



H.F.T. GOUGH & Co.

SOLICITORS

38/42 Lowther Street, Whitehaven, Cumbria, CA28 7JU

Telephone: 01946 692461

Fax: 01946 692015

e-mail: admin@goughs-solicitors.com

The Head of Planning & Place
Cumberland Council
The Market Hall
Market Place
Whitehaven
Cumbria CA28 7JG

Your Ref:

Our Ref: MTS/MF/0240

Date: 23 January 2025

Contact: Michael Sandelands

Dear Sirs

**Re: Town and Country Planning Act 1990 – Lawful Development Certificate
Existing Development – The Development and Occupation of a Single Dwelling House
Waltham Nursery, The Green, Millom LA18 5JD**

The application is submitted under Section 191 of the Town and Country Planning Act 1990 (as amended) (TCPA) to certify the lawfulness of the above operations and use.

The planning unit is considered to be on the land shown edged red on the plan attached to the Statement of Truth dated 17th January 2025 as RMB1. The application is submitted to ascertain the lawfulness of the operations carried out on the land to construct a dwelling and the use of the building constructed as a single dwellinghouse.

Pursuant to Section 191(2)(a) the use and operations are lawful because no enforcement action may be taken in respect of them because the time for enforcement action has expired. If the Local Planning Authority (LPA) is satisfied with the information provided to them of the lawfulness at the time the application of the use and operations they should issue the certificate. The standard of proof is the balance of probabilities and therefore if the LPA concludes that it is more likely than not that the use and operations are lawful the burden of proof is discharged and the certificate should be granted.

In considering the application as to whether to issue a certificate the Local Authority should consider Section 191(5). The applicant respectfully suggests the correct responses should be as follows:

(a) Specify the land – the land shown edged red on plan RMB1 under the Statement Declaration dated 17 January 2025 identifies the land.

(b) the building operations to construct a dwellinghouse were completed immediately prior to the 16 November 2013 and subsequently the use of the building as a single self-contained dwellinghouse commenced on the 16 November 2013 and has continued without interruption to the date of this application.

(c) the reasons for determining the use and operations are lawful are that in terms of the operations to construct the dwelling these operations were substantially completed on the 16 November 2013. The use and occupation of the dwellinghouse began on the 16 November 2013 and has continued uninterrupted at all times thereafter. the operations were substantially completed and the use commenced before 25 April 2024.

No enforcement action was instigated by the LPA in the four years immediately following the 16 November 2013. 4 years without any enforcement action the development is lawful. The time limits for taking enforcement action in relation to the breaches of planning control were exceeded on 17 November 2017. The operations and use have become lawful in planning terms and should be certified by such by a Lawful Development Certificate under Section 191 of TCPA 1990.

The applicant acknowledges by virtue of TCPA 1990 Section 171BA the Local Planning Authority may apply to the Court to obtain a Planning Enforcement Order allowing enforcement action to be taken outside the time periods set out in Section 171(b) TCPA 1990 in cases of deliberate concealment. This is not such a case. The development has been undertaken and the building occupied as a dwelling without openly and without secrecy. The property is in close proximity to a public bridleway and railway line and is clearly in public view. Furthermore, there is substantial evidence which indicates that significant numbers of local residents and the wider community being aware of the dwelling's existence. This is supported by the individual letters accompanying the application. The dwelling has not been concealed.

Furthermore, it is not considered to be just, with regard to all the circumstances, that the council should apply for an Order which an action taking into account all material facts and the public interest. Section 191 of the TCPA is method of certifying the lawfulness of the dwelling.

If the council requires any additional information or clarification, please do not hesitate to contact us.

Yours faithfully

H F T Gough & Co