

Our Ref.: WAR/476/JPP  
Your ref: SMD/2016/0423

30<sup>th</sup> January 2017

Staffordshire Moorlands District Council  
Moorlands House  
Stockwell Street  
Leek  
ST13 6HQ



By email: [planning@staffsmoorlands.gov.uk](mailto:planning@staffsmoorlands.gov.uk)

Dear Sir or Madam,

**'Blakeley', Reacliffe Road, Rudyard, ST13 8RT**  
**Application for Lawful Development Certificate for an Existing Use as a Dwellinghouse (Class C3)**

I act for Miss Beryl Warburton in this matter and have been in liaison with her agent Mr Andrew Rockett of Quay Associates Ltd. I have been commissioned to review matters and provide a letter and information in support of the submitted application, referenced at the head of this letter.

In doing so I have undertaken a site visit to view the dwellinghouse, 'Blakeley', where I met Miss Warburton and Mr Rockett, but also Miss Warbuton's brother, Mr John Warburton, and his daughter, Mrs Moira James.

In addition I have researched historic maps and online resources in respect of 'Blakeley'. The family have a significant bundle of legal papers relating to the land and dwelling, which has proved very helpful. It is evident that over the course of its life the dwellinghouse has also been known as other names, such as 'Bleakley', 'Blackley' or 'Blacklea'. Reacliffe Road has also been known historically by other names including 'Cliffe Park Drive', 'Cliff Park Road' and 'Lakeside Road'.

The submission includes the following:

1. This letter
2. A separate document containing 14no. annexes
3. Amended application forms, and
4. A scanned copy of my client's signed letter of 28<sup>th</sup> January 2017, with accompanying plan

With regard to the application forms, more particularly question 10, the dwelling evidently existed as a building and a use in 1947, and is shown on OS plans of that year. However, we have no definitive evidence of when the building was erected prior to that. Hence the date given is 24<sup>th</sup> March 1947 (the date of one of the earlier documents within the annexes), a search request to the then Local Authority, Leek Rural District Council.

The Council themselves recognise the longevity of the building within the Rudyard Conservation Area Character Appraisal.



It is my submission that the development as described existed at the 'appointed day' under the Town and Country Planning Act 1947, namely 1<sup>st</sup> July 1948 and thus is lawful for planning purposes. The dwellinghouse predates the appointed day and the Council's own Conservation Area Character Appraisal highlights the relative age of the property.

Evidence demonstrates that the dwelling has been in situ from a time pre-dating 1 July 1948, and has remained a single planning unit since that date, having also not been abandoned as a building or use. The evidence submitted demonstrates that, on the balance of probability, the use remains lawful having not been abandoned, no material change of use having taken place, no new planning unit having been formed and no discontinuance order having been served.

To support the submission I have included a signed statement from my client, Miss Beryl Warburton. It sits separately to this letter and my separate document containing the annexes.

### Legal context

This application is made under Section 191 of the Town and Country Planning Act 1990 as amended by Section 10 of the Planning and Compensation Act 1991. Details of the site, the subject of the Lawful Development Certificate (LDC) application, are identified on the site location plan at **Annex 1**.

The appropriate legal test of the evidence is 'the balance of probability'. However, it is considered that the supporting information provided in the submission is conclusive and provides evidence beyond reasonable doubt as to the use of the dwelling.

Section 171B of the Town and Country Planning Act (TCPA) sets the time limits for taking enforcement action. Part 1) sets a period of four years for physical works, Part 2) sets four years for the change of use to a single dwellinghouse, and Part 3) sets ten years in the case of any other breach.

Section 191, paragraph (1) (a), of the TCPA enables any person, who wishes to ascertain whether an existing use of buildings or other land is lawful, to make an application for a Lawful Development Certificate to the local planning authority specifying the land and describing the use.

By virtue of section 191 (2) uses and operations are "lawful" if no enforcement action may be taken against them **and** they are not in contravention of any enforcement notice which is in force, and, by virtue of section 191(3), a failure to comply with any condition or limitation subject to which planning permission has been granted is "lawful" if the time for taking enforcement action in respect of the failure has expired and it does not constitute a contravention of any enforcement notice or breach of condition notice which is in force.

It is not necessary for the applicant's own evidence to be corroborated by independent evidence and the case of *FW Gabbita V. SSE and Newham LBC 1985 JPL 630* is referred to where this principle was established.

If the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to



refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability". The LPA should proceed on the basis that neither the identity of the applicant (except to the extent that he or she may or may not be able personally confirm the accuracy of any claim being made about the history of a development), nor the planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application.

Ordinarily the 'four year rule' might be thought to be of most relevance here, both in terms of the erection of the building and use as a dwelling house. It is still possibly the case as a 'fall back' position. However, development or other activity on land is lawful for planning purposes if it is within one of several categories and does not involve a failure to comply with a condition or limitation subject to which planning permission has been granted. One of those is if development took place before 1st July 1948 (the "appointed day" in respect of the Town and Country Planning Act 1947). This is the position here.

### **The dwellinghouse**

The dwelling and its curtilage (which includes the site of its former boathouse) is shown on the submitted location plan at **Annex 1**. I show the dwelling outlined in black and the curtilage in red. The site of the boathouse is clear, next to the lake's edge, within the curtilage to the dwelling.

I also attach a brief photographic survey of the dwelling (at **Annex 2**). Ostensibly it is comprised of 5no. rooms. The property has a kitchen, living room, bedroom (with sanitary facilities), a sun room and an additional WC at lower ground.

The dwelling is served by electricity and water supply and is heated by way of electric heaters and previously an open fire/stove. There is a septic tank to deal with foul waste.

The kitchen has an electric cooker comprising oven, grill and hob, sink, and preparation and eating areas.

The dwelling has parallel car parking within its curtilage, just off Reacliffe Road.

### **The definition of a 'dwellinghouse'**

The common feature of all premises which can be generally described as dwellinghouses is that they are buildings that ordinarily afford the facilities required for day to day private domestic existence. It is recognised that unlikely or unusual buildings, such as churches or windmills, have been used as, or adapted to become, dwellinghouses. Whilst such premises may not be regarded as dwellinghouses in the traditional sense, they may be so classified for the purposes of the Use Classes Order.

The criteria for determining whether the use of particular premises should be classified within the C3 use class include both the manner of the use and the physical condition of the premises. Premises can properly be regarded as being used as a single dwellinghouse where they are:



- a single, self-contained unit of occupation which can be regarded as being a separate 'planning unit' distinct from any other part of the building containing them;
- designed or adapted for residential purposes-containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse;

and are used as a dwellinghouse, whether permanently or temporarily, by a single person or more than one person.

As held in *Gravesham Borough Council v SSE [1982]*, affirmed in *Moore v SSE [1998]* and *Bloomfield v SSETR [1999]* the distinctive character of a dwellinghouse is its ability to afford to those who use it the facilities required for day to day private domestic existence. In *Gravesham* it was held that a small holiday chalet comprising a living room, kitchen and bedroom did constitute a dwellinghouse, notwithstanding [in that case] that there was no bathroom or WC.

'Blakeley' meets the above criteria within the bullet points: it is a single, self-contained unit and provides the normal facilities for cooking, eating and sleeping across its 5no. rooms, and unlike the dwellinghouse in *Gravesham* it does include a WC, two in fact. And it has done so since before the 'appointed day' of 1<sup>st</sup> July 1948.

### **A pre-1948 dwellinghouse**

The dwellinghouse existed prior to 1<sup>st</sup> July 1948. I attach the following copy documents that evidence the dwelling's pre-1948 existence:

- A copy of a Request for an Official Search in relation to the dwellinghouse, referred to as a 'bungalow', known as 'Blacklea' and its associated land. The Official Search request was submitted by Messrs. Brierley and Hudson and dated 22<sup>nd</sup> March 1947 (**Annex 3**).
- A copy extract of the Title documents relating to the bungalow known as 'Blacklea', dated 1947 prepared by Shaw, Smith and Co., Solicitors (**Annex 4**).
- A copy extract of conveyance documents dated 1<sup>st</sup> April 1947, prepared Messrs Brierley and Hudson (**Annex 5**).
- An OS Six Inch Map Extract from a 1947 survey, published c. 1949, showing the location of 'Blakeley', or 'Blacklea' as it was then (**Annex 6**).
- The Particulars of Sale for 'Blacklea' (extract), 1947, prepared by Shaw, Smith and Co., Solicitors (**Annex 14**).

These 5no. documents all date from 1947; all prior to the 'appointed' day of 1<sup>st</sup> July 1948 and importantly the dwelling house is also identified on the 1947 survey OS Map. The documents relate in the main to the conveyance of the dwelling (the bungalow) and land between *Anderton* and *Wrigley/Maitland* in 1947 (see **Annexes 4, 5 and 14**). Cross-examination with the Land Registry document at **Annex 7** shows at Item 7 that particular conveyance on 1<sup>st</sup> April 1947 between the parties.



Due to the passage of time, it is not surprising that the applicant is unable to provide further independent evidence to support the above, particularly as the dwellinghouse did not come into the family's ownership until 1951. That said it is not expected that the LPA will be able to produce any evidence of their own or from others, to contradict or otherwise make the applicant's version of events less than probable.

Indeed, the Council themselves in their '*Rudyard Conservation Area Character Appraisal*' of July 2016, acknowledge the longevity of the dwellinghouse, seeing it as one of the older, early 20<sup>th</sup> Century properties around the lake.

Both my client, Beryl Warburton and her brother, John, recall being told that a family from Manchester lived at the property during World War II, to escape bombing raids on the city.

The requirement to obtain planning permission was established on 1st July 1948. Everything built before this date is treated as an existing/original building for the purposes of planning.

The dwelling here, is deemed to have 'planning permission' by virtue of the fact that it was built before the 1st July 1948 (the 'Appointed Day' for the Town & Country Planning Act 1947).

This is a Statutory Right that applies to every building in England which was built before 1st July 1948, and should be sufficient of itself to confirm the lawful use of the dwelling house known as 'Blakeley' or then 'Blacklea'.

### **Post 1<sup>st</sup> July 1948**

Should the LPA consider that the onus of proof has not been discharged in respect of the pre-1948 dwellinghouse development and use, evidence is now submitted to support the further submission that the use has existed for a period in excess of four years starting with the date 1<sup>st</sup> July 1948.

In 1951 the dwellinghouse came into the ownership of the family when it was purchased by Mr Joseph Eric Abbotts, the applicant's uncle, known as Eric.

The Land Registry List of Documents at **Annex 7** provides a very useful schedule of the parties involved in conveyances with respect to the dwellinghouse and land at 'Black Lea'. It goes as far back as 1905 and includes:

- more latterly my client, Beryl Warburton,
- her brother John Warburton,
- Eric Abbotts, the family member that purchased the property in 1951, and
- Eric's sister, Winifred Warburton, who inherited it from Eric

My client recalls visiting and staying with her uncle at the dwelling in the 1950's. At **Annex 8** is a copy of a family photograph from the 1950's showing the dwelling from the lake. At **Annex 9** are family photographs of Eric Abbotts and his dog, 'Buster', at Blakeley, one taken in the conservatory, or sun room and the other by the lakeshore within the curtilage of the dwellinghouse. Again, my client recalls these images being of the 1950's, readily aged by the presence of 'Buster'.



Attached at **Annex 10** is an OS Survey (1:25000) map 1937-1961, published 1961. 'Blakeley' is readily identified on the map.

In 1977 a local inquiry was held in respect of a proposed Tree Preservation Order (TPO). The Department of the Environment corresponded with my client on the matter and at **Annex 11** I include their letter dated 25<sup>th</sup> August 1977 to my client at 'Blakeley'.

In 1979 my client had the property valued and at **Annex 12** is the valuation of Bury and Hilton, Chartered Surveyors, dated 16<sup>th</sup> October 1979. The report refers to the bungalow 'Blackley' but from the address and accommodation schedule and description it is clearly 'Blakeley', the subject of this application that is referred to. The schedule usefully describes the accommodation and services. The author correctly referred to there being no '*adverse...Town and Country Planning restrictions*'.

Online records show that 'Blakeley' is classified as a Band A property for Council Tax purposes. At **Annex 13** is a screenshot of 'DirectGov's' website. This shows that the dwellinghouse has the Local Authority reference 39600X, is within Band A and that Council Tax has been paid since 1<sup>st</sup> April 1993, 23 years ago when the Council tax regime was introduced.

Another site 'MyCouncilTax.org.uk' confirms the Band A classification and the current annual Council Tax paid on the dwellinghouse is £1014. Prior to this Community Charge and Local Authority rates would have been paid against the dwellinghouse.

This is quite apart from a few properties in the area that pay business rates on account of them being self-catering holiday units. As a dwellinghouse 'Blakeley' is subject to Council Tax charges

### Final questions

It is evident that the dwelling as a building and use has existed for a considerable period of time, and pre-dates the 'appointed' day of 1st July 1948. Since that date for 65 years the dwelling has been in the ownership of my client's family, having been initially purchased and occupied by her uncle, Mr Eric Abbotts.

To me it is evident that the building and use are immune from enforcement action. The lawful use of the property is as a dwellinghouse (class C3). This could only have been lost if one of three things had occurred, as follows:

- By abandonment
- By the formation of a new planning unit, or
- By way of a material change of use

The use as a dwellinghouse has not been abandoned. That use continues here. Case Law demonstrates that for a residential use of a property to be abandoned a very long time has to have passed. Even where, for example, a property has been empty and derelict for over 30 years, the courts have still held that the residential use has not been abandoned. No new planning unit has been formed and no material change of use has occurred.



## Summary

It is the applicant's submission that there has not been the formation of a new planning unit or a material change of use, either pre-1<sup>st</sup> July 1948 or afterwards. With the dwellinghouse having been developed prior to 1<sup>st</sup> July 1948, the 'appointed day', it is lawful for planning purposes, and immune from enforcement action.

If the Council require further information or clarification upon any point I will be more than happy to assist but am confident that there is sufficient evidence in support of the application for the Certificate to be issued for the described development.

Yours sincerely

*Julian Philcox*

Julian Philcox  
Director

**Mobile 07986 350974**

Enc.

**Annex Document (with 14no. annexes)**  
**Letter dated 28<sup>th</sup> January 2017 from Miss B Warburton**  
**Amended application forms**

