APPLICATION NO:
**CLE/2000/0398**

LOCATION:
**49 Nine Mile Ride Wokingham.**

APPLICANT:
**Mr G Anderson C/O Martin And Pole Nicholas**

PROPOSAL:
**Application for certificate of lawful existing use of land for continued use of dwelling (breach of condition of consent 173/73 requiring removal of dwelling).**

EARLIEST DATE FOR DECISION: **20/02/2000**

APPLICATION EXPIRY DATE: **13/03/2000**

CASE OFFICER: **Simon Lewis**

RAILEX
Marbleboard

EASIFILE EP7

Application No : CLE/2000/0398

**WOKINGHAM DISTRICT COUNCIL**

**TOWN & COUNTRY PLANNING ACT 1990, SECTION 191 AS AMENDED BY SECTION 10 OF THE PLANNING AND COMPENSATION ACT 1991**

**TOWN & COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER, 1995: ARTICLE 24**

**Certificate of Lawful Use or Development**

The Wokingham District Council hereby certify that on **12/06/2000** the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto, and edged & coloured red was lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended), for the following reasons:

The use commenced more than 10 years before the date of this decision.

Signed ..... (Development Control Manager)

On behalf of Wokingham District Council, Shute End, Wokingham, Berkshire RG40 1WH

Date: 12/06/2000

**FIRST SCHEDULE**

Application for certificate of lawful existing use of land for continued use of dwelling (breach of condition of consent 173/73 requiring removal of dwelling).

**SECOND SCHEDULE**

49 Nine Mile Ride Finchampstead Wokingham

Notes :

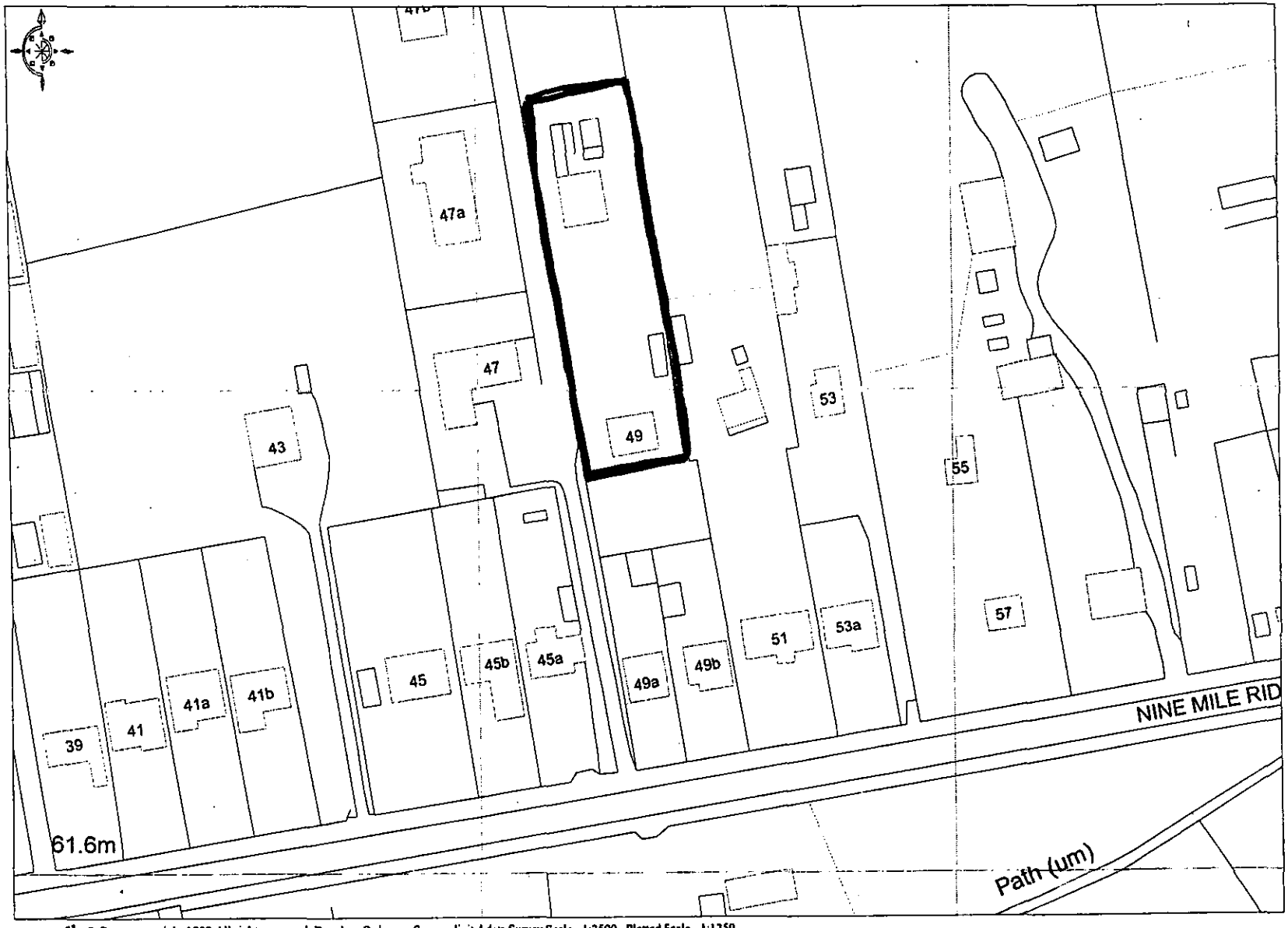
1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

2. It certifies that the Use specified in the First Schedule taking place on the land described in the Second Schedule would have been lawful, on the specified date and, thus, would not have been liable to enforcement action under Section 172 of the 1990 Act on that date.

3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.

4. The effect of the certificate is also qualified by the proviso in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.

17 JAN 2000* 0598

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(Scales other than at Survey Scale should not be used for accurate measurement). Business occupancy data ©1999 Thomson Directories Ltd.

Ordnance Survey

PART 1

17 JAN. 2000* 0558

**NOTICE OF CONSENT.**

# BERKSHIRE COUNTY COUNCIL

## Town and Country Planning Act, 1971

WOKINGHAM RURAL DISTRICT COUNCIL,
COUNCIL OFFICES,
SHUTE END,
WOKINGHAM, BERKS.

To Mr. T. B. Snook,
c/o Messrs. Patrick Williams and Partners,
303/305, Oxford Road,
READING
Bersk.

Application No. 173/73

Proposal Demolition of existing dwelling and erection of detached house and double garage at 49 Nine Mile Ride, Finchampstead, Berks.

The Rural District Council of Wokingham, acting as Agents for the Berkshire County Council under the above Act, hereby PERMIT the above development to be carried out in accordance with the accompanying plans submitted by you and approved by the Council on the 22nd day of February 1973, subject to compliance with the conditions specified hereunder:—

1. The development hereby permitted shall be commenced within five years from the date of this permission.
2. The garage hereby permitted shall be used only as a private garage for purposes incidental to the use of the dwelling on the site as a dwelling. The garage shall not be used for business purposes.
3. Samples of the materials to be used in the elevations of the proposal shall be submitted to and approved by the Local Planning Authority before building work commences, and this condition shall apply notwithstanding any indication as to these matters which have beengiven in the current application
4. The access crossover shall be constructed in accordance with Form 'C' attached.
5. The proposal shall be in replacement of the dwelling which exists on the site. The existing dwelling shall be demolished within 3 months of the erection of the proposed new dwelling.

The reasons for the Council's decision to grant permission for the development subject to compliance with the conditions hereinbefore specified are:—

1. This condition is deemed to be attached by virtue of Section 41 (1) of the Town and Country Planning Act, 1971.
2. To protect the residential amenities of the area.
3. To ensure that the materials harmonise with the surroundings.
4. In the interests of road safety.
5. The site is within an area where new dwellings are not normally permitted.

Except as aforesaid any permission granted is subject to due compliance with the byelaws and general statutory provisions in force in the District.

Date [illegible]

Clerk to the Council

N.B.—A statement of the applicant's rights is set out overleaf

*an existing operation:

*an existing use, operation or activity in breach of a condition; x

being a use, operation or activity subsisting on the date of this application.

(*Tick whichever is applicable).

---

7. If there is more than one subsisting use of, or operation or activity on the land at the date of this application, describe fully each of them and, where appropriate, show to which part of the land each use, operation or activity relates.

---

8. When was the use or activity begun, or the operation substantially completed?

BREACH OF CONDITION SINCE 1973

---

9. Under what grounds is the certificate sought?

(Delete those which are not applicable)

(1) ~~The use began more than ten years before the date of this application; or~~

(2) The use, operation or activity in breach of condition began more than ten years before the date of this application; or

(3) ~~The use began within the last ten years, as a result of a~~ change of use not requiring planning permission in the last ten years; or

(4) The operations were substantially completed more than four years before the date of this application; or

(5) The use as a single dwellinghouse began more than four years before the date of this application.

(6) Other - specify (this might include claims that the change of use or operation was not development, or that it benefited from planning permission granted under the Act or by the General ~~Development Order~~).

10. If the certificate is sought for a use, operation or activity in breach of a condition or limitation, specify the condition or limitation which has not been complied with, and attach a copy of the relevant planning permission.

CONDITION 05 OF APPLICATION REFERENCE 173/73

---

11. Give any additional information you consider necessary to substantiate your claim.

(Continue on a separate sheet if necessary)

---

12. List here all the documents, drawings or plans which accompany this application.

* Counsel's Opinion
* Agent letter dated 14 January 2000

---

I/We hereby apply for a lawful use or development certificate under Section 191 of the 1990 Act in respect of the existing use, operations or activity described in this application and the documents, drawings and plans which accompany it. I/We enclose the appropriate fee of £.....

Signed: Martin Pole Nicholas MARTIN&POLE, NICHOLAS ..... Date: 14 January 2000..

On behalf of: G ANDERSON ESQ .....

(Insert name of applicant if signed by an Agent).

**WARNING:** The amended Section 194 of the 1990 Act provides that it is an offence to furnish false or misleading information or to withhold material information with intent to deceive. Section 193(7) enables the Council to revoke, at any time, a certificate they may have issued as a result of such false or misleading information.

PART 1 REGISTER
17 JAN 2000* 0358




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(Scales other than at Survey Scale should not be used for accurate measurement). Business occupancy data ©1999 Thomson Directories Ltd.

Ordnance Survey
Value Added Reseller

1

1943

PART 1 REGISTER

17 JAN 2000* 0578

For the Council's use only:

Application No: .....

Date received: .....

WOKINGHAM DISTRICT COUNCIL

Town and Country Planning Act 1990, Section 191, as amended by Section 10 of the Planning and Compensation Act 1991.

Town and Country Planning General Development (Amendment) Order, 1992.

---

APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR AN *EXISTING* USE OR OPERATION OR ACTIVITY IN BREACH OF A PLANNING CONDITION.

---

1. Description of existing use or operation or activity applied for:

Retention of a dwelling in breach of Condition 05 of 173/73

---

2. Applicant (in block capitals)

Name: G ANDERSON ESQ

Address: c/o AGENT

.....

Post Code: .....

Tel. No: .....

---

3. Agent (if any)

Name: MARTIN & POLE, NICHOLAS

Address: 7 BROAD STREET, WOKINGHAM

BERKSHIRE

.....

Post Code: RG40 1AY

Tel. No: 0118 978 0777

4. (1) Nature of applicant's interest in the land, e.g. owner, lessee, occupier. OWNER

(2) If you do not have an interest:

(a) give name(s) and address(es) of anyone you know who has an interest in the land.

(b) state the nature of their interest (if known).

(c) state whether they have been informed about this application.

YES/NO

---

5. Address or exact location of the land to which this application relates:

49 NINE MILE RIDE
FINCHAMPSTEAD

Describe here and enclose ( 4 ) copies of an OS-based plan showing the boundary of the land edged in red.

Curtilage of 49 Nine Mile Ride, Finchampstead

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6. This application is for:

*an existing use;

PART

17. JAN. 2000* U6?8

49 NINE MILE RIDE, FINCHAMPSTEAD, BERKS

---

# OPINION

---

1. In 1973 detailed planning permission was granted for *"the demolition of an existing dwelling and erection of a detached house and double garage"* subject to conditions. In particular condition No.5 provided:

> *"The proposal shall be in replacement of the dwelling which exists on the site. The existing dwelling shall be demolished within 3 months of the erection of the proposed new dwelling."*

Microfiche extracts from the permission under reference 173.73 show a proposed new dwelling and garage on the site of what is now No.49 A and 49 B respectively.

2. Subsequently in 1976, under reference 04600 planning permission was granted for the " *resiting of the garage and erection of house and garage at - 49 Nine Mile Ride, Finchampstead.* "

I have not had sight of any application plans but my understanding is that by this

application, consent was granted to resite the location of the original double garage, granted consent in 1973 under reference 173/ 73 serving what is now 49 A . In addition a second consent for another house on what is now the location of 49 B.

Again another condition was imposed which provided that:

> *"... the existing dwelling to the rear of the site shall be completely demolished within one month of the erection of the new dwelling hereby approved."*

3. Thus by 1976 the Council had granted 2 separate planning permissions for the erection of two separate dwellings conditioning each consent to ensure that the original No.49 was demolished upon the third and first month after the erection of the approved buildings.

4. Thus the Council ensured that upon the erection of either No.49 A or 49 B, or both , an obligation arose so as to ensure demolition of the original property at No.49.

5. In the event both buildings were erected and the original property at No.49 remains.

6. My instructions are that Building Regulation approval for the properties now known as and situated at No.49 A and 49 B was obtained in 1975 and 1976 respectively.

7. Those instructing me have seen an aerial photograph dated 1986 and confirm that this shows 49, 49A and 49B all present.

8. My client's father constructed No.49 A and 49 B. and it as within the family's knowledge, that No.49 was never demolished. This is evident from the photographs accompanying

my papers. Although not now inhabited the building in the photograph has all the outward characteristics of a former dwelling.

9. Condition 5 of the 1973 permission includes a sentence *"the proposal shall be in replacement of the dwelling which exists on the site"*. The reason given for the condition requiring demolition of the existing dwelling within 3 months of the erection of the proposed new dwelling is *"the site is within an area where new dwellings are not normally permitted."*

The condition is perfectly valid and, subject to being immune from enforcement due to the time limits imposed by section 171B, enforceable. Likewise condition 7 of the 1976 permission is expressed in similar words although demolition had to be achieved within 1 month of the erection of that building.

10. Section 187A provides that a local planning authority may, if any condition is not complied with, serve a breach of condition notice. The service of such a notice constitutes the taking of enforcement action within section 171A and is therefore governed by the time limits prescribed in section 171B. A notice may not be served after the end of the period of ten years beginning with the date of the breach.

11. Since both permissions have been implemented, and the aerial photograph confirms the erection of the two dwellings in 1986 there is no doubt that the failure to demolish is now immune from enforcement action. This could be confirmed by the application under section 191(1)(c).

12. In considering an application under section 191(1)(c) the LPA would not, in my opinion be concerned about the vacancy of the dwelling or condition of the original No.49. The vacancy of the building is wholly irrelevant to the question of whether the breach of condition has become lawful due to the fact that the time window of opportunity (10 year period) in which to take enforcement action has passed.

As for the condition of the building, unless there was an issue of fact as to whether the building had been demolished then the condition of the building would be irrelevant. Since plainly the building is still standing, albeit in need of repair and renovation, in my opinion its condition is not relevant to any consideration of a section 191 (1) (c) certificate.

13. As to repair and renovation in my opinion the owners would be perfectly entitled to undertake any works of enlargement, improvement or other alteration falling within the scope of permitted development rights set out in Part 1 of Schedule 2 of the General Permitted Development Order 1995 so long as the building that remains is *"sufficiently intact as to reasonably support the description of dwelling house and not merely the ruins of a dwelling."* See the Secretary of State's determination in Oak Tree Cottage, Hope Mansell [1978] JPL 806, approved by McNeill J in Trustees of Earl of Lichfield v Secretary of State for the Environment & Stafford Borough Council [1985] JPL 251. In the Oak Tree case the Secretary of State accepted the building did not necessarily need to be actually in use in order to benefit from G.D.O. rights.

14. If those instructing me have any queries then no doubt they will not hesitate to get in touch.

Mary Cook

MARY COOK
12.1.00

2/3 Gray's Inn Square
Gray's Inn
London WC1R 5JH

49 NINE MILE RIDE,
FINCHAMPSTEAD, BERKS

---

OPINION

---

Martin Pole Nicholas
7 Broad Street
Wokingham
Berkshire
RG40 1AY

Tel: 0118 978 0777

| PLANNING SERVICES | HPT |
|---|---|
| POL | |
| DC SL | ENF |
| APP | |
| CS | |
| 14 APR 2000 | |
| COPIES TO: | ACK: |
| | FILE: |

# M E M O R A N D U M

**DATE:** 13 April 2000

**TO:** Simon Lewis, Senior Planner, Development Control

**FROM:** Colin Lawley, Principal Solicitor

**RE:** **49 NINE MILE RIDE, WOKINGHAM**
**APPLICATION FOR CERTIFICATE OF LAWFUL EXISTING USE**

I refer to the file which you left with me relating to this application.

I agree with the Counsel opinion produced by the Applicant. You will obviously need to carry out a site visit to assess the situation. However, I consider we have no option but to issue the Certificate.

Please let me know if you wish to discuss further. I attach the file to this memorandum.

CSL.

**Colin Lawley**

SL

# Martin & Pole Nicholas

inc. Watts & Son Est. 1846

| PLANNING SERVICES | 29 February 2000 |
|---|---|
| POL | TJML/lea/14684 |
| DC | ENF |
| APP | |
| CS | |
| 01 MA... 2000 | |
| COPIES TO: | ACK: |
| | FILE: |


**Partners**
I Millar Campbell FRICS
D C Auger ARICS, FSVA
C W Reynolds FRICS
D D Chopping FRICS

S M Leedale
MSc Dip. TP. B.Ed (Hons). MRTPI
R N Price BSc. FRICS

**Associates**
R C Griffiths ARICS
(Management Surveyor)

G J R Lewis
(Chattels Auctioneer)

**Consultants**
P A H Lawrence FRICS, FSVA
W J Dulborough FRICS, IRRV
P C Neale FRICS
L J Ruse FSVA


Head of Planning and Transportation
Wokingham District Council
Shute End
WOKINGHAM

**FAO Mrs C Hurst**

Dear Sirs

**APPLICATION UNDER SECTION 191**
**BREACH OF CONDITION 05 OF 173/73**
**49 NINE MILE RIDE, FINCHAMPSTEAD**
**CLE/2000/0398**

Please would you kindly transfer the registration details to the following address;

Gregory Gray Associates
Chartered Town Planning Consultants
'Redcliffe'
17 Dinorben Close
Fleet GU13 9SL

01252 624004

Yours faithfully

**Mark Leedale**
for Martin & Pole, Nicholas
Planning Department

Enclosures

✓ in part.

Chartered Surveyors


7 Broad Street, Wokingham, Berkshire RG40 1AY Tel: Wokingham (0118) 978 0777
Residential Sales Tel: Wokingham (0118) 979 0010
*Fax: Wokingham (0118) 977 1991* e.mail: w@martinpole.co.uk

Reading Office
(0118) 959 1231
*Fax: (0118) 958 5061*

Crowthorne Office
(01344) 780111
*Fax: (01344) 780191*

The Auction House
(0118) 979 0460
*Fax: (0118) 977 6166*

FROM: Simon Lewis

DATE: 27 January 2000

DELEGATED

## Finchampstead Parish Council Consultation Sheet

26175

**Application Number:** CLE/2000/0398

**Proposal:** Application for certificate of lawful existing use of land for continued use of dwelling (breach of condition of consent 173/73 requiring removal of dwelling)..

**Site Address:** 49 Nine Mile Ride Finchampstead.

**Applicant:** Mr G Anderson C/O Martin And Pole Nicholas.

Your observations are required in respect of this application **by 20/02/2000** .

---

Objection on the grounds of over-development of the site. The Parish Council feels that the District Council has been negligent in not enforcing the original planning condition which required the demolition of the original dwelling.

SIGNED: C.S. Cady DATE: 18-2-00

CLERK TO Finchampstead Parish Council

1103

# CONFIDENTIAL

APPLICATION NUMBER .....

☐ PRE-APP

☐ POST-APP

☐ SAIF

☐ OTHER

Tel: (0118) 974 6454

Date: 27 January, 2000 Simon

Your ref:

My ref: CLE/2000/0398

Councillor M Long
Foxfield
Wick Hill Lane
Finchampstead
RG40 3PY


Environmental Services Department
Planning Services
P.O. Box 157
Shute End, Wokingham
Berkshire RG40 1WR
Tel: (0118) 974 6000
Fax: (0118) 974 6484
Minicom No: (0118) 974 6991
DX: 33506 – Wokingham


Dear Councillor

Application No: CLE/2000/0398

Applicant: Mr G Anderson C/O Martin And Pole Nicholas.

Proposal: Application for certificate of lawful existing use of land for continued use of dwelling (breach of condition of consent 173/73 requiring removal of dwelling)..

Location: 49, Nine Mile Ride, Finchampstead.

This is to advise that I am in receipt of the above application.

Any applications for 10 or more new dwellings or more than 500 square metres of new industrial/office floor space will be considered at the next Service Amenity and Infrastructure (SAI) Panel meeting. If you have any suggestions that you feel should be taken into consideration relating to this or any other aspect of the application please contact the case officer Simon Lewis on (0118) 974 6454.

Yours faithfully

DKWood

Chris Wood
Head of Planning and Transportation

ask Simon?

I find this one hard to place - I will get in touch to ask you what goes on there

Daniel Long.

# WOKINGHAM D.C. DEVELOPMENT CONTROL

| | |
|---|---|
| Start date: 17 JAN 2000 | Map No. ..... Site ..020.... |
| Officer: SL | Application No. CLE/2000/0398 |
| | Easting: ..... Flood Pln ..... |
| | Northing: ..... Mineral ..... |

Level: ☐ Sub Committee ☑ Delegated ☐ Sec. State

☐ Incorrect Fee ☐ Invalid ☐ PD

Description:
CLU(E) APPLICATION FOR CERTIFICATE OF LAWFUL EXISTING USE OF LAND FOR CONTINUED USE OF DWELLING (BREACH OF CONDITION OF ~~RE~~ CONSENT 173/73 REQUIRING REMOVAL OF DWELLING)

Location: 49 NINE MILE RIDE

Parish: FINCHAMPSTEAD Ward: Finch South.

27.1.2000

Applicant: MR G ANDERSON

Fee Received 190-00 (6) Required ..... Additional ..... Refund .....

Enforcement Section to be notified ☐ tick if required

---

**Additional information required for validation**

| | | Reason | Requested | Received |
|---|---|---|---|---|
| 1 | 1:2500 OS location plan showing property edged in blue/red | | | |
| 2 | 1:500 block plan showing existing & proposed dev. + adj. Properties | | | |
| 3 | Forms unsigned | | | |
| 4 | Correct S 66 certificate | Is S66 required? No | | |
| 5 | Elevation plans | | | |
| 6 | Floor plans | | | |
| 7 | Metric scale disclaimer | | | |
| 8 | Encroachment letter | | | |
| 9 | Miscellaneous | | | |

APPLN NO. _____

## ACTION REQUIRED BY DEVELOPMENT CONTROL

Conservation Area .....

Listed Building 1 2 2*

Advertisement Required .....

---

Date Site Notice Sent : 27.1.2000 Parish Council Informed - YES / NO

### INTERNAL CONSULTATIONS

| | |
|---|---|
| Building Control | NF: ..... |
| Landscape | NK: ..... |
| Trees | NK: ..... |
| Conservation Officer | NK: ..... |
| Environmental Health | NA: ..... |
| Housing | NA: ..... |
| Leisure & Cultural services | PA: ..... |
| Public Rights of Way | PA: ..... |
| Property | NG: ..... |
| District Secretary (only if called in by SOS) | MA: ..... |
| Policy & Plans | QA: ..... |
| Strategic Planning (JSPU) | HA: ..... |
| Minerals (BABTIE) | GA: ..... |
| Archaeological Site (BABTIE) | : ..... |
| Education | AP: ..... |
| Social Services | BT: ..... |
| Highways | XA: ..... |

### EXTERNAL CONSULTATIONS

| | |
|---|---|
| Adjacent D P A | : ..... |
| Adjacent Parish | : ..... |
| Southern Electricity Board | BN: ..... |
| British Gas | BM: ..... |
| PSA Oil Pipeline | BD: ..... |
| Transco | : ..... |
| Environment Agency | BP: ..... |
| Rail Track | BI: ..... |
| Police Arch. Liaison Officer | PC: ..... |

### HERITAGE BODIES

| | |
|---|---|
| The Georgian Group | KC: ..... |
| Ancient Monuments Society | KA: ..... |
| Council for British Arch. | KB: ..... |
| RCHME | KF: ..... |
| Telecommunications (NRPB) | : ..... |
| Sport England | : ..... |

### OTHERS:

..... (Rural Area) .....

.....

..... No pre-apps .....

### NEIGHBOURS:

..... S/N sufficient .....

ADDRESS 49 Nine Mile Ride PARISH Lynch E

PLOT No. ORD. SHEET No.

BUILDER

| Plan No. | Applicant | Description of Development | Date of Decision | Decision |
|---|---|---|---|---|
| 1201/72 | MR. T. SNOOK | 2 DET. HOUSES + GARAGES | 3.8.72 | Ref |
| 1568/72 | " | | 28.9.72 | Ref |
| 173/73 | " | DEM. & REBUILDING / HOUSE & GARAGE ON SITE OF | 22.2.73 | App Cl |
| BR 1837 | MR. N. HILL | 2 HOUSES + GARAGES | 5.1.75 | App N/ |
| 01894 | " | IN FRONT OF | 23.1.75 | N/A Ref |
| BR 4412 | ROSE STREET PROPERTIES | DEMOLE GARAGE | 18.3.76 | App all |
| 04600 | " | REBUILD GARAGE | 7.5.76 | N/A G |
| BR 5005 | " | GARAGE | 2.7.76 | App N/ |
| 11682 | " | BUNG. + GARAGE ON SITE OF | 27.9.79 | N/A Re |
| 29613 APPEAL | " | " | 16.2.88 | Ref |
| ~~31759~~ 31759 | " | HOUSE + GARAGE ON SITE OF BUNGALOW | 27.10.88 | Ref |

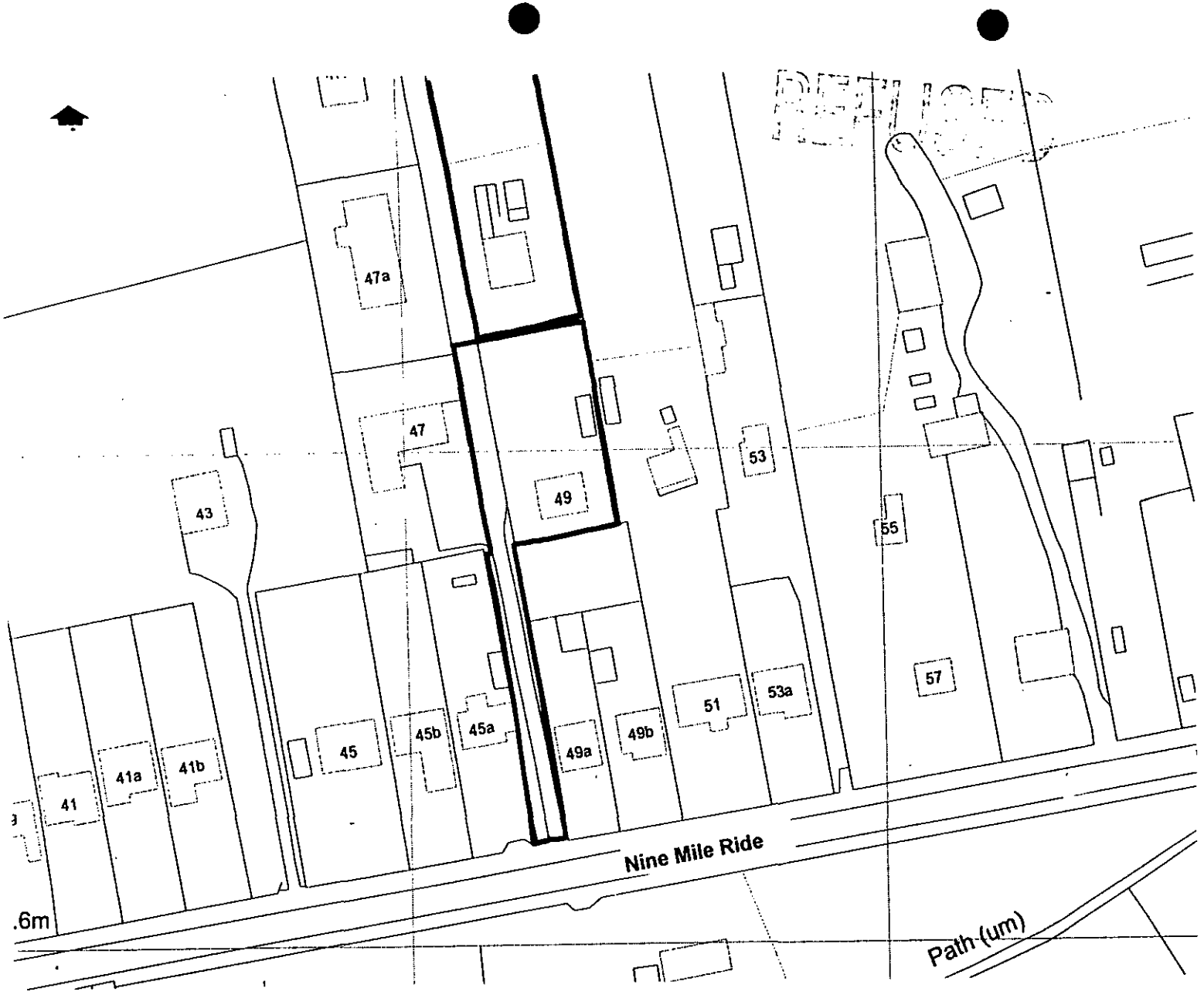
DATE OF COMPLETION

MINISTRY DECISION 29613 - APPEAL DISMISSED - 24.2.89

SPECIAL ORDERS

DRAINAGE

091074




**Notes**
Do not scale except for Planning and Building Regulations purposes.

| Revision Details | | | |
|---|---|---|---|
| E | | | |
| D | | | |
| C | | | |
| B | | | |
| A | | | |


**Gregory Gray Associates**
**Chartered Town Planning Consultants**
**'Redcliffe,'**
**17 Dinorben Close,**
**FLEET,**
**Hants, GU52 7SL.**
**Telephone: 01252 624004**
**Fax: 01252 684160**
**E-Mail:** info@ggassociates.co.uk


**Client**
Mr and Mrs G Anderson

**Job Title**
Replacement dwelling

**Drawing Title**
Location plan

**Scale**
1:1,250

**Date**
Nov. 2001

**Drawn By**
ML

**Drg. No.**
NMR/00/166/02

**Rev.**

20 JAN 2002

**Received by Wokingham District Council**

# Application No: CLE/2000/0398

**Proposal:**

Application for certificate of lawful existing use of land for continued use of dwelling (breach of condition of consent 173/73 requiring removal of dwelling).

**Location:**

49 Nine Mile Ride Finchampstead.

**The application is available for inspection at Wokingham District Council's offices during the following times:**

PLANNING DEPARTMENT, SHUTE END, WOKINGHAM TEL (0118) 974 6428
**8.30 - 5.00 Monday - Thursday & 8.30 - 4.00 Friday**

WOODLEY LIBRARY HEADLEY ROAD WOODLEY **(9.30am - 7.00pm Mon, Thurs & Fri. 9.30am - 5.00pm Tues, 9.30am - 1.00pm Saturday. closed all day Wednesday)**

**Comments should be sent in writing QUOTING THE APPLICATION NUMBER to the Case Officer Simon Lewis P.O. Box 157 Council Offices, Shute End, Wokingham Berkshire, RG40 1WR to arrive on or before 20/02/2000. Written comments submitted will become available for public inspection.**

**In view of the very large number of planning applications and letters of comment received, it will not normally be possible for an individual reply to observations made. However any comments will be taken into account when the application is determined and you will be notified of the decision.**

**Head Planning and Transportation**




## Site Plan, Scale: 1 to 1250

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Date: 20 January 2000

N
W E
S

# Gregory Gray Associates

**CHARTERED TOWN PLANNING CONSULTANTS**
'Redcliffe', 17 Dinorben Close, Fleet, Hants, GU13 9SL.
Telephone: 01252 624004 Fax: 01252 684160
E-Mail: info@ggassociates.co.uk



...ING SERVICES | HPT
TLS
PC ✓ SL | ENF
APP
CS
07 JUN 2000
COPIES TO: | ACK:


S Lewis Esq,
Planning Department
Wokingham District Council
Shute End
Wokingham RG40 1 WR

**0118 974 6484 (2 pages)**

6 June 2000

Our Ref: NMR/00/166

Dear Mr Lewis,

**49 NINE MILE RIDE WOKINGHAM BERKSHIRE**
**CLE 200/0398**

I write further to our telephone conversation in respect of the above matter.

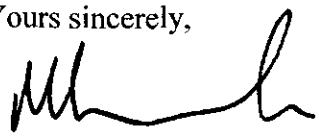
Whilst I appreciate that your Council needs to examine these matters carefully, I must reiterate that the condition and non-occupation of the building are wholly irrelevant to the consideration of this application under section 191 of the Act. May I please draw your attention to the following extracts from Counsels' opinion which, I understand, your own solicitors have accepted.

> ***11.....there is no doubt that the failure to demolish is now immune from enforcement action.***
>
> ***12.....the vacancy of the dwelling is wholly irrelevant to whether the breach of condition has become lawful due to the fact that the time window of opportunity (10 year period) in which to take enforcement action has passed,***
>
> ***As for the condition of the building, unless there was an issue of fact as to whether the building had been demolished then the condition of the building would be irrelevant. Since plainly the building is still standing, albeit in need of repair and renovation, in my opinion its condition is not relevant to any consideration of a section 191(1)(c) certificate.***

Counsel also refers to case law to the effect that the owners would be perfectly entitled to repair and renovate the building within the scope of the GDPO irrespective of the period of non-occupation.

I trust that this clarifies my Clients position and unless your colleagues have recourse to alternative opinion or case law I look forward to receiving the certificate in the next few days.

Yours sincerely,



Mark Leedale

**WORK SHEET FOR :** Simon Lewis

**Application Number :** CLE/2000/0398

**Applicant :** Mr G Anderson C/O Martin And Pole Nicholas.

**Location :** 49 Nine Mile Ride Finchampstead.
**Proposal :** Application for certificate of lawful existing use of land for continued use of dwelling (breach of condition of consent 173/73 requiring removal of dwelling).

**Site Notice Displayed ? :**

| YES | NO | DATE |
|---|---|---|
| ✓ | | 2.2.2000 |

**Date of Neighbour Notifications :** .....

**Date of Site Visit :** .....

**Date Registered : 17/01/2000**

**Earliest Date for Decision : 20/02/2000**

**Latest Consultation Date/Site Notice Expiry Date : 20/02/2000**

**Application Expiry Date: 13/03/2000**

**Consultation Responses :** Finchampstead P.C - objection.

Council's Solicitor - accepts Counsel's view.

**Planning Issues :** Consider submitted evidence.

**Application Number: CLE/2000/0398**

**Appraisal :**

This CLUE relates to a site, which has had a particularly chequered planning history. The property which is the subject of the application has been vacant for a considerable number of years, but in the past was used as a residential dwelling and was known as 49 Nine Mile Ride.

In 1973 planning permission was granted for the demolition of this property and its replacement with a detached house and garage (ref:173/73). One of the conditions imposed upon this consent was that the existing property should be demolished within 3 months of the new dwelling being erected. This condition was never complied with. The address of the new property was 49A Nine Mile Ride.

In 1976 planning permission was granted for 'the resiting of a garage and the erection of a house and garage at 49 Nine Mile Ride' (ref:04600). Once again a condition was imposed requiring the complete demolition of the existing dwelling (49 Nine Mile Ride) within 1 month of the erection of the new dwelling whose address is 49B Nine Mile Ride. Again this condition was not complied with.

Unfortunately at no time has any Breach of Condition Notice been served by this Council for the failure to demolish the existing building. Therefore the applicants are contending that as both permissions have been implemented and both dwellings erected in excess of 10 years they are immune from enforcement action and as such the existing dwelling (no.49) can remain. This view has been supported by a written opinion from their Counsel.

The Council's Principal Solicitor agrees with the Counsel opinion and considers there is no option but to issue the CLUE. Having visited the site is its clear that the property known as 49 Nine Mile Ride is still in existence and with certain repair work could be re-introduced as a residential unit.

Therefore due to the significant evidence provided by the applicants it is considered that the Certificate should be issued.

(tick appropriate box)

John Rutter 12/6/00

no change of address of agents.

## Application Number CLE/2000/0398
## Conditions/Reasons for Refusal

| No | Std Con | Std Reas | Non Std Conditions / Reasons for Refusal |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

# RECORD OF SITE VISIT

SITE ADDRESS: 49 Nine Mile Ride Wokingham.

APPLICATION NUMBER: CLE/2000/0398

OFFICER: Simon Lewis

DATE OF SITE VISIT: 7/8

1 SITE/STATUTORY NOTICE DISPLAYED ? Yes.

2. DESCRIPTION OF SURROUNDINGS Rural residential.

3. DESCRIPTION OF SITE/BUILDING Existing property.

Vacant.

4. RELATIONSHIP TO ADJOINING PROPERTIES Set away.

5. SITE CONSTRAINTS

TREES

ACCESS/PARKING

LEVELS

BOUNDARY TREATMENT

OTHERS

17 JAN 2000* 0598

# Martin & Pole Nicholas

inc. Watts & Son Est. 1846

14 January 2000
ML/lea/14684

**Partners**
I Millar Campbell FRICS
D C Auger ARICS, FSVA
C W Reynolds FRICS
D D Chopping FRICS

S M Leedale
MSc. Dip, TP, B.Ed (Hons). MRTPI
R N Price BSc. FRICS

**Associates**
R C Griffiths ARICS
(Management Surveyor)

G J R Lewis
(Chattels Auctioneer)

**Consultants**
P A H Lawrence FRICS, FSVA
W J Dulborough FRICS, IRRV
P C Neale FRICS
L J Ruse FSVA

Head of Planning and Transportation
Wokingham District Council
Shute End
WOKINGHAM

Dear Sirs

**APPLICATION UNDER SECTION 191**
**BREACH OF CONDITION 05 OF 173/73**
**49 NINE MILE RIDE, FINCHAMPSTEAD**

We are pleased to enclose the following particulars in respect of the above matter;

Four copies application forms duly completed
Four copies ordnance survey plan showing the site edged red
Four copies of the decision notice relating to reference 173/73
Four copies of Opinion from Miss Mary Cook of Counsel
The statutory planning fee for £190.

In 1973 under Council Reference 173/73 detailed planning permission was granted for the 'demolition of existing dwelling and erection of a detached house and double garage'. As you will observe from the attached decision notice condition 5 required the existing dwelling – number 49 Nine Mile Ride – to be demolished within three months of the erection of the new dwelling.

Notwithstanding this, in 1976 under Council Reference 04600 planning permission was granted for 'resiting garage and erection of a house and garage at 49 Nine Mile Ride'. Condition 7 of the permission required that the existing dwelling 'to the rear of the site' should be completely demolished within one month of the erection of the new dwelling.

Building Regulations approval was granted in 1975 under Council Reference 1837 and the dwelling constructed pursuant to planning permission 173/73 was built. It is numbered 49A Nine Mile Ride.

Continued/..

Chartered Surveyors

7 Broad Street, Wokingham, Berkshire RG40 1AY Tel: Wokingham (0118) 978 0777
Residential Sales Tel: Wokingham (0118) 979 0010
*Fax: Wokingham (0118) 977 1991* e.mail: w@martinpole.co.uk

Reading Office
(0118) 959 1231
*Fax: (0118) 958 5061*

Crowthorne Office
(01344) 780111
*Fax: (01344) 780191*

The Auction House
(0118) 979 0460
*Fax: (0118) 977 6166*

Building Regulations approval was granted in 1976 under Council Reference 4944 for a new dwelling pursuant to planning reference 04600 and this now forms number 49B Nine Mile Ride. Building Regulations approval was also granted in 1985 in relation to this property and under reference 24534 for a kitchen extension.

Our clients father actually constructed numbers 49A and 49B Nine Mile Ride and from their knowledge and from site observation it is clear that number 49 was never demolished. Notwithstanding the Building Regulations records, we have checked an aerial photograph held at your offices and dated 1986. The dwellings numbered 49A and 49B are present as is number 49.

We draw your attention to the written opinion of Counsel which considers all of the above matters in instruction from ourselves. The important matters may be summarised as;

- The condition(s) are valid and enforceable as from the time when numbers 49A and 49B were complete.
- It is clear that the relevant dwelling(s) has been complete for a period in excess of ten years.
- It is clear from site observation that the dwelling remains and implicitly cannot have been demolished
- Given the time which has elapsed since the completion of the dwelling(s) and the present, the relevant condition(s) are immune from enforcement action because they are outside the time limits prescribed in section 171B.
- The building which remains is not a 'ruin' and our clients or other persons could within the limits of the General Permitted Development Order renovate it for purposes of habitation.

It is our contention that both of the relevant conditions to the separate planning permissions have been breached for a period in excess of ten years. However, and for administrative ease, we only submit an application in respect of condition 05 of 173/73.

We trust you have all the information required and please do contact us if we can be of further assistance.

Yours faithfully

p.p. J. m. Ireland

**Mark Leedale**
for Martin & Pole, Nicholas
Planning Department

Enclosures

17 JAN 2000* 0528

**NOTICE OF CONSENT.**

# BERKSHIRE COUNTY COUNCIL

## Town and Country Planning Act, 1971

WOKINGHAM RURAL DISTRICT COUNCIL,
COUNCIL OFFICES,
SHUTE END,
WOKINGHAM, BERKS.

To Mr. T. B. Snook,
c/o Messrs. Patrick Williams and Partners,
303/305, Oxford Road,
READING
Berks.

Application No. 173/73

Proposal Demolition of existing dwelling and erection of detached house and double garage at 49 Nine Mile Ride, Finchampstead. Berks.

The Rural District Council of Wokingham, acting as Agents for the Berkshire County Council under the above Act, hereby PERMIT the above development to be carried out in accordance with the accompanying plans submitted by you and approved by the Council on the 22nd day of February 1973, subject to compliance with the conditions specified hereunder:—

1. The development hereby permitted shall be commenced within five years from the date of this permission.
2. The garage hereby permitted shall be used only as a private garage for purposes incidental to the use of the dwelling on the site as a dwelling. The garage shall not be used for business purposes.
3. Samples of the materials to be used in the elevations of the proposal shall be submitted to and approved by the Local Planning Authority before building work commences, and this condition shall apply notwithstanding any indication as to these matters which have been given in the current application
4. The access crossover shall be constructed in accordance with Form 'C' attached.
5. The proposal shall be in replacement of the dwelling which exists on the site. The existing dwelling shall be demolished within 3 months of the erection of the proposed new dwelling.

The reasons for the Council's decision to grant permission for the development subject to compliance with the conditions hereinbefore specified are:—

1. This condition is deemed to be attached by virtue of Section 41 (1) of the Town and Country Planning Act 1971.
2. To protect the residential amenities of the area.
3. To ensure that the materials harmonise with the surroundings.
4. In the interests of road safety.
5. The site is within an area where new dwellings are not normally permitted.

Except as aforesaid any permission granted is subject to due compliance with the byelaws and general statutory provisions in force in the District.

Date 13

Clerk to the Council

N.B.—A statement of the applicant's rights is set out overleaf

49 NINE MILE RIDE, FINCHAMPSTEAD, BERKS

# OPINION

1. In 1973 detailed planning permission was granted for *"the demolition of an existing dwelling and erection of a detached house and double garage"* subject to conditions. In particular condition No.5 provided:

> *"The proposal shall be in replacement of the dwelling which exists on the site. The existing dwelling shall be demolished within 3 months of the erection of the proposed new dwelling."*

Microfiche extracts from the permission under reference 173.73 show a proposed new dwelling and garage on the site of what is now No.49 A and 49 B respectively.

2. Subsequently in 1976, under reference 04600 planning permission was granted for the " *resiting of the garage and erection of house and garage at - 49 Nine Mile Ride, Finchampstead.* "

I have not had sight of any application plans but my understanding is that by this

application, consent was granted to resite the location of the original double garage, granted consent in 1973 under reference 173/ 73 serving what is now 49 A . In addition a second consent for another house on what is now the location of 49 B.

Again another condition was imposed which provided that:

> *"... the existing dwelling to the rear of the site shall be completely demolished within one month of the erection of the new dwelling hereby approved."*

3. Thus by 1976 the Council had granted 2 separate planning permissions for the erection of two separate dwellings conditioning each consent to ensure that the original No.49 was demolished upon the third and first month after the erection of the approved buildings.

4. Thus the Council ensured that upon the erection of either No.49 A or 49 B, or both , an obligation arose so as to ensure demolition of the original property at No.49.

5. In the event both buildings were erected and the original property at No.49 remains.

6. My instructions are that Building Regulation approval for the properties now known as and situated at No.49 A and 49 B was obtained in 1975 and 1976 respectively.

7. Those instructing me have seen an aerial photograph dated 1986 and confirm that this shows 49, 49A and 49B all present.

8. My client's father constructed No.49 A and 49 B. and it as within the family's knowledge, that No.49 was never demolished. This is evident from the photographs accompanying

my papers. Although not now inhabited the building in the photograph has all the outward characteristics of a former dwelling.

9. Condition 5 of the 1973 permission includes a sentence *"the proposal shall be in replacement of the dwelling which exists on the site"*. The reason given for the condition requiring demolition of the existing dwelling within 3 months of the erection of the proposed new dwelling is *"the site is within an area where new dwellings are not normally permitted."*

The condition is perfectly valid and, subject to being immune from enforcement due to the time limits imposed by section 171B, enforceable. Likewise condition 7 of the 1976 permission is expressed in similar words although demolition had to be achieved within 1 month of the erection of that building.

10. Section 187A provides that a local planning authority may, if any condition is not complied with, serve a breach of condition notice. The service of such a notice constitutes the taking of enforcement action within section 171A and is therefore governed by the time limits prescribed in section 171B. A notice may not be served after the end of the period of ten years beginning with the date of the breach.

11. Since both permissions have been implemented, and the aerial photograph confirms the erection of the two dwellings in 1986 there is no doubt that the failure to demolish is now immune from enforcement action. This could be confirmed by the application under section 191(1)(c).

12. In considering an application under section 191(1)(c) the LPA would not, in my opinion be concerned about the vacancy of the dwelling or condition of the original No.49. The vacancy of the building is wholly irrelevant to the question of whether the breach of condition has become lawful due to the fact that the time window of opportunity (10 year period) in which to take enforcement action has passed.

As for the condition of the building, unless there was an issue of fact as to whether the building had been demolished then the condition of the building would be irrelevant. Since plainly the building is still standing, albeit in need of repair and renovation, in my opinion its condition is not relevant to any consideration of a section 191 (1) (c) certificate.

13. As to repair and renovation in my opinion the owners would be perfectly entitled to undertake any works of enlargement, improvement or other alteration falling within the scope of permitted development rights set out in Part 1 of Schedule 2 of the General Permitted Development Order 1995 so long as the building that remains is *"sufficiently intact as to reasonably support the description of dwelling house and not merely the ruins of a dwelling."* See the Secretary of State's determination in Oak Tree Cottage, Hope Mansell [1978] JPL 806, approved by McNeill J in Trustees of Earl of Lichfield v Secretary of State for the Environment & Stafford Borough Council [1985] JPL 251. In the Oak Tree case the Secretary of State accepted the building did not necessarily need to be actually in use in order to benefit from G.D.O. rights.

14. If those instructing me have any queries then no doubt they will not hesitate to get in touch.

Mary Cook

MARY COOK
12.1.00

2/3 Gray's Inn Square
Gray's Inn
London WC1R 5JH

49 NINE MILE RIDE,
FINCHAMPSTEAD, BERKS

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OPINION

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Martin Pole Nicholas
7 Broad Street
Wokingham
Berkshire
RG40 1AY

Tel: 0118 978 0777

1943

17 JAN 2000* 0398

For the Council's use only:

Application No: CLE/2000/0398

Date received: .....

WOKINGHAM DISTRICT COUNCIL

Town and Country Planning Act 1990, Section 191, as amended by Section 10 of the Planning and Compensation Act 1991.

Town and Country Planning General Development (Amendment) Order, 1992.

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APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR AN *EXISTING* USE OR OPERATION OR ACTIVITY IN BREACH OF A PLANNING CONDITION.

---

1. Description of existing use or operation or activity applied for:

Retention of a dwelling in breach of Condition 05 of 173/73

---

2. Applicant (in block capitals)

Name: G ANDERSON ESQ

Address: c/o AGENT

.....

Post Code: .....

Tel. No: .....

---

3. Agent (if any)

Name: MARTIN & POLE, NICHOLAS

Address: 7 BROAD STREET, WOKINGHAM

BERKSHIRE

.....

Post Code: RG40 1AY

Tel. No: 0118 978 0777

4. (1) Nature of applicant's interest in the land, e.g. owner, lessee, occupier. OWNER

(2) If you do not have an interest:

(a) give name(s) and address(es) of anyone you know who has an interest in the land.

(b) state the nature of their interest (if known).

(c) state whether they have been informed about this application.

YES/NO

---

5. Address or exact location of the land to which this application relates:

49 NINE MILE RIDE
FINCHAMPSTEAD

Describe here and enclose ( 4 ) copies of an OS-based plan showing the boundary of the land edged in red.

Curtilage of 49 Nine Mile Ride, Finchampstead

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6. This application is for:

*an existing use;

*an existing operation:

*an existing use, operation or activity in breach of a condition; x

being a use, operation or activity subsisting on the date of this application.

(*Tick whichever is applicable).

---

7. If there is more than one subsisting use of, or operation or activity on the land at the date of this application, describe fully each of them and, where appropriate, show to which part of the land each use, operation or activity relates.

---

8. When was the use or activity begun, or the operation substantially completed?

BREACH OF CONDITION SINCE 1973

---

9. Under what grounds is the certificate sought?

(Delete those which are not applicable)

(1) ~~The use began more than ten years before the date of this application; or~~

(2) The use, operation or activity in breach of condition began more than ten years before the date of this application; or

(3) ~~The use began within the last ten years, as a result of a change of use not requiring planning permission in the last ten years; or~~

(4) The operations were substantially completed more than four years before the date of this application; or

(5) The use as a single dwellinghouse began more than four years before the date of this application.

(6) Other - specify (this might include claims that the change of use or operation was not development, or that it benefited from planning permission granted under the Act or by the General ~~Development Order~~).

10. If the certificate is sought for a use, operation or activity in breach of a condition or limitation, specify the condition or limitation which has not been complied with, and attach a copy of the relevant planning permission.

CONDITION 05 OF APPLICATION REFERENCE 173/73

---

11. Give any additional information you consider necessary to substantiate your claim.

(Continue on a separate sheet if necessary)

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12. List here all the documents, drawings or plans which accompany this application.

* Counsel's Opinion
* Agent letter dated 14 January 2000

---

I/We hereby apply for a lawful use or development certificate under Section 191 of the 1990 Act in respect of the existing use, operations or activity described in this application and the documents, drawings and plans which accompany it. I/We enclose the appropriate fee of £.....

Signed: Martin Pole Nicholas MARTIN&POLE, NICHOLAS ..... Date: 14 January 2000..

On behalf of: G ANDERSON ESQ .....

(Insert name of applicant if signed by an Agent).

WARNING: The amended Section 194 of the 1990 Act provides that it is an offence to furnish false or misleading information or to withhold material information with intent to deceive. Section 193(7) enables the Council to revoke, at any time, a certificate they may have issued as a result of such false or misleading information.