STAFFORDSHIRE moorlands DISTRICT COUNCIL

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Staffordshire Moorlands District Council
Moorlands House, Stockwell Street, Leek
Staffordshire Moorlands, ST13 6HQ
Telephone: 0845 605 3013
www.staffsmoorlands.gov.uk

Application for a Lawful Development Certificate for an Existing use or operation or activity including those in breach of a planning condition.

Town and Country Planning Act 1990: Section 191 as amended by section 10 of the Planning and Compensation Act 1991.

Town and Country Planning (General Development Procedure) Order 1995

Part one

Publication of planning applications on council web sites
Please note that with the exception of applicant contact details and Certificates of Ownership, the information provided on this application form and in supporting documents may be published on the council's website.
If any other information that is provided as part of the application which falls within the definition of personal data under the Data Protection Act and is not to be published on the council's website, please contact the council's planning department.

1. Applicant Name, Address and Contact Details

Title: Mr | First name: Martin | Surname: Lownds

Company name:

Street address: Churnetside Garage
Abbey Green Road

Town/City: Leek
County: Staffordshire
Country:
Postcode: ST13 8SA

	Country Code	National Number	Extension Number
Telephone number:			
Mobile number:			
Fax number:			

Email address:

Are you an agent acting on behalf of the applicant? (•) Yes ( ) No

2. Agent Name, Address and Contact Details

Title: | First Name: Ken | Surname: Wainman

Company name: Ken Wainman Associates Ltd

Street address: 29A
St. Edward Street

Town/City: Leek
County: Staffordshire
Country: England
Postcode: ST13 5DN

	Country Code	National Number	Extension Number
Telephone number:		01538386808	
Mobile number:		07968774785	
Fax number:		01538384401	

Email address: ken@sgaplanners.co.uk

3. Site Address Details

Full postal address of the site (including full postcode where available)

House: 0 Suffix:

House name: Churnetside Garage

Street address: Abbey Green Road

Town/City: LEEK

County: Staffordshire

Postcode: ST13 8SA

Description of location or a grid reference
(must be completed if postcode is not known):

Easting: 397995

Northing: 357251

Description:

Residential building in the southern part of the applicant's business premises.

4. Pre-application Advice

Has assistance or prior advice been sought from the local authority about this application? (•) Yes ( ) No

If Yes, please complete the following information about the advice you were given (this will help the authority to deal with this application more efficiently):

Officer name:

Title: Mrs First name: Stephanie Surname: Hatton

Reference: 05/00203/BOC

Date (DD/MM/YYYY): 02/04/2008 (Must be pre-application submission)

Details of the pre-application advice received:

The first letter from the Council, in the applicant's file is dated 21st February 2006, However, this letter does refer to previous contact. Subsequent letters from the Council, in the applicant's files, are dated 9th May 2006 and 2nd April 2008. A Planning Contravention Notice was completed by the applicant and sent to the Council in February 2007. The letter dated 2nd April 2008 asked for a site visit to be arranged.
A site visit/meeting was held on 24th June 2008. Present from the Council were Mr B. Hurst and Mrs S. Hatton. Present for the applicant was the applicant - Mr Lownds and his agent - Mr K Wainman. The Council officers indicated that an application for a Certificate of Lawfulness would most probably be required but it was agreed that the applicant should first informally provide evidence to the Council on residential use of the building occupied by the applicant and the previous siting of a residential caravan on the site prior to the erection of the building currently used as a dwelling.
A second Planning Contravention Notice was completed and sent by the applicant to the Council on 7th October 2008.
Informal evidence relating the residential use of the building, its erection and siting and incorporation of a caravan in the structure was sent to the Council on 21st October 2008. This evidence included copies of six statutory declarations, a bill for plumbing and electrical work, an aerial photograph, a site location plan, photographs of the building and a plan of the building.
The Council asked on 20th November 2008 for a plan of the building showing the dates certain parts of the building were erected. A plan showing the dates the different parts of the building were erected and the dates the various caravan walls were removed was taken to the Council on 9th December 2008 together with a hand-written draft of a statement, including photographs, from the site's previous owners.

5. Lawful Development Certificate - Interest in Land

Please state the applicant's interest in the land: (•) a) Owner ( ) b) Lessee ( ) c) Occupier ( ) d) Other

6. Council Employee / Member

Is the applicant or agent related to any member of staff or elected member of the council? ( ) Yes (•) No

7. Description of Use, Operation or Activity

Which category describes the existing use or operation or development for which the certificate is sought:

(•) An existing use

( ) An existing operation

( ) An existing use, operation or activity in breach of a condition

If Yes, to either 'an existing use' or 'an existing use in breach of a condition', please state which one of the Use Classes of the Town and Country Planning (Use Classes) Order 1987 (as amended) the use relates to:

Use Classes: C3 Other:

8. Description of Use, Operation or Activity

Describe the existing uses, building works or activities for which you want a lawful development certificate. Where appropriate, show to which part of the land each use building works or activity relates:

Residential Unit (The erection of a building in which a residential caravan was sited, and later incorporated into the building; and the use of the building, including the remaining parts of the incorporated caravan, as a single dwelling house).

9. Grounds For Application For A Lawful Development Certificate

Under what grounds is the certificate being sought:

- ○ The use began more than 10 years before the date of this application
- ○ The use, building works or activity in breach of condition began more than 10 years before the date of this application.
- ○ The use began within the last 10 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 10 years
- ○ The building works (for instance, building or engineering works) were substantially completed more than four years before the date of this application.
- ◉ The use as a single dwelling house began more than four years before the date of this application
- ○ Other - please specify (this might include claims that the change of use of building work was not development, or that it benefited from planning permission granted under the Act or by the General Permitted Development Order).

If the certificate is sought for a use, operation, or activity in breach of a condition or limitation, please specify the condition or limitation that has not been complied with:

Reference number: | Condition number: | Date:

Please state why a Lawful Development Certificate should be granted:

The building operations were substantially completed over four years ago and it has been occupied and used has a dwelling house for over five years - since February 2004 - and contains all the facilities required for residential use.

10. Information in Support of a Lawful Development Certificate

When was the use or activity begun, or the building works substantially completed? 28/02/2004

In the case of an existing use or activity in breach of conditions has there been any interruption? ○ Yes ◉ No

In the case of an existing use of land, has there been any material change of use of the land since the start of the use for which a certificate is sought: ○ Yes ◉ No

10. Information in Support of a Lawful Development Certificate (cont.) - Residential / Dwelling Units

Does the application for a certificate relate to a residential use where the number of residential units has changed? ◉ Yes ○ No

Market Housing - Proposed

	Number of bedrooms				
	1	2	3	4+	Unknown
Houses	1				
Flats/Maisonettes					
Live-Work units					
Cluster flats					
Sheltered housing					
Bedsit/Studios					
Unknown					

Proposed Market Housing Total: 1

Market Housing - Existing

	Number of bedrooms				
	1	2	3	4+	Unknown
Houses					
Flats/Maisonettes					
Live-Work units					
Cluster flats					
Sheltered housing					
Bedsit/Studios					
Unknown					

Existing Market Housing Total: 0

Overall Residential Unit Totals

Total proposed residential units	1
Total existing residential units	0

11. Site Visit

Can the site be seen from a public road, public footpath, bridleway or other public land? ○ Yes ◉ No

If the planning authority needs to make an appointment to carry out a site visit, whom should they contact? (Please select only one)

◉ The agent ○ The applicant ○ Other person

12. Declaration

I/we hereby apply for a Lawful Development Certificate as described in this form and the accompanying plans/drawings and additional information. ☒ Date: 17/04/2009

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.

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SUPPORTING INFORMATION.

APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR THE EXISTING USE OF A BUILDING AS A SINGLE DWELLING HOUSE

AT
CHURNETSIDE GARAGE,
ABBEY GREEN ROAD,
LEEK, ST13 8SA.

April 2009

1 Introduction.

1.1 This document sets out the evidence in support of Mr Martin Lownds application for a Certificate of Lawfulness for an Existing Use, namely the existing use as a single dwelling of a building at Churnetside Garage, Abbey Green Road, Leek.

1.2 Mr Lownds has lived on site since September/November 2003. At first he lived in a caravan in an existing building on site and then in January and February 2004 he built a shed/building including a bedroom extension which is the subject of this application. The term "the Building" is used in this report to include the shed/building and extension unless stated otherwise. The Building in February 2004 consisted of 3 walls, a partially built fourth wall and a roof. Further work to the Building took place between March and October 2004.

1.3 Prior to Mr Lownds living on the site there has been a residential caravan inside another building on the site since 1994 and previous to that a residential caravan elsewhere on the site. The Building is situated in the southern part of the Churnetside site. Mr Lownds operates a plant and machinery dismantling and refurbishment business on the rest of the site and has operated the business since 2003.

1.4 Section 171 B(1) of the Town and Country Planning Act 1990 (updated in the Planning and Compensation Act 1991) states that where a building has been substantially completed for more than four years no enforcement action can be taken. Section 171B(2) of the Town and Country Planning Act 1990 (updated in the Planning and Compensation Act 1991) states that where a building has been used for more than four years as a single dwelling house no enforcement action can be taken. The applicant's basic case is that the building has been erected for over four years and that he has lived in the building for over four years; the period for enforcement action has passed; and that both the building and use are now lawful.

1.5 The evidence in support of his case submitted with the application, and referred to in this document, consists of :

- A site location plan showing the site of the Building (drawing No. 139/2). This plan was submitted with the Certificate application.
- Eleven statutory declarations relating to the construction of a building and the integration of a caravan into the Building. These statements are contained in a separate Evidence document and are referred to as "Items 1, 2, etc in Evidence".
- A bill for plumbing and electrical work from Mr Brian Poyser (appended to Item 6 in Evidence).
- Photographs of the building construction particularly beneath the Building and of the interior of the Building which show the construction under the Building carried out in January/February 2004 (Item 11 in Evidence).

- An aerial photograph of the site taken on 18th July 2006 plus an email confirming the date photo was taken (Items 12 & 13 in the Evidence).
- Letters and emails from aerial photography companies and the Ordnance Survey confirming that no aerial photographs exist for the years 2004 and 2005. (Item 15 in the Evidence).
- Copies of Council Tax bills (Item 14 in the Evidence).
- Bills for the fitting of windows and doors, the supply of timber cladding, and for calor gas bottles (Items 16, 17 & 18 in the Evidence).
- Electricity and Telephone company reminders for non-payment (Items 19 & 20 in the Evidence).

1.6 This evidence is contained in a separate document titled "Evidence in Support of the Application for a Certificated of Lawfulness".

1.7 In addition, for clarity, plans of the Building showing the dates the different parts of the building were completed are submitted online with the Certificate application and are referred to in the text by the drawing numbers. The information in these plans is derived from the information and dates in the Evidence and supplied by the applicant.

2 Brief Previous Site History.

2.1 It is understood that the land at Churnetside Garage has been used for a variety of commercial uses for many years. Anecdotal evidence is that the site has been used for a variety of commercial uses since the First World War. In August 1979 an Established Use Certificate was issued by Staffordshire Moorlands District Council for use of the land for the repair and maintenance of motor vehicles and the storage of associated spare parts.

2.2 After the issue of the Certificate the site was rented and then owned by Mr Alf Johnson from 1988 until its transfer to the current owner, Mr Martin Lownds in September/November 2003. Mr Lownds, in September/November 2003, came to an informal agreement with Mr Johnson to buy the site but didn't formally buy the site until April 2005.

2.3 Since September/November 2003 Mr Lownds has operated a plant and machinery dismantling and refurbishment business from the site buying used machinery and plant, refurbishing and repairing it, and selling it for re-use. Much of the refurbished equipment is exported.

2.4 Mr Lownds moved on the site in September/November 2003 living at first in a caravan located inside a shed on the site. In January - March 2004 he built a building and a bedroom extension on the site and in February 2004 moved into a caravan in to the building and he and his family has lived in the building and extension since that time. The building in February 2004 consisted of 3 walls, a partially built fourth wall and a roof. Further work to the building took place between March and October 2004.

2.5 It is understood that there has been residential use on the site throughout the period starting after the First World War. Anecdotal evidence is that the site was first occupied after the war by a Mr Danny Broadhurst who lived in a railway carriage on the site for many years and that there has been someone living on the site continuously since then to the present time, living either in a caravan or a former railway wagon/carriage.

2.6 Since the previous owner, Mr Johnson, bought the site there has been residential caravan on the site. At first the caravan was sited in the open where it doubled as an office and in 1993-1994 it was moved into an existing building on the site and a separate office created elsewhere on the site.

Building Construction details:

2.7 The base of the Building is mainly constructed in concrete blocks. The walls are built on top of this base. The walls of the Building are constructed in different materials. The roof was originally, and still is, supported by timber posts fixed into the ground. The posts have been incorporated into the building but can still be seen in places. The south wall of the building, built in January/February 2004, is partly (the eastern part) built in concrete blocks; the central part of the wall in insulation material with timber cladding on the outside built onto concrete blocks. The insulation on the central part of the south wall is fixed to the remaining caravan walls. The bedroom extension walls are constructed in insulation material with timber cladding on the outside built onto stud walls on concrete blocks. The east wall of the Building is built of concrete blocks; the north wall in insulation material covered with timber cladding built on concrete blocks.

2.8 Internally some of the caravan walls and the caravan walls and floor remain – see drawing 139/3B. The caravan chassis framework is supported by metal beams fixed in to the concrete. The beams run through the metal framework and would, unless the beams were removed, further prevent the caravan being moved.

The Applicant's Case.

3.1 The essence of the applicant's case is that more than four years have elapsed since the Building was built and that he and his family have lived in the entire Building for more than four years and that both the Building and its use as a single dwelling house are thereby lawful. It is also contended that there has been a residential caravan on the site for more than ten years.

3.2 The following issues are addressed in the text below:

1. When the Building was built.
2. When the caravan was located in the Building. This section also describes how the caravan was incorporated into and became part of the Building.
3. The period that the Building has been used as a single dwelling house.
4. Whether the building meets the Advice given in paragraph 2.81 of Annex 2 to Circular 10/97 "*Enforcing Planning Control: Legislative Provisions and Procedural Requirements*" which gives advice on interpretation of the term "use as a single dwelling-house". This advice sets out three tests:
   - Whether the building is a separate planning unit.
   - Does the building have the necessary facilities for residential living?
   - Are the premises used by a single person or more than one person living together as, or like, a single family.
5. Previous residential caravan use on the site. There has been a residential caravan on the site for over ten years.

3.3 Each of these issues is addressed in turn below.

4 The period the Building has been built

4.1 Section 336 of the Town and Country Planning Act 1990 defines a building as including "any structure or erection, or any part of a building, as so defined, but does not include plant or machinery comprised in a building".

4.2 The applicant's contention is that the present building meets this definition and that the Building has existed for more than four years. This contention is based on and supported by the evidence in the Statutory Declarations (Items 1-10 and Item 21 in the Evidence). The applicant's statutory declaration (Item 1, Evidence) gives the dates the various parts of the Building were built.

4.3 The building was mainly built by Mr Lownds with help from his sons – Tom and Robert Lownds. Building began in January 2004; a building and bedroom extension (the western bedroom on Drawing No. 139/6B) were erected by the end of February 2004, the caravan moved into the building; and further building work took place between March 2004 to the end of October 2004.

4.3 Based on the evidence in Mr Lownd's declaration and the other declarations and the bills in Items 16 and 17:

- The south, east, west and north wall of the extension; the roof of the Building supported on timber pillars fixed into the ground; the porch at the front of the building and the bedroom extension were built in January and February 2004 (see drawing no. 139/8B). The northern elevation consisted of an 8.1metre length of wall in front of the bedroom extension and porch. The eastern part of this elevation was left open in February.
- The east wall and the eastern part of the south wall were built in concrete blocks. The central part of the south wall consisted of insulation and timber cladding fixed to the caravan wall. The western part of the south wall consisted of insulation fixed to timber battens. The western and northern bedroom extension walls consisted of timber studding insulated and, clad in metal sheeting. The porch wall also consisted of metal sheeting.
- Wooden decking was built across the remaining open part – a 5.5m length - of the front (northern elevation) of the structure in May 2004; as shown on drawing number 139/6B.
- In April/May 2004 parts of the caravan's external walls were removed (see drawing no. 139/6B). At the same time – April/May 2004 - a timber wall was built between the remaining caravan wall at the back of the decking to the eastern wall of the Building and the living and dining area extended to the east wall of the building.
- In June 2004 the applicant bought timber cladding (see Item 17 in the Evidence) and between June and October 2004 he replaced the

sheet metal cladding on the west and north walls of the extension and the porch wall with timber cladding.

- Between May to October 2004 a wall was built across the front of the decking (see drawing no. 139/5B) and clad with some of the timber purchased in June (paragraph 13, Mr Lownd's Statement – Item 1 in Evidence). Part of the front caravan wall was removed at this time and the living area was extended to the front of the Building.
- Between May and October 2004 the internal floor was replaced (paragraph 13, Mr Lownd's Statement – Item 1 in Evidence).
- The external walls of and design of the Building, as built in October 2004 were, apart from the replacement of a glass door, the same as the existing building and over four years have elapsed since then.

4.4 The Building was built in second-hand materials and much of the timber used to build the Building was obtained from Mr Wayne Byatt who operates a building business from the neighbouring builder's yard on the access road to the west of the site. Mr Byatt states in his declaration (Item 9 in Evidence) that he supplied timber to build the Building and for fuel for the burner and that within 10-12 months Mr Lownds "had built a bedroom and a wooden bungalow". Mr Byatt is the nearest neighbour and visits this site regularly. Mr Finnikin's declaration (Item 10 in Evidence) corroborates Mr Byatt's evidence that the building work took about 10-12 months and he also states that the Building was finished in autumn 2004.

4.5 Based on the above, the basic building footprint or outline - as defined by the roof and the walls and timber posts/pillars supporting the roof - was completed by the end of February 2004. The area occupied by the Building has remained unchanged since then. The Building in May 2004, when the decking was built, occupied the same floor area as the current building and all of the space within the Building, including the decking, was used for residential purposes. As described above further work took place between May to October 2004 when the Building was completed. The external design and appearance of the Building has remained unchanged, apart from the replacement of a glass door on the eastern side of the porch, since October 2004.

4.6 Section 171(B)(1) of the Town and Country Planning Act 1990(updated in the Planning and Compensation Act 1991) states that:

Where there has been a breach of planning control consisting in the carrying out without planning permission of building.....or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

4.7 It is the applicant's contention that the basic building was erected by the end of February 2004, substantially/fully completed by the end of October 2004 and that as such the Building is lawful. Four years five months have elapsed since elapsed since the Building was completed in October 2004.

4.8 Paragraph 2.80 in Annex 2 of Circular 10/97 states that "what is substantially complete must always be decided as a matter of fact and degree" and that it is not possible to define precisely what is meant by the term 'substantially completed'. However, there have been no material changes to the building since October 2004. All the walls, roof, guttering, glazing and guttering were complete by that time. The appearance and design of the present building is as built at the end of October 2004. Furthermore, the building has been in fully used as a house since February 2004.

The date the caravan was located in the Building

5.1 Mr Roy Howell's Statutory Declaration (Item 2 in Evidence) states that he brought the caravan onto the site at "roughly about the end of October, beginning of November 2003".

5.2 Mr Lownd's Declaration (paragraph 6) confirms that Mr Howell brought the caravan to the site possibly on the second Sunday in November 2004. Steven Mycock in paragraph 5 of his Declaration (Item 3 in Evidence) mentions the "new caravan".

5.3 Mr Lownds states in his Declaration (paragraph 8) that he and Mr Mycock "started to build a shed to accommodate the new caravan" and when the shed was finished the caravan was dragged into the shed, put on temporary pillars and bolted with six inch bolts to the bedroom extension. He is not specific about the date the caravan was moved into the building but in paragraph 9 of his Declaration he states that after moving the caravan he contacted Mr Brian Poyser to do the plumbing and electrical work. Mr Poyser in his Declaration (Item 6 in Evidence) states that he carried out electrical and plumbing work in February 2004. His invoice – appended to the Declaration – is dated 27 February 2004. Mr Poyser connected the building to the electric and water supply and to the existing septic tank on the site.

5.4 In paragraph 5 of his statement Mr Steven Mycock (Item 3 in Evidence) states that the caravan was put into the shed in the last week in January 2004. This is further corroborated in paragraph 1 of Mr Anthony Mycock's (no relation to Mr Steven Mycock) declaration (Item 5 in Evidence). Ms Tidmarsh in her Declaration (Item 7 in Evidence) mentions visiting Mrs Lownds in February 2004 and entering the building and seeing the decking, hallway, bedrooms, kitchen and living room

5.5 In paragraph 8 of his Declaration Mr Lownds mentions bolting the caravan to the bedroom extension; in paragraph 9 he mentions building the east wall of the building; and in paragraph 10 states that the floor of the caravan is bolted, with 3in by 4in timbers, to the main structure of the building and fixed to the ground with block piles. In paragraph 11 he states that when the pillars were built one of the two caravan wheels was removed. He also mentions that they couldn't remove the other wheel because of soil pipe blocking the way. Photograph 15 in Appendix 11 shows the soil pipe beneath the caravan behind which is the remaining caravan wheel.

5.6 In April and May 2004 Mr Lownds removed the east and south-eastern part of the caravan walls – see paragraph 12 of his declaration and drawing number 139/6B. This is corroborated in Paragraph 10 of Mrs Lownd's statement. A further length of caravan wall behind the decking was removed by October 2004 – see paragraph 13 of Mr Lownd's declaration and drawing number 139/7C.

5.7 The decking at the front of the Building was removed between May and October 2004 and a concrete and studded timber wall built along

the front (see paragraph 13 of Mr Lownd's declaration). During the same period a new floor was built and the internal walls plastered (see paragraph 13 of Mr Lownd's declaration. Mrs Lownds in her declaration corroborates that in May Mr Lownds started building a wall (paragraph 10) and that the work finished in October 2004 (paragraph 11).

5.8 Two windows and a door were fitted by Mr Phillip Kidd (Item 16 in the Evidence) in July 2004. The windows in question were the front window in the north-east corner of the building and the window in the east elevation. The latter window had been boarded up since the construction of the wall in February 2004. The door in question was the door from the former area of decking leading out onto the porch.

5.9 Both Mr Byatt' and Mr Finnikin in their declarations corroborate the time from the start of works to completion. Mr Byatt in his declaration (Item 9 in the Evidence) states that the building works took 10-12 months. Mr Finnikin in his declaration (Item 10 in Evidence) states that "Martin and Jackie moved into Churnetside Garage... later that autumn" (autumn 2003); that in March 2004 they were living in a caravan under a shed with a bedroom built on the end; and that "they finished the bungalow" (i.e. the Building) by about the end of autumn 2004.

5.10 The declaration (Item 21 in the Evidence) from Mr Lownd's son – Robert Lownds – confirms the dates the building work took place and was complete. Mr Robert Lownds helped the applicant with the building work.

5.11 The various works to the caravan described in paragraphs 5.3, 5.5, and 5.6 above incorporated or integrated the caravan into the building. A large part of the caravan walls have been removed and the remaining parts of the caravan fixed to and incorporated into the building. It is contended that as result of these works the caravan became an integral part of the building rather an independent entity. By the end of February 2004 it would have been impossible to remove the caravan from the building without either dismantling it or parts of the building because of the building walls, the vertical posts supporting the roof, and because of the other works described above. The walls and posts would have prevented the caravan being dragged or pulled out of the building. The addition of the decking and the removal of lengths of caravan wall in May 2004 and September/October 2004 and the construction of the front wall between May to October 2004 would have made it even more impossible.

5.12 With the removal of parts of the caravan wall in May and between June and October 2004 the living and dining area was expanded into the rest of the building. From May 2004 all the building including the decking was used for residential purposes. In May 2004 the eastern and south-eastern caravan walls were removed and the living and dining area extended and the decking built across the remaining open part of the front of the building.

5.13 Also, as a result of these works described in paragraphs 5.3, 5.5 & 5.6 the caravan could not be removed from the building because:

- the tow-bar and one wheel had been removed.
- The caravan was plumbed in to the ground and the position of the pipework was such that it blocked the remaining wheel and prevented the caravan being moved (See Photograph 15).
- The caravan was bolted to the concrete block bedroom extension
- The Building's roof, the vertical uprights/posts supporting the roof, and the Building's walls (including the north-west wall and the porch) prevented the caravan being either towed or lifted from the building.
- The caravan was raised and mounted into concrete block walls fixed into the ground.
- The caravan was supported by steel beams/joists which passed through the steel sub-base of the caravan. The beams were concreted to and fixed to concrete block walls fixed into the ground and to the lean-to walls/foundations.
- The insulation and cladding on the south wall of the caravan is fixed to battens which are fixed to the caravan wall.
- The caravan floor was replaced with a timber floor between May to October 2004.
- Several of the caravan walls were removed.

All the above works - apart from the last two - were carried out in January/February 2004. The dates the caravan walls were removed are mentioned in the preceding paragraphs. All the above works were completed by October 2004.

Enclosed Photographs (see Appendix 11)

5.14 Photographs 1-7 show the construction under the base of the former caravan. In particular Photograph 2 shows the basic construction and Photographs 4-6 show the steel beams going through the caravan sub-base/chassis.

5.15 Photographs 8-10 show the internal facilities in the lean-to. Photograph 11 shows the front wall of the Building and, (by the steps), one of the timber posts supporting the lean-to roof. Photograph 12 shows a timber post fixed to metal plates fixed in the ground. Photograph 13 shows a timber post bolted to metal plates fixed in and protruding from the ground. Photographs 14 and 15 show the soil pipe which was, based on the evidence, constructed beneath the Building in February 2004. Photograph 15 shows the remaining caravan wheel behind the soil pipe.

6 The period that the Building has been used as a single dwelling house.

6.1 Section 171(B)(2) of the Town and Country Planning Act 1990(updated in the Planning and Compensation Act 1991) states that:

"Where there has been a breach of planning control consisting of a change of use of a building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach".

6.2 In paragraph 12 of his declaration Mr Lownds states that Jackie, his partner, Dylan (Jackie's son) and he "moved straight in after the electric and plumbing work was done. It was around the end of February" (*that is February 2004*). This is consistent with the evidence provided by Mr Brain Poyser (Item 6 in Evidence) that he did the electric and plumbing work in February 2004 and Mr Anthony Mycock (Item 5 in Evidence) who states that Mr Poyser was doing the electric and plumbing work in mid- February.

6.3 Tessa Tidmarsh in her declaration (Item 7 in Evidence) states that she visited Jackie in about February 2004 and describes the facilities in the building. Although Ms Tidmarsh does not definitely say the Lownds had moved into the Building it is implicit in her description. Mr Byatt in his declaration (Item 9 in Evidence) states that within 10-12 months Martin Lownds "had built a wooden bungalow..." and that "as far as I can remember they have lived there since February 2004".

6.4 Mr Finnikin in his declaration (Item 10 in Evidence) states that "Martin and Jackie moved into Churnetside Garage... later that autumn" (autumn 2003) and "they were living in a caravan in March 2004 and by autumn 2004 they had finished the building.

6.5 Mrs Jackie Lownds in her declaration (Item 8 in Evidence) corroborates the fact that she, her son and Mr Lownds moved into the building in February 2004.

6.6 The issue as to whether the Building has been used as a single dwelling house is addressed in the next section. But the evidence given on oath from Mr and Mrs Lownds and the other witnesses is that Martin Lownds and his family have lived in the property continuously for over four years and it is contended that as such the time for enforcement action has passed.

7 The Advice given in paragraph 2.81 of Annex 2 to Circular 10/97"

7.1 Paragraph 2.81 of Annex 2 to Circular 10/97 "Enforcing Planning Control: Legislative Provisions and Procedural Requirements" gives advice on interpretation of the term "use as a single dwelling-house" and sets out three tests:

"Where a single, self-contained set of premises comprises a unit of occupation, which can be regarded as a separate "planning unit" from any part of a building containing them; are designed or adapted for residential purposes, containing the normal facilities for cooking, eating and sleeping associated with use as a dwelling house; and are used as a dwelling, whether permanently or temporarily, by a single person or more than one person living together as, or like, a single family, those premises can properly be regarded as being in use

7.2 Each of the tests is examined in the following paragraphs.

The Planning Unit

7.3 The use of the Building is clearly separate from the use of in the rest of the yard/site and constitutes a planning unit in its own right. It has been used for domestic purposes since February 2004. The Building whilst situated in the business yard is, and has never been used, for business purposes. Although the Building is situated in the yard there is a clear functional and physical separation from the plant refurbishment business. The residential use takes place solely within the Building and is separate from the other use on the Garage site. There is a separate office in one of the other buildings on the site and all of the Building is, and has been used, for purely domestic purposes separate from the use on the rest of the site. It has only ever been used for residential purposes by Mr Lownds and his family.

7.4 Later in this document reference is made to appeals where caravans have been sited inside buildings on agricultural holdings. In each case the Inspector has accepted that the residential use in, or in part of a building, was a separate planning unit.

The facilities in the Building

7.5 The facilities in the Building and the bedroom extension meet the definition of what is needed for normal domestic living. The caravan contained a living and dining area, toilet, kitchen, bathroom and bedroom and the extension provided a second bedroom. Therefore, since January/February 2004 the facilities in the Building have been those necessary for residential use.

7.6 The Building was plumbed in, connected to electricity mains; running water provided; and connected to the septic tank on the site in February 2004 (see Mr Poyser's and Mr A Mycock's statements). A solid fuel burner was put into the building in January 2004 (see Mr A Mycock's statement). Power for cooking, was and is, provided by calor gas. The

bill in Item 18 in the Evidence is for the purchase of calor gas for cooking. Although the bill is made out to Abbey Plant the gas was, and is still, used for cooking by the Lownds in the Building. The date of this bill - 17 November 2004 – supports the other evidence that Mr Lownds and his family were living in the Building in November 2004 and that there were cooking facilities.

7.7 Tessa Tidmarsh in her declaration (Item 7 in Evidence) states that she visited Jackie in about February 2004 and describes the facilities in the building.

7.8 The Reminder letter, dated 11 May 2005 in Item 19 of the Evidence demonstrates that mains electricity was provided prior to May 2005. The actual date (based on a telephone conversation) that the electricity was connected was 21 December 2004. Efforts are being made to obtain written confirmation of this date. The letter is addressed to Mr Martin Lownds and Jacqueline Jones (Mrs Lownds previous name).

7.8 The BT Reminder letter addressed to Mrs J Jones in Evidence Item 20 although dated July 2005 is for the previous quarter. Mr Johnson the previous owner had asked that a landline should not be fitted until the land was bought by Mr Lownds. Mr Lownds acquired the site in April 2005 and a landline connection provided by BT in May 2004 (information obtained by phone 14/4/2009). The Reminder is for the first quarter's bill from May to July 2005. Prior to May 2005 Mr and Mrs Lownds used mobile phones.

7.8 The caravan was approximately 8.5 m long by 3 m wide and 3 m high. The total length of the Building (excluding the bedroom) is 11.1 m long by 4.54 m wide. The extension is 2.46 m long by 4.95 m wide. The lean-to and extension together measure 13.65 m long by 4.54 – 5.1 m wide.

7.9 It can be seen from these measurements that the caravan occupied a significant part of the Building (excluding the extension) and with the removal of several of the caravan walls the whole of the Building and extension were used for residential purposes.

7.10 Mr Lownds and his family moved into and lived in the caravan and bedroom extension in February 2004. The space outside the caravan in the building was used for domestic storage of goods such a wood for the fire, and calor gas bottles, a washing line, a tumble dryer, coats and boots and mop buckets as there was limited storage inside. Therefore, the entire space within the building has been used for residential purposes since February 2004.

7.11 In May 2004 the eastern and south eastern caravan walls were removed and the living area extended to the east wall. At the same time decking was built along the remaining open frontage. Therefore, from May 2004 the whole building has been occupied with built structures used for residential purposes. Part of the front caravan wall and a temporary timber wall were removed in about September/October 2004 and the living area further extended. Drawing No. 139/7C shows the original

caravan walls and drawing no.139/5B shows the caravan walls that were removed in September/October 2004.

Residential use by a single person or family

7.12 As described in Section 6 Mr Lownds, his then partner (now Mrs Lownds – they were married in July 2005) and her son moved into the Building in February 2004 and have lived there continuously since then (see declarations - Items 1 and 8 in Evidence). Also, both Mr and Byatt and Mr Finnikin in their declarations (Items 9 and 10 in Evidence) state that Mr and Mrs Lownds moved onto the site in late 2003 and that within approximately a year the caravan was converted into a bungalow.

8 Council Tax

Council Tax has been paid uninterrupted on the property since 1 April 2005. Item 14 in the Evidence contains copies of Council Tax bills for three of the four years from 1st April 2005. A copy of the missing bill (2006/07) has been requested from the Local Tax Section of the Council and will be submitted as soon as it is received. Although the address on the Council Tax bills is the Caravan at Abbey Plant Garage the caravan has been sited in and incorporated into the building since 2004 and as the Council Tax bills demonstrate uninterrupted residential use of the property.

9. Aerial photograph

9.1 The aerial photograph in Item 12 in the Evidence is the same one enclosed with the letter to the Council dated 21 October 2008. Unfortunately the wrong date was given for when the photograph was taken. In the letter the date was mistakenly given as 17th July 2004. This was incorrect - the photograph was taken on 18th July 2006.This was a genuine mistake for which I apologise. There was no intent to mislead.

9.2 Item 13 in the evidence contains an email, dated 21 October 2008, from Getmapping confirming the date the photograph was taken.

9.3 A thorough trawl was made of all the commercial air photography companies but this is the only photograph for the relevant period that exists, as far as we could discover. Other companies and organisations contacted were Air Images Ltd, Bluesky, the National Monuments Record and the Ordnance Survey. Correspondence from these companies contained in Item 15 of the Evidence shows that there are no aerial photographs available for 2004 or 2005. This information is included to demonstrate that strenuous efforts have been made to find aerial photographic evidence.

9.4 The aerial photograph shows the roof of the Building and whilst this is over two years after the roof was built it confirms that the Building existed in 2006.

10. Relevant Appeal and Court decisions

10.1 The caravan was placed in the Building in January 2004 and there are two relevant appeals where caravans were sited in buildings and the use as a single dwelling house has been addressed and allowed.

10.2 The relevant appeal decisions are:

1. Barnstone Farm, Kentisbury, Barnstaple, EX31 4NL.
   Ref: APP/X1118/C/07/2046893 & 2046895.

   This appeal related to the siting of a caravan in a barn and the use of the caravan and the rest of the barn as a single dwelling unit. The issues of whether the use was a separate planning unit and whether it met the tests in paragraph 2.81 of Circular 10/97 were addressed in this appeal. In his decision the Inspector refers to the first two of the court cases in paragraph 10.3 below.

2. Staits Barn, Hasfield, Gloucester, GL19 4LJ.
   Ref:APP/P1615/X/07/2046883.

   This appeal related to the siting of a mobile home in a barn and the use of the caravan and the rest of the barn as a single dwelling unit. This appeal refers to the fact that once a building or part of a building has been used for four years the time for enforcement action has passed.

10.3 Relevant Court cases are:

1. Gravesham BC vs SOS & Michael W O'Brien, 1982.
   This decision held that the distinctive characteristic of a dwelling house "was its ability to afford those who use it the facilities required for day to day domestic use". This is the basis for the advice in paragraph 2.81 of Circular 10/97.
2. R vs SOS & Swale BC, 2003.
   This case held that the use of two caravans positioned in a building had to be part of the use of the building and would be material to, if not determinative of, the question as to whether the building was in use as a single dwelling house.
3. Court of Appeal decision on Arun DC vs First Secretary of State/Brown.
   The court of appeal held that householders who change the use of a building to that of a single dwelling should only be vulnerable to enforcement action if it is instituted within four years of the change.

10.4 The two above appeal decisions are similar to this case in that a caravan/mobile home was located in a building, and that the building, or part of it, including the caravan was used as a single dwelling house.

11. Summary

11.1 It is the applicant's contention that there is strong and clear evidence that the Building has been built for more than four years from the date of this application and that the entire Building has been used as a single dwelling house for over five years. The evidence indicates that the caravan was sited in the Building and physically attached to it and incorporated into it for over five years.

11.2 Although the Council's correspondence to the applicant refers to the residential use of a caravan on the site it is the applicant's contention that the caravan has been incorporated into, and has been an integral part of the building, for well over four years, arguably five years. The use of a caravan positioned in a building is part of the use of a building. The caravan has been lived in for over five years. It has been in the building for over five years and the rest of the Building has been used for residential purposes for the same period.

11.3 The evidence shows that the main part of the Building including the extension was built in January/February 2004 and that the caravan was moved into the Building in February 2004. The caravan was fixed to the building and parts of the external caravan walls gradually removed. Building works continued between March and October 2004 and the evidence shows that the building as it currently exists was built and completed by October 2004.

11.4 The evidence shows that a building has existed since February 2004 and has since that date contained all the facilities necessary for day to day domestic use including running water, waste water disposal, electricity and heating, and living and bedrooms. Over four years have elapsed since this use began and has continued uninterrupted and as such it is contended that the use is immune from enforcement action. The whole of the building has been used for residential purposes since the caravan was placed in the building in January/February 2004.

11.5 It is the nature of cases such as this that the evidence mainly consists of statutory declarations. Strenuous efforts have been made to find aerial photographs but unfortunately no aerial photographs appear to have been taken in 2004 or 2005. The evidence from Council Tax bills; the bills for the cladding and windows; the bill for calor gas; and the BT and Npower Reminder letters supports the statements in the declarations both with regard to the dates the Building was built and the residential use of the Building.

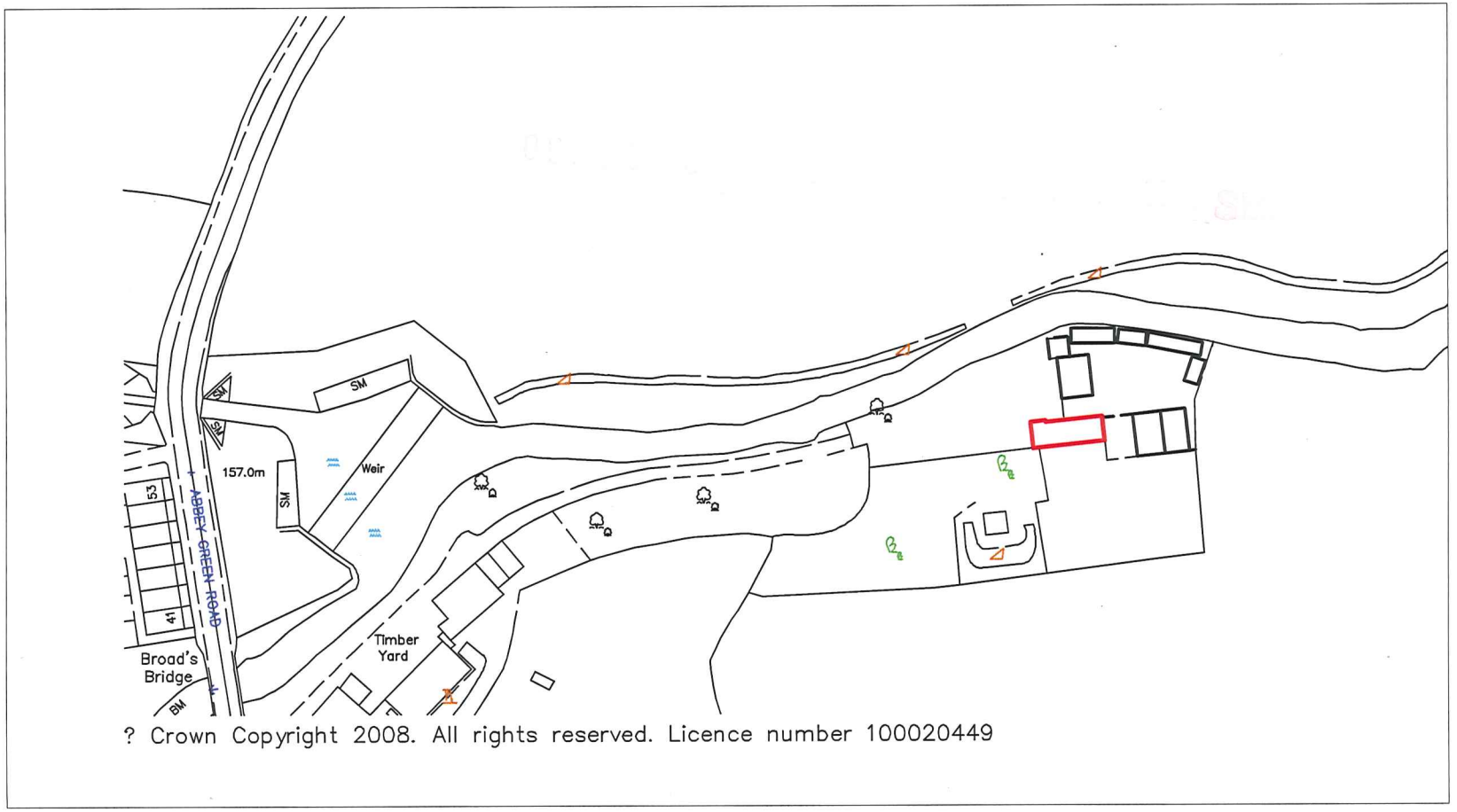
11.6 The site is located in a relatively secluded situation and it is inevitable that the main knowledge of the history of the site will be through the applicant, his family and his friends and business associates. Every effort has been made to get evidence from a wide a range of witnesses and other sources as possible.

11.7 There are a number of minor differences in dates between the different witnesses but this is perhaps inevitable where people are relying on their memories but there are no significant differences. The clear thrust of the evidence is that the building is that the building has been substantially complete and used as a single dwelling house for more than four years.

11.8 Key evidence is provided by Mr and Mrs Lownds corroborated by others. Circular 10/97, in paragraph 8.15, states that the applicant's own evidence does not need to be corroborated by "independent" evidence to be accepted. If the Council do not have other evidence to the contrary – and the applicant is not aware of any – it is contended, that on the balance of probability, that the use is lawful and that the evidence provided is sufficient to warrant the issue of a Certificate of Lawfulness.

List of Drawings Submitted with the Application.

Drawing No. 139/1	-	Location Plan.
Drawing No. 139/2	-	Site Plan.
Drawing No. 139/3B	-	The Existing Residential Building.
Drawing No. 139/5B	-	The Building in October 2004.
Drawing No. 139/6B	-	The Building in May 2004
Drawing No. 139/7C	-	The Full History of the Construction of the Building.
Drawing No. 139/8B	-	The Building as at the End of February 2004.
Drawing No. 139/9	-	Existing Building Elevations.



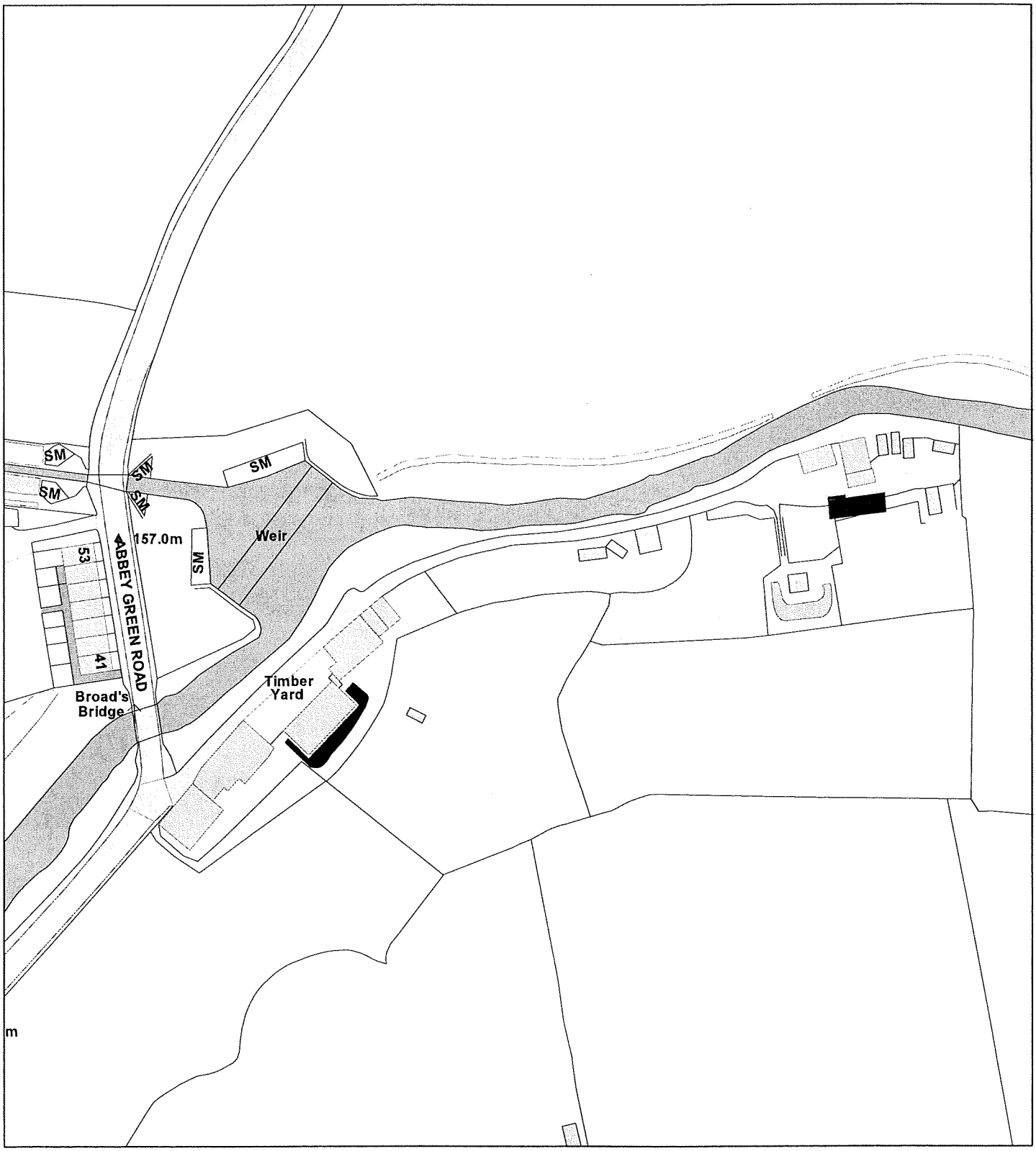
LOCATION PLAN,
RESIDENTIAL BUILDING,
CHURNETSIDE GARAGE.

STEPHEN GOWER ASSOCIATES.
29A ST. EDWARD STREET,
LEEK,
STAFFORDSHIRE,
ST13 5DN.

N

Drawing No. 139/1
Date: 9 December 2008
Scale - 1:1250
Paper size: A4

Reference:	09/00380/CL_EXG Leek



Scale : 1:1250

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Date	27 April 2009
Organisation	SMDC
Department	PLANNING
Comments	