DATE: DECEMBER 2016

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION FOR A CERTIFICATE OF LAWFUL DEVELOPMENT

RELATING TO AN OUTBUILDING CONSTRUCTED AT

FAIRVIEW, 11 BATTLESTEADS, ALTON, STOKE ON TRENT, STAFFORDSHIRE, ST10 4BE

APPLICANT: MRS P R BROWN

SUPPORTING SUBMISSION

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1. This submission relates to an application for a certificate of lawful development to certify that the outbuilding ('the Outbuilding') which has been built within the curtilage of the residential dwelling house at Fairview, 11 Battlesteads, Alton, Stoke on Trent, Staffordshire, ST10 4BE ('the Property') is immune from enforcement action by the Council and can be used for purposes ancillary to the residential use of the dwelling.

2. **Relevant History** In February 2008 the Applicant and her late husband began the construction of the Outbuilding within the grounds of the Property. It is the Applicant's case that the Outbuilding was constructed within the parameters of the permitted development rules in existence at the time as a building which was intended to be incidental to the Property and has been used for domestic purposes incidental to the use of the Property as a dwelling house.

3. On 8 September 2008, before construction of the Outbuilding had been completed, the Applicant submitted an application (through agents) for a certificate of lawful proposed use (ref SMD/2008/1069) ('the First CLEUD Application') that the Outbuilding fell within the remit of the permitted development rules existing at the time construction began. That application was refused by the Council on 4 November 2008. No enforcement action was taken by the Council following the refusal of the First CLEUD Application. After that refusal the present Applicant and her late husband instructed this firm and we advised then that the refusal was not justified because the Property fell within permitted development parameters.

4. The construction of the Outbuilding was subsequently completed during 2009. It is not known exactly when the works were substantially completed, so in response to that question on the application form, the date of 31/12/2009 has been given, although works were completed prior to that date.

5. Even in the event that the Outbuilding was not constructed under permitted development rights and if it had indeed required planning permission, then under s171B(1) of the TCPA 1990 the breach of planning control involved would have become immune from enforcement after the end of the period of four years beginning with the date on which the operations were substantially completed. As a result, by the end of 2013 *at the latest* the Outbuilding had become immune from enforcement.

6. Work was begun prior to 1 October 2008, so it is the GPDO as it stood at that point which is relevant. When the matter was contentious, in 2008/9, there were two issues

of contention; the first was as to the intended use, whilst the second was as to the measurement of height above ground level.

7. As can be seen from the plans **attached at Appendix 1,** the Outbuilding comprises a building of brick construction and internally has a WC, a storage room, a home office/study, a garden room with a sewing area, and a double garage with workshop area. The appended plans are the plans prepared prior to the construction of the Outbuilding, and they are therefore proposed. The Outbuilding was constructed in accordance with the plans. Since completion, its use has accorded with what is set out on the plans. The Outbuilding has thus fulfilled its original purpose for 7 years. That purpose is plainly 'incidental to the use of the dwelling house as such', and consistent with the Emmin case to which reference was made at that time.

8. Later on, a question arose as to the point from which measurements of height should be taken, and, we recall we referred to Article 1(3) of the 1995 GPDO as it then stood. Of course whilst such measurement might have been possible at the time, it is now less easy to make such measurements.

9. However given the lapse of time since the completion of the building it is academic as to whether it was correctly built. We simply make the point that it was considered by us and by the Applicant and her architect that the Outbuilding did conform with the Order when it was built. Whatever was built, however, is now immune from enforcement.

10. The Outbuilding lies within the residential planning unit of the Property. All parts of the planning unit are obviously able to be used for purposes ancillary to the primary residential use. (A building may only be constructed for purposes *incidental* to the dwelling, but in law, once in situ for a time it may be used for purposes *ancillary* to the dwelling).

11. The purpose of this application is to establish that the building as constructed is immune from enforcement and can be used for purposes ancillary to the residential use of the dwelling.