cattle.

From a recent inspection of the site, I would suggest that the existing framework in the north-eastern corner of the site is not usable in its present state for agricultural purposes, bearing in mind there are no substantial roof or walls to the building. It would appear therefore that the works to make the structure usable for agricultural purposes for housing animals would not be permitted development by virtue of the proximity of dwellings within 400m and as such formal consent should be sought for the proposed works to be carried out.

It is also clear that a significant proportion of the site referred to in the Agreement appears to be used as a contractors temporary depot. Further, at the present time I have no record of any detailed planning permission being sought for the erection of a dwelling on the site.

Bearing the above matters in mind I am not able to confirm that suitable agricultural buildings have been erected to enable the construction of the dwelling to commence in accordance with the Second Schedule of the Section 52 Agreement.

I would, however, confirm that outline planning permission is still live subject to the Section 52 Agreement, and that I would be happy to confirm that the construction of the dwelling can commence when the appropriate detailed permissions have been granted, the contractors have left the site on which outline consent has been granted for the dwelling and lastly that suitable agricultural buildings to house the pigs and cattle have been erected.

Yours faithfully,

Director of Planning.

DATED 22nd January 1990

THE HUNTINGDONSHIRE DISTRICT COUNCIL

- and -

BRIAN ROBERT WHITMEE

A G R E E M E N T

under Section 52 of the Town and Country Planning Act 1971 in relation to agricultural dwelling at River Lane, Brampton in the County of Cambridgeshire

C Meadowcroft
District Solicitor
Pathfinder House
Saint Mary's Street
Huntingdon
Cambridgeshire

(CM.at.PO.10.87)

THIS A G R E E M E N T is made the 22nd day of January One thousand nine hundred and ~~Eighty-nine~~ Ninety

B E T W E E N The HUNTINGDONSHIRE DISTRICT COUNCIL of Pathfinder House Saint Mary's Street Huntingdon in the County of Cambridgeshire (hereinafter called "the Council") of the one part and BRIAN ROBERT WHITMEE of 1 Croft Close Brampton Huntingdon aforesaid (hereinafter called "the Owner") of the other part

W H E R E A S :

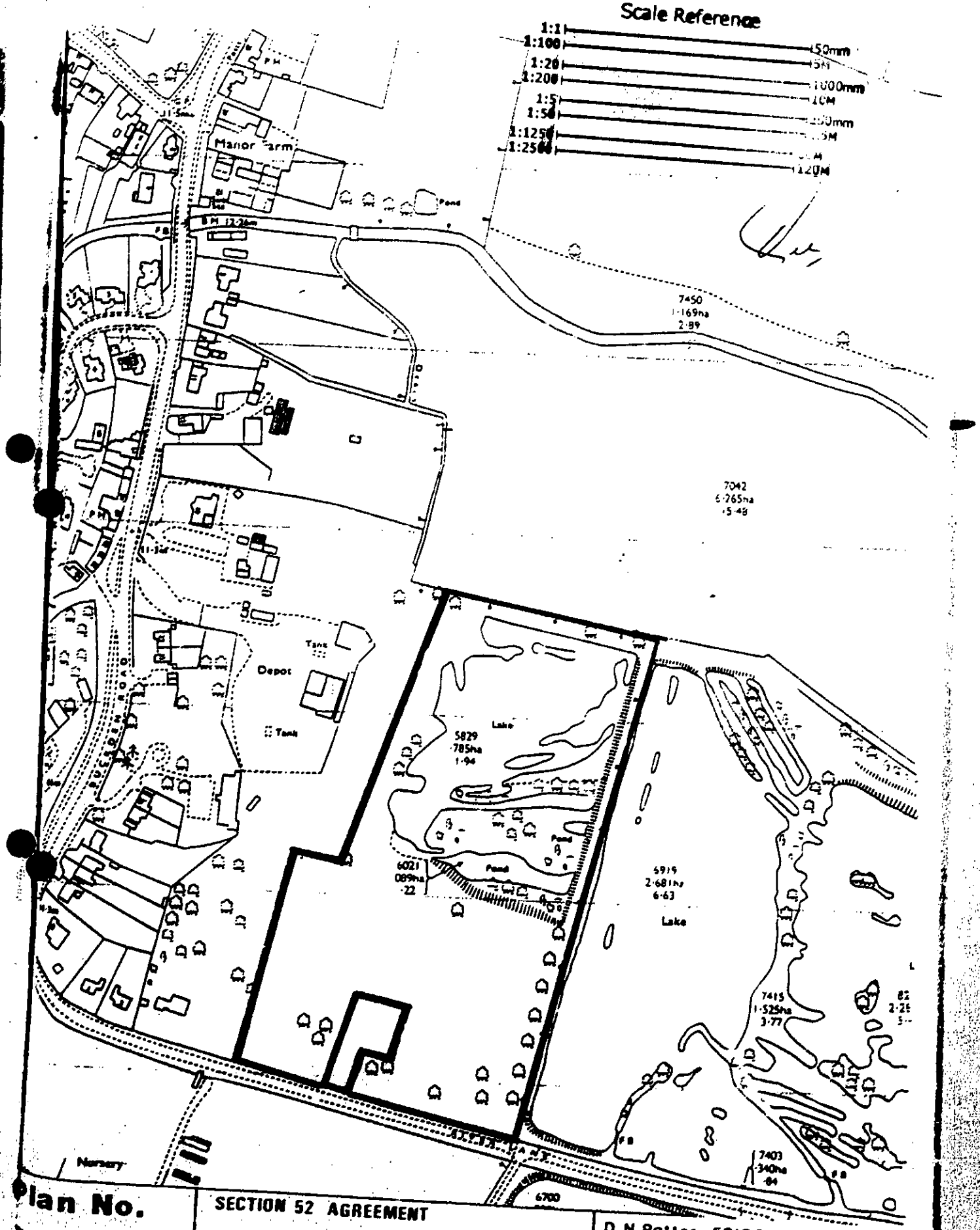
(1) The Council is the Local Planning Authority for the purposes of Section 52 of the Town and Country Planning Act 1971 (hereinafter called the "1971 Act") for the area within which the property described in the First Schedule hereto (hereinafter called "the said land") is situated

(2) The Owner is seised of the said land for an estate in fee simple in possession free from incumbrances

(3) On the 22nd day of May 1987 application was made for planning permission under application number H1017/87 for the erection of an agricultural dwelling (hereinafter called "the dwelling house") on the said land

(4) Subject to the Owner restricting the development and use of the said land in manner hereinafter appearing the Council is satisfied that the development disclosed by the said application is such as may be permitted by the Council under the 1971 Act subject to conditions and subject to any direction by the Secretary of State for the Department of the Environment restricting the grant for planning permission

(5) The parties hereto have agreed prior to the determination of the said application pursuant to Section 52 of the 1971 Act to execute this Deed with a view to restricting the development and use of the said land in manner hereinafter appearing



Plan No.

Ha/87/1017

1:2500

14.9.88

SECTION 52 AGREEMENT

Agricultural dwelling, River Lane, Brampton, Huntingdon, Cambs.

D.N.Potter, FRICS MRTPI
Director of Planning,
Huntingdonshire District Council
Planning Department,
Pathfinder House,
St Mary's Street,

NOW THIS DEED W I T N E S S E T H as follows :

1. THE Owner for himself and all persons deriving title under him hereby covenants with the Council that the said land shall henceforth be subject to the restrictions regulating the development and use thereof specified in the Second Schedule hereto and this covenant is made pursuant to Section 52 of the 1971 Act
2. If the planning permission shall expire before the development has begun as aforesaid or is revoked or otherwise withdrawn or without the consent of the owner or his successors in title modified by any statutory procedure this Agreement shall thereupon cease to have effect

IN WITNESS whereof the parties hereto have either caused their Common Seals to be hereunto annexed or set their hands and seals (as appropriate) the day and year first before mentioned

THE FIRST SCHEDULE

(The Said Land)

ALL THAT piece or parcel of land situate on the northern side of River Lane Brampton which said land is shown for the purposes of identification only edged blue on the attached plan

THE SECOND SCHEDULE

(Section 52 Covenants)

1. Not to use or cause or permit the dwellinghouse to be erected on the land edged red on the attached plan (being part of the said land) to be used otherwise than as a single private dwellinghouse
2. Not to cause or permit the said dwellinghouse to be occupied otherwise than by a person solely or mainly employed or last employed in the locality in agriculture as defined in Section 290(1) of the 1971 Act or in forestry or a dependant of such a person residing with him or her or a widow or widower of such person
3. The erection of the dwellinghouse shall not be commenced on the said

land unless and until the Director of Planning for the time being of the Council has certified in writing that suitable agricultural buildings have been erected on the said land

THE COMMON SEAL of THE HUNTINGDONSHIRE)
DISTRICT COUNCIL was hereunto annexed)
in the presence of :)

Chief Executive

16/90

SIGNED SEALED and DELIVERED by the said) Brian Robert Whitmee
BRIAN ROBERT WHITMEE in the presence)
of :)

SOLICITOR
PE18 6TA

AGENDA ITEM NO. 8.3c.

Erection of an agricultural dwellings, Pt. OSP. 219, River Lane, Brampton, for Mr. B. R. Whitmee.

Ref. 8H1017/879 (Outline Application) TL 2153 7012

1. The Site and Application

1.1 The site is located to the south-east of Brampton outside the built-up part of the village in an area of open countryside. It comprises part of 10 acres of worked out gravel pits.

1.2 The site has a long history of refusals and appeals:- 1972 (for estate development), 1975 (3 dwellings), 1979 (2 dwellings), 1979 (1 dwelling), 1980 (1 dwelling) and 1982 (1 dwelling). A further two applications were submitted in 1985 for 1 dwelling which was refused and for an agricultural dwelling which was withdrawn. The site was also considered for development in the Huntingdon Area Local Plan Inquiry and rejected by the Inspector.

1.3 The current application is for an agricultural dwelling to be constructed in conjunction with a range of buildings comprising stabling and pig pens following the removal of Mr. Whitmee's operations from Hylands Farm at Ellington as a result of the road improvements arising from the A1/M1 Link.

2. Consultations

2.1 Brampton Parish Council - APPROVE. The Parish Council have been asked to reconsider and their comments will be reported to the Planning Committee.

2.2 Anglian Water - Objection. The proposal is within the recorded flood plains.

2.3 Director of Property - No current agricultural justification for building a dwelling at River Lane, Brampton.

2.3 Director of Transportation - No comment.

2.4 Third Party Representations - Three letters of representation have been received. The objections relate to approval of a dwelling would set a precedent for other dwellings, the proposed use of the land for keeping cattle and farrowing pigs would adversely affect the residential character of the area and that a business of the type indicated would be a nuisance. One of these letters indicates that whilst they have no objections to the erection of a dwelling, they are not in favour of a smallholding of the type proposed.

3. Summary of Issues

3.1 The applicants current holding at Hylands Farm, Ellington, consists of 20-30 beef cattle with 2-6 farrowing pigs. It is understood that the existing

INITIALS

building and operations currently at Hylands Farm are to be relocated at River Lane, Brampton. However, no buildings have been erected as yet and the land remains as open pasture and lakes.

3.2 The applicant has indicated that the size of the buildings will be below that requiring planning permission under the provisions of the General Development Order but that he requires the certainty of a consent for a dwelling before carrying out the expenditure of a building.

3.3 It is not the normal policy of the Authority to grant planning permission for dwellings in advance of the commencement of farming operations. Mr. Whitmee lives in Brampton and is therefore closer to his prospective venture at River Lane than his existing one at Ellington. The current proposal provides no justification for permitting a dwelling outside the village limits and is contrary to the existing policies of the Local Planning Authority.

3.4 In situations such as these, the Local Planning Authority would normally expect the farming operations to commence and, once it had become a viable concern, the requirements for agricultural dwelling would be reviewed subject, of course, to there being adequate justification.

4. **Recommendation** - **REFUSE. Reasons for refusal:**

1. **The development proposed would be contrary to policy P7/5 incorporated in the Approved Structure Plan for Cambridgeshire wherein it is proposed that the construction of new dwellings in the open countryside will not be allowed except where they are essential to the efficient operation of local agriculture, horticulture or forestry. There are no special circumstances in this case to warrant departure from the approved Planning Policy.**

2. **The site lies in a rural area and the proposal which comprises an undesirable incursion of residential development would be prejudicial to the rural character of the area in which it is intended that the existing uses of the land shall remain for the most part undisturbed.**

INITIALS

Mr C Meadowcroft
Head of Legal and Estates
Head Of Legal And Estates
Central Services Directorate

File Copy

Our Ref: 02/01431/CLUED
Your Ref:

12th June 2002

Proposal: **Certificate of lawful development for retention of dwelling without occupancy restriction**
Location: **7 River Lane Brampton Huntingdon Cambridgeshire PE28 4PU**
Applicant: **Mr B Whitmee**

I enclose a copy of the above application. Please make any comments by 26th June 2002.

If you wish to discuss this matter further, please contact Sue Wheatley on Direct Dial 8490

OBSERVATIONS:

Please tick the appropriate box:

		No comments
		No objections
		No objections subject to:
		Objections for the following reasons:
		I require an additional 14 days.

SIGNED:

Date:

Huntingdonshire
DISTRICT COUNCIL
Pathfinder House St Mary's Street Huntingdon PE29 3TN

Mr B Whitmee
c/o D H Barford + Co
Howard House
17 Church Street
St. Neots
Cambs PE19 2BU

Our Ref: 02/01431/CLUED
Your Ref:

30th May 2002

Dear Sir/Madam

Certificate of lawful development fo tio f Dwelling without occupancy restriction
7 River Lane Brampton Huntingdon C bridgeshire PE28 4PU

Filecopy

Your application, as described above, was registered on 30th May 2002 and is due to be determined by 25th July 2002. If this is not possible it will be assumed that you have no objections to an extension of the time period unless you notify the Local Planning Authority to the contrary.
However, you are entitled to appeal to the Planning Inspectorate against non-determination if no decision is reached within the statutory eight week period.

Appeals must be made on a form, which is obtainable from the Planning Inspectorate, Room 3/24 Hawk Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol. BS1 6PN.

The Planning Officer will now begin processing your application. Should you wish to discuss the progress of the application please contact the Help Desk in 4-5 weeks when replies to consultations should have been received.

Your application is a public document and any neighbours will be informed of the application and given the opportunity to comment.

Planning permission may not be the only approval required to carry out the development and it is your responsibility to ensure that any other relevant approvals are obtained. Building Regulations consent may be required for building or engineering works and you are advised to obtain advice from the Building Control Section of this Directorate on 01480 388455.
If you wish to discuss this matter further, please contact the help desk on Direct Dial 01480388426 .
Please accept this letter as a receipt for the fee of £220.00 received 22nd May 2002.
Yours faithfully

Steve Ingram
Development Control Manager
Operational Services Directorate

Tel **01480 388388** Fax **01480 388099** **mail@huntsdc.gov.uk** **www.huntsdc.gov.uk**

PLANNING SERVICES

Huntingdonshire
DISTRICT COUNCIL
Pathfinder House St Mary's Street Huntingdon PE29 3TN

File Copy

M Vigor
Strategic Planning
Cambridgeshire County Council
Shire Hall
Castle Hill
Cambridge
CB2 0AP

Our Ref: 02/01431/CLUED
Your Ref:

30th May 2002

Dear Sir/Madam

Planning Application Consultation
Proposal: Certificate of lawful development for retention of dwelling without occupancy restriction
Location: 7 River Lane Brampton Huntingdon Cambridgeshire PE28 4PU

I enclose a copy of the above application and should be grateful for any views your Council may have as County Planning Authority by 20th June 2002.

If you wish to discuss this matter further, please contact me or the help desk on Direct Dial 01480388426 .

Yours faithfully

Sue Wheatley
Development Control Team Leader
Operational Services Directorate

Tel 01480 388490

01424/02

Jameson & Hill

SOLICITORS

C. J. Hill, LL.B. (Notary Public)
R. A. Jameson, LL.B.
S. J. Battersby, LL.B.
N. A. Evans, LL.B.
A. D. J. Royce, LL.B.

72-74 FORE STREET
HERTFORD SG14 1BY
Tel: (01992) 554881
DX 57908 HERTFORD
Fax: (01992) 551885
Also at:
60-62 High Street, Ware SG12 9DA
126 Turners Hill, Cheshunt, EN8 9BN

Your ref: MLP/W-044 Our ref: RAJ/lcb/Whitmee/020108 Date 30th January 2002

DH Barford & Co
Howard House
17 Church Street
St Neots, Cambs
PE19 2BU

raj@jailforest.co.uk

HPS | OPERATIONAL SERVICES PLANNING DIVISION | TL
PPM | | ACK
DCM | 22 MAY 2002 |

Dear Sir

RE: ERECTION OF AGRICULTURAL DWELLING: 7 RIVER LANE, BRAMPTON, HUNTINGDON, CAMBS

I am instructed to advise in relation to a dwelling erected at and known as 7 River Lane, Brampton, Huntingdon, Cambridgeshire.

Outline planning permission was granted for the erection of an agricultural dwelling now known as 7 River Lane, Brampton on the 2nd February 1990. A copy of that consent is attached to this Opinion at Appendix A.

The permission was also subject to an Agreement under Section 52 of the Town and Country Planning Act 1971. I have received a copy of an unexecuted version of that Agreement which appears to be a draft. However I am instructed that the Agreement was entered into in the same form as the amended draft. A copy of the unexecuted draft is attached at Appendix B.

The Huntingdonshire District Council's Building Control section's records confirm that the construction of a dwelling on the site commenced on the 1st April 1992. Thereafter details in respect of the brick to be used on the external elevation was submitted to the Council and approved by letter dated 29th April 1992. Details of the roof tile were also submitted to the Council and were agreed by letter dated 15th September 1992.

Condition number 3 attached to the outline planning permission provides that:-

> *"Before any development is commenced on the site a landscaping scheme shall be submitted to and approved by the Local Planning Authority. This scheme shall list the numbers, species and sizes of the trees and shrubs which are to be planted and include a plan indicating the treatment of all ground surfaces, the materials to be used and the disposition of the various elements."*

No landscaping scheme has ever been submitted to the Local Planning Authority and therefore (of course), no landscaping scheme has been approved by the Local Planning Authority.

Condition number 6 of the outline planning permission provides as follows:-

> *"Details of the type and colour of all materials to be used for the external surfaces of the building(s) shall be submitted to and approved by the Local Planning Authority before the commencement of the development to which this permission relates."*

Clearly those details were submitted after the development had in fact begun rather than prior to the commencement of development.

Identifying whether development has commenced is an important point in planning law because of the requirement in successive Town and Country Planning acts for development to commence before the expiration of 5 years from the date that planning permission is granted or within 2 years of the final approval of reserved matters. That requirement is contained within Condition 2 of the outline planning permission and is stated to be to comply with Section 42 of the Town and Country Planning Act 1991.

It is well established in a series of court cases that a condition requiring matters to be done "before development commences" operates as a condition precedent to the implementation of the planning permission. The case law establishes that if the development is carried out without compliance with that condition precedent then the development has not "commenced" within the terms of Section 56 of The Town and Country Planning Act 1990.

In the case of *Etheridge v Secretary of State for the Environment (1984) JPL48* the court held that development commenced in contravention of conditions on a permission would not be development to which the permission related because it would be in breach of planning control.

22 MAY 2002

The Court of Appeal in *Oakimber v Elmbridge Borough Council (1992) JPL48* accepted that until an application for approval of reserved matters was made and approved, no development capable of being a specified operation (for the purposes of Section 56) was permitted. That principle was accepted by the High Court in *R v Elmbridge Borough Council ex parte Health Care Corporation Limited (1992) JPL39* and by the Court of Appeal in *Staffordshire Moorlands District Council v Cartwright (1992) JPL138.*

The Court of Appeal in the case of *F G Whitley & Sons v Secretary of State for Wales (1992) 3PLR72* held that the single question in each case was whether the development was permitted by the planning permission read together with the conditions imposed on it. If the operations concerned contravened the conditions they could not properly be described as commencing the development authorised by the permission.

The current state of the law is summarised in the case of *Leisure Great Britain plc v Isle of Wight Council* heard on the 28th June 1999 before Mr Justice Keene. That held that works that had been undertaken in breach of an operative planning condition of whatever type and which are therefore in breach of planning control cannot be taken as works of material development for the purposes of Section 56 of the 1990 Act unless they fall within one or more of 4 recognised exceptions. Those exceptions are:

(1) where the developers have clearly done all they could to meet the condition;

(2) where approval has subsequently been given so that work done before the deadline was made lawful;

(3) where the Local Planning Authority have agreed that the development could commence without full compliance with the relevant conditions, and

(4) where the condition had in substance been complied with but the formalities such as a written notice of approval had not been completed before work started on the site.

In the case before us clearly Condition 6 falls within the ambit of the second exception because subsequent approval was obtained to the external materials - ie. the bricks and the roofing materials.

However none of the exceptions apply to Condition 3.

It is therefore the case that the planning permission has been implemented in breach of planning control and the planning permission has not been implemented.

In principle therefore the Local Planning Authority could take enforcement proceedings in relation to the development, but subject to the time limits imposed by Section 171B of the 1990 Act which provides that in relation to operational development no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed.

My instructions are that development here commenced on the 1st April 1992 and thereafter proceeded to completion during that year. Clearly the building was "substantially completed" almost 10 years ago and therefore cannot be enforced against by virtue of the provisions of Section 171B.

I am further instructed that the dwelling has never been occupied by a person solely or mainly or last employed in the locality in agriculture. However the development is not subject to any of the conditions imposed in the outline planning permission because the development was not constructed pursuant to the planning permission by virtue of the failure to comply with the condition precedent contained within Condition 3.

I have then to consider separately the requirements of the Section 52 Agreement. In summary form the covenants contained within that Section 52 Agreement are:-

(1) Only to use the dwellinghouse as a single private dwelling house.

(2) To limit the occupation of the dwellinghouse to a person solely, mainly or last employed in the locality in agriculture.

(3) Not to commence the development unless and until the Director of Planning has certified in writing that suitable agricultural buildings have been erected on the said land.

However clause 2 of the Agreement provides that the Agreement shall cease to have effect (inter alia) "if the planning permission shall expire before the development has begun as aforesaid". In that context "begun" means begun pursuant to the application for planning permission under application number H1017/87 made on the 22nd May 1987. That was the application that lead to the outline planning permission.

Clearly the planning permission has expired because the time limits set out in Condition 2 of the outline planning permission have long since expired. Furthermore, and because the development was constructed in breach of planning control and not pursuant to the planning permission, the Section 52 Agreement is of no effect and ceases to have effect by virtue of clause 2 of that Agreement.

Your clients are therefore entitled to a Certificate of Lawfulness from Huntingdonshire District Council that the dwelling known as 7 River Lane, Brampton, Huntingdon, Cambridgeshire may be occupied as a single dwellinghouse without compliance with the conditions contained in the outline planning consent and in particular without complying with the requirement in the planning consent that it shall only be occupied by a person solely, mainly or last employed in the locality in agriculture.

R A JAMESON
JAMESON & HILL

RATIONAL SERVICES
22 MAY 2002
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Huntingdonshire District Council

CAMBRIDGESHIRE

Application Number: 87/1017

TOWN AND COUNTRY PLANNING ACT, 1971

OUTLINE PLANNING PERMISSION

To Mr. B. R. Whitmee,
C/O D. H. Barford & Co.
Howard House,
17 Church Street,
St. Neots,
Cambs. PE19 2BU

Huntingdonshire District Council in pursuance of powers under the above-mentioned Act, hereby PERMIT

Erection of an agricultural dwelling, at: Pt. OSP. 219, River Lane, Brampton

in accordance with your application received on 29 MAY 1987

and the plans, drawings and documents which form part of the application, subject to the conditions specified hereunder:

1. The permission hereby granted is an outline permission under Article 5(2) of S.I. 1977 No.289 and an application for the approval of the Local Planning Authority to the following matters must be made not later than the expiration of 3 years beginning with the date of this permission:- (a) the layout of the site; (b) the number, siting, design, height and external appearance of the building(s); (c) the landscaping of the site; (d) the means of access from the site to the highway.

2. The development to which this permission relates must be begun not later than whichever is the later of the following dates:-(a) the expiration of 5 years from the date hereof; or (b) the expiration of 2 years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

3. Before any development is commenced on the site, a landscaping scheme shall be submitted to and approved by the Local Planning Authority. This scheme shall list the numbers, species and sizes of the trees and shrubs which are to be planted and include a plan indicating the treatment of all ground surfaces, the materials to be used and the disposition of the various elements.

HPS
PM
22 MAY 2002
TL
CK
REPLY
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Dated: 02 FEB 1990 (Continued)

The Director of Planning

Planning Department, Pathfinder House, St. Mary's Street, Huntingdon, Cambs., PE18 6TN.

- 1 -

P/P016

Huntingdonshire District Council

CAMBRIDGESHIRE

Application Number: 87/1017

TOWN AND COUNTRY PLANNING ACT, 1971

OUTLINE PLANNING PERMISSION (Continued)

4. All planting, seeding or turfing, comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

5. The minimum ground floor level of any building involved in the development must be at least 11.5 metres ODN.

6. Details of the type and colour of all materials to be used for the external surfaces of the building(s) shall be submitted to and approved by the Local Planning Authority, before the commencement of the development to which this permission relates.

7. An adequate space shall be provided within the site to enable vehicles to enter and leave in forward gear.

8. An adequate space shall be provided within the site to enable vehicles to park clear of the public highway.

9. The permanent space to be reserved on the site for turning and parking shall be provided before the use commences and thereafter maintained.

10. 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 of the Town and Country planning Act, 1971, or in forestry, or a dependant of such a person residing with him or her or a widow or widower of such a person.

The reasons for the Council's decision to grant permission for development subject to compliance with the conditions hereinbefore specified are:

1. To enable the Local Planning Authority to control the development in detail and to comply with Section 42 of the Town and Country Planning Act, 1971.

OPERATIONAL SERVICES
22 MAY 2002
ACK
OM

Dated: 02 FEB 1990 (Continued)

Planning Department, Pathfinder House, St. Mary's Street, Huntingdon, Cambs., PE18 6TN.

The Director of Planning

P/P016

Huntingdonshire District Council

CAMBRIDGESHIRE

Application Number: 87/1017

TOWN AND COUNTRY PLANNING ACT, 1971

OUTLINE PLANNING PERMISSION (Continued)

2. To enable the Local Planning Authority to control the development in detail and to comply with Section 42 of the Town and Country Planning Act, 1971.

3. To enhance the appearance of the development.

4. To ensure that the work is carried out within a reasonable period.

5. To prevent the buildings flooding.

6. To ensure a satisfactory external appearance and grouping of materials.

7. To minimise interference with the free flow and safety of traffic on the adjoining public highway.

8. To minimise interference with the free flow and safety of traffic on the adjoining public highway.

9. To minimise interference with the free flow and safety of traffic on the adjoining public highway.

10. The site lies in an area within which the Local Planning Authority would not normally grant permission for residential development. This permission is therefore granted only because of special agricultural need and the premises should accordingly only be occupied by persons connected with agriculture.

Notes to Applicants

1. This permission is related to an Agreement entered into by the applicant and the Huntingdonshire District Council under Section 52 of the Town and Country Planning Act, 1971.

OPERATIONAL SERVICES
22 MAY 2002

Dated: 02 FEB 1990

Planning Department, Pathfinder House, St. Mary's Street, Huntingdon, Cambs., PE18 6TN.

The Director of Planning

P/P016

B.

ORIGINAL : PLANNING : SECTION 52

THIS A G R E E M E N T is made the day of One thousand nine hundred and Eighty-

B E T W E E N The HUNTINGDONSHIRE DISTRICT COUNCIL of Pathfinder House Saint Mary's Street Huntingdon in the County of Cambridgeshire (hereinafter called "the Council") of the one/~~first~~ part and BRIAN ROBERT WHITMEE of 1 Croft Close Brampton Huntingdon aforesaid (hereinafter called "the Owner") of the other/~~second~~ part and ~~(~~

~~(hereinafter called "the Mortgagee")~~ of the third part

W H E R E A S :

(1) The Council is the Local Planning Authority for the purposes of Section 52 of the Town and Country Planning Act 1971 (hereinafter called the "1971 Act") for the area within which the property described in the First Schedule hereto (hereinafter called "the said land") is situated

(2) The Owner is seised of the said land for an estate in fee simple in possession ~~(subject to a mortgage (hereinafter called "the Mortgage") dated the day of 19 and made between the Owner (1) and the Mortgagee (2) but otherwise)~~ free from incumbrances

(3) On the 22nd day of May 1987 application was made for planning permission under application number H1017/87 for the erection of an agricultural dwelling (hereinafter called "the dwelling house") on the said land

(4) Subject to the Owner restricting the development and use of the said land ~~(and the Mortgagee agreeing to postpone the Mortgage to this Deed both)~~ in manner hereinafter appearing the Council is satisfied that the development disclosed by the said application

OPERATIONAL SERVICES
PLANNING DIVISION
2 MAY 2002
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is such as may be permitted by the Council under the 1971 Act subject to conditions and subject to any direction by the Secretary of State for the Department of the Environment restricting the grant for planning permission

(5) The parties hereto have agreed prior to the determination of the said application pursuant to Section 52 of the 1971 Act to execute this Deed with a view to restricting the development and use of the said land in manner hereinafter appearing ~~(and postponing the Mortgage to this Deed)~~

NOW THIS DEED W I T N E S S E T H as follows :

1. **THE** Owner for himself and all persons deriving title under him ~~(and with the consent of the Mortgagee)~~ hereby covenants with the Council that the said land shall henceforth be subject to the restrictions regulating the development and use thereof specified in the Second Schedule hereto and this covenant is made pursuant to Section 52 of the 1971 Act

2. **IT IS HEREBY AGREED** and **DECLARED** by the parties hereto that this Deed shall have priority to the Mortgage

3. If the planning permission shall expire before the development has begun as aforesaid or is revoked or otherwise withdrawn or without the consent of the owner or his successors in title modified by any statutory procedure this Agreement shall thereupon cease to have effect

IN WITNESS whereof the parties hereto have either caused their Common Seals to be hereunto annexed or set their hands and seals (as appropriate) the day and year first before mentioned

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2 MAY 2002
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THE FIRST SCHEDULE

(The Said Land)

ALL THAT piece or parcel of land situate on the northern side of River Lane Brampton which said land is shown for the purposes of identification only edged blue on the attached plan

THE SECOND SCHEDULE

Section 52 Covenants)

1. Not to use or cause or permit the dwellinghouse to be erected on the land edged red on the attached plan (being part of the said land) otherwise than as a single private dwellinghouse
2. Not to cause or permit the said dwellinghouse to be occupied otherwise than by a person solely or mainly employed or last employed in the locality in agriculture as defined in Section 290(1) of the 1971 Act or in forestry or a dependent of such a person residing with him or her or a widow or widower of such person
3. No development including in particular the erection of the dwellinghouse (other than the development necessary to fulfill this condition) shall be commenced on the said land unless and until the Director of Planning for the time being of the Council has certified in writing that suitable agricultural buildings have been erected on the said land

OPERATIONAL SERVICES
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22 MAY 2002
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REPLY

THE COMMON SEAL OF THE HUNTINDONSHIRE DISTRICT COUNCIL was hereunto annexed in the presence of:)

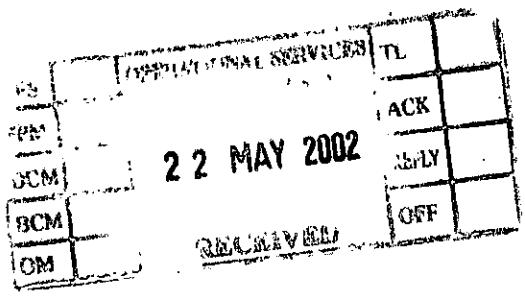
Chief Executive

THE COMMON SEAL of)
was hereunto annexed in the presence)
of:)

Director

Secretary

SIGNED SEALED and DELIVERED by the)
said BRIAN ROBERT WHITMEE)
in the presence of:)



DATED 19

THE HUNTINDONSHIRE DISTRICT COUNCIL

- and -

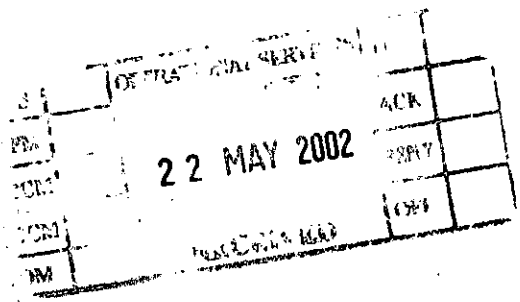
B. R. WHITMEE

A G R E E M E N T

under Section 52 of the Town and Country Planning Act 1971 in relation to erection of agricultural dwelling River Lane Brampton

C. Meadowcroft
Distirct Solicitor
Pathfinder House
Saint Mary's Street
Huntingdon
Cambridgeshire

(CM/at/PO 10/87)



01424/02

D|H|Barford + Co
CHARTERED SURVEYORS + PLANNING CONSULTANTS

Howard House . 17 Church Street . St. Neots
Cambs . PE19 2BU . **Tel: 01480 213811**
Fax: 01480 406911 . Web: www.barfords.co.uk
email: general@barfords.co.uk

Head of Planning Services
Huntingdonshire District Council
Pathfinder House
St. Mary's Street
Huntingdon
Cambs PE29 6TN

Your ref:
Our ref: MLP/ACB/W-044
Date: 20th May 2002

DPS PPM DCM SERVICES TI
22 MAY 2002

Dear Sir,

RE: APPLICATION FOR CERTIFICATE OF LAWFULNESS FOR THE ERECTION OF DWELLING : 7 RIVER LANE, BRAMPTON, HUNTINGDON

We enclose herewith an application for a Certificate of Lawful Development in respect of the above property, together with a cheque for the sum of £220 to cover the Planning Registration Fee.

The subject property was granted outline planning permission in February 1990 (LPA Ref: 87/1017) subject to conditions and the conclusion of a Section 52 Agreement which, amongst other things, restricted the property to agricultural occupation. This application is made on the grounds that condition No.3 (landscaping) was not complied with when construction of the property commenced in April 1992, and that the property was therefore not erected in accordance with the terms of the planning permission. We would also add that construction commenced in advance of the details for the external elevation materials being approved (29th April, 1992 and 15th September, 1992), and again the property was not therefore erected in compliance with the permission. Accordingly, the property does not have the benefit of a planning permission, and we are seeking a Certificate of Lawfulness for the retention of the dwelling that was built and occupied more than four years ago.

We enclose herewith a legal opinion provided by Robert Jameson which provides additional background information and confirms the view that our client is entitled to a Certificate of Lawfulness to the effect that No. 7 River Lane can be retained as a single dwellinghouse. Furthermore, as the planning permission reference 87/1017 has not been implemented, the property is not subject to any occupation restriction, or the requirements of the Section 52 Agreement dated 22nd January 1990.

Should you require any additional information or clarification, please do not hesitate to contact the writer.

Yours faithfully

MARTIN PAGE
D.H. BARFORD + CO
Encs.

email: mpage@barfords.co.uk

Printed: March 2002

NOTE: This form incorporates details of fees which are required to accompany applications received after 7th May 2002

01424/02

TOWN AND COUNTRY PLANNING ACT 1990

TOWN AND COUNTRY PLANNING (Fees for Applications and Deemed Applications) (Amendment) Regulations 2002

PLANNING APPLICATION CHARGES Planning applications are required to be accompanied by a fee payable to the District Authority to whom application is made. Please read the scale of charges overleaf and the notes, complete the following details and submit this form, together with the appropriate fees, with your application. Failure to complete this form or deposit the correct fee may result in the application being delayed.

In cases of doubt please consult the relevant District Planning Authority to ascertain the correct fee.

PLEASE USE BLOCK CAPITALS	
Applicant's Name	Agent's Name (if any) .....
Address	Address .....
.....	.....
.....	.....

1. Brief Description and location of development.

2. Where applicable please complete the following:	
(i) site area (outline, minerals, operations).	(i) ha
(ii) no. of dwelling units or additional units	(ii)
(iii) gross floor area created (non residential).	(iii) sq.m.
3. Is exemption claimed from payments?	YES/NO
If so, please specify reasons: (*see notes overleaf*).	
(i) for disabled persons requirements.	(i) YES/NO
(ii) the development would otherwise be permitted.	(ii) YES/NO
(iii) modified proposal by the same applicant within 12 months.	(iii) YES/NO
	Previous ref. no .....
(iv) resubmission within 12 months of withdrawn or refused application (ref. no. and date of submission of withdrawn application, or ref. no. and date of previous refusal should be given.	(iv) YES/NO Previous ref. no. ..... Date .....
(v) same use class - required by planning condition.	(v) YES/NO
(vi) Consolidating minerals application.	(vi) YES/NO
4. Is a reduced fee claimed? (If so, reasons below).	YES/NO
(i) application by Parish Council.	(i) YES/NO
(ii) for non-profit making sports club.	(ii) YES/NO
(iii) approval of reserved matters where full fee has been paid.	(iii) YES/NO
(iv) alternative proposals for same site.	(iv) YES/NO
5. Indicate category of development for which payment is made (see list of categories overleaf).	0'33
6. Amount enclosed with this application	£ 220.00

RECM 22 MAY 2002

Signed	*Date*

NOTES

1. Payment should preferably be made by crossed cheque made payable to the District Council to whom application is made. The Council will accept no liability if cash is sent by unregistered post.

HPS573

PLANNING CHARGES FROM 1st APRIL 2002

SUMMARY OF CHARGES PROVIDED FOR IN THE REGULATIONS

CATEGORIES		FEE PAYABLE	MAXIMUM FEE
Operations			
1. New dwellings	(a) Outline	£220 per 0.1 hectare	£5,500
(b)	Others	£220 per dwelling	£11,000
2. Buildings (other than dwellings agricultural buildings or plant and glasshouses etc.)	(a) Outline	£220 per 0.1 hectare	£5,500
	(b) Others:		
(i) where no floor area is created:		£110	
(ii) where the floor area created is below 40 sq. m.:		£110	
(iii) where floor area is between 40 & 75 sq. m.		£220	
(iv) where floor area exceeds 75 sq. m.		£220 per 75 sq.	£11,000
3. Agricultural buildings on agricultural land (other than glasshouses)	(a) Outline	£220 per 0.1 hectare	£5,500
	(b) Others		
(i) where gross floor area is less than 465 sq. m.		£40	
(ii) where floor area is between 465 and 540 sq. m.		£220	
(iii) where floor area exceeds 540 sq. m.		additional £220 per 75sq. m	£11,000
4. Glasshouses and Poly tunnels agricultural land			
	(a) up to 465 sq.m	£40	
	(b) exceeding 465 sq.m	£1,235	
5. Erection, alteration or replacement of plant and machinery		£220 per 0.1 hectare	£11,000
6. Enlargement, improvement or alteration of dwellings for domestic purposes:			
(a) in respect of one dwelling		£110	
(b) 2 or more dwellings		£220	
7. (a) Operations within residential curtilage for domestic purpose (including buildings, gates and fences etc.)		£110	
(b) Car Park, road and access to serve single undertaking where associated with existing use.		£110	
8. Operations connected with exploratory drilling for oil or gas.		£220 per 0.1 hectare	£16,500
9. Operations not within above categories:			
(a) Maximum mineral operations:		£110 per 0.1 hectare	£16,500
(b) Maximum in other cases			£1,100
Uses			
10. Change of use of a building to one or more dwellings:			
(a) from existing dwelling to two or more dwellings:		£220 per extra dwelling	£11,000
(b) from other building to one or more dwellings.		£220 per dwelling	£11,000
11. Use for disposal of refuse or waste materials and open mineral storage.		£110 per 0.1 hectare	£16,500
12. Material change of use in land or buildings other than above		£220	
Advertisements			
A1 Advertisement on business premises or other land within the business curtilage relating to nature of business, goods sold, services provided, or name of persons undertaking business.		£60	
A2 Sign relating to business in the locality but not visible from that site		£60	
A3 All other advertisements		£220	
Determinations			
Applications submitted under parts 6, 7 or 31 of the (General Permitted Development) Order 1995		£40	
" " part 24		£220	

CALCULATION OF FEES

(a) Floor & site areas

(i) Fees based on floor areas are measured externally

(ii) Any excess over multiples of 75 sq.m. (full or detailed applications) or 0.1 ha (outline applications) are rounded up to the nearest 75 sq.m. or 0.1 ha)

(b) Mixed Category Applications

(i) Where applications (other than outline) are for development in Category 1 and development in Categories 2, 3 or 4, the fees for each part of the application are calculated separately and are added together.

(ii) Where applications are for development within more than one of categories 2, 3 and 4 or categories 5-12, the fee for each category is calculated separately and the highest fee is payable.

Summary of Exemptions Fees are not payable in the following circumstances:

(a) Facilities for Disabled Persons

Where the development relates to alterations or extensions to a dwelling house or operations within the curtilage of a dwelling house and the development is for the purpose of providing access or facilities for greater safety, health or comfort of a resident or intended resident who is disabled (i.e. within any of the descriptions to which Section 29 of the National Assistance Act 1948 applies or a child who is disabled for the purposes of the Children Act 1989). This exemption extends to works to improve a disabled access to a public building.

(b) Development otherwise P.D.

Applications required by a restrictive condition on a previous planning permission, or because of the effect of an Article 4 direction, for development which is otherwise permitted by a General Development Order, or for a change of use within the same class specified in the Use Classes Order.

(c) Resubmissions

Resubmissions of applications following refusals of permission or withdrawn applications, and the submission of amended proposals following the grant of permission or approval of reserved matters subject to the following conditions:

(i) The application is made within twelve months of the date of the decision or, in the case of a withdrawn application, within twelve months of the date the previous application was submitted.

(ii) The site is the same as, or part of the original site and no other land is included

(iii) The development is of the same character.

(iv) The applicant is the same

(v) That the earlier application is one to which no exemption was granted and the relevant fee was paid.

(vi) If the original application was in outline the resubmission is in the outline.

SUMMARY OF REDUCED FEES

1) Use of land for sports fields or other ancillary operations (other than buildings) by non profit making club or society - fee payable £220.

2) Applications for approval of one or more reserved matters require fees in accordance with the schedule, except where such applications have been previously made and the sum is not less than would be payable in respect of all reserved matters authorised by the outline permission. On subsequent applications for approval of reserved matters by the same applicant the fee payable is £220.

3) Applications by Parish Councils - fee payable is one half the normal rate.

4) Alternative proposals on the same site. Submitted by the same applicant. Highest category at full fee, remainder at half fee. (Normal fees are required for duplicate applications).

5) Applications straddling district or county boundaries are subject to special rules. (Para. 8 of DOE circular 73/91 relates). Generally one fee is paid to the authority having the larger site but calculated by the whole scheme, and subject to special ceiling. Applicants in these cases and any other cases of doubt are advised to consult the district planning authority.

6) Renewal of permission - fee payable £110 unless the original permission was not implemented and has expired.

7) Variation or removal of a condition £110.

01424/02

HUNTINGDONSHIRE DISTRICT COUNCIL

TOWN & COUNTRY PLANNING ACT 1990: SECTION 191
AMENDED BY SECTION 10 OF THE PLANNING & COMPENSATION ACT 1991

TOWN & COUNTRY (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995

APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR AN EXISTING USE OR OPERATION OR ACTIVITY IN BREACH OF A PLANNING CONDITION

1. Applicant: Name: MR. B. WHITMEE

Address: C/O AGENT

HPS [illegible] OPERATIONAL SERVICES TI
22 MAY 200[illegible]

Post Code: ..... Tel. No: .....

2. Agent: (if any) Name: D.H. BARFORD + CO

Address: HOWARD HOUSE, 17 CHURCH STREET,
ST. NEOTS, CAMBS.

Post Code: PE19 2BU Tel. No: 01480 213811

3. (1) Nature of applicant's interest in the land, e.g. owner, lessee, occupier OWNER

(2) If you do not have an interest:-
(a) give name(s) and address(es) of anyone you know who has an interest in the land;

.....

(b) state the nature of their interest (if known)

.....

(c) state whether they have been informed about this application YES/NO

4. Address or exact location of the land to which this application relates:
(Enclose 2 copies of an OS-based plan showing the boundary of the land edged in red)

7 RIVER LANE, BRAMPTON, HUNTINGDON,

CAMBS, PE28 4PU.

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5. Is the application for:

An existing use	~~YES~~/NO
An existing operation	~~YES~~/NO
An existing use operation or activity in breach of a condition being a use, operation or activity subsisting of this application	YES/~~NO~~

---

6. If there is more than one subsisting use of, or operation or activity, on the land at the date of this application, describe fully each of them and where appropriate, show to which part of the land each use, operation or activity relates.

---

7. When was the use or activity begun or the operation substantially completed

CONSTRUCTION OF NO.7 RIVER LANE COMMENCED 1ST APRIL, 1992

---

8. Under what grounds is the certificate sought?
(Delete those which are not applicable)

(1) ~~The use began more than ten years before the date of this application; or~~
(2) The use, operation or activity in breach of condition began more than ten years before the date of this application; or
(3) ~~The use began within the last ten years, as a result of a change of use not requiring planning permission, and there has not been a change of use requiring planning permission in the last ten years; or~~
(4) The operations were substantially completed more than four years before the date of this application; or
(5) The use as a single dwellinghouse began more than four years before the date of this application.
(6) ~~Other – specify (this might include claims that the change of use or operation was not development, or that it benefited from planning permission granted under the Act or by the (General Permitted Development) Order.~~

---

9. If the certificate is sought for a use, operation or activity in breach of a condition or limitation, specify the condition or limitation which has not been complied with, and attach a copy of the relevant planning permission.

CONDITIONS NOS. 3 & 6

10. Give any additional information you consider necessary to substantiate your claim.

SEE COVERING LETTER AND ATTACHED LEGAL OPINION FROM PLANNING LAWYER.

(Continue on a separate sheet if necessary)

11. List here all the documents, drawings or plans which accompany this application.

- 2 COPIES OF OS PLAN.
- LEGAL OPINION FROM PLANNING LAWYER (INCLUDING COPY OF RELEVANT PLANNING PERMISSION AND SECTION 52 AGREEMENT).

(Continue on a separate sheet if necessary)

HPS | OPERATIONAL SERVICES DIVISION | TL | ACK | 22 MAY 2002

I/We hereby apply for a Lawful Use or Development Certificate under Section 191 of the 1990 Act in respect of the existing use, operations or activity described in this application and the documents, drawings and plans which accompany it.

I/We enclose the appropriate fee of £ 220-00

Signed D.H. Bamford + Co. Dated 20.05.02

On behalf of MR. B. WHITMEE

(insert name of applicant if signed by an agent)

Warning: The amended Section 194 of the 1990 Act provides that it is an offence to furnish false or misleading information or to withhold material information with intent to deceive. Section 193(7) enables the Council to revoke, at any time, a Certificate they may have issued as a result of such false or misleading information.

Application Monitoring Sheet

Notes on use: -

1.To be attached to the application file on registration.

2.Input data to be completed by admin immediately prior to passing to DC teams.

3.Decision data to be completed by admin immediately after decision sent out.

4. Completed sheet in file should be sent within one week of the decision to Sue Sharpe for compilation into tables.

Input

Application No.	02/0143/
Officer	SW
Valid Application & fee receipt date	22/5
Date passed to Case officer	30/5
Is date passed within 2 working days of receipt?	Yes / No
Householder App.?	Yes / No

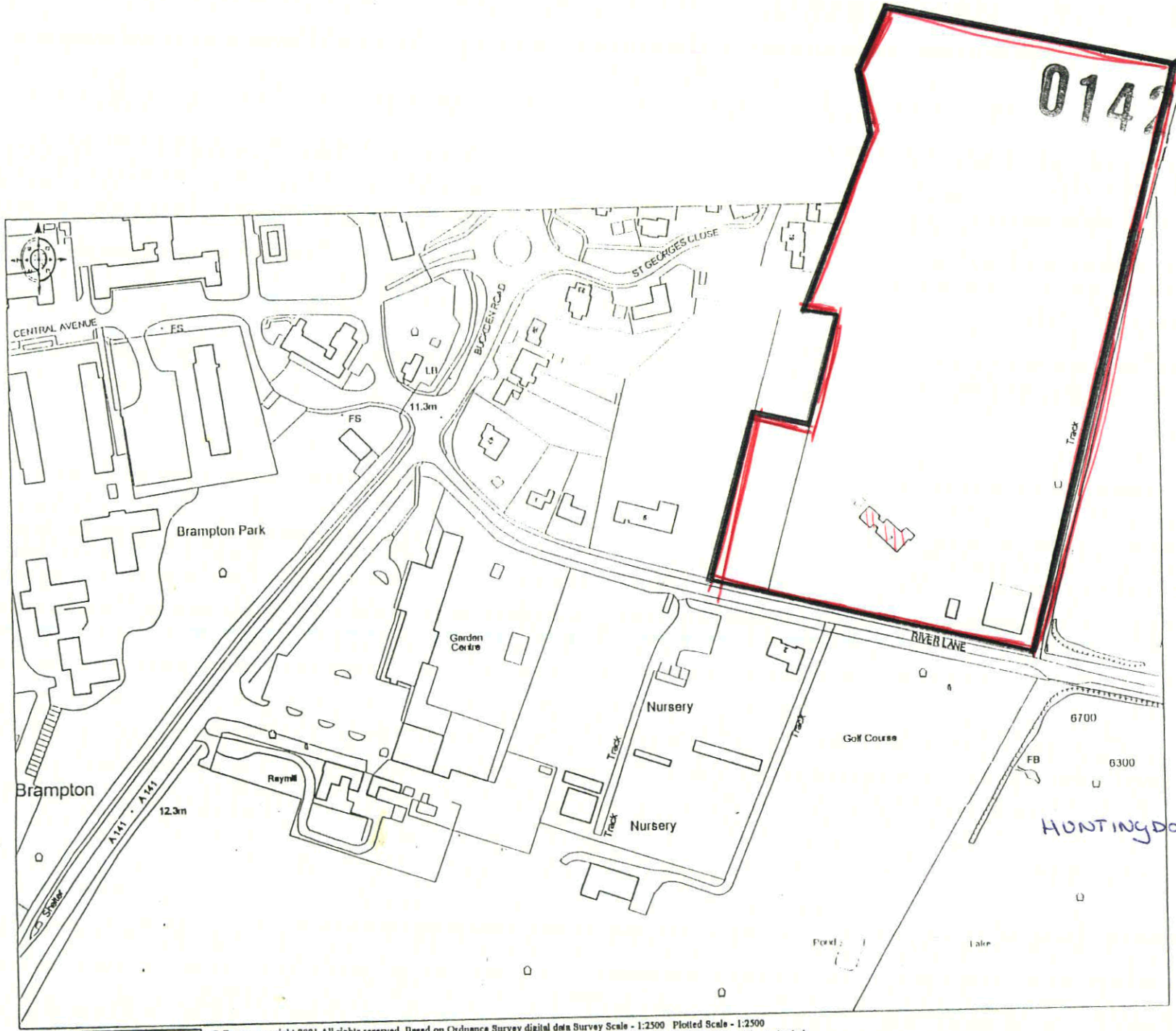
Decision

Decision date	
Date decision sent	
Is it sent within 2 working days of decision date ?	Yes / No
Is decision within 8 weeks.	Yes / No

Appeals

Date decision letter	
Decision	Allowed / Dismissed

0142/1102



Scale Reference

1:1	150mm
1:100	1.5M
1:200	300mm
1:200	3.0M
1:500	750mm
1:500	7.5M
1:1250	600mm
1:2500	12.0M

HUNTINGDONSHIRE DISTRICT COUNCIL

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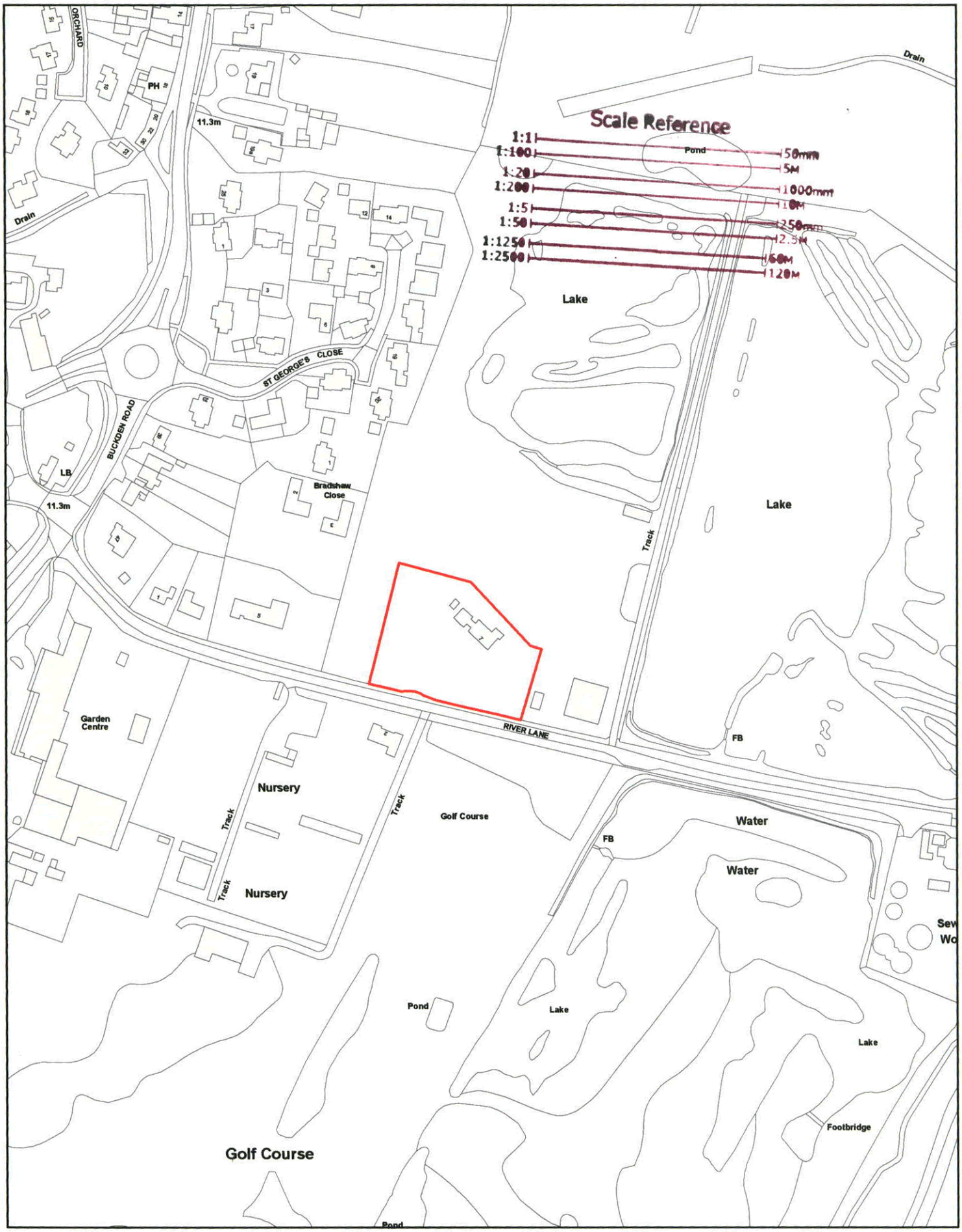
need comments
from Colin



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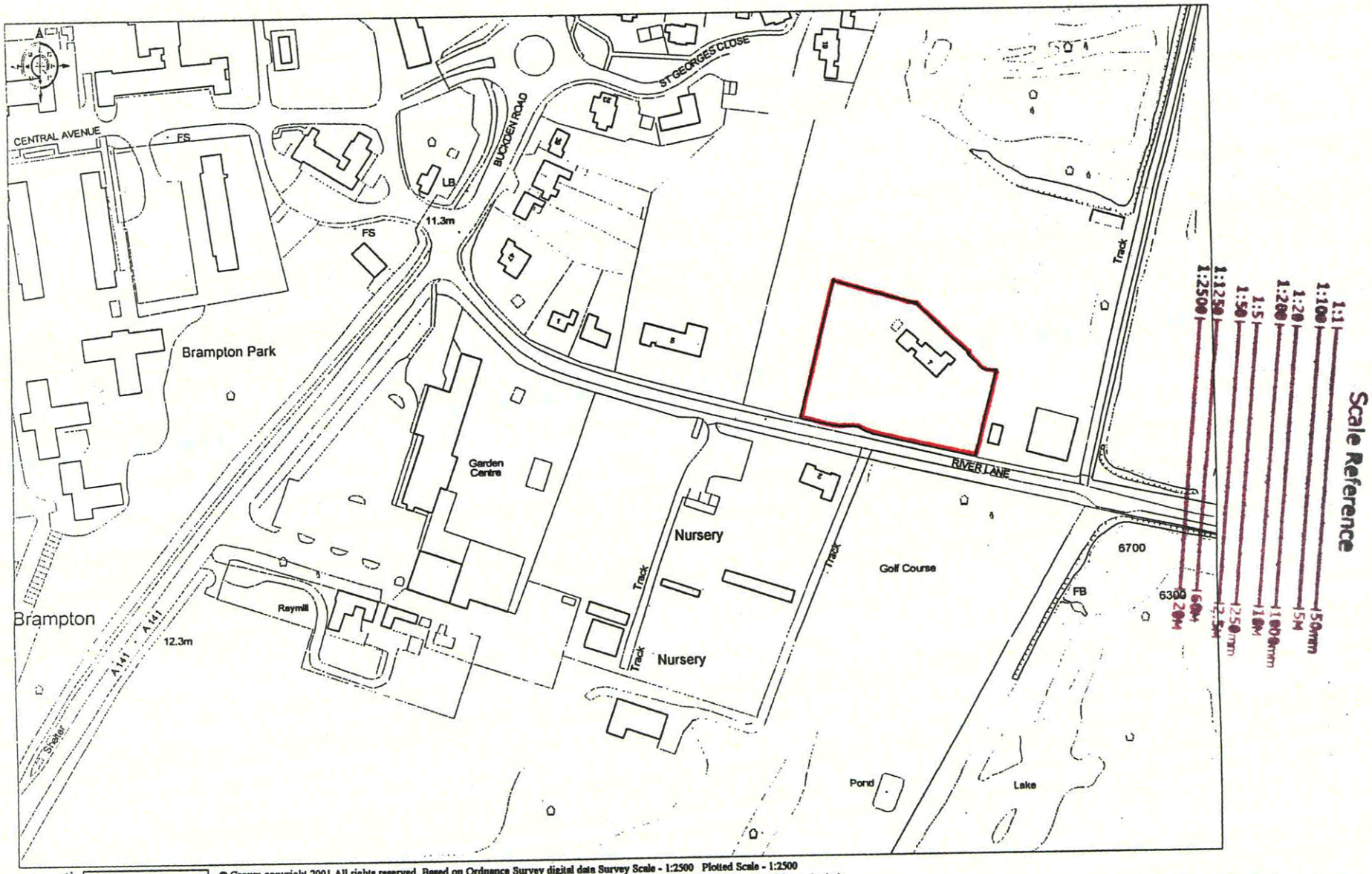
Huntingdonshire district council	Certificate of Lawful Use	Date: 27/12/03	N
	7 River Lane, Brampton		
	Ref: 02/01280	scale: 1:2,500	

APPLICATION FOR CERTIFICATE OF LAWFULNESS FOR RETENTION OF DWELLING WITHOUT OCCUPANCY RESTRICTION; 7 RIVER LANE, BRAMPTON



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(Scales other than at Survey Scale should not be used for accurate measurement). Business occupancy data ©2001 Thomson Directories Ltd.

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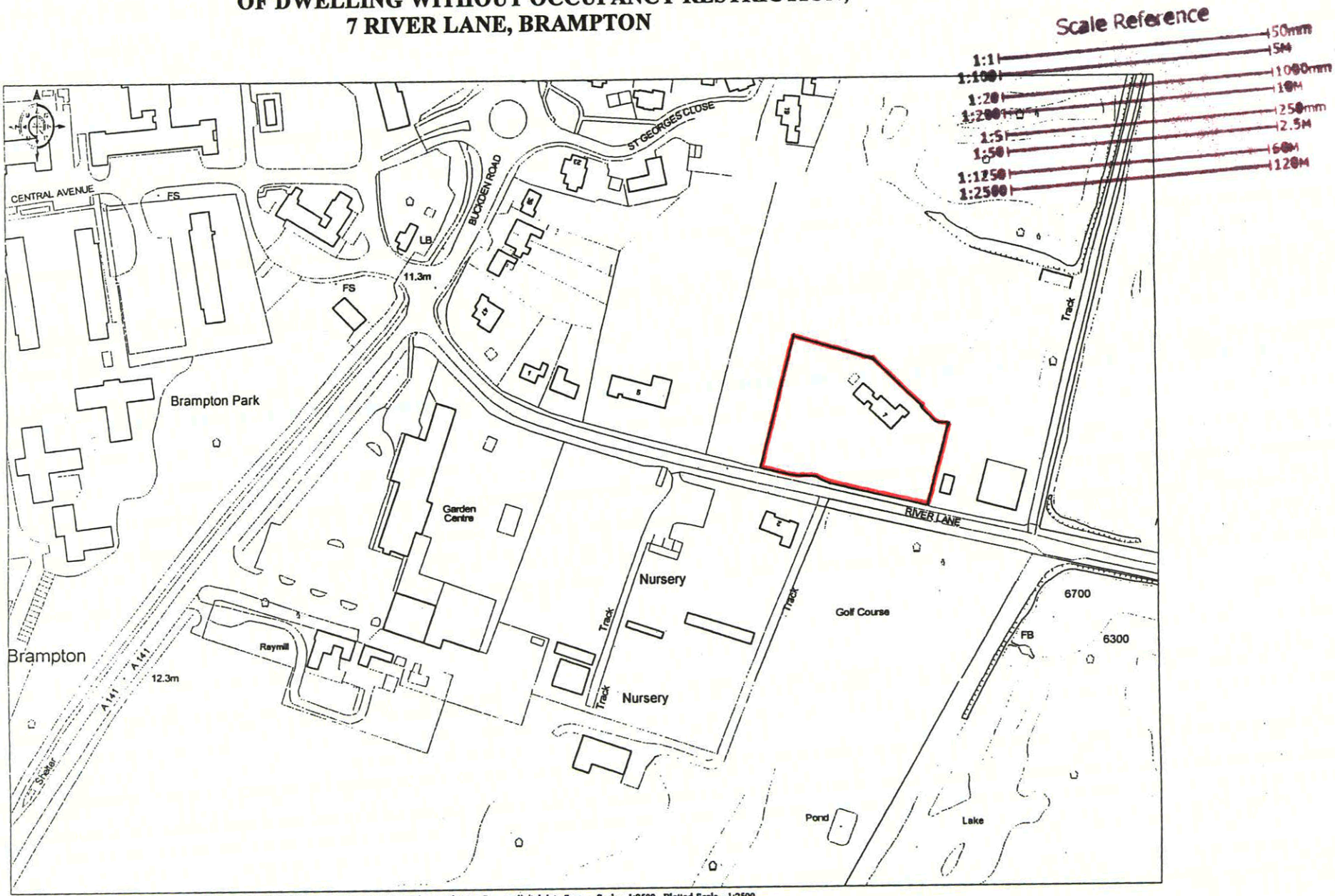
LOCATION PLAN

SCALE 1:2500

APPLICATION FOR CERTIFICATE OF LAWFULNESS FOR RETENTION OF DWELLING WITHOUT OCCUPANCY RESTRICTION; 7 RIVER LANE, BRAMPTON



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LOCATION PLAN

SCALE 1:2500

REF: W-044/P/REV.A (21.11.03).