

Land adjacent to 4a Wiswell Lane, Whalley, BB7 9AF

Application for a Certificate of Lawfulness in respect of use of land as an existing dwellinghouse along with its associated curtilage (garden, driveway, areas of hardstanding).

SUPPORTING STATEMENT

January 2025

REPORT CONTROL

Document type	Supporting Statement
Project	4a Wiswell Lane
Client	John Atherton
Job Number	25-2246

Document Checking

Primary Author	Edward James
Contributor	
Reviewer	Daniel Hughes

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/1 Introduction

- 1.1. PWA Planning is retained by Mr John Atherton ('the applicant') to progress an application for a Certificate of Lawfulness (LDC) to confirm the use of land as an existing dwellinghouse along with its associated curtilage (garden, driveway, areas of hardstanding) at Land adjacent to 4a Wiswell Lane, Whalley, BB7 9AF ('the application site') is lawful.
- 1.2. The applicant had lived at the 4 Wiswell Lane for over ten years, before he sold the property in 2017 and moved into his father's house next door. His father's house had been an annex to the main house but was now used as a separate dwelling (4a). This was initially going to be a temporary arrangement whilst they obtained planning consent for new dwellings in the land associated with 4 Wiswell Lane. Following this, there were a number of consents on the wider site relating to an increase in dwellings (see Section 2), this included an extension to 4a and a new dwelling on the land to the southwest of the application site in March 2020.
- 1.3. Before and at the time of the above approval, the applicant's father had been ill and to ensure that he could be around to care for him, the applicant decided to build a new annex in the form of a mobile home. This is the building that this application relates to.
- 1.4. Construction of the building began in March 2020, with the first parts of the structure erected in June 2020. Sadly, in the same summer, the applicant's father passed away and this therefore changed the initial reasons for the structure. Following this, it was decided that other family members would move into 4a Wiswell Lane, whilst the applicant would use the new annex as living accommodation. It was also decided that the the new dwelling would be sold off (now known as 4b Wiswell Lane).
- 1.5. As set out above, it was the applicant's understanding that the building as now built was a temporary annex mobile home and therefore did not require planning permission. Nevertheless, since the building was complete, there were a number of neighbour complaints, and the applicant had ongoing discussions with the LPA's Enforcement Officer regarding the structure.

- 1.6. Following the above, a pre-application request was submitted to the LPA (Ref: RV/2020/ENQ/00108) in October 2020, with the response received in January 2021. It was the LPA's view that the building required consent. Following this, the applicant kept in correspondence with the LPA, and it was constructively agreed a planning application should be submitted to regularise the development.
- 1.7. The works on the dwelling were substantially complete by the end of December 2020, with the applicant fully moved into the property by the end of February 2021.
- 1.8. An application was submitted in October 2024 (Ref: 3/2024/0851), however was recommended for refusal on design and highway grounds. The planning committee upheld the Officer's reasons for refusal at the 09 January 2025 planning committee, and a decision notice was received on 10 January 2025.
- 1.9. Following the above, the applicant seeks formal confirmation that the dwelling and use of the curtilage are lawful by virtue of the passage of time, given they were erected well over 4 years ago.
- 1.10. The statement consists of Section 2 – Planning History, Section 3 – Relevant Legislation, Section 4 – Establishing Existing Use/Development, Section 5 – Planning Comment and Section 6 – Conclusion. It should be read in conjunction with all the documents submitted as part of the lawful development certificate application. These comprise:
- Completed Application Form;
 - Location Plan;
 - Supporting Statement (this document) including:
 - Appendix A – Existing Site Plan and Existing Plan and Elevations
 - Appendix B – Aerial Images
 - Appendix C – Enforcement Letter July 2020
 - Appendix D – Correspondence with LPA
 - Appendix E – Pre-application Enquiry
 - Appendix F – Statutory Declaration

/2 PLANNING HISTORY

- 2.1. The application site and its immediate surroundings have been subject to a planning history search on Ribble Valley Borough Councils planning register.
- 2.2. The following applications are considered relevant to the proposal:
- **3/2020/0006** – Proposed extension and erection of new single storey dwelling to replace existing residential caravan. (Approved March 2020)
 - **3/2024/0851** – Retrospective planning application for the retention of a single dwelling house and associated parking, soft and hard landscaping and associated works. (Refused January 2025)
- 2.3. Whilst the above 2020 application does not directly relate to the building subject to this certificate of lawfulness, the proposals within the application (extension to 4a and new dwelling, now sold off) are those which resulted in the applicant constructing the dwelling in question. The above application was approved in March 2020, with the building work of the dwelling beginning the same month and substantially completed by the end of December 2020. Whilst it is noted that the dwelling was not included within the above approval, and therefore that the lawfulness of the dwelling and its curtilage are not certified, over four years have passed since its substantial completion and therefore the applicant has the right to submit a certificate of lawfulness.
- 2.4. The applicant also received letters from the Council's planning enforcement team in July 2020 and October 2021. Following this a Planning Contravention Notice (PCN) was served on the applicant in October 2022, and this was responded to in the same month by the applicant. Following this, a letter (December 2022) was sent to the applicant to follow up on this PCN response. Whilst the applicant has been in continuous engagement with the Council and submitted an application (Ref: 3/2024/0851) to regularise the development (which was recently refused), there has been no further enforcement action following the December 2022 letter. What is now clear is that the dwelling and its curtilage have become lawful by virtue of time (4 years), and in this case no enforcement action can be taken, as the works are by definition lawful.

/3 RELEVANT LEGISLATION

3.1. Section 191 of the Town and Country Planning Act 1990 states that: -

(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.

(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.*

(3A) In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if—

- (a) the time for applying for an order under section 171BA(1) (a "planning enforcement order") in relation to the matter has not expired,*

(b) an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or

I a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired

(4) If, on an application under this section, the local 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 local 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.

(5) A certificate under this section shall—

(a) specify the land to which it relates;

(b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);

I give the reasons for determining the use, operations or other matter to be lawful; and

(d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

(7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission—

(a) section 3(3) of the Caravan Sites and Control of Development Act 1960 [or section 7(1) of the Mobile Homes (Wales) Act 2013;]

(b) section 5(2) of the Control of Pollution Act 1974; and

I section 36(2)(a) of the Environmental Protection Act 1990.]

- 3.2. Section 171 of the Town and Country Planning Act sets the time limits for enforcement where there has been a breach of planning control.
- 3.3. In April 2024, the then government made amendments to the Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024. As part of this Regulation 3(b) brings into force section 115 of the 2023 Act. Section 115 amends section 171B(1) and (2) of the 1990 Act to extend the time period in which local planning authorities can take enforcement action against unauthorized development in England from **4 to 10 years**. This came into force on 25th April 2024.
- 3.4. Nevertheless, within the same set of amendments, the below transitional provision for time limits on enforcement was included:

5. The amendments made to the 1990 Act by section 115 of the 2023 Act (time limits for enforcement) do not apply where—

*(a) in respect of a breach of planning control referred to in section 171B(1) of the 1990 Act (b) (time limits), the operations were **substantially completed**, or*

(b) in respect of a breach of planning control referred to in section 171B(2) of the 1990 Act (time limits), the breach occurred,

before the day on which that section comes into force.

- 3.5. With the above in mind, if works were substantially completed before the 25th April 2024, the 4 year rule still applies. In the applicant's case, it is pretty clear that the works were substantially complete before this date.

Need for precision in certificates

- 3.6. There is nothing in Section 191 of the Act to suggest that in issuing a Certificate of Lawfulness a local planning authority may attach conditions. It follows that someone who commenced a use in breach of planning control and escapes enforcement action for the

time limit period could be in a better position than one who applied for planning permission to which conditions were attached. This problem is addressed in the Planning Practice Guidance at Paragraph 010, reference ID 17c-010-20140306:

""Precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it. It is important to note that:

- a certificate for existing use must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a use class. But where it is within a "use class", a certificate must also specify the relevant "class". In all cases, the description needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to therefore spell out the characteristics of the matter so as to define it unambiguously and with precision. This is particularly important for uses which do not fall within any "use class" (i.e. "sui generis" use); and*
- where a certificate is granted for one use on a "planning unit" which is in mixed or composite use, that situation may need to be carefully reflected in the certificate. Failure to do so may result in a loss of control over any subsequent intensification of the certificated use.*

- 3.7. The wording of the Certificate as outlined in Section 1 of this statement is considered to be accurate and reflective of the site in question which forms 1no. dwelling and associated curtilage (including garden, parking and hardstanding). This application provides sufficient evidence to demonstrate that the development of the dwelling and associated curtilage is lawful within the 4-year rule.

Certification process under Section 191: Obligation to Apply

- 3.8. There is no obligation on a landowner to make an application under either S.191 or S.192; the matter is entirely at their discretion.
- 3.9. If the landowner has complete confidence in his planning title, then he should supply the relevant information, if requested, in the form of statutory declarations submitted to the local planning authority, showing that the use in question is lawful by virtue of immunity.

- 3.10. In accordance with the legislation, the submitted application form provides the information required by Part (3) (a), (b) and (d). The purpose of this statement is to expand upon the information provided and to explain the reasoning for determining that the operations and use would be lawful.

Onus on Proof

- 3.11. It is understood that the onus of proof in a certificate of lawfulness application is on the applicant. The standard of proof in respect of a certificate is on the balance of probability.
- 3.12. It was held in *F. W. Gabbittas v Secretary of State and Newham London Borough Council* [1985] J.P.L 630 that an applicant's own evidence is not required to be corroborated by independent evidence in order to be accepted. Further, if the local planning authority or an Inspector have no evidence of their own or from third parties to contradict or otherwise dispute the applicant's version of events, rendering them less than probable, then 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 the certificate on the balance of probability. If, however, there are contradictions in the applicant's evidence on material issues, then the local planning authority would be entitled to refuse the certificate. Further, the local planning authority is entitled to treat hearsay evidence with caution if it is entirely uncorroborated.
- 3.13. In this case it is considered that the evidential documentation submitted in support of the existing development and use of the dwelling, detailed at Section 4 and 5 below, is conclusive.

/4 ESTABLISHING EXISTING STRUCTURE AND USE

- 4.1. The site in question is land adjacent to 4a Wiswell Lane, which is a single dwelling house and associated garden, driveway and areas of hardstanding. The site initially comprised of vacant land, used as garden space for 4a Wiswell Lane. The existing site plan, plan and elevations are included within Appendix A of this statement.
- 4.2. As set out above within the Section 3, works are required to be “substantially complete” before the 25th April 2025. As set out within the leading case of *Sage v Secretary of State for the Environment, Transport and the Regions [2003] UKHL 22*, “regard should be had to the totality of the operations which the person originally contemplated and intended to carry out” and if a developer has “stopped short of what he contemplated and intended ... the building ... can properly be treated as an uncompleted building against which the four-year period has not yet begun to run”.
- 4.3. Further to the above, in the case of *Gravesham Borough Council v Secretary of State for the Environment (1984) 47 P. & C.R. 142*, the key characteristic of a dwelling house is “its ability to afford to those who use it the facilities required for day-to-day private domestic existence”. In this instance, if facilities have not yet been installed it is unlikely that the building is substantially complete. However, the case does not suggest that the building needs to be in use, and more that it needs to be capable of use for its intended purpose.
- 4.4. The below paragraphs set a timeline for when the construction of the development begun to its intended residential use.
- 4.5. Ground works to the property began in March 2020. Appendix B includes an historic timeline of Google Earth aerial photographs dating back to April 2020. The image in April 2020 clearly shows the groundwork undertaken for the development. As shown within these images, first sight of the dwelling and associated landscaping (pond and decking) and hardstanding is seen in the April 2021 image. Whilst there is a gap in the imagery between April 2020 and April 2021, the below correspondence and evidence confirms that the Council were aware that the dwelling was under construction and subsequently built in 2020.
- 4.6. The first correspondence received from the Council are letters from the Enforcement Officer in July 2020 (Appendix C). In these letters, the Officer states that “an alleged new structure” or “mobile home” is under construction at the site, and the Council are therefore aware of

the development. Whilst the 24th July 2020 letter shows the Council's position on why they consider the building could not be considered a moveable structure, it highlights a point in time for when the Council knew the structure was under construction.

- 4.7. The second piece of evidence relates to emails sent between the applicant and the Council in August 2020 (Appendix D). The email (dated 18th August 2020) from the applicant seeks to set out why he considers the structure to be a mobile home and moveable. The responding email from the Council (dated 19th August 2020) continues their position on the structure requiring planning consent. Importantly, the email from the Council describes the development as "primary living accommodation". With this in mind, the Council must have had the view that the structure was at a stage of construction where it could be described as such.
- 4.8. Following the above, a pre-application submission was made in October 2020. Appendix E includes the pre-application request form, the Applicant's contextual statement submitted with the pre-application request and the Council's response (dated January 2021).
- 4.9. As set out within the applicant's contextual statement, *"construction of the chalet started in March 2020 and much of the external structure was completed by early June"*. Although within the same statement, the applicant advises *"I still intend to use the new chalet as extra living accommodation as soon as we finish it"*, this related to the final works internally on the structure before it could be lived in.
- 4.10. It has been confirmed by the Applicant that internal fittings (bathroom and kitchen) were installed by the end of December 2020, with the applicant moving into the property by the end of February 2021. Given that the internal fittings were installed by the end of December 2020 and therefore the dwelling can be deemed substantially completed, it is considered that the 4-year time period for a lawful development certificate should begin on 1 January 2021.
- 4.11. To confirm the series of events are accurate, the applicant has prepared and signed a statutory declaration which is included within Appendix F.
- 4.12. As set out within the pre-application response (dated 13 January 2021), the proposal is named as the "erection of a single dwelling/annex". The Officer also states, *"given the nature of the accommodation provided and its self-contained nature I consider the structure*

would be considered as being 'ancillary' to the main household and not 'incidental'". In this respect, it is clear by this date that the Council consider the structure as self-contained accommodation which can be lived within. It is at this period in time that the works at the site can be considered as "substantially complete".

- 4.13. On the basis that the building and use of the property as C3 residential has been in place for over 4 years, by virtue of the passage of time, has become lawful, meaning that enforcement action can no longer be taken against the development. The Applicant has not received any enforcement action requiring the structure to be demolished, however they are applying for a certificate of lawfulness to confirm the lawful development and use of the site to regularise the planning title.
- 4.14. Overall, the evidence above confirms that the structure was substantially completed and used as a residential dwelling over 4 years ago.

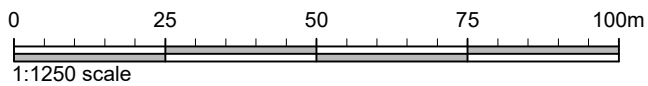
/5 CONCLUSION

5.1. This lawful development certificate application seeks the following:

"Application for a Certificate of Lawfulness in respect of use of land as an existing dwellinghouse along with its associated curtilage (garden, driveway, areas of hardstanding)."

5.2. Considering all of the above and the submitted evidence, it is clear that all of the matters claimed to be lawful are indeed so. In accordance with the NPPG, it is considered that the evidence provided is sufficiently precise and unambiguous to justify the grant of a certificate. Accordingly, based on the evidence provided, it is clear that the applicant would be entitled to a certificate to this effect.

Appendix A – Existing Site Plan and Existing Plan and Elevations



This drawing is to be read in conjunction with all relevant Architect, consultants' and specialists' drawings and specifications. The Architect is to be notified of any discrepancies before proceeding. All dimensions and levels are to be checked on site. This drawing is subject to copyright. All work carried out before Planning and Building Permission has been granted is at the contractor/clients risk.

Note: proposed drawing based on OS dwg information. All illustrated dimensions are approximate and all site dimensions are to be checked on site and subject to site survey.

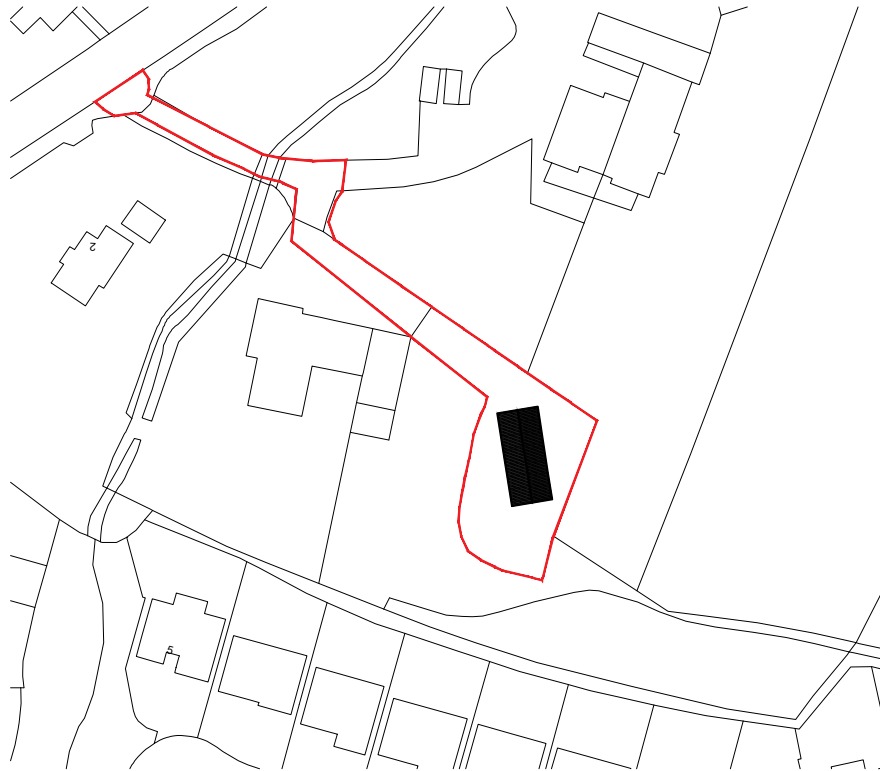
Rev A - 24.09.2024 - Building Location Amended

Rev B - 02.10.2024 - Red Line Amended

Rev C - 03.10.2024 - "Do not scale" removed

Rev D - 22.10.2024 - Red Line Amended

Rev E - 22.10.2024 - Red Line Amended



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LOCATION PLAN SCALE 1:1250

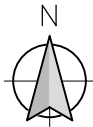


EXISTING SITE PLAN SCALE 1:200



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C	BWT	'Do not scale' removed	03.10.2024
B	BWT	Parking Added	02.10.2024
A	BWT	Topographical Survey Added and Building Position Amended	24.09.2024

Client
Mr J Atherton

Job Title
**Moorgill Lodge at
4a Wiswell Lane,
Whalley
BB7 9AF**

Drawing Title
Existing Site Plan

Scale	Date	Drawn
1:200 @ A3	October 2020	BT

spa
SUNDERLAND PEACOCK ARCHITECTS
SUNDERLAND PEACOCK & ASSOCIATES LTD.
HAZELMERE, PIMLICO ROAD, CLITHEROE
LANCASHIRE, BB7 2AG
T 01200 423178 F 01200 427328
E info@sunderlandpeacock.com
www.sunderlandpeacock.com

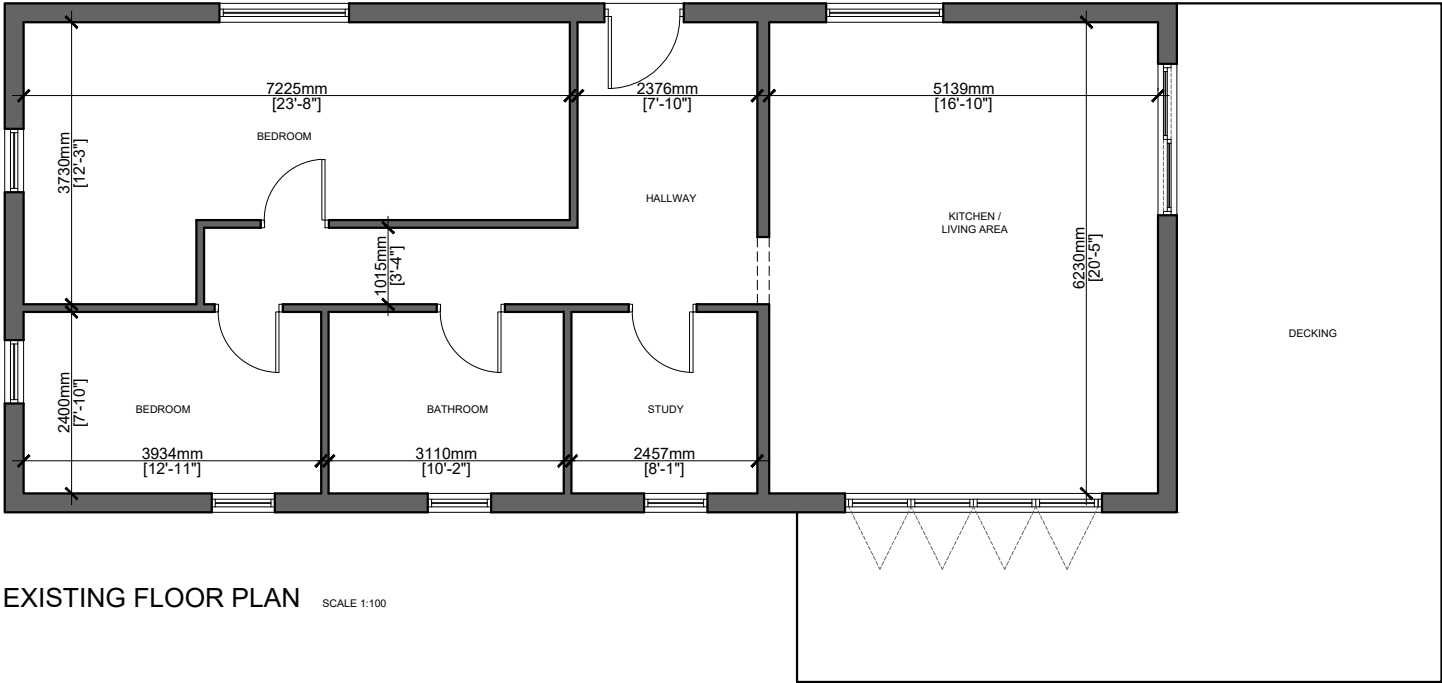


6180 -E01

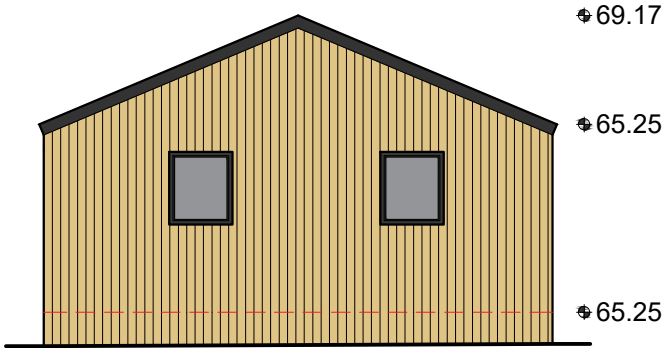
REV
C

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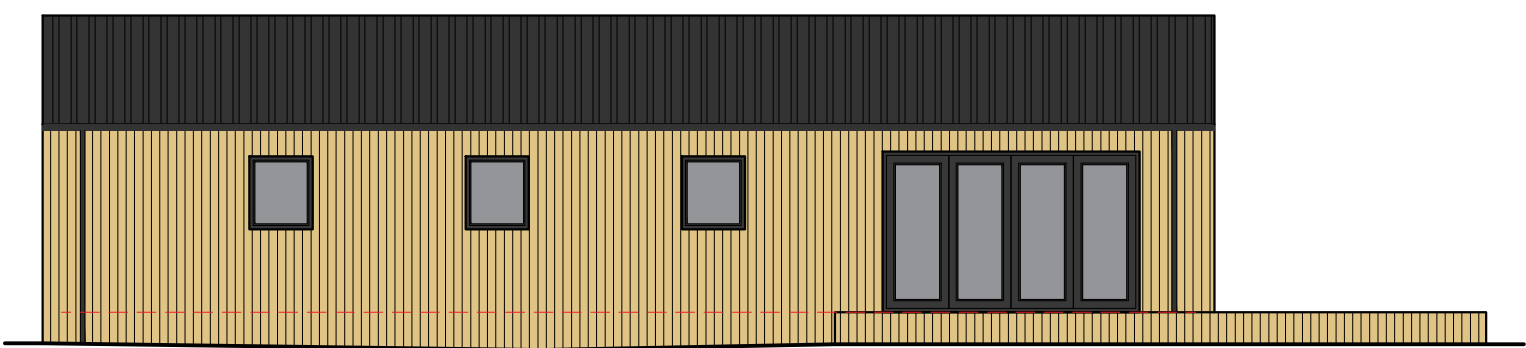
Note: proposed drawing based on OS dwg information. All illustrated dimensions are approximate and all site dimensions are to be checked on site and subject to site survey.



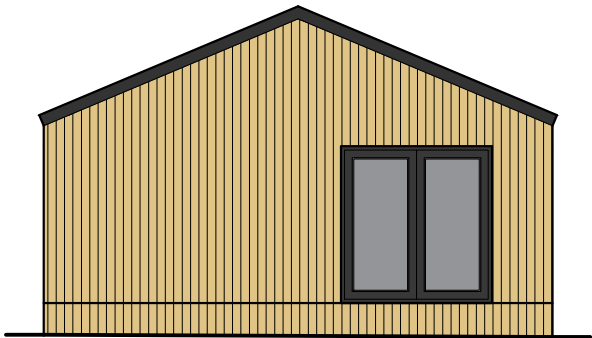
EXISTING FLOOR PLAN SCALE 1:100



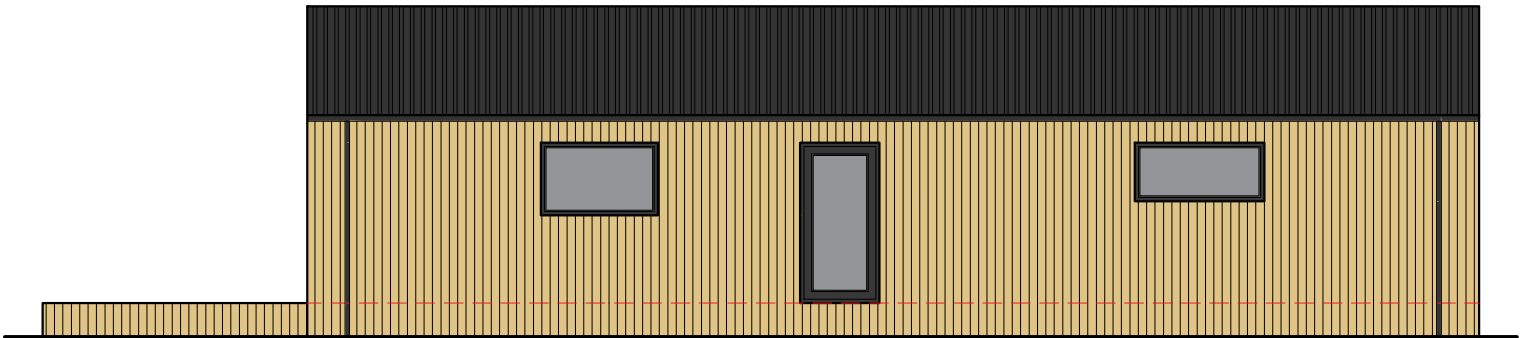
Datum 63.00 FFL 63.00
EXISTING NORTH FACING ELEVATION SCALE 1:100



Datum 63.00
EXISTING WEST FACING ELEVATION SCALE 1:100



Datum 63.00
EXISTING SOUTH FACING ELEVATION SCALE 1:100



Datum 63.00
EXISTING EAST FACING ELEVATION SCALE 1:100

D	03.10.2024	'Do not scale' removed	BT
C	24.09.2024	Amended following topographical survey	BT
B	22.10.2020	Window Added on Elevation	BT
A	21.10.2020	Floor Plan Added	BT

Client
Mr J Atherton

Job Title
Moorgill Lodge at
4a Wiswell Lane,
Whalley
BB7 9AF

Drawing Title Existing Elevations		
Scale 1:200 @ A3	Date October 2020	Drawn BT

spa
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SUNDERLAND PEACOCK & ASSOCIATES LTD.
HAZELMERE, PIMLICO ROAD, CLITHEROE
LANCASHIRE, BB7 2AG
T 01200 423178 F 01200 427328
E info@sunderlandpeacock.com
www.sunderlandpeacock.com

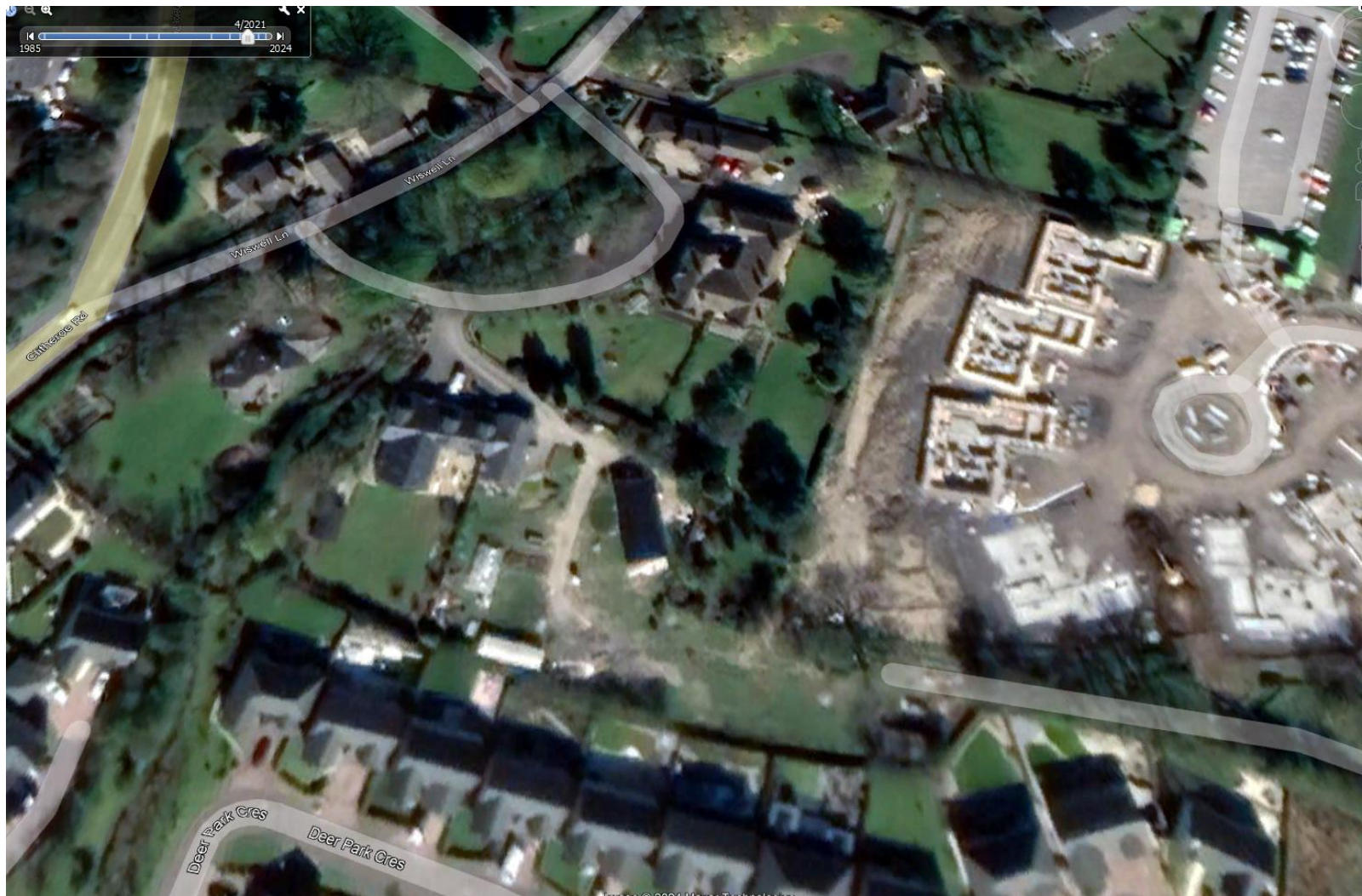


6180 -E02 REV D

Appendix B – Aerial Images



April 2020



April 2021



September 2021



June 2022



June 2023



October 2024

Appendix C – Enforcement Letters July 2020

RIBBLE VALLEY BOROUGH COUNCIL



please ask for: Mr A Glover
direct line: 01200 413209
e-mail: andy.glover@ribblevalley.gov.uk
my ref:
your ref:
date: 16 July 2020

Council Offices
Church Walk
CLITHEROE
Lancashire BB7 2RA

Switchboard: 01200 425111
Fax: 01200 414488
www.ribblevalley.gov.uk

Dear Mr Atherton

ALLEGED BREACH OF PLANNING CONTROL RE: 4a WISWELL LANE, WHALLEY BB7 9AF

I am writing to you as the owner of the property at 4a Wiswell Lane, Whalley.

A number of confidential complaints have been received stating that a breach of planning control may have occurred at the above address. For ease of reference these are itemised below:

1) Alleged incorrect positioning of the property

I am aware of planning consent 3/2020/0006, which grants approval for the extension / erection of a new single storey dwelling. Condition 2 of this consent states that the development at the site must be carried out in accordance with approved plans, including site plan 58.19 03 (copy attached). It is alleged that the new single storey dwelling is not built in the approved position but has been rotated through 45 degrees, and as a result the sight lines have a negative impact on properties in the vicinity.

2) Alleged non-compliance with proposed elevations

Condition 2 above also approves elevations as set out in 58.19-07 (copy attached). It is alleged that the actual installation of windows differs from the arrangement set out in the approved plan.

3) Alleged new structure without planning approval

It is alleged that a new structure (erected around a hooped frame) is under construction, without this being identified in consent 3/2020/0006.

Mr J Atherton
4a Wiswell Lane
Whalley
Lancs
BB7 9AF

Finally, the Council has received a query asking how long you would intend to retain the caravan on site as the development activity progresses. It is noted that planning consent 3/2020/0006 grants approval for development which is intended to "replace existing residential caravan", and it would be helpful if the Council could be made aware of your thinking in this regard.

The Council is carrying out preliminary investigations into this matter and will consider what, if any, action to take. I would be grateful if you could please call me directly on 01200 413209 or write to me within seven days at the above address. If during the course of our conversation or correspondence, it becomes clear that a breach of planning control has taken place, the Council will consider enforcement action, which may result in a prosecution.

If you feel that no breach has been committed by you, it is in everyone's interests that this is established as soon as possible. Even if a breach has been committed it is possible that this could be remedied without recourse to the Courts.

If it would help to establish the true position, I am of course willing to visit the site in your presence and view the development first-hand. The purpose of this visit would be to identify the precise location of the new property and assess whether any issues of non-compliance are identified; confirm whether any additional planning consents may be needed; and to discuss next steps. Please note that any such visit would need to comply with social distancing arrangements.

The Council's officers have to do what they can to establish the facts. They would be grateful for your cooperation in this regard.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'A. Glover'.

Andy Glover
Enforcement Officer (Part Time)

RIBBLE VALLEY BOROUGH COUNCIL



please ask for: Mr A Glover
direct line: 01200 413209
e-mail: andy.glover@ribblevalley.gov.uk
my ref:
your ref:
date: 24 July 2020

Council Offices
Church Walk
CLITHEROE
Lancashire BB7 2RA

Switchboard: 01200 425111
Fax: 01200 414488
www.ribblevalley.gov.uk

Dear Mr Atherton

ALLEGED BREACH OF PLANNING CONTROL RE: 4a WISWELL LANE, WHALLEY BB7 9AF

As you will recall, I wrote to you on 16 July 2020 in relation to alleged breaches of planning control at the above address. The concerns as then understood related to possible non-compliance with planning consent 3/2020/0006, although my site visit on 22 July established a different scenario; it was established that a "mobile home" was in the process of construction (intended as an annexe to the existing residential property). It was agreed that I would take advice on the matter from a senior Planning colleague and come back to you with an indication of the Council's stance.

In relation to the mobile home, I note your comments that the structure meets the definition of a mobile home as defined in regulations. Specifically, you indicated that the regulatory definition required a mobile home to meet certain criteria:

- it should fall within certain dimensions (20m x 6m x 3m in height, floor to ceiling);
- it should be assembled in two parts which were bolted together to form a single unit; and
- it should be capable of being relocated.

During the visit, the structure was measured at 18.9m x 6.58m x 2.4m in height (floor to ceiling), ie it did indeed approximately fall within the specified dimensions. It was also assembled in two parts which you confirmed would be bolted together. However, the issue of whether the mobile home can be moved is rather more contentious.

Discussions with my Planning colleagues have confirmed that the definition of a mobile home is relevant only for the purposes of site licences which relate to commercial mobile home establishments, and do not apply to structures located solely in a residential setting. In terms of whether planning consent is required, it is therefore necessary to apply general principles and consider the following issues:

Mr J Atherton
4a Wiswell Lane
Whalley
Lancs
BB7 9AF

a) Does Permitted Development apply?

Under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, the structure would be considered an outbuilding. To fall within Permitted Development, an outbuilding which is within 2m of boundary of the curtilage of a dwelling house must not exceed 2.5m in height (or 3m in any other case). It is likely that the height of the structure (including the height to the apex) will exceed these approved dimensions and therefore Permitted Development will not apply.

b) Is the structure permanent / immovable?

I am advised that, from a Planning perspective, the sheer size of the structure will render it permanent and immovable. It would not be practical for a crane of an appropriate size to access the site and physically relocate the structure on a regular basis. (I am aware of your view that the practicalities of movement are irrelevant, but again this approach would be restricted to mobile homes in scenarios covered by the regulations, ie in situations relating to residential sites).

I must therefore advise that an application for planning consent to retain the structure should be submitted to the Local Planning Authority. You can apply to Ribble Valley Borough Council for planning consent by contacting the Council's Planning Department (reception telephone 01200 414499). Alternatively, it is possible to apply online for planning permission, or access a wealth of helpful information, via the Planning Portal. This can be found at:

<https://www.planningportal.co.uk/applications>

The application must provide sufficient information for the Council to decide the application; otherwise it may be refused. Often the issues involved in applications are complex and you may feel that you would benefit by obtaining professional advice. You may therefore wish to engage a Planning Consultant to assist with this process on your behalf.

Alternatively, should you disagree with the views expressed in this letter and wish to retain the structure, you could seek official clarification of the position by applying for a Lawful Development Certificate (LDC) under the Town and Country Planning Act 1990 (section 191 as amended by section 10 of the Planning and Compensation Act 1991). The Council cannot require you to apply for a LDC but this proposal would represent a means of ensuring that the existing use of the mobile home is lawful for planning purposes or that your use does not require planning permission.

Please note that (i) a fee is payable to apply for any application and (ii) each application is a matter for the Planning department to determine on its individual merit, so I can give no assurance at this stage about the outcome of a particular application.

I must request that you contact me within 2 weeks of the date of receipt of this letter to let me know your intentions in relation to this matter.

The other matter discussed during my visit was that of the polytunnel. Again, this matter has been considered by senior Planners and I can confirm that the Council is not proposing to take any further action with regard to the polytunnel.

I would like to thank you for your willingness to meet me on site and engage with the Council on this matter. I look forward to receiving your further comments in due course.

Yours sincerely

A handwritten signature in cursive script that reads "A. Glover". The signature is written in dark ink and is positioned above the printed name.

Andy Glover
Enforcement Officer (Part Time)



1/2

Appendix D – Correspondence with LPA

John Atherton

From: Andy Glover (Andy.Glover@ribblevalley.gov.uk) <Andy.Glover@ribblevalley.gov.uk>
Sent: 19 August 2020 12:23
To: John Atherton
Subject: RE: 4a Wiswell Lane, Whalley

Dear Mr Atherton

Thank you for your detailed response, the contents of which are noted. I have now had the opportunity to raise your comments with a senior Planning colleague in the Council; unfortunately I am writing to advise that, after due consideration, the Council's view remains the same and an application for planning consent is indeed required. In the Council's opinion, the structure does amount to "development" within the legal definition and constitutes primary living accommodation. Whilst we would accept that it may be technically "moveable", in reality the Council does not accept that this can be achieved.

I must therefore ask that you confirm, within the next 2 weeks, whether you intend to submit an application. If you remain minded not to submit, regret to advise that I will be obliged to seek guidance from the Council's Head of Legal and Democratic Services and Director of Economic Development and Planning as to whether any formal enforcement action is appropriate.

Please be assured that the Council appreciates your willingness to date to engage with us on this issue, and any enforcement action will be very much a matter of last resort. Nonetheless, it would be wrong of me to rule this out at this stage.

Yours sincerely

Andy

From: John Atherton <john@athertons-uk.com>
Sent: 18 August 2020 07:27
To: Andy Glover <Andy.Glover@ribblevalley.gov.uk>
Subject: FW: 4a Wiswell Lane, Whalley

Dear Andy

I apologise again for the delay in getting back to you, but I now write with some proposals and thoughts as to how we should proceed from here. I can assure you that we don't want to cause any controversy or do anything underhand – I am sure there is a solution amongst your suggested options /plans of attack that you put to me in your letter dated 24 July.

You basically set out your initial opinion that the structure neither conforms to it being a "mobile home" nor "Permitted Development" and as such you suggest that a planning application may be necessary.

1. I believe that we are creating a mobile home – that is our intention and we have designed it accordingly. It's size, location and usage as part of my family unit, in my opinion, clearly exempts it from Planning Control. (I will expand on this below).
2. As such, we have not "developed" for reasons I also give below – so a Lawful Development Certificate would be inappropriate.
3. We believe we can prove that it is a moveable structure in accordance with much Case Law on the subject. There are the principles of "Construction" and "Mobility" that need to be passed. And I do genuinely believe that we pass both with flying colours. I will be happy to pass on all notes referring to these cases.

I have taken some advice from Graham Love, a local Planning Consultant and also informal Counsel Opinion and I now copy an extract from an email that Graham sent me earlier today: -

John,

The meaning of 'development' is defined at Section 55(1) of the Town and Country Planning Act 1990 as "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."

Therefore, the siting of a non-permanent / non-afixed (i.e. moveable) structure on land is not development comprising building, engineering, mining or other operations in, on, over or under land. It could be a change of use of land if a caravan was siting on a field and occupied, but in this case a caravan / mobile home being used as living accomodation on land within the curtilage of a residential property is not a change of use.

It is arguable that the structure is therefore neither operational development nor a material change of use of land requiring planning permission.

Section 55(2)(d) adds clarification. It says "The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land - the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such"

This is also reflected in Schedule 1 of the Caravan Sites and Control of Development Act 1960 which confirms that; *"A site licence shall not be required for the use of land as a caravan site if the use is incidental to the enjoyment as such of a dwellinghouse within the curtilage of which the land is situated."*

There is a difference in law between "incidental" and "ancillary" - you will need to explain how the structure will be used (which will influence what facilities it contains) in conjunction with the house.

You therefore need to tell the enforcement officer that you disagree with his view that due to its size the structure is permanent and immovable. It is not a question of whether it is permitted development (i.e. development for which automatic planning permission is granted). It is your view that it is not development at all - i.e. it falls outside the definition of development and therefore the scope of planning control.

You will of course have to prove that the structure is not permanent - i.e. no foundations and how it is disassembled / moved - given that it doesn't have wheels. There is much Case Law to support your stance here.

Graham also goes on to point out that the original planning application that I made last year for a permanent separate dwelling was unsuccessful largely on the grounds that it would create an eighth dwelling which would mean that an access onto the highway would need to be 5.5m wide. This was in fact wrong - it only creates six such dwellings – and as such the existing width would suffice. But making another planning application is not something that I would like to do – I genuinely only want the new property to be an annexe as outlined above, but if all else fails, it looks like this would be successful. However, I say again that I believe this is unnecessary and again – inappropriate..... and it would create risk and stress that I would dearly like to avoid!

We seem to be stuck between two stools here – hopefully there is an easy solution that satisfies all concerned.

There are a couple of changes that could be made on site that I would be very happy to meet with you to discuss further once you have had chance to take further advice.

Kind regards
John

John Atherton MRICS

Director

Tel 01254 822722 or 07977 512210

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Tops for resident satisfaction – 79% of residents are satisfied with Ribble Valley as a place to live (Perception Survey 2018)

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Appendix E – Pre-application Enquiry

The Council is a public authority for the purposes of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. Applicants under this legislation may request copies of any information that we hold, and, unless exemptions/exceptions apply, we must supply the requested information to them. Please see the attached notes.

In providing information to us, you understand and agree that all of the information supplied by you to us, could be disclosed to third parties (including to your competitors).

If you consider that any of the information that you give to us is confidential or commercially sensitive, you must: (i) provide it in a separate document; and (ii) mark it as such (and provide an explanation, where this is not self-evident).

If we receive a request for such information, we will take your views into account. However, the final decision as to whether or not to disclose the information will remain the Council's.



Ribble Valley Borough Council

REQUEST FOR PRE-APPLICATION ADVICE

Please complete all sections – see overleaf for guidance notes.
DO NOT DELETE OR REMOVE ANY PART OF THIS FORM

THE PLANNING DEPARTMENT NO LONGER ADVISE WHETHER OR NOT PERMISSION IS REQUIRED. IF YOU REQUIRE CONFIRMATION OF THIS TYPE, PLEASE SUBMIT AN APPLICATION FOR A LAWFUL DEVELOPMENT CERTIFICATE FOR THE PROPOSED DEVELOPMENT. SUCH AN APPLICATION COSTS HALF THE NORMAL PLANNING FEE. DOWNLOADABLE GUIDANCE NOTES AND THE RELEVANT FORMS CAN BE FOUND ON THE COUNCIL'S WEB PAGES AT
https://www.ribblevalley.gov.uk/info/200361/planning_applications/1542/forms_for_planning_applications

For Householder development only, further guidance on whether or not you need planning permission can be found at <http://www.planningportal.gov.uk/permission/> however, these guidelines **do not** apply to any addresses that do not have Permitted Development Rights. We therefore advise that before consulting the planning portal you first check the planning history of your property to find out whether or not these Rights have been removed. If they have, then planning permission will automatically be required for any development proposed at the site.

1. Address of proposed work

MOORGILL LODGE 4A WISWELL LANE
WHALLEY BB7 9AF

2. Your/Applicant's name and address

JOHN ATHERTON
4A WISWELL LANE
WHALLEY
BB7 9AF
Tel No: 07977 512210
e-mail: john@athertons-uk.com

Name/Address of Planning Agent/Architect
(our response will be sent to this address)

Tel No:
e-mail:

3. Please provide a brief description of your proposed development, and write the questions you wish to ask (continue on a separate sheet if necessary).

WE HAVE CONSTRUCTED A STRUCTURE IN MY GARDEN
- PLEASE SEE ACCOMPANYING DOCUMENTS

Please enclose your supporting information and fee (see overleaf)

☐

Please tick if you **only** require a written response

☒

Please tick if you require a meeting* with a written response

☐

Please tick if you require a FAST TRACK pre-application response (+50% fee increase)

For all enquiries, please provide the following supporting information: -

- Location plan showing the site (Including at least two street names and at a recognised scale of 1:1250 where possible)
- Sketch plans of the proposed work (site plan, elevations, floor plans)
- Draft design and access/heritage statement where appropriate
- Photos of the existing site and surroundings may also be helpful, along with confirmation of the current use of the land/buildings

If insufficient information is given with your request, we may not be able to provide advice.

I enclose the fee of £ 250 and understand that no refunds will be given
Signed..... *John S. Atherton* (Print name) JOHN S. ATHERTON
Dated 16/10/20

Completed request forms, together with the supporting information and fee should be sent to:

Planning Department
Ribble Valley Borough Council
Council Offices
Church Walk
CLITHEROE
Lancashire BB7 2RA

Requests accompanied by insufficient information or payment will not be considered. We will contact you if this is the case, and if you have not validated your enquiry within six months we will dispose of your submission. Please do not send your request by email as we do not have the equipment to deal with it.

**Please see guidance notes for temporary changes to meetings during the Covid-19 emergency.*

Building Regulations

Building Regulations apply to the majority of new buildings, extensions, structural alterations, alterations to bathrooms, loft conversions and some detached buildings. If you are unsure of the requirements, further information may be obtained from any of our Building Control Surveyors on (01200) 425111, or visit our web pages,

http://www.ribblevalley.gov.uk/info/200141/building_control

If the regulations apply to your proposals, then it is necessary to obtain Building Regulation consent. If you wish to receive the necessary forms, please tick the box.

☐

The Current Situation (2.10.20)

Re: 4a Wiswell Lane, Whalley BB7 9AF

In 2017, I sold 4 Wiswell Lane, where I had lived for over ten years, and moved into my dad's house - next door - which had been an annexe to the main house but now was used as a separate dwelling. The move was, I thought, going to be a brief and temporary arrangement, until we obtained planning consent for new dwelling(s) in the garden, one of which it was my intention to move into so that I could be near to care for my dad in his last years – but enjoying my own space albeit in the near vicinity.

We started the planning application process over three years ago. Unfortunately, there were several delays and, largely as a result of poorly conducted applications (by my planning consultant at the time) we failed to gain an appropriate consent until February this year.

For reasons I will expand on later, we ended up with a couple of refusals but finally succeeded with a consent, having reduced the number of dwellings to one new one and the extension of the existing dwelling to form a large four-bedroom home. I attach a copy of the consent.

It was only on receipt of this consent that we had the idea of a new annex in the form of a mobile home that I could live in whilst caring for my dad whose health was slowly deteriorating. Prior to starting construction, we looked into all the rules and regulations regarding construction, size, movability and usage in order to be compliant and it seemed clear and non-contentious just to get on with it as we then proceeded to do.

Construction of the chalet started in March and much of the external structure was completed by early June.

Sadly, my father passed away on 16th July. This has obviously changed the initial reasons for the structure. After much family discussion, my son and his girlfriend are now going to move into the main house and I still intend to use the new chalet as extra living accommodation as soon as we finish it. We will then create the extension to the main house in the immediate future. I have detailed my family circumstances in more detail in earlier correspondence with the Council - I attach my "Assessment of Personal Circumstances" which summarises how we are going to use the property as a family enclave.

I have enclosed photographs of the chalet and a plan showing its position, elevations and floor plan. Basically, it is of timber frame and panel construction with Siberian larch cladding and a corrugated sheeted black roof. The structure has no foundations and rests on several concrete plinths.

1. The facts to establish the structure as a 'mobile home'

We maintain that we have satisfied the statutory rules and conditions of a mobile home and that we intend to use it correctly, in accordance with Planning Law legislation, Common Law Court Cases and Appeal Decisions that relate closely to our circumstances.

However, I received a letter from the RVBC Enforcement Officer (coincidentally dated 16th July, 2020) stating that, having received several letters of complaint from neighbours, the Council

required an explanation of what the structure is, alleging that we may have contravened Planning Control rules.

I promptly replied with the facts of the situation, outlining everything that we had done. There have been several exchanges of correspondence since. I have also had several telephone discussions with the Enforcement Officer and it transpires that the Council's main bone of contention is that they consider that all the rules, regulations and definitions of what a 'mobile home' that we have followed are, in fact, irrelevant to this situation, since they believe that such rules only relate to structures built on 'registered/licensed sites' – and not in a domestic situation such as this.

This is clearly an incorrect opinion for the following reasons:

- 1. Schedule 1 of The Caravan Sites & Development Act 1960 confirms that “a site licence shall not be required for the use of the land as a caravan site if the use is incidental to the enjoyment, as such, of a dwelling house within the curtilage of which the land is situated.”**
- 2. As such, Section 13 of The Caravan Sites Act 1968 applies. The definitions therein include the tests and rules that apply to constructions of this nature i.e. there are defined sizes, mobility and construction tests that need to be passed. There are also Planning Control rules in terms of occupation of the structure that need to be adhered to in order to be allowable as a mobile home and annexe to the main residence.**
- 3. We believe that we have proved that the structure is neither operational development (as defined by Section 55 (1) of The Town and Country Planning Act 1990) nor a material change of use of the land, requiring planning permission (as clarified by Section 55 (2) (d) of the same Act).**

I have attached a Planning Statement which successfully proved the case for a Certificate of Lawfulness being granted for the siting of a mobile home, in a domestic situation, by Barnsley Borough Council in 2018.

The circumstances of this case are very similar to my own and, rather than rewrite the detail of the arguments herein, I would ask that you regard the points made in that report as being of complete relevance to my circumstances.

So in summary of the above, I believe I have provided what I consider to be a watertight argument and justification that this structure is in fact a mobile home; moreover, that the siting of it within my curtilage for purposes ancillary to the main dwelling does NOT constitute operational development or a material change of use.

2. Pre-Application Advice for a Planning Application to define the structure as a permanent separate dwelling

Notwithstanding the above opinion (which RVBC have certainly not concurred with to date!), I would like to seek your advice regarding a potential planning application for consent to grant permission for its existence as a new, separate dwelling, as advised by the Enforcement Officer.

An application for a new dwelling on the site (number 3/2018/1017) was refused on 27th February 2019 (I have attached a copy). On re-reading the Decision Notice and the associated notes of explanation, a summary of the issues raised by the application is as follows:

i. LCC Highways

This was the major issue which, at the time, seemed insurmountable. However, my planning consultant failed to address the fundamental issue raised.

Basically, the Highways Officer was of the opinion that, if approved, the existing access onto the highway would serve eight dwellings and, as such, would require a minimum width of 5.5 metres; the current gateway is less than this and currently not capable of being widened. If less than eight dwellings, the existing access would in fact be satisfactory.

The fact of the matter is that, if this structure were to be approved as a separate dwelling, it would only be the sixth dwelling that the access would be serving – and therefore acceptable..... ie consent for this new dwelling would mean that only six dwellings would have a legal right of way to use this access.

If all the other issues raised by RVBC can be satisfied in terms of planning control (i.e. design, materials etc), I intend to submit a Pre-Application Enquiry to LCC Highways to address this issue with them. Assuming this is positive, I will then submit a full planning application for a separate dwelling. These issues raised in the Decision Notice are summarised as follows: -

ii. Lead Local Flood Authority

As long as we can provide sufficient information for them, proving that there are no watercourses within eight metres of the construction, they would be satisfied. This has been done.

iii. United Utilities

No objections, subject to conditions - that we have met and addressed.

iv. National Planning Policy Framework

It was considered that the development complies with all Key Statements.

v. Impact on Residential Amenity

All issues have been addressed within the revised planning consent that was granted in February this year.

The structure now existing has no adverse impact on neighbours' amenity. It is sited in an acceptable position and is not visually detrimental to the character of the area. Its external

appearance and materials used in its construction are the same as the proposed bungalow that was included in the planning consent.

vi. Landscape and Ecology

No issues.

vii. Drainage

Potential issues were raised and have all now been addressed.

So in summary, I believe we have addressed all the issues that were raised as potential objections to the original planning application (although I understand that the highways issue will need to be addressed with the Highways Officer).

So on reflection, it may be that the best way for us to proceed is via a full retrospective planning application for a new, separate dwelling.

Your advice as to how you feel it best to proceed will be gratefully received.

John S Atherton

October 2020



Ribble Valley
Borough Council

www.ribblevalley.gov.uk

RIBBLE VALLEY BOROUGH COUNCIL

Officer:	Stephen Kilmartin	Direct Tel:	01200 414555	Council Offices	
Email:	stephen.kilmartin@ribblevalley.gov.uk			Church Walk	
Our Ref:	RV/2020/ENQ/00108			Clitheroe	
Location:	Moorgill Lodge			Lancashire BB7 2RA	
Proposal:	Erection of single dwelling/annex			Tel: 01200 425111	Fax: 01200 414487
Date:	13/01/21				

Pre-Application Enquiry Response

Dear Mr Atherton,

I write further to your submission of a request for pre-application advice relating to 4a Wiswell lane, Whalley. The enquiry seeks the Council's views as to firstly whether the structure requires planning permission and secondly as to whether if such consent is required, the likelihood of such consent being granted.

As you will be aware the site is located within the defined settlement boundary for Whalley. As such, the policies that are relevant to the determination of the proposal are considered to be as follows:

Relevant Core Strategy Policies:

- Key Statement DS1 – Development Strategy
- Key Statement DMI2 – Transport Considerations
- Policy DMG1 – General Considerations
- Policy DMG2 – Strategic Considerations
- Policy DMG3 – Transport and Mobility
- Policy DMH5 – Residential and Curtilage Extensions
- National Planning Policy Framework (NPPF)

Principle of Development:

Contrary to the advice you have submitted in support of your enquiry it is my view that the structure will require full planning permission. Given the nature of the accommodation provided and its self-contained nature I consider the structure would be considered as being 'ancillary' to the main household and not 'incidental'. As such it is my view that the proposal could not be considered to benefit from the exemptions afforded under Section 55 of the Town and Country Planning Act.

You will note that the Permitted Development Rights for Householders Technical Guidance 2019 provides some guidance on this matter stating that:

'A purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.'

Given it is my view that the proposed structure would require consent, I will now turn to the matter as to whether it is the view of the authority that the proposal would be viewed favourably if an application was

made to seek formal consent. Taking account of the recent consent granted in association with application 3/2020/0006 and taking account of the proposed siting and scale of the structure to which this enquiry relates, it is my view that addition of an additional structure will result in a discordant pattern of development that fails to respond positively to the inherent pattern of development found in the vicinity that will result in an incongruous and discordant cramped form of development.

It is further my view that the proposed structure, by virtue of its design, external appearance and materiality will also appear discordant and anomalous when taking account of the character and external appearance of surrounding built form and the inherent character of the area.

Conclusion:

As such, taking account of all matters raised, it is the opinion of the authority that the proposal not only requires planning consent but also that it could not be supported insofar that it would result in detriment to the character and visual amenities of the area.

Submission Requirements:

Should you proceed to submission of a formal full application, based on the nature of the proposal/site constraints identified above, it is my opinion that the Local Planning Authority would require the following information to accompany such an application to allow for an accurate assessment:

- Application forms
- Location plan
- Existing and Proposed Site Plan
- Elevations and floor plans (dimensioned, existing and proposed) – of all buildings
- Topographic survey
- Existing and proposed site sections
- Existing and proposed land levels
- Drainage details
- Arboricultural Impact Assessment (where applicable)
- Ecological Appraisal (where applicable)

Please note this aforementioned required information may not be exhaustive and is provided on the basis of the level of information submitted. Failure to provide required information is likely to result in an application being made invalid until such information is received or potentially refused on the basis of insufficient information.

Please also be advised that Lancashire County Council provide a separate, chargeable pre-application service for highway related matters. You should contact the County Council directly to discuss any such issues - <https://www.lancashire.gov.uk/business/business-services/pre-planning-application-advice-service/pre-planning-application-highways-advice-service>

The above observations have been provided on the basis of the level of information submitted and the comments contained within this response represent officer opinion only, at the time of writing, without prejudice to the final determination of any application submitted.

Should you wish to discuss any of these matters further please do not hesitate to contact me.

Yours Sincerely

Stephen Kilmartin
Principal Planning and Urban Design Officer
Stephen.Kilmartin@ribblevalley.gov.uk

Appendix F – Statutory Declaration

In the matter of an application for a certificate of lawfulness

Land adjacent to 4a Wiswell Lane, Whalley, BB7 9AF

Construction and use of the dwelling and residential curtilage

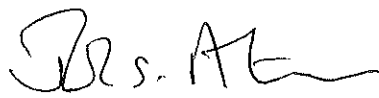
STATUTORY DECLARATION

I, JOHN ATHERTON, DO SOLEMNLY AND SINCERELY DELCLARE as follows:-

1. I, John Atherton, own the land at Land adjacent to 4a Wiswell Lane, Whalley, BB7 9AF.
2. In April 2020, works began on the construction of the dwelling, soft landscaping and hardstanding, with the first parts of structure erected by June 2020. Windows, doors and internal fittings (kitchen and bathroom) were all installed by the end of December 2020. I moved into the dwelling by the end of February 2021.
3. The soft landscaping and hardstanding works have not significantly changed from January 2021, however additional plants and flowers have been added to the garden.
4. Since it was constructed, the dwelling has always been intended and occupied as a residential property with use of the associated garden.

and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act 1835.

Declared at:



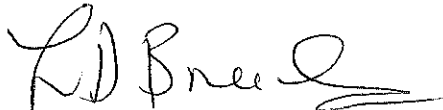
JOHN STEPHEN ATHERTON.

BARROW, LANCASHIRE

Date:

21 JANUARY 2025

Before me:



LEE DAVID BRIENLEY

Solicitor

Manchester

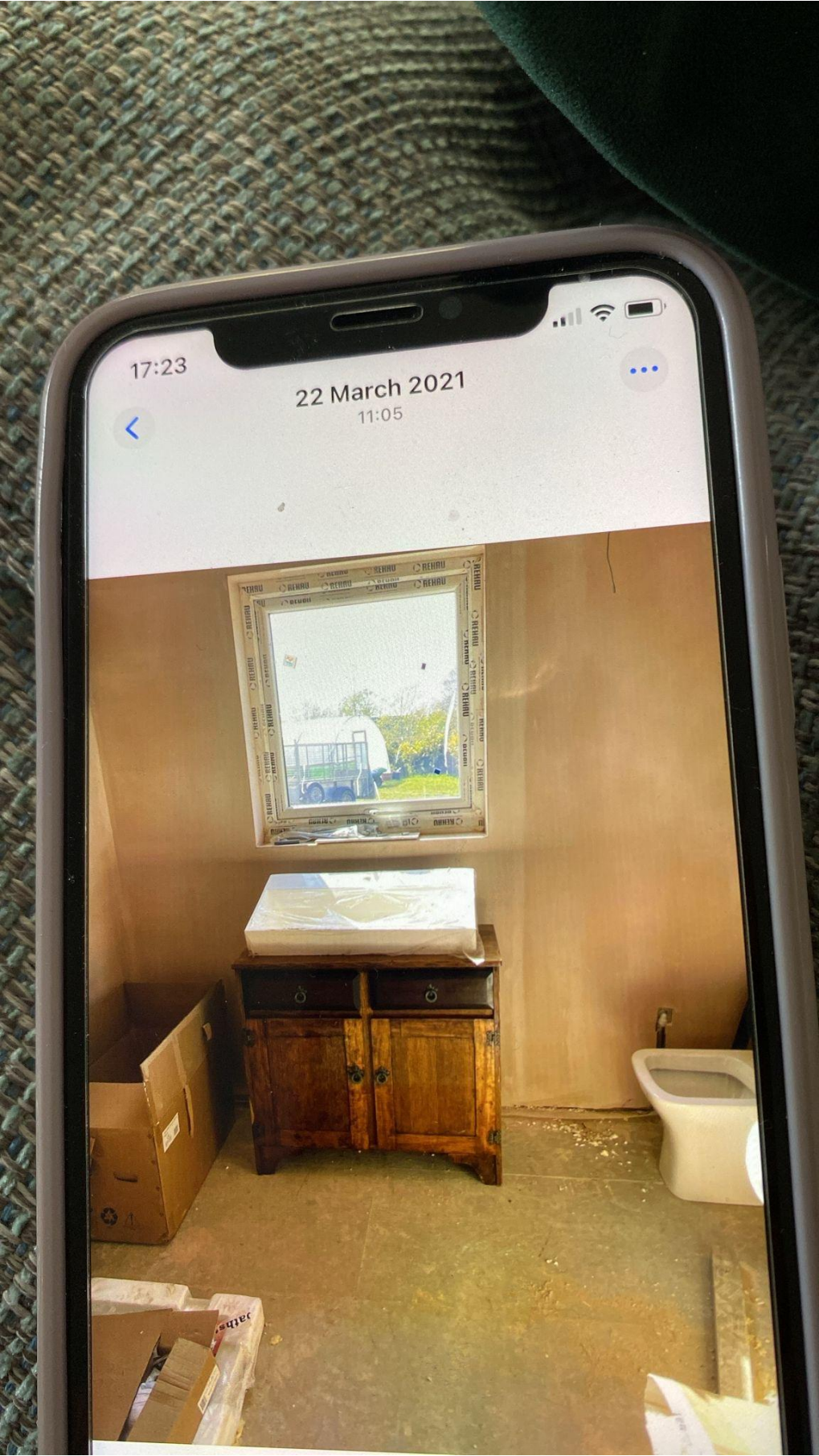


PWA Planning Ltd
Eastgate
2 Castle Street
Manchester
M3 4LZ

0161 883 7069

www.pwaplanning.co.uk

Appendix 10 – Photos of Kitchen and Bathroom in March 2021



...

12 March 2021
12:19

