Certificate of Lawfulness Supporting Statement

2 Green Bank Park, Higher Road, Longridge, PR3 2XY

Prepared for:
NGJ Holdings Ltd

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Contents

/1 Introduction 4

/2 Planning History 5

/3 Relevant Legislation 8

/4 Establishing Existing Use 14

/5 Assessment of Evidence 16

/6 Conclusion 20

/1 Introduction

1.1.1. PWA Planning is instructed by NGJ Holdings Ltd ("the applicant") to submit an application for a Certificate of Lawfulness (LDC) to confirm the existing development and use of 2 Green Bank Park, Higher Road, Longridge as a permanent, independent residential dwellinghouse (Use Class C3) in breach of Condition 4 of planning permission ref 3/2006/0673/P.

1.1.2. The site has previously obtained planning permission for 45no. holiday lodges. However, since their construction, they have been utilised solely for residential purposes. The applicant is now seeking formal confirmation that the continued use of Unit no. 2 for residential purposes is lawful, by virtue of the passage of time.

1.1.3. This Statement consists of the following sections; Section 2 – Planning History; Section 3 – Relevant Legislation; Section 4 – Establishing Existing Use; Section 5; Assessment of Evidence; and Section 6 – Conclusion.

1.1.4. This Statement should be read in conjunction with the documents submitted as part of the Lawful Development Certificate application. They comprise;

- Completed Application Form;
- Location Plan;
- Existing Site Plan;
- Supporting Statement (this document) including separate supporting documents:
    - Appendix 1 – Relevant Planning Decision (3/2006/0673);
    - Appendix 2 – Certificate of Completion;
    - Appendix 3 – Accounting Records;
    - Appendix 4 – Tenancy Agreements; and
    - Appendix 5 – Inventories and Schedules of Condition.

/2 Planning History

2.1.1. The application site and its immediate surroundings have been subject to a number of planning applications, which are listed below:

- 3/1995/0080 – Outline Application for Development Of 30 No. Holiday Chalets with Reception/Restaurant Building – Approved 19/05/1998
- 3/2000/0208 – Renewal of Outline Permission for Development Of 20 No. Holiday Chalets with Reception and Restaurant – Approved 18/05/2000
- 3/2001/0485 - Reserved Matters Application for 30 Holiday Chalets – Approved 10/11/2004
- 3/2005/0503 - Construction of three additional timber chalets – Approved 28/07/2005
- 3/2005/0922 - Substitute Balcony to cabins – Approved 16/12/2005
- 3/2006/0138 - Two additional stone chalets on tourism development. – Refused 03/04/2006
- 3/2006/0400 - Erection of one holiday chalet. Proposed construction of 40m length of random stone wall 1.5m high along Clitheroe Road – Approved 21/06/2006
- 3/2006/0673 - Alteration to approved site road and layout (part) and additional 4 chalets; associated engineering works – Approved 15/09/2006
- 3/2006/1002 - Five additional stone Chalets on south west side of site, and amendments to siting of car park to avoid public footpath – Approved 19/01/2007
- 3/2007/0176 - Six additional stone chalets on southern side of site. – Refused/Withdrawn 23/05/2007
- 3/2007/0576 - Two additional stone chalets – Approved 20/07/2007
- 3/2007/0839 - Two additional stone chalets on southern side of lake. – Refused 01/10/2007
- 3/2008/0615 - One additional stone chalet on eastern side of lake. – Refused 11/09/2008 – Appeal Dismissed 21/01/2009

- 3/2025/0953 – Certificate of Lawfulness for existing use of holiday let (no. 70) as a residential dwelling (Use Class C3) – Refused 29/01/26
- 3/2025/0853 – Certificate of Lawfulness for existing use of holiday let (no. 36) as a residential dwelling (Use Class C3) – Approved 25/03/26
- 3/2025/0855 – Certificate of Lawfulness for existing use of holiday let (no. 50) as a residential dwelling (Use Class C3) – Approved 27/03/26

2.1.2. The most pertinent applications to this Certificate of Lawfulness application are the original outline application (3/1995/0080), the subsequent reserved matters application (3/2001/0485), and an application comprising of an alteration to the approved layout and additional units (3/2006/0673).

2.1.3. The original application was subject to a Section 106 Agreement which restricted the occupation of the lodges for holiday accommodation. The relevant clause stated:

b) Not to allow the holiday chalets the subject of development:

i. To be occupied as permanent residential dwellings or to be occupied or let other than as holiday accommodation nor;

ii. To be occupied for a continuous period of more than six months in any one year by any one person or any one group of persons.

2.1.4. Whilst the lodges built out in accordance with the original application are subject to the S106 Agreement, lodge number 2, to which this application relates, is not bound by the aforementioned S106 Agreement. The layout consented as part of the original outline and reserved matters applications was subject to alteration and expansion via a number of applications, including Application Ref. 3/2006/0673. This application was submitted as a new full application, rather than as a variation to the original consent. Whilst a condition attached to Application Ref. 3/2006/0673 limits the use of the lodges, there was no S106 Agreement attached to the permission. Therefore, lodge number 2 is not subject to the S106 Agreement restricting the use of the lodge.

2.1.5. Condition 4 of Planning Permission Ref. 3/2006/0673 restricts the use of the lodges, stating:

> *The unit(s) of accommodation shall not be let to or occupied by any one person or group of persons for a continuous period of longer than 3 months in any one year and in any event shall not be used as a permanent accommodation. A register of such lettings shall be kept and made available to the Local Planning Authority to inspect on an annual basis.*

2.1.6. The occupation of Lodge number 2 on a Use Class C3 residential basis is therefore in breach of Condition 4.

/3 Relevant Legislation

3.1.1. Section 191 of the Town and Country Planning Act 1990 (as amended) (hereby referred to as 'the Act') 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

(c) 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);

(c) 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

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

3.1.2. The timescales for taking enforcement action are set out in Planning Practice Guidance (PPG) on *Enforcement and post-permission matters*, which confirms:

"In most cases, development becomes immune from enforcement if no action is taken:

...

Within 10 years for any other breach of planning control"

(Paragraph: 004 Reference ID: 17b-004-20180222)

3.1.3. This directly reflects Section 171B(3) of the Act, which establishes that for any breach of planning control not consisting of operational development or an unauthorised change of use to a single dwellinghouse without permission—specifically including a failure to comply with a planning condition or limitation—no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach. As this application is made under Section 191(1)(c) in respect of non-compliance with Condition 4 of planning permission Ref: 3/2006/0673/P, the applicable statutory immunity period is 10 years.

3.1.4. In the context of the above, the 10-year rule applies. As demonstrated by the Certificate of Completion found at Appendix 2 and the Tenancy/Accounting records at Appendices 3 and 4, the breach commenced in June 2009. The property has remained in continuous residential use in breach of the condition for over 17 years, meaning the development is unequivocally outside of the window for enforcement action.

Need for Precision in Certificates

3.1.5. Conditions cannot be attached to Certificates of Lawfulness. It follows that someone who commenced a use in breach of planning control and escapes enforcement action for the time limit period would be subject to less control than one who applied for planning permission to which conditions are attached. This issue is addressed in the PPG 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"*

3.1.6. The wording of the Certificate is outlined in Section 1 of this Statement, and is considered to be accurate and reflective of the property in question, Lodge number 2, which sits on a wider development of 45no. lodges, was granted permission for use as holiday homes through Application Ref. 3/2006/0673. Whilst a Section 106 Agreement restricting the use to holiday lets covers some of the units within the wider site, Lodge number 2 is subject to the abovementioned planning permission with no S106 Agreement.

3.1.7. The lodge subject to this application has continuously been occupied as a residential unit for over 10 years, and the existing use of the property is as a permanent residential dwelling, with the building having never been occupied as a holiday home as restricted by the conditions attached to the planning permission. Given the property was built out and occupied under a residential use for well over a 10-year period, and sufficient evidence is submitted with this application to demonstrate that this is the case, the use of this property on a residential basis with a year-round continuous occupancy is lawful.

Certification Process under Section 191: Obligations to Apply

3.1.8. In accordance with the legislation, the submitted application forms provide 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.

3.1.9. The use of the lodge for residential purposes means that the property would not fall within the C1 Use Class that was originally granted as part of the permission. As the permission was secured on the basis of Condition 4 limiting the use to holiday homes, the existing use is in breach of the condition. The lodge has been erected on site and has been in continuous permanent residential occupation for over 17 years. Given that the use has been in place well in excess of the 10-year period required for a breach of condition to become lawful, it is our view that the use of the lodge as a permanent residential unit is lawful.

Onus of Proof

3.1.10. 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.

3.1.11. It was held in *F. W. Gabbitas 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.

3.1.12. In this case, the evidence provided in support of this application has been provided by the Applicant to demonstrate that the certificate can be issued.

/4 Establishing Existing Use

4.1.1. The site in question is Green Bank Park, which has been subject to a number of applications over the past 28 years for the development of lodges. The initial permission (3/1995/0080) was granted in 1998 comprising outline permission for the development of 30no. holiday homes, with reserved matters permission later granted in 2004.

4.1.2. Following this, further applications were submitted applying for additional lodges and/or amendments to the site layout, which amounted to an additional 15no. lodges. As previously mentioned, Application Ref. 3/2006/0673 amended the layout and number of properties within a substantial area of the site previously consented through the original application. These additions / amendments were made under a new full planning application.

4.1.3. As set out within this Statement, the properties were never used as holiday homes and since their initial occupation, have always been occupied on a permanent residential basis (Use Class C3), which is set out in the various relevant tenancy agreements, which can be found at Appendix 4. Whilst the original application was subject to a S106 Agreement, the lodge in question was consented through Application Ref. 3/2006/0673 with no S106 attached. Therefore, the use of Lodge number 2 is only restricted by Condition 4 of the permission, and given that the lodge comprises a residential dwelling constructed and has been in continuous use as a residential dwelling for a period of over 10 years, the residential use of the lodge should be considered lawful by virtue of the passage of time, in line with the provisions of Section 171B(3) of the Act, which states *"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"*. Therefore, enforcement action can no longer be taken against the development.

4.1.4. The lodge has never received planning permission to change its use to residential, but has been occupied in this manner since the initial occupation. Furthermore, the residential use of the lodge has not been concealed in any way (in line with the provisions of Section 171BA of the Act), as the property has been officially registered on the Council's own Valuation List as a domestic dwelling (Band A) since 2009.

4.1.5. Further to this, the accompanying evidence of accounting records and tenancy periods demonstrates continuous residential occupation from the first occupancy until the present day.

4.1.6. The Applicant is therefore seeking a Certificate of Lawfulness to confirm that Lodge number 2 has a lawful permanent residential use given that it has been occupied in this manner for over 10 years.

/5 Assessment of Evidence

5.1.1. This Certificate of Lawfulness application is submitted on the basis that Lodge number 2 has been used for residential purposes for over 10 years, meaning that the use of the lodge is lawful by virtue of the passage of time in line with Section 171B of the Act.

5.1.2. The accompanying Certificate of Completion (Appendix 2) confirms that the construction of the lodge was completed on 6th February 2009. Page 1 of the Accounting Records, found at Appendix 3, details the tenancy periods over the lifetime of the lodge. The lodge was first let from 26th June 2009, and has been in continuous occupancy until the present day. There are some minor gaps in tenancies, however none of the gaps exceed 2 months, with the majority of gaps being around one month. These are considered to be normal periods of vacancy in relation to rental properties, when factoring in tenant turnover and time for repair / refurbishment etc.

5.1.3. These tenancy records are also supported by the sales transactions set out in Appendix 3, which show rent payments and utility bill payments from the 25th August 2010. Importantly, the 10-year statutory immunity period under Section 171B(3) of the Act was fully accrued and crystallised on 26th June 2019 entirely within the continuous, 10 and a half-year residential tenancy of [redacted], who resided at the property from January 2011 to June 2021. The unbroken domestic occupation of the lodge is summarised in the table below:

Tenant	Move in Date	Move out Date	Length of Occupancy
[redacted]	26th June 2009	24th August 2010	14 months
[redacted]	24th August 2010	8th December 2010	3.5 months

[redacted]	29th January 2011	15th June 2021	10.5 years
[redacted]	24th June 2021	31st December 2022	6 months
[redacted]	14th January 2023	Present (Sold to NGJ Holdings Ltd March 2023)	3 years (ongoing)

5.1.4. In accordance with the Court of Appeal judgment in *Secretary of State for the Environment, Transport and the Regions v Thurrock Borough Council* [2002] EWCA Civ 226, a brief void period between tenants does not constitute a cessation of the use or a break in continuity. In *Thurrock*, the Court established that the true test of continuity is whether the Local Planning Authority could have taken enforcement action at any time during the accrual period. Lord Justice Schiemann confirmed that an enforcement notice can be lawfully issued even when the activity is temporarily paused (such as when a landlord is between tenants), as the land is still properly described as being used for that activity.

5.1.5. Furthermore, in *Swale Borough Council v First Secretary of State* [2005] EWHC 290 (Admin), the High Court ruled that a failure to physically occupy a building for a period does not mean the residential use has ceased, noting that true cessation would require "*absence combined with removal of all personal effects and disconnection of services.*" During the standard, brief turnover periods at Lodge 2, the property remained fully furnished as a dwellinghouse, actively marketed for the next residential tenant, and the utilities remained connected (as explicitly proven by the continuous electricity and gas standing charges billed throughout the voids on the Sage ledgers at Appendix 3). Applying the principles of *Thurrock* and *Swale*, the residential use of Lodge 2 never ceased during these tenant turnovers, and the Council was capable of taking enforcement action against the breach of Condition 4 at every point during the 10-year period.

5.1.6. The Assured Shorthold Tenancy agreements (ASTs) are also provided at Appendix 4. These agreements demonstrate that the property was rented to the occupier on a residential basis in line with the tenancy periods set out at Appendix 4, and that this has been the case for a continuous period of more than 10 years.

5.1.7. Whilst it is acknowledged that the ASTs refer to an initial fixed term of 3 months (which would be in accordance with Condition 4 of the permission), it is assumed that the lettings agents drafted the initial 3-month terms to replicate the wording of Condition 4, which restricts continuous occupation for a maximum of 3 months.

5.1.8. Importantly, Condition 4 contains two distinct restrictions: it states the unit shall not be occupied for longer than 3 months, *and* "in any event shall not be used as a permanent accommodation."

5.1.9. Under Schedule 1, Part I, Paragraph 9 of the Housing Act 1988 (read with Section 1(2)), holiday lettings are legally excluded from being assured tenancies. The ASTs were issued under Section 19A of the Housing Act, explicitly containing a term *"to use the Premises for the purpose of a private residence only in the occupation of the Tenant"* ('General Tenancy Condition' 10). This is clear written evidence that the property was rented out as a permanent domestic residence, not a holiday let, thereby breaching the "permanent accommodation" limb of the condition from Day 1.

5.1.10. Under Section 5(2) and 5(3)(d) of the Housing Act 1988, when a fixed-term AST ends and the tenant remains in occupation paying monthly rent, a statutory periodic tenancy arises automatically by operation of law on identical terms. Under Section 5(3)(d), because rent was payable monthly, it became a rolling monthly periodic tenancy on identical terms. Tenants did not need to sign rolling 3-month extensions as the tenancy continued automatically by statute.

5.1.11. Accordingly, this is why only initial 3-month AST agreements were executed, and no subsequent renewal contracts were required or signed by tenants who remained in situ for years at a time. This does not mean that the property was occupied on only 3-month terms. The longer-term

occupations are definitively evidenced by the rental payments provided at Appendix 3. By rolling into Month 4 and beyond via statutory periodic tenancies, the occupants continuously breached the 3-month continuous occupation limb of the condition.

5.1.12. The submitted evidence clearly demonstrates that the property was rented out on a residential basis, shortly after the property's completion, from 26th June 2009 to the present day. This demonstrates well over 10 years of continuous residential use.

5.1.13. Therefore, the permanent residential use (Use Class C3) should be considered lawful by virtue of passage of time and a Certificate of Lawful Use should be issued, in line with the relevant sections of the Town and Country Planning Act 1990 (as amended).

/6 Conclusion

6.1.1. This Certificate of Lawfulness application seeks the following:

Application for a Certificate of Lawfulness to confirm the use of Lodge 2, Green Bank Park as a permanent, independent residential dwellinghouse (Use Class C3) in breach of Condition 4 of planning permission Ref: 3/2006/0673/P.

6.1.2. When considering the evidence provided within this Statement and its appendices, it is clear that the lawful use of Lodge number 2 is as C3 residential, and not as the short-term holiday let accommodation that it was consented for. Whilst a S106 Agreement restricts the use for some of the lodges across the wider site, Lodge 2 was subject to a later permission, where the only restriction on the use was through Condition 4 of the permission. The use of the lodge as a permanent residential accommodation is therefore in breach of Condition 4 of Planning Permission Ref. 3/2006/0673.

6.1.3. The submitted evidence has demonstrated that since the lodge's first occupation in 2009, the lodge has been in continuous permanent residential use until the present day, for a period of over 17 years. This has been demonstrated through Assured Shorthold Tenancy Agreements, a history of occupants of the lodge, rent payments, and utility bill payments.

6.1.4. Furthermore, the residential use of the lodge has not been concealed in any way (in line with the provisions of Section 171BA of the Act), as the property has been officially registered on the Council's own Valuation List as a domestic dwelling (Band A) since 2009.

6.1.5. In light of the above and considering the submitted evidence, it is clear that the lodge has been in continuous permanent residential occupation for over 10 years, and therefore, the use of the lodge as residential C3 use is lawful by virtue of the passage of time.

6.1.6. In accordance with Section 191 of the Act and the NPPG (Paragraph: 006 Reference ID: 17c-006-20140306), it is considered that the evidence provided is sufficiently precise and unambiguous to justify the grant of a certificate. The evidence provides a clear account of all

the historic and current occupiers of the property, and how it has been used for residential purposes continuously for over 10 years. Accordingly, a Certificate of Lawfulness should be granted.

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