

SUPPORTING STATEMENT



White Gables, Stile House Lane, Bradnop, Nr. Leek, Staffs ST13 7NE

Application to Staffordshire Moorlands District Council
for a Lawful Development Certificate

AFA Planning (Agriculture) Ltd

April 2021

1 INTRODUCTION

1.1 This application seeks to assert that the dwelling known as White Gables, Stile House Lane, Bradnop, Nr Leek, Staffordshire, ST13 7NE is lawful as a dwelling and does not have any agricultural occupancy restriction or any other occupancy restriction appertaining to it, as the result of the imposition of such a restriction by way of a conditioned planning permission. The basic evidence in support of this assertion is that your Authority and the County Council holds no planning history relating to the dwelling.

1.2 My client by making this application is therefore exercising his rights under Section 191 of the Town and Country Planning Act 1990 in order to establish that the dwelling is now lawful, and indeed lawful without any occupancy restriction, this being in view of the facts that it cannot be certain that:

- the dwelling was constructed under the authority of a valid planning permission, or
- any such planning permission ever actually existed, or
- if such a planning permission did exist, that it cannot be proved that the construction of the dwelling amounted to a lawful implementation of the permission, or
- if such a planning permission did exist, that it cannot be proved that it was conditioned by an occupancy restriction.

1.3 Furthermore since the dwelling has indisputably been in existence for more than four years it is immune from enforcement action under planning law. The essence

of the application is not the planning merits or otherwise of the dwelling, but that the dwelling is now lawful and is not subject to any occupancy condition or restriction.



2 THE LAW

2.1 More recent legislation (Localism Act 2011) is discussed at 14.19 ('No concealment'), however the principle law relating to this application is as follows:

2.2 Section 171A of the Town & Country Planning Act 1990 (as amended by Section 10 of the Planning & Compensation Act 1991):

(1) For the purposes of this Act—

(a) carrying out development without the required planning permission;
or

(b) failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of

planning control.

2.3 Section 171B of the Town & Country Planning Act 1990 as amended.

- (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining 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.**
- (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.**
- (3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.**

2.4 S.191 of Town & Country Planning Act 1990 as amended:

- (1) If any person wishes to ascertain whether—**
 - (a) any existing use of buildings or other land is lawful;**
 - (b) any operations which have been carried out in, on, over or under land are lawful; or**

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the planning authority specifying the land and describing the use, operations or other matters.

(2) For the purposes of this Act, uses and operations are lawful at any time if —

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and**
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.**

(3) For the purposes of this Act, any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if —

- (a) the time for taking enforcement action in respect of the failure has then expired; and**
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.**

(4) If, on an application under this section, the planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

- 2.5 Planning Practice Guidance - Lawful Development Certificates makes it clear that anyone can apply to the local planning authority to obtain a decision on whether an existing use or development, or a proposed use or development, is lawful for planning purposes or not.
- 2.6 If the local planning authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate. Where an application has been made under section 191, the statement in a lawful development certificate of what is lawful relates only to the state of affairs on the land at the date of the certificate application.
- 2.7 The applicant is responsible for providing sufficient information to support an application, although a local planning authority needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who then must be given opportunity to comment on it and possibly produce counter-evidence.

- 2.8 In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

3 PLANNING HISTORY

- 3.1 My client purchased the dwelling in 2017 and having spoken to neighbours and to people in the village, it seems the dwelling was built around the period 1977-1978. The style and condition of the dwelling also seems to reflect this. We also have learnt that the two bungalows (which includes Green Hectares Farm to the south) may have been built as a pair, particularly due to their location next to the farm and their design and construction techniques.
- 3.2 Local knowledge suggests they were both farm workers dwellings to the adjoining Stile House Farm. The bungalows were constructed for the farmers 2 sons. It's believed the dwellings were built and occupied, then the adjacent farm sold and the bungalows sold off separately.
- 3.3 My client purchased the dwelling on the assumption that it has an agricultural occupancy condition attached to it, but neither the estate agent nor solicitor have ever had a copy of the planning permission which states the restrictive condition. It was marketed with a note that a tie exists and the google earth street view image actually shows this. The sale was however completed without evidence of the tie.



3.4 My client (Mr Burton - applicant) contact AFA Planning Consultants with a view to looking into the dwelling's history to see if the tie could be removed. We (AFA) have contacted both Staffordshire Moorlands District Council (Hayley Kay) who confirmed no history for the dwelling. They advised I should go to the County Council so have liaised with Vanessa Simcox at Staffordshire County Council and they too have confirmed the site has no history. Both councils seem to suggest records around the 1974 might be in different places due to the reorganisation of the planning function between county and district council. Some records may have been lost in that period. Below is an extract from the County could stating they have no records;

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I've checked our old plotting maps which go back to 1974 (please see below) and there are no Planning References shown for the property in question (circled red).

Kind regards

Vanessa Simcox
Planning Information Officer
Staffordshire County Council



- 3.5 My client has no copy of the planning permission or the plans for the dwelling as we equally wanted to check its siting to see if it had been lawfully implemented.
- 3.6 In the absences of the relevant planning permission histories and because of the passage of time, my client cannot be certain that there was ever any such occupancy restriction in place. This is for obvious reasons critically important in terms of any occupancy breach and any resale value and we feel the only way to formalise this situation is via a certificate.
- 3.7 Our history search went one step further, as the dwelling to the south (Green Hectares Farm) south did have an application to remove an agricultural occupancy condition in 1989 via permission SMD/1988/0296. This was refused on the 8th Feb 1989. The council made these plans available to view in the hope it would shed light onto Mr Burtons dwelling (White Gables) if they were built as a pair. The officer report seems to indicate that they were built as a pair, however the occupancy

restriction being removed is ref LKR 4075/7H, which was the outline consent for the original dwelling. The estate officer report within that application referred to the original outline having been necessary for 3 farmers workers so 1 being the current farmhouse (Stile House Farm) and then permission for the remaining 2 of which White Gables may be one. Therefore, it seems the outline for the farm workers dwellings may have been LKR 4075/7H. Being the outline consent, this is likely to have had the restrictive occupancy condition imposed.

3.8 I again contacted both Staffordshire Moorlands District Council (Hayley Kay) and Vanessa Simcox at the County Council, who both confirmed they do not have the file record. This is therefore where our history trail ends. Our email correspondence regarding this is included at Appendix 'A'.

3.9 Failure to find any record in the Statutory Planning Register of any relevant permission(s) is in itself compelling evidence that no permission has ever existed, or at least if such a permission(s) did exist, it has been lost at some point.

3.10 This is because Section 69 of the Planning Act states that local planning authorities are required to maintain a statutory register of all planning applications and must maintain records of all associated documents as well as information as to the manner in which applications have been dealt with. Furthermore, under the relevant General Development Procedure Order, the Planning Authority is required to keep a record of the date of any planning approval. We accept permissions may get lost over and when LPA reorganise however this permission is critical to my client.

3.11 Therefore in view of these legal obligations placed on your Authority, the fact that no relevant permission can be found on the statutory Planning Register despite a careful search by members of your staff is very strong evidence that no such permission was ever issued.

3.12 It would seem that another potential scenario is that a relevant permission was indeed issued but the details have been mislaid. However, this is purely conjecture as there is no evidence to this effect. In view of the clear statutory obligation on planning authorities to maintain a planning register, it is not reasonable to suggest that this was indeed the case.

4 GROUND FOR THE APPLICATION

4.1 Principle Grounds for the application

The substantive grounds for this application is that your Authority holds no planning history relating to the dwelling and consequently it cannot in law be proved that there ever was any planning permission for the erection of the dwelling or indeed that any occupancy restriction exists. Nevertheless, it is clear that the dwelling has been in existence for many years, certainly well in excess of the 4 year period required to establish lawfulness under the Town & Country Planning Act 1990.

4.2 Other grounds

In addition to the above it is considered that the following very important factors should also be taken into account and are relevant to and support the assertion that the certificate should now be granted.

- 4.3 **i) Future clarity** - If the current state of affairs continues unaltered, the possibility will remain, no matter how remote, that a relevant planning permission perhaps conditioned by an agricultural/forestry occupancy restriction could at some point in the future come to light. One of the main purposes of this application therefore is to ensure that if this did ever happen, my client and any subsequent occupiers would **not** be at risk of enforcement action with respect to any such possible restriction. My client is seeking the issue of a lawful development certificate in order to be sure that even if such a planning permission was ever discovered, the legality of unencumbered residential occupation of the dwelling by non-agriculturally employed persons would not be the subject of any enforcement action and their continued residential occupation of the dwelling would never be in jeopardy due to the discovery of any such permission.
- 4.4 It is therefore assumed that if your Authority does grant the certificate applied for, there will be no possibility whatsoever in the future of your Authority taking the view that the discovery of some relevant permission in any way or in any sense overrides the lawful development certificate and therefore any possible occupancy condition is effective.
- 4.5 This is an absolutely imperative point, that your Authority by issuing the certificate would be guaranteeing that no occupancy condition will ever in the future be regarded as operative. Even if an original planning permission including a possible occupancy condition was later unearthed, if your Authority took any other view, it would be only reasonable to regard this as a very serious abuse of process.

4.6 In respect of this aspect of the application my client further wishes to point out that he is not the creator of current situation. The dwelling was purchased on an understanding that an occupancy condition existed, however none of the former occupiers, estate agents, solicitors or planning team had a copy of the permission where the occupancy condition is detailed. My client has not devised this situation or has in any way connived or engineered it. In fact we have made every attempt to discover the condition through email exchanges.

4.7 It is for the above-mentioned reasons and to provide absolute clarity, that the application is for - *“Dwelling which is without any residential occupancy restriction and which is immune from future enforcement action relating to any residential occupancy restriction.”*

4.8 I acknowledge that this wording is somewhat unusual, however it is considered that it is justified in the circumstances. In any case my client is fully entitled by law to make such an application in view of the fact that S.191 of Town & Country Planning Act 1990 does clearly state that *“If any person wishes to ascertain whether (a) any existing use of buildings or other land is lawful he may make an application for the purpose to the planning authority specifying the land and describing the use, operations or other matters.”* The wording stated on the application form is exactly what my client wishes to ascertain, that is the *“existing use”* (S.191) the lawfulness of which he wishes to establish.

4.9 **ii) Enforcement not taken** - As a result of searches of your Authority's Planning Register, it is clear that the use of the bungalow as a dwelling house does not constitute a contravention of any of the requirements of any enforcement notice, or

breach of condition notice relative to S. 191 (3) (b). In other words, your Authority has not instituted enforcement action the effect of which would have been to 'stop the 4-year clock', the relevant period for the purposes of the application therefore commenced 4 years prior to the date of the application.

4.10 **iii) Enforcement not possible** - As no permission can be found, it cannot be determined whether or not there was ever any kind of occupancy restriction pertinent to the dwelling and that being the case, it is clear that your Authority would certainly not be able to take enforcement action relating to an alleged breach of any such restriction. Any possible enforcement action with respect to a possible breach of an occupancy restriction would of course have to clearly specify exactly what the alleged breach of planning control is. As no planning permission can be found, and equally to the point, since no occupancy condition can be found, such a precise and unambiguous allegation would be impossible to frame. Indeed neither could your Authority specify what steps must be taken to remedy the alleged breach.

4.11 The purpose of this application therefore is to establish in law that whatever may or may not have happened in the past, the dwelling is now lawful by virtue of the 4 year rule and furthermore that the dwelling is not encumbered by any occupancy restriction and no enforcement action relating to an alleged breach of planning control could ever be initiated by your Authority.

4.12 To argue that a relevant planning permission with an occupancy restriction may at some juncture in the future be found and thus enforcement action may one day be possible and therefore this application should be refused, would be palpably contrary to my client's entitlement to natural justice. This is especially so in view of

your Authority's statutory duty to maintain a register of all planning applications and maintain records of all associated documents as well as information as to the manner in which applications have been dealt with. This obligation is reinforced by the relevant General Development Procedure Order.

4.13 **iv) Marketing campaign not possible** - The usual policy of your Authority in respect of applicants seeking to have occupancy conditions lifted would be that any such application must be supported by evidence first obtained by a marketing campaign, to offer the dwelling to any complying potential purchasers at a suitably reduced price.

4.14 However it is clear that such a marketing campaign is not possible in the case of my client's property, due to the fact that it is impossible to know who would comply with any occupancy condition, as no one knows how any such condition is worded, or indeed whether any such condition in reality even exists at all.

4.15 In any case, notwithstanding what may or may not be required in other cases, this application is not in fact an application to have an occupancy condition lifted. It is simply an application for a lawful development certificate which it is well established cannot be conditioned by any occupancy restriction, or indeed by any other matter. The situation therefore is quite simple, either the dwelling is lawful, or it is not and the usual requirement for a pre-application marketing campaign therefore has no bearing on whether or not the certificate applied for should be granted.

4.16 **v) Compliance not possible** - As no permission can at the current time be found, it is not possible for my client or any future occupier to be sure whether or not he/she

is in breach of a possible occupancy condition. In fact, neither can my client be sure that it is lawful to rent the dwelling to a non-agricultural tenant. In view of the above it cannot therefore be reasonable to expect my client or a future occupier to live under such a cloud of uncertainty.

4.17 vi) Certificate of lawful use not possible & Section 73 to remove vary - As no permission at the current time can be found and therefore no one knows how any possible restriction is worded, it is not possible for my client or any future occupier to submit an application for a certificate of lawful use based on an asserted breach of the condition for the last 10 years. Nor is it possible to submit a section 73 application to remove or vary the condition, as we do not know the date of the decision or condition number.

4.18 vii) No concealment - Statutory changes regarding deliberate concealment were introduced by the Localism Act 2011 with consequential additions to Section 171 of the Town & Country Planning Act 1990. These additions to the legal situation meant that applications for certificates can fail where there has been, to any extent, a deliberate concealment of a breach of planning control. However, there is no suggestion, let alone evidence, in this case that anyone has engaged in any kind of deliberate concealment or deception with respect to the occupation of the application dwelling. Therefore, the Localism Act 2011 has no implications for the determination of this application.

4.19 viii) Sale may not be possible - My client may want to sell the dwelling in the future. However, he would not be able sell the dwelling due to its current uncertain planning history and unclear lawfulness. It cannot therefore be reasonable to expect

my client or a future owner to be restricted in this way in terms of the sale of the property.

5 **CONCLUSION**

- 5.1 In the light of the above, I believe that there is sufficient evidence in this case to prove on *the balance of probabilities*, that the dwelling is lawful, and that no occupancy restriction applies to it.
- 5.2 I would emphasise that the relevant evidential test with regard to this is that of *the balance of probability*, not that of *beyond reasonable doubt*, the latter requiring a far stricter standard of proof as applicable to criminal matters. In this case the Authority has a legal obligation under S. 191 (4) of the Act to issue the Certificate if satisfied that the balance of the evidence is probably on the side of the applicant. With respect therefore I would point out that the Authority has no right to insist on a stricter standard of evidence than that of *the balance of probability*. This has in my view been clearly provided and therefore the Certificate should now be issued.
- 5.3 For the avoidance of any doubt either in the present or in the future, the application is worded “*Dwelling which is without any residential occupancy restriction and which is immune from future enforcement action relating to any residential occupancy restriction.*” Should the application be successful therefore, I would ask that this wording is shown on the Certificate.

5.4 I hope that the submitted application and evidence is sufficient to enable you to reach a decision on this case within the statutory 8-week period. If you require any further information, please do not hesitate to contact me.

Appendix A – Email correspondence with the Council

Appendix B – Location plan