

# PLANNING STATEMENT & EVIDENCE STATEMENT

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Location	Land Off Far Lane, Hepworth, Holmfirth.
application	Certificate of Existing Lawful Development – Equine Buildings.
client/applicant	Mr & Mrs B Hodgson
job number	23/953
date	March 2024

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Ltd  
**PAUL MATTHEWS** ARCHITECTURAL

## ARCHITECTURE | PLANNING | DESIGN

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## INTRODUCTION

This application for a Certificate of Existing Lawful Development is submitted to the Local Planning Authority (Kirklees Council) under section 191 of the Town and Country Planning Act 1990 (as amended).

The date of this application is 19th April 2024.

The applicant is Mr & Mrs B Hodgson.

## PLANNING HISTORY

The following planning history has been taken from the public, online database;

Application number	Description	Decision	Decision Date
93/62/05502/W7	Erection of Stable block	Refused	26/01/1994

It is important to note the above refusal was appealed on 24<sup>th</sup> May 1994. The appeal was dismissed on 25<sup>th</sup> August 1994.

## APPLICATION

This application is made under the ten-year immunity rule of Section 171B Town & Country Planning Act 1990 (as amended) – Paragraph (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.*)

The development in question relates to the following aspect of ‘development’ as defined under Section 55 of The Town and Country Planning Act (meaning of development);

*“Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.”*

We contend this application provides relevant and sufficient justification to evidence and support this application to enable the LPPA to issue the certificate of lawfulness for the existing equine buildings.

The erection of the equine buildings and associated equine use of the land has been carried out and used for in excess of ten years prior to the date of this application.

This application relates to the buildings and equine yard within the shaded red area, all as identified on the accompanying location plan and block plan. The red line area, not shaded in red, simply identifies the access to the stable yard as has been enjoyed for in excess of 10 years but not included within this certificate of lawfulness application.

The overall land ownership is indicated on the Land Registry plan within Appendix A of this document.

Accompanying this application, within Appendix B, is a series of documentation and letters from others that clearly support this certificate of lawfulness application to assist in demonstrating on the *balance of probabilities* that a material change of use and operational development has taken place for in excess of 10 years prior to the date of this application.

Appendix B contains the following documentary evidence;

- A statement from the land owners (family members of the applicants).
- Evidence of Veterinary visits to the application site and formal confirmation from one of the Donaldsons Vets directors that the visits were all carried out at the application site.
- A letter from Mr D Taylor confirming the equine use of the site along with stable maintenance.
- Photo of Mr D Taylor on site in 1995.
- Letter confirming the stable yard from Ian & Andrea Mallinson.
- Letter from Tom Pears (Farrier) confirming visits to the subject stables to shoe various horses and ponies on a regular basis for well over 10 years and confirming the stable-yard has been in situ for well over 20 years.
- Receipts for materials used in the construction of the stable roof covering (dated 19/07/2013).
- Evidence of the purchase of the land.
- Letter from Willowbank Builders, dated 28<sup>th</sup> January 2024 confirming Mr Harvey Singleton carried out the construction works of the barn including the roof covering on the application site (cross referencing the Land Registry document in appendix A) in July/August 2013.

We contend this application, when considered as a whole, demonstrates the 'balance of probability' in favour of the application.

Google earth historic images, going back over the years, clearly show the structures dating back to June 2009, as noted on the June 2009 extract below.



The Kirklees gazetteer system, dated 2012 aerial, also shows the structures existing on site in 2012, as indicated below;



The barn structure (general storage, hay and feed store) was constructed in July/August 2013. Please refer to the Willowbank Builders letter dated 28<sup>th</sup> January 2024 within appendix B of this statement for verification on this.

#### **LAWFUL DEVELOPMENT LEGISLATION**

The legislation sets out (Section 191 – 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 local planning authority specifying the land and describing the use, operations or other matter.”*

Point A & B above are relevant on this application.

Section 191 (2) goes on to state:

*“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.*

*Section 171B confirms the time limits for enforcement action;*

*(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.*

Statutory requirements of the Town and Country Planning (Development Management Procedure) Order 2010

As required by this secondary legislation, Part 8 (39) states that such an application must be accompanied by the following information (responses shown in RED):

(a) A plan identifying the land to which the application relates drawn to an identified scale and showing the direction of North; (SUBMITTED WITH THIS APPLICATION - SEE THE ACCOMPANYING 1:1250 LOCATION PLAN, AND 1:500 EXISTING BLOCK PLAN)

(b) such evidence verifying the information included in the application as the applicant can provide; (PLANNING & EVIDENCE STATEMENT ALONG WITH THE APPENDICES) and;

(c) A statement setting out the applicant's interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application. THE APPLICANT MR & MRS BEN HODGSON ARE FAMILY MEMBERS OF THE LAND OWNERS WHO ARE THE FREEHOLD OWNER OF THE PROPERTY AND LAND IN QUESTION – REFER TO THE LETTER, WITHIN APENDIX B, FROM RICHARD & DIANA COE (THE LAND OWNERS).

Guidance and case law for Lawful Development Certificate applications

The National Planning Practice Guidance 'Lawful Development Certificates', paragraph 006, states; *"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."*

Case law notes that the '**balance of probability**' test is less onerous than that of '**beyond reasonable doubt**'. Moreover, the courts have held that the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted (*Gabbitas v Secretary of State for the Environment and Newham LBC [1985] J.P.L. 630*).

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## SITE HISTORY & INFORMATION

Land as indicated on the land registry plan, as shown in appendix A, was purchased by Mr & Mrs Coe back in 1993.

The land has been continuously used, since its purchase back in 1993, for grazing and exercising horses on the field, also within the applicants family ownership has also been mowed to produce hay feed for the horses. (NB This field is not included within the redline boundary).

An application was made to Kirklees planning for stables in November 1993. The planning application was refused with the subsequent appeal dismissed in August 1994.

It is assumed that the stables were erected sometime between August 1994 and December 2001 (assuming at the time of the appeal the construction had not commenced yet showing in place on google earth aerials in December 2001) a poor quality image but more clear on the 2002 aerial image below;



The barn, used for general storage and hay/feed store was erected, as noted within documentation/evidence within appendix B (see Willowbank letter dated 28<sup>th</sup> January 2024) in July/August 2013.

## **EVIDENCE OF LAWFULNESS**

Appendix B contains Witness Statements/declaration from people familiar with the site, land and use.

Although the site is remote and tucked away we contend no attempt has been made to conceal the development.

Various documents within Appendix B of this statement provide detailed evidence.

We contend this statement along with the appendices demonstrates that the equine buildings, within the shaded red area on the accompanying OS plans, evidences the continuous use to be well in excess of ten years.

## **CONCLUSION**

It is submitted that the existing equine buildings are lawful at the date of this application under Section 191 of the Town & Country Planning Act.

The evidence listed and within the appendices is considered to be sufficiently precise and unambiguous to prove, on the balance of probabilities, that the equine buildings have been in situ and continuous use for a period of more than ten years from the date of this application. This comprises the minimum required ten-year immunity time period before the date of this S191 Certificate of Lawfulness application.

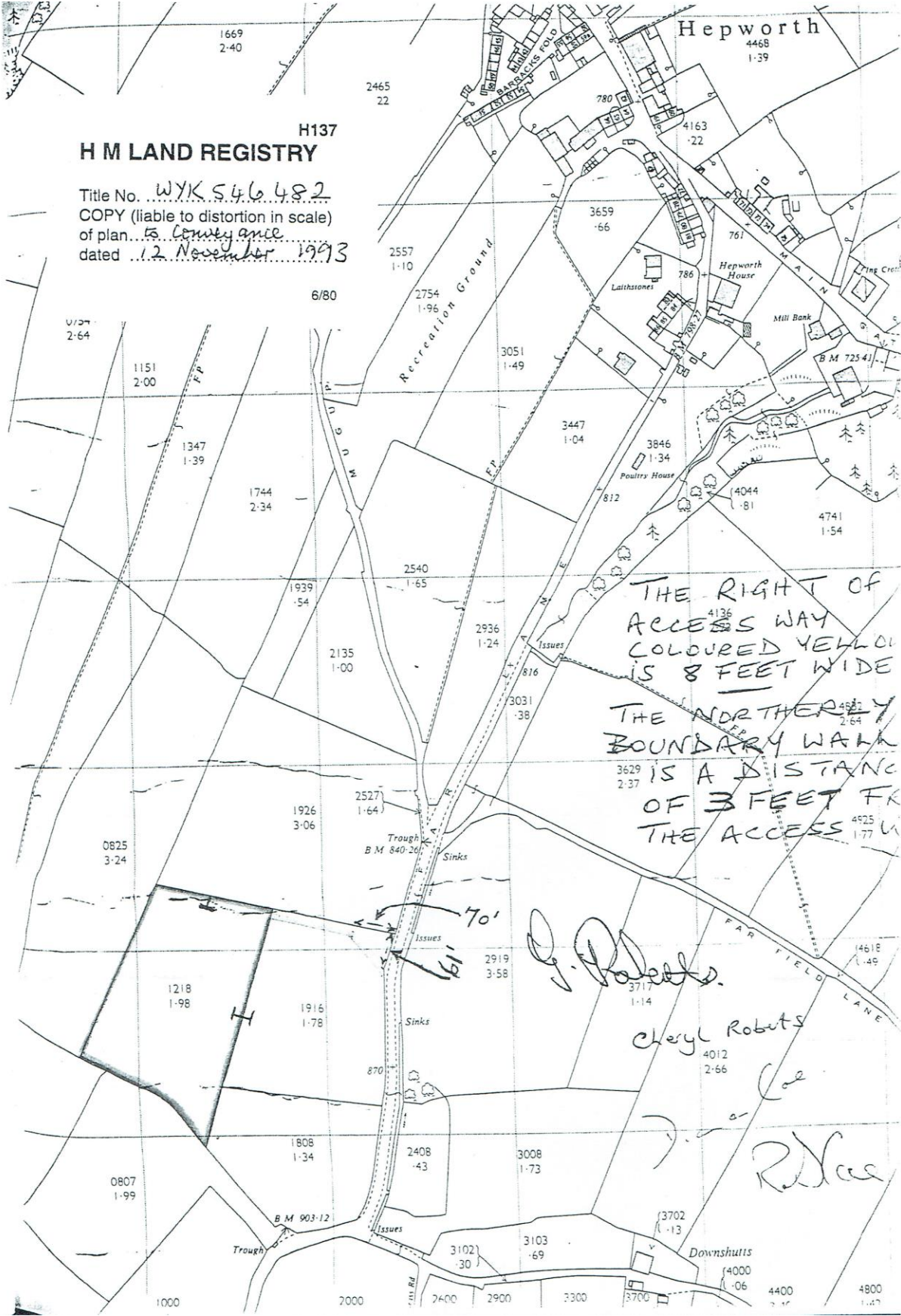
Finally, as the Planning Practice Guidance recommends, at paragraph 006, should the Local Authority obtain its own evidence, this needs to be shared with the applicant to enable comment and the opportunity, if necessary, to produce counter-evidence. In light of the above, we respectfully submit that the aforementioned development is indeed lawful, and request that the Local Planning Authority grant the Certificate of Lawfulness accordingly.

Should any further information or clarification be required please don't hesitate to contact us.

It would be appreciated if you could contact Paul Matthews Architectural Ltd prior to drafting up your recommendation for determination.

# **APPENDIX A**

**Land Registry Plan (WYK 546482)**



**H137  
H M LAND REGISTRY**

Title No. WYK 546 482  
 COPY (liable to distortion in scale)  
 of plan 15 Countyance  
 dated 12 November 1993

THE RIGHT OF  
 ACCESS WAY  
 COLOURED YELLOW  
 IS 8 FEET WIDE  
 THE NORTHERLY  
 BOUNDARY WALL  
 IS A DISTANCE  
 OF 3 FEET FR  
 THE ACCESS

*G. Roberts*  
 Cheryl Roberts  
*Col*  
*Roberts*