

**Instruction re. Counsel's opinion – Land adjoining Bromiley, Ribchester Road,
Clayton-Le-Dale, Blackburn
Clients: Mrs Kenny & Mrs Panniker**

Background

Planning permission was granted in 1955 for a "Detached bungalow" on the above land. That planning permission, reference 6/9/548 is attached as Document A. That bungalow has not been built but it is the client's contention that the permission was commenced by virtue of an access being created. Following a change of ownership, a planning application was submitted in 1974 to revise the access to the proposed bungalow. That application, reference 3/1974/0357 was granted. The decision notice is attached as Document B.

The client sought to purchase the land, which was being sold on the basis that it had an extant planning permission for the erection of a bungalow. In March 2015, acting on behalf of the client, to seek reassurance that the permission remained extant, we submitted a Certificate of Lawfulness application to "establish whether planning permission 6/9/548 (amended under 3/1974/0357) is extant". The application form is attached as Document C; the supporting documentation submitted (including a statutory declaration from the owner of the land) is Document D and the covering letter which sets out the detailed background to the application is Document E.

The case we put forward was essentially as follows:

1. The permission had been commenced prior to it expiring by virtue of the construction of an access.
2. The statutory declaration of Mrs Panniker (part of Document D) demonstrates this.
3. Correspondence from the Council in 1984 and 1985 (part of Document D) makes it clear that the Council accepted that the provision of the access had kept the 1955 permission alive.
4. The Council had approved the 1974 planning application revising the access to the bungalow (after the 21 9 73 'expiry date').

The Certificate was refused. The decision notice is attached as Document F. The officer report is attached as Document G. Paragraph 14 of the officer report sets out the reasons why the Council refused the Certificate. It is the Council's view that the relevant permission had lapsed (on 25th February 1973 by virtue of the time periods imposed by the 1968 Act) and in addition there was no evidence that the development had been commenced prior to that permission lapsing.

What we need to know

We would like advice on the following:

1. Do we have grounds to make a resubmission, accompanied by legal advice, to the effect that the 1955 permission remains extant?
2. Does the owner (Mrs Panniker) have grounds for any form of compensatory action against the Council, in that she has been led to believe that she benefitted from an extant permission?

Kieran Howarth MRTPI
22 June 2017

APPENDIX 1

**Document A
Planning Permission 6/9/548**

C. G. G. not
 COMMISSIONER for GATH
 22/1/1955

L.P.C. Reference No. 127

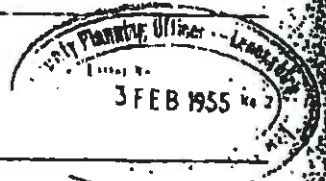
TOWN AND COUNTRY PLANNING ACT, 1947

NOTICE OF CONSENT TO APPLICATION

*By E. A. Hirst, Architect,
 100, Broad Street,
 GREAT BRIDGE.*

PART I.—PARTICULARS OF APPLICATION

1. Name and address of applicant	<i>Mr. E. Fournier, F.R.C.S., 25, Langhill, Blandford.</i>
2. Name and address of agent (if any)	<i>By E. A. Hirst, Architect, 100, Broad Street, Great Bridge.</i>
3. Date of application	<i>January, 1955.</i>
4. Land to be developed	<i>Oaks Brook, Claydon-le-Rice.</i>
	Site Sheet No. Edition Plot No.
5. Development forming the subject of the application	<i>Proposed detached bungalow.</i>
6. Particulars of any directions given under the Act, or under the General Development Order	



Note: Brief particulars only are required for 4-6 above

PART II.—PARTICULARS OF DECISION

The **Electoral Rural District** Council, as agent for the **Landward County Council** the local planning authority for the Administrative County of **Landward** hereby give notice in pursuance of the provisions of the Town and Country Planning Act, 1947 that permission for the carrying out of the development referred to in Part I hereof in accordance with the application and plans submitted HAS BEEN GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

1. That the applicant shall be responsible for the provision of the necessary drainage and sewerage for the proposed development and shall be liable for the cost of any drainage or sewerage works which may be required for the purpose of the development and shall be responsible for the provision of the necessary drainage and sewerage for the proposed development and shall be liable for the cost of any drainage or sewerage works which may be required for the purpose of the development.
2. That the applicant shall be responsible for the provision of the necessary drainage and sewerage for the proposed development and shall be liable for the cost of any drainage or sewerage works which may be required for the purpose of the development.

Handwritten signature

COMMISSIONER FOR CASH
22/1/2015

The reasons for the conditions set out in the above are as follows:-
That the land will eventually be required for highway purposes,
to ensure a reasonable degree of visibility and to safeguard the
proper use of the highway.

Thirty-three JANUARY, 1955.

Handwritten signature
Clerk of the Council
(P. A. Gifford)

42, Wellington Street (St. John's),
BLACKBURN.

IMPORTANT This form does not refer to the provisions under the Town and Country Planning Act 1947 and does not include any consent or approval under any other enactment or under the Building Bye Laws.

These Notes do not apply when consent is granted unconditionally.

1. If the applicant is aggrieved by the decision of the local planning authority to grant permission for the proposed development he may in the usual manner apply to the Minister of Town and Country Planning for a certificate of appeal. The certificate of appeal must be submitted to the Minister within the period for the giving of a Notice of Appeal and to the local planning authority within the period for the giving of a notice of appeal. The Minister is not required to entertain such an appeal if it appears to him that permission for the proposed development could not have been granted but for the provisions of the Act. The Minister is not required to entertain such an appeal if it appears to him that permission for the proposed development could not have been granted but for the provisions of the Act. The Minister is not required to entertain such an appeal if it appears to him that permission for the proposed development could not have been granted but for the provisions of the Act.

Blackburn Rural District

The Minister of Town and Country Planning is not required to entertain such an appeal if it appears to him that permission for the proposed development could not have been granted but for the provisions of the Act. The Minister is not required to entertain such an appeal if it appears to him that permission for the proposed development could not have been granted but for the provisions of the Act.

APPENDIX 2

Document B

Decision Notice for application reference 3/1974/0357

Planning permission

Name and address of applicant

Name and address of agent (if any)

Mrs. H. Tamlikar,
Bromley,
Ribechester Road,
Clayton-le-Dale, Llockburn.

Part I - Particulars of application

Date of application

9 July, 1974

Application no

3/74/0357/00/P

Particulars and location of development

Land adjoining Bromley, Ribechester Road, Clayton-le-Dale, Llockburn.
Proposed vehicular access to approved site for bungalow.

Part II - Particulars of decision

The Ribble Valley Borough Council

hereby give notice in pursuance of the provisions of the Town and Country Planning Act 1971 that permission has been granted for the carrying out of the development referred to in Part I hereof in accordance with the application and plans submitted subject to the following conditions.

1. The development must be begun not later than the expiration of five years beginning with the date of this permission.
2. Notwithstanding the provisions of the Town & Country Planning General Development Order, 1973, the land between the improvement line and the existing highway boundary of Ribechester Road, B 6245, shall be kept free of all buildings, structures or erections whether above or below the surface of the land, excepting gates, fences or walls not exceeding a height of 3 metres. The improvement line is 50ft. from the highway boundary on the opposite side of the highway.
3. The access shall be constructed in accordance with the detail indicated on the submitted plan, and a note should be attached to any permission given to the effect that under the Highways Act, 1971, section 40, the County Council as highway authority may specify works to be done for the construction, improvement or alteration of a vehicle crossing across the grass verge or barbed footway or a county road where this may be necessary as a result of carrying out development. The County Surveyor is prepared, on request, to forward specification and quotation of the work which may be necessary in a particular case.

The reasons for the conditions are

1. Required to be imposed pursuant to section 41 of the Town and Country Planning Act 1971
2. The land between the existing highway boundary and the improvement line will eventually be required for highway purposes.
3. To ensure the proper use of the access.

Date

10th July, 1974

Planning Department,
Princess Avenue,
Clitheroe.

Charles Wilson

Chief Planning Officer

Note: This permission relates only to that required under the Town and Country Planning Act and does not include any consent or approval under any other enactment or bylaw, order or regulation, but under section 56(2) of the Town and Country Planning Act 1971 it will operate as listed building consent in respect of any works described in the permission for the alteration or extension of a listed building.

APPENDIX 3

Document C

**Application Form for Certification of Lawfulness application
to establish whether planning permission 6/9/548 (amended under
3/1974/0357) is extant**



RIBBLE VALLEY
BOROUGH COUNCIL

Council Offices, Church Walk, Clitheroe, Lancashire, BB7 2RA Tel: 01200 425111 www.ribblevalley.gov.uk

For office use only

Application No.

Date received

Fee paid £

Receipt No.

Application for a Lawful Development Certificate for an Existing use or operation
or activity including those in breach of a planning condition.

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

Town and Country Planning (Development Management Procedure) (England) Order 2010

You can complete and submit this form electronically via the Planning Portal by visiting www.planningportal.gov.uk/apply

Publication of applications on planning authority websites

Please note that the information provided on this application form and in supporting documents may be published on the Authority's website. If you require any further clarification, please contact the Authority's planning department.

Please complete using block capitals and black ink.

It is important that you read the accompanying guidance notes as incorrect completion will delay the processing of your application.

1. Applicant Name and Address

Title: First name:

Last name:

Company (optional):

Unit: House number: House suffix:

House name:

Address 1:

Address 2:

Address 3:

Town:

County:

Country:

Postcode:

2. Agent Name and Address

Title: First name:

Last name:

Company (optional):

Unit: House number: House suffix:

House name:

Address 1:

Address 2:

Address 3:

Town:

County:

Country:

Postcode:

3. Site Address Details

Please provide the full postal address of the application site.

Unit: House number: House suffix:

House name: LAND ADJACENT TO

Address 1: BREMILEY

Address 2: RIBCHESTER ROAD

Address 3: CLAYTON-LE-DARE

Town: SLACKBURN

County:

Postcode (optional): BB1 9EG

Description of location or a grid reference. (must be completed if postcode is not known):

Easting: Northing:

Description:

4. Pre-application Advice

Has assistance or prior advice been sought from the local authority about this application? Yes No

If Yes, please complete the following information about the advice you were given. (This will help the authority to deal with this application more efficiently).

Please tick if the full contact details are not known, and then complete as much as possible:

Officer name:

Reference:

Date (DD/MM/YYYY): (must be pre-application submission)

Details of pre-application advice received?

5. Lawful Development Certificate - Interest In Land

Please state the applicant's interest in the land:

Owner: Yes No Lessee: Yes No Occupier: Yes No

If Yes to Lessee or Occupier please give details of the owner and state whether they have been informed in writing of this application:

Name	Address	Have they been informed in writing of the application	
		Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>

If No to all the above, please give name and address of anyone you know who has an interest in the land:

Name	Address	State the nature of their interest (if known)	State whether they have been informed about this application		If No, please explain why not
			Yes	No	
MRS. M. PANIKKAR	BREMILEY RIBCHESTER ROAD, CLAYTON-LE-DARE SLACKBURN, BB1 9EG	OWNER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
			<input type="checkbox"/>	<input type="checkbox"/>	
			<input type="checkbox"/>	<input type="checkbox"/>	
			<input type="checkbox"/>	<input type="checkbox"/>	

6. Authority Employee / Member

With respect to the Authority, I am:

- (a) a member of staff (c) related to a member of staff
 (b) an elected member (d) related to an elected member

Do any of these statements apply to you?

Yes No

If Yes, please provide details of the name, relationship and role

7. Description of Use, Building Works or Activity

Please state for which of these you need a lawful development certificate/building works (you must tick at least one option):

An existing use: Yes No

Existing building works: Yes No

An existing use, building work or activity in breach of a condition: Yes No

Being a use, building works or activity which is still going on at the date of this application

If Yes to either 'an existing use' or 'an existing use in breach of a condition', please state which one of the Use Classes of the Town and Country Planning (Use Classes) Order 1987 (as amended) the use relates to:

BUILDING WORKS COMMENCED WITH THE CREATION OF THE ACCESS.

8. Description of Existing Use, Building Works or Activity

What is the existing site use(s) for which the certificate of lawfulness is being sought? Please fully describe each use and state which part of the land the use relates to:

EXISTING USE A BUILDING PLOT FOR THE ERECTION OF A BUILDING AND A GARAGE APPROVED UNDER APPLICATION NUMBER 6/9/548 AND AMENDED UNDER APPLICATION NUMBER 3/74/0357 WORK HAVING COMMENCED.

9. Grounds For Application For A Lawful Development Certificate

Please state under what grounds is the certificate sought (you must tick at least one box):

- The use began more than 10 years before the date of this application.
- The use, building works or activity in breach of condition began more than 10 years before the date of this application.
- The use began within the last 10 years, as a result of a change of use not requiring planning permission, and there has not been a change of use requiring planning permission in the last 10 years.
- The building works (for instance, building or engineering works) were substantially completed more than four years before the date of this application.
- The use as a single dwelling house began more than four years before the date of this application.
- Other - please specify (this might include claims that the change of use or building work was not development, or that it benefited from planning permission granted under the Act or by the General Permitted Development Order).

If the certificate is sought on 'Other' grounds please give details:

WORK COMMENCED TO CREATE THE REVISED ACCESS TO THE SITE WITHIN 5 YEARS OF APPLICATION 3/74/0357 BEING APPROVED AS A RESULT APPLICATION 6/9/548 IS EXTANT.

If applicable, please give the reference number of any existing planning permission, lawful development certificate or enforcement notice affecting the application site. Include its date and the number of any condition being breached:

Reference Number: 6/9/548 Condition Number: Date (DD/MM/YYYY): (must be pre application submission)

Please state why a Lawful Development Certificate should be granted:

A TECHNICAL START OF DEVELOPMENT WAS MADE WHILE APPLICATION 3/74/0357 WAS EXTANT. SEE COVERING LETTER.

10. Information In Support Of A Lawful Development Certificate

When was the use or activity begun, or the building works substantially completed: WORK STARTED BEFORE DEC 1978 (date must be pre-application submission) (DD/MM/YYYY)

In the case of an existing use or activity in breach of conditions has there been any interruption? N/A Yes No

If Yes, please provide details of the dates, duration and any discontinuance of the development which is the subject of this application. If your application is based on the claim that a use or activity has been ongoing for a period of years, please state exactly when any interruption occurred:

N/A

In the case of an existing use of land, has there been any material change of use of the land since the start of the use for which a certificate is sought? Yes No

If Yes please provide details?

N/A

10. Information In Support Of A Lawful Development Certificate (Continued) - Residential Information

Does the application for a Certificate relate to a residential use where the number of residential units has changed? Yes No
 If Yes, please complete the following table:

Proposed Housing						Existing Housing							
	Number of Bedrooms					Total		Number of Bedrooms					Total
	1	2	3	4+	Unknown			1	2	3	4+	Unknown	
Market Housing							Market Housing						
Houses							Houses						
Flats & Maisonettes							Flats & Maisonettes						
Live-Work Units							Live-Work Units						
Cluster Flats							Cluster Flats						
Sheltered Housing							Sheltered Housing						
Bedsit/Studios							Bedsit/Studios						
Unknown							Unknown						
Market Housing Total (a + b + c + d + e + f + g) =							Market Housing Total (a + b + c + d + e + f + g) =						
Social Rented Housing							Social Rented Housing						
Houses							Houses						
Flats & Maisonettes							Flats & Maisonettes						
Live-Work Units							Live-Work Units						
Cluster Flats							Cluster Flats						
Sheltered Housing							Sheltered Housing						
Bedsit/Studios							Bedsit/Studios						
Unknown							Unknown						
Social Rented Housing Total (a + b + c + d + e + f + g) =							Social Rented Housing Total (a + b + c + d + e + f + g) =						
Intermediate Housing							Intermediate Housing						
Houses							Houses						
Flats & Maisonettes							Flats & Maisonettes						
Live-Work Units							Live-Work Units						
Cluster Flats							Cluster Flats						
Sheltered Housing							Sheltered Housing						
Bedsit/Studios							Bedsit/Studios						
Unknown							Unknown						
Intermediate Housing Total (a + b + c + d + e + f + g) =							Intermediate Housing Total (a + b + c + d + e + f + g) =						
Key Worker Housing							Key Worker Housing						
Houses							Houses						
Flats & Maisonettes							Flats & Maisonettes						
Live-Work Units							Live-Work Units						
Cluster Flats							Cluster Flats						
Sheltered Housing							Sheltered Housing						
Bedsit/Studios							Bedsit/Studios						
Unknown							Unknown						
Key Worker Housing Total (a + b + c + d + e + f + g) =							Key Worker Housing Total (a + b + c + d + e + f + g) =						
Proposed Housing Grand Total (A + B + C + D) =							Existing Housing Grand Total (E + F + G + H) =						

TOTAL NET GAIN or LOSS of RESIDENTIAL UNITS (Proposed Housing Grand Total - Existing Housing Grand Total):

11. Planning Application Requirements - Checklist

Please read the following checklist to make sure you have sent all the information in support of your proposal. Failure to submit all information required will result in your application being deemed invalid. It will not be considered valid until all information required by the Local Planning Authority has been submitted.

The burden of proof in a Lawful Development Certificate is firmly with the applicant and therefore sufficient and precise information should be provided.

The original and 3 copies of a completed dated application form:

The original and 3 copies of such evidence verifying the information included in the application as you can provide:

The original and 3 copies of a plan which identifies the land to which the application relates drawn to an identified scale and showing the direction of North:

The correct fee:

TO BE DEALT WITH BY THE CLIENT.

12. Declaration

I/we hereby apply for a Lawful Development Certificate as described in this form and the accompanying plans/drawings and additional information. I/we confirm that, to the best of my/our knowledge, any facts stated are true and accurate and any opinions given are the genuine opinions of the person(s) giving them.

Signed - Applicant

Or signed - Agent



Date (DD/MM/YYYY):

26.1.2015 (date cannot be pre-application submission)

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 authority to revoke, at any time, a certificate they may have issued as a result of such false or misleading information.

13. Applicant Contact Details

Telephone numbers

Country code: National number: Extension number:

Country code: Mobile number (optional):

Country code: Fax number (optional):

Email address (optional):

14. Agent Contact Details

Telephone numbers

Country code: National number: Extension number:

Country code: Mobile number (optional):

Country code: Fax number (optional):

Email address (optional):

15. Site Visit

Can the site be seen from a public road, public footpath, bridleway or other public land? Yes No

If the planning authority needs to make an appointment to carry out a site visit, whom should they contact? (Please select only one)

Agent

Applicant

Other (if different from the agent/applicant's details)

If Other has been selected, please provide:

Contact name:

Telephone number:

Email address:

APPENDIX 4

Document D

**Supporting documentation relating to the Certificate of Lawfulness
application to establish whether planning permission 6/9/548 (amended
under 3/1974/0357) is extant**

I, Mrs Margaret Panikkar of Bromiley, Ribchester Road, Clayton Le Dale, Blackburn, BB1 9EG DO SOLEMNLY AND SINCERELY DECLARE as follows: -

1. My late husband and I purchased Bromiley in 1958 from Mr and Mrs Parker for whom the house had originally been built. The extent of Bromiley is shown edged blue on the attached plan and as can be seen there is a large curtilage which extends along the rear of my neighbours property, Rockhaven, it did extend further but some was sold to Ekasse a few years ago.
2. In February 1964, we purchased an adjoining parcel of land from Mrs Forrest, which is shown edged red on the attached plan. This parcel of land was purchased with the benefit of planning permission for the erection of a detached bungalow which has been approved under application reference 6/9/548 on the 31st January 1955. A copy of the decision notice is attached to this declaration. i.s.
CB
3. On the approved plans the entrance to the approved bungalow was located to the south eastern edge of the plot of land. However we decided that the access would be safer if it were located to the north west of the plot adjacent to our own access to Bromiley. On the 9th July 1974 I applied to Blackburn Rural District Council for planning permission for "*Land adjoining Bromiley, Ribchester Road, Clayton le Dale, Blackburn, proposed vehicular access to approved site for bungalow*". The application reference number was 3/74/0357 and planning permission was granted and we subsequently implemented the planning permission and created the approved access within the five year period for which the permission lasted.
4. I cannot recall the exact date when we created the access but I am certain that the work was done before the planning permission expired as I was aware of the importance of not letting the permission lapse. I attach to this Statutory Declaration an aerial photograph which was taken of Bromiley which shows the access into the building plot having been created. The photograph unfortunately wasn't dated however as a consequence of the presence of my daughter's hen ^{coop} in the top left hand corner of the picture I am able to say with certainty that the picture was taken between 1973 and 1978 as this was the period of time when she kept chickens from when she was 14 years of age until she was 18 years of age. i.s.
CB
5. I entered into correspondence with Ribble Valley Borough Council in 1984 to seek confirmation that the planning permission for the bungalow was still valid and I received confirmation that this was the case on the 14th March 1985. I do not have copies of the letters that I sent to the Council but I have copies of two letters that I received from them one dated the 20 December 1984 and the other the 14th March 1985 the letters from the Council were sent following legal opinion having been taken and very clearly conclude that "*the creation of the access constituted a specified operation and the planning consent therefore remains valid*". I attach copies of these two letters to this declaration.

6. I now wish to sell the building plot for the bungalow and this declaration has been prepared to support a planning application for a Lawful Development Certificate for this use.

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

SIGNED AND DECLARED at Culterhoe
in the County of LANCASHIRE
this 22nd day the 22nd of January 2015
before me [Signature]
Solicitor/Commissioner for Oaths

Signed Margaret Panikkar Date 22 Jan 2015

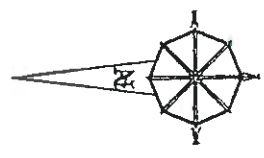
Mrs M Panikkar

ROLDSWORTH SOLICITORS
Purman House
2-4 Duck Street
Clitheroe
Lancashire
BB7 1LP

Tel: 01200 422152


Certificate of Lawfulness on land adjacent to
Bromley, Ribchester Road, Clayton-le-Dale, BB1 9EG -

Notes:
 All work is to be carried out to the latest current British standards Codes of Practice and recognised working practices.
 All work and materials should comply with Health and Safety legislation.
 All dimensions are in millimetres where explicitly shown otherwise.
 The contractor should check and certify all dimensions as work proceeds and notify the architect of any discrepancies.
 Do not scale off the drawings, if in doubt ask



Ordnance Survey (c) Crown Copyright 2015. All rights reserved. Licence number 100022432

Commissioner for O.M.T.S.
 COMMISSIONER FOR O.M.T.S.

 Gary Heerly Associates Gary Heerly Associates Chartered Surveyors Suite 9 - Grindleton Business Centre The Spinney Grindleton Clitheroe Lancashire BB7 4DH T 01200 449700 Email info@ghaonline.co.uk	Project: (No. 694.1879)
	Certificate of Lawfulness on land adjacent to Bromley Ribchester Road Clayton-le-Dale BB1 9EG
Title: Location Plan	Drawn: P.F.
Client: Mrs M Kenny	Date: 16.01.2015
Scale: 1:1250 @A1	Amendments:

C. O. Smith

COMMISSIONER FOR OATHS.

22/1/2015



MIDDLE VALLEY BOROUGH COUNCIL

Council Offices, Church Walk, Clitheroe, Lancashire, BB7 2RA.
Telephone Clitheroe (STD 0200 25111)

Michael Jackson, IPFA., ACIS., Chief Executive and Town Clerk
G. D. Onslow, IPFA., FRVA., Borough Treasurer and Deputy Chief Executive
F. Gledwin, M.F.S.H., M.A.F.H.I., Borough Health and Housing Officer
Philip Eriky Dip.Arch., Dip.T.P., R.I.E.A., M.R.T.P.I., A.M.E.I.M., Borough Planning and Technical Officer

please ask for
extension

Mr Hobday
255

my ref
your ref

TJH/OB/3/74/357

date

20 December 1984

Dear Madam

PLANNING PERMISSION FOR THE ERECTION OF A RESIDENTIAL DWELLING
LAND OFF OAKS BROW, CLAYTON-LE-DALE.

I refer to the above and to your letter dated the 24 August, 1984,
and to your subsequent discussions with my Senior Planning Officer.

I have discussed the matter in some detail with the Solicitor
bearing in mind the implications of the construction of the
vehicular access.

On the face of it and after taking legal opinion it would appear
that the construction of the access is a specified operation and
constitutes commencement of development. That is provided that
the access was constructed solely for the benefit of gaining access
to the proposed development.

A site inspection and photographs would reveal that an access has
simply been provided to the land and that no further development
has taken place. I would be pleased if you could confirm and
provide supporting evidence which would suggest that the access
has indeed been constructed solely for the above purpose.

Yours faithfully

P. Bailey

Borough Planning and Technical Officer

Mrs M Panikhar
Bromiley
Ribchester Road
CLAYTON LE DALE
Blackburn
BB1 9EG

Commissioner for Oaths

Commissioner for Oaths
22/1/2015



Ribble Valley Borough Council

Council Offices, Church Walk, Clitheroe, Lancashire, BB7 2RA
Telephone Clitheroe (STD 0200 25111)

Michael Jackson, IFFA., ACIS., Chief Executive and Town Clerk
G. D. Onslow, IPFA., FRVA., Borough Treasurer and Deputy Chief Executive
F. Gladwin, MRS.M., MAFPH., Borough Health and Housing Officer
Philip Bailey Dip.Arch., Dip.TF., RIBA MRPFI., AMBIM., Borough Planning and Technical Officer

Message for: Mr T J Hobday
extension: 255

my ref: TJH/GW/7/16/1
your ref:

date: 14th March 1985

Dear Madam

RESIDENTIAL DEVELOPMENT LAND ADJACENT TO
BROMILEY RIBCHESTER ROAD CLAYTON LE DALE

I refer to the above, to your letter dated
7th March 1985 and to previous correspondence
in this matter.

Having taken legal opinions on the matter,
I am satisfied that the provision of the
access constitutes a specified operation
and the planning consent therefore, remains
valid.

I trust the above information is of benefit
to you.

Yours faithfully

Borough Planning and Technical Officer

Mrs Panikkar
Bromiley
Ribchester Road
Clayton le Dale
Blackburn
BB1 9EG

COMMISSIONER FOR CATH
22/1/2015

APPENDIX 5

Document E

Covering Letter and detailed background information relating to the Certificate of Lawfulness application to establish whether planning permission 6/9/548 (amended under 3/1974/0357) is extant

26 January 2015

Our Ref: Ken/694/1879/GH

The Director of Planning and Development Control
Ribble Valley Borough Council
Council Offices
Church Walk
Clitheroe
BB7 2RA

Dear Sir

Re: Our Client – Mrs M Kenny, 17 Rowley Court, Newmarket, Suffolk, CB8 0PA. Planning application for a Lawful Development Certificate in respect of a parcel of land adjacent to Bromiley, Ribchester Road, Clayton le Dale, Blackburn, BB1 9EG granted planning consent under application number 6 9 548 for the construction of a bungalow.

I am pleased to enclose a lawful development certificate application on behalf of our above named client in respect of a parcel of land which belongs to a Mrs M Panikkar of Bromiley, Ribchester Road, Clayton le Dale which has been offered for sale by John Pallister Surveyors.

The application follows investigation that we have undertaken on behalf of Mrs Kenny to establish the planning status of the land which was offered for sale on the basis that there was an extant consent for the erection of a bungalow and garage, a technical start on the approved development having been made by the vendor, Mrs Panikkar, through the creation of the site access in the 1970's.

We have been instructed to seek the lawful development certificate so that our client can be guaranteed of the planning status of the land prior to their purchase of it and the evidence that is included with the application comprises a Statutory Declaration from Mrs Panikkar who has owned Bromiley since 1958. Mrs Panikkar and her husband acquired the development site with the benefit of the permission that had been granted in 1955 under application 6/9/548.

In order to understand the planning history and the use of the land I met with Mrs Panikkar and discussed the property and her knowledge of the planning history with her, fortunately she had already been able to provide Pallisters with some historic documentation which is included with her statutory declaration and referred to below and during the meeting she was able to provide additional information, also referred to below, which clearly supports the fact that there is an extant consent for the development that was approved in 1955.

Some of the correspondence that Mrs Panikkar had provided to Pallisters referred to application 3/74/357 and the records for application 3/74/357 are available for inspection at the Council Offices. This application was referred to in correspondence that Mrs Panikkar had with Trevor Hobday when he worked at the Council in 1984/1985 and this was a planning application by Mrs Panikkar to relocate the access that was approved under application 6 9 548 from the south eastern corner of the plot to the north western corner of the plot as it was a safer location for it. This planning application was approved. The decision date appears to be 10 July 1974 which is somewhat at odds with the fact that the date of the planning application is referred to as being 9 July 1974.

The description on the planning application read "*land adjoining Bromiley, Ribchester Road, Clayton le Dale, Blackburn - Proposed vehicular access to approved site for bungalow*".

Permission was granted with conditions which read as follows:

- 1. The development must be begun not later than the expiration of five years beginning with the date of this permission.*
- 2. Notwithstanding the provisions of the Town and Country Planning General Development Order, 1973, the land between the improvement line and the existing highway boundary of Ribchester Road, B6245, shall be kept free of all buildings, structures or erections whether above or below the surface of the land, excepting gates, fences or walls not exceeding a height of 1 metre. The improvement line is 50ft from the highway boundary on the opposite side of the highway.*
- 3. The access shall be constructed in accordance with the detail indicated on the submitted plan, and a note should be attached to any permission given to the effect that under the Highways Act 1971 Section 40 the construction, improvement or alteration of a vehicle crossing across the grass verge or kerbed footway of a country road where this may be necessary as a result of carrying out development, the County Surveyor is prepared, on request, to forward specification and quotation of the work which may be necessary in a particular case.*

A plan accompanied the planning application which showed the proposed location of the gates and the access into the field set back 20ft from the public highway and indicated the location of the gate posts. There was clear reference on the planning application form to application number 6 9 548 which was the planning consent for the development granted in 1955.

Following my instruction to assist Mrs Kenny in this matter I made an appointment to meet with Mrs Panikkar and she was able to provide me with an aerial photograph already referred to above which is included as part of her statutory declaration. The aerial photograph does clearly show the creation of the access and Mrs Panikkar was

quite clear about the date of the photograph as this shows in the top left hand corner a small poultry shed which belonged to her daughter who wanted chickens when she was 14 and kept them for approximately 5 years until she was in her late teens. This dates the photograph to between 1973 and 1978 and the latest date is clearly within the five years of the planning permission being granted in July 1974. Mrs Panikkar is quite certain that the access was created within a year or two of the planning permission being granted in 1974.

Mrs Panikkar corresponded with the Council in 1984 and it is clear that following some degree of investigation which is referenced in letters dated 20 December 1984 and 14 March 1985 the local authority confirmed to Mrs Panikkar that a technical start had been made on the approved development and that the consent was therefore extant. Our own investigations and the evidence of Mrs Panikkar clearly confirm that this was the case and therefore we can see no reason why the certificate should not be granted.

I am of the opinion that we have submitted sufficient information to demonstrate beyond reasonable doubt that the planning permission which was granted for the erection of a detached bungalow on the application site is extant and the certificate should accordingly be granted by the Council.

I look forward to discussing the matter with the officer appointed to deal with the application in due course and look forward to receiving confirmation of receipt of the application at your earliest convenience.

Yours faithfully

Gary Hoerty
Encl'

CC. Mrs M Kenny
Mrs Panikkar

APPENDIX 6

**Document F
Decision Notice**

RIBBLE VALLEY BOROUGH COUNCIL

Development Department

Council Offices, Church Walk, Clitheroe, Lancashire, BB7 2RA

Telephone: 01200 425111

Fax: 01200 414488

Planning Fax: 01200 414487

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

REFUSAL OF CERTIFICATE OF LAWFULNESS FOR AN EXISTING USE OR ACTIVITY IN BREACH OF PLANNING CONDITION

APPLICATION NO: 3/2015/0122
DECISION DATE: 14 March 2016
DATE RECEIVED: 27 January 2015

APPLICANT:

Mrs Maggie Kenny
C/o Agent

AGENT:

Mr Gary Hoerly
Gary Hoerly Associates
Suite 9
Grindleton Business Centre
The Spinney
Grindleton
Clitheroe
BB7 4DH

EXISTING USE OR ACTIVITY: To establish whether planning permission 6/9/548 (amended under 3/1974/0357) is extant.

AT: Land adj Bromley Ribchester Road Clayton le Dale BB1 9EG

Ribble Valley Borough Council hereby give notice that the application for a certificate of lawfulness for the existing use or activity in respect of the above land **has been refused**. The reason(s) for this decision are as follows:

1. Evidence has not been provided that proves beyond reasonable doubt that any "specified operation" (as defined by Section 43 of the Town and Country Planning Act 1971) has been carried out in respect of planning permission 6/9/548 dated 31 January 1955 and that (by virtue of Section 65 of the Town and Country Planning Act 1968) that permission therefore lapsed on 25 February 1973.

JOHN HEAP
DIRECTOR OF COMMUNITY SERVICES

**RIBBLE VALLEY BOROUGH COUNCIL
REFUSAL OF CERTIFICATE OF LAWFULNESS FOR AN EXISTING USE OR
ACTIVITY IN BREACH OF PLANNING CONDITION**

APPLICATION NO: 3/2015/0122

DECISION DATE: 14 March 2016

Notes:

1 If your application is refused

If a properly made application is wholly or partly refused, or it is granted in a different form from the application, or is deemed to have been refused (because the authority have not determined the application within the time-limit of eight weeks of receiving the completed application), you can appeal to the Secretary of State.

2 Appeals against refusal or failure to give decision on application

Section 195:

(1) Where an application is made to a local planning authority for a certificate under Section 191 or 192 and -

- (a) the application is refused or is refused in part, or
- (b) the authority do not give notice to the applicant of their decision on the application within such period as may be prescribed by a development order or within such extended period as may at any time be agreed upon in writing between the applicant and the authority, the applicant may by notice appeal to the Secretary of State.

(2) On any such appeal, if and so far as the Secretary of State is satisfied -

- (a) in the case of an appeal under subsection (1)(a), that the authority's refusal is not well-founded, or
- (b) in the case of an appeal under subsection (1)(b), that if the authority had refused the application their refusal would not have been well-founded.

he shall grant the appellant a certificate under Section 191 or, as the case may be, 192 accordingly or, in the case of a refusal in part, modify the certificate granted by the authority on the application.

(3) If and so far as the Secretary of State is satisfied that the authority's refusal is or, as the case may be, would have been well-founded, he shall dismiss the appeal.

(4) References in this section to a refusal of an application in part include a modification or substitution of the description in the application of the use, operations or other matter in question.

(5) For the purposes of the application of Section 288(10)(b) in relation to an appeal in a case within subsection (1)(b) it shall be assumed that the authority decided to refuse the application in question.

(6) Schedule 6 applies to appeals under this section.

3 The Secretary of State may decide to dismiss an appeal, or allow it (wholly or partly) and grant a certificate. His decision may be challenged in the High Court, by the appellant, *but only on a point of law*.

4 Appeal forms are obtainable from the Department of the Environment, Room TX103, Tollgate House, Houlton Street, Bristol BS2 9DJ, Tel: 0117 987 8546, Fax: 0117 987 8639. By properly completing an appeal form you will help to ensure that your appeal is dealt with quickly.

APPENDIX 7

**Document G
Officer Report**

Report to be read in conjunction with the Decision Notice.

Application Ref: 3/2015/0122/P

Date Inspected:

Officer: CS



Ribble Valley
Borough Council

www.ribblevalley.gov.uk

DELEGATED ITEM FILE REPORT:

REFUSAL

Development Description: To establish whether planning permission 6/9/548 (amended under 3/2974/0357/P) is extant on

Site Address/Location: land adjoining Bromiley, Ribchester, Clayton-le-Dale

CONSULTATIONS: Parish/Town Council

N/A.

CONSULTATIONS: Highways/Water Authority/Other Bodies

LCC Highways:

N/A.

LLFA:

N/A.

CONSULTATIONS: Additional Representations.

N/A.

RELEVANT POLICIES:

N/A.

CONSIDERATION OF THE APPLICATION

The application relates to a parcel of land on the north side of Ribchester Road (Oaks Brow) and to the east of the property "Bromiley" in Clayton-le-Dale. The applicant, Mrs Kenny, is a prospective purchaser of the site that is owned by Mrs Pannikar. The application seeks to establish whether a planning permission for a detached bungalow granted in 1955 (6/9/548) remains extant. The evidence to support the claim that the permission is extant has largely been provided by Mrs Pannikar to the agent acting for Mrs Kenny.

The consideration of the application involves an understanding of the planning history of the site as comprised in the Council's records and amplified/explained in the evidence provided by Mrs Pannikar. I will outline that history, within the context of the relevant legislation, and will comment upon the history and legislation, in as simple terms as possible, below:

1. Planning permission was granted on 31 January 1955 by the former Blackburn Rural District Council (BRDC) for a "proposed detached bungalow" on land to the east of Bromiley. That permission, 6/9/548, was not subject to any condition stating that the development should be commenced within a specific time period. This was in accordance with the practice at that time, as opposed to any error or oversight in relation to the particular application.
2. Mrs Pannikar (and her late husband) purchased the property, Bromiley, in 1958.

3. In February 1964 Mr & Mrs Pannikar purchased the adjoining parcel of land which, at that time, benefitted from the permission 6/9/548.
4. The Town and Country Planning Act 1968 became operative on 25 October 1968. Paragraph 65 of the Act and its heading, is as follows:
 - Limit of Duration of Planning Permissions Past and Future
 - (1) Subject to the provisions of this section, every planning permission granted or deemed to have been granted before the commencement of this section shall, if the development to which it relates has not been begun before the beginning of 1968, be deemed to have been granted subject to a condition that the development must be begun not later than the expiration of 5 years beginning with the said commencement.
5. In the light of the above point number 4, I contend that, unless the commencement of development had been made before the beginning of 1968, permission 6/9/548 would have lapsed on 25 October 1973 (ie 5 years after the Act became operative). No claim, or evidence, has been put forward in this current application that development in respect of permission 6/9/548 was carried out before the beginning of 1968.
6. In July 1973 an application was submitted to BRDC and given the reference number 6/9/3965 which sought permission for a "proposed vehicular access to approved site for bungalow, land adjoining Bromiley, Ribchester Road, Clayton-le-Dale, Blackburn". For reasons that are not evident in the Council's records, this application was not determined by BRDC but was eventually approved by Ribble Valley Borough Council (RVBC) on 9 July 1974 under a new reference number of 3/74/0357/00/P.
7. I consider that the Borough Council's approval of an application for a "proposed vehicular access to approved site for bungalow" was fundamentally flawed because the approval for the bungalow had lapsed on 25 October 1973.
8. Notwithstanding point number 7 above, it is necessary to quote condition number 3 of permission 3/74/0357/00/P as follows:

"the access shall be constructed in accordance with the details indicated on the submitted plan, and a note should be attached to any permission given to the effect that, under the Highway Act 1971, Section 40, the County Council as Highway Authority may specify works to be done for the construction, improvement or alterations, of a vehicle crossing across the grass verge or curbed footway of a county road where this may be necessary as a result of carrying out development. The County Surveyor is prepared, on request, to forward specification and quotation of the work which may be necessary in a particular case".
9. Mrs Pannikar states that she "subsequently implemented the planning permission and created the approved access within the 5 year period for which the permission lasted". An undated photograph has been submitted with this current application which is alleged to show that the access into the field had been created. Mrs Pannikar is unable to confirm the exact date when the access was created but, due to the presence of a chicken coup on the photograph she knows that it must have been between 1973 and 1978 (the permission would lapse on 10 July 1979).
10. Paragraph 43 of Part 3 of the Town and Country Planning Act 1971 states as follows:

- Provisions supplementary of ss.41 and 42

- (1) For the purposes of sections 41 and 42 of this Act, development shall be taken to be begun on the earliest date on which any specified operation comprised in the development begins to be carried out.
- (2) In sub-section (1) of this section "specified operation" means any of the following, that is to say –
 - (a) any work of construction in the course of the erection of a building;
 - (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
 - (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in the last preceding paragraph;
 - (d) any operation in the course of laying out or constructing a road or part of a road;
 - (e) any change in the use of any land, where that change constitutes material development.

11. Of the above mentioned "specified operations" only (2) (d) could, in my opinion, have been used to prove a 'start' in this case. However, in the solemn declaration submitted by Mrs Pannikar with this current application, there is no detail of the actual works that were carried out and no reference to any contact with the County Surveyor (as might have been expected in view of Condition No.3 of the permission). No real evidence has been put forward in respect of the nature of the works. If it was only the making of a gap in the hedge (even if the gap was gated) this would not, in my opinion, constitute a "specified operation" under Section 43 of the 1971 Act.

12. Mrs Pannikar says in her statement that she "was aware of the importance of not letting the permission lapse" yet she did not seek confirmation from the LPA at that time that the works were sufficient and were accepted by the LPA as constituting at 'start' on the development. If she had done, then the LPA would have had the opportunity to say one, two or all three of the following:

- (1) The works were insufficient.
- (2) The works did not comply with Condition 3 of the permission.
- (3) The works were 'out of time' as the permission had already lapsed on 25 October 1973.

There is no categorical evidence of exactly when the works were carried out. I consider the undated photograph and reference to the hen coup to be rather weak.

13. Mrs Pannikar did not seek the Council's opinion on whether the 1955 planning permission was still extant until she submitted a letter to the Council on that subject on 24 August 1984. In a reply dated 20 December 1984, an offer of the Council stated that "after taking legal opinion it would appear that the construction of the access is a specified operation and constitutes commencement of development. That is provided that the access was constructed solely for the benefit of gaining access to the proposed development. A site inspection and photographs would reveal that an access has simply been provided to the land and that no further development has taken place. I would be pleased if you could confirm and provide supporting evidence which would suggest that the access has indeed been constructed solely for the above purpose".

In a further letter dated 7 March 1985, the same officer of the Council stated "having taken legal opinions on the matter, I am satisfied that the provision of the access constitutes a specified operation and the planning consent therefore, remains valid".

14. I consider the conclusion of the officer in 1985 to be fundamentally flawed for 2 reasons:
 - (a) It did not acknowledge that the permission for the bungalow had lapsed on 25 October 1973 – before the permission was granted for the access in the amended position.
 - (b) No evidence appears to have been provided that any "specified operation" had been carried out that would constitute development as defined by paragraph 43(2) of the Town and Country Planning Act 1971.
15. If such evidence had been available and provided in 1984, the Council contends that it would have been provided to support this current application.
16. During the determination of this current application the agent acting for the applicant (a prospective purchaser of the site) has made the following points in an email:
 - I have serious concerns that, in effect, the applicants in 1974 were left by the Council's actions believing they had been granted planning permission to keep alive the earlier permission which therefore has since that time, particularly in the light of subsequent advice from the Council, left them with the clear belief that they had permission for something which might otherwise have been granted permission post 1974, which they could have applied for, but which wouldn't now. Refusal of the current application might leave the current owner of the land with a legitimate claim against the Council as a consequence.
 - I wish to obtain a legal opinion as to what the Council actually granted permission for in 1974, notwithstanding any description to the contrary, was permission for a bungalow and the amended access.
17. The Council's response to the above points was that "irrespective of the Council's action in 1974 and 1984 (in response to the very belated request for confirmation of a legitimate 'start') the LPA will determine this current application as it sees fit having regard to all the relevant considerations". However, if the agent was to provide legal opinion that the permission 6/9/548 remains extant, then this opinion would be taken into account, but would not prejudice the ability of the LPA to refuse the application. The Council added that "if the existing owners of the property feel that they have cause to complain about the actions of the Council in 1974 and 1984, then any such complaint would be dealt with through the relevant procedures, separately from the determination of this application for an LDC".
18. The applicant has, in my opinion quite legitimately said that the cost of obtaining Counsel's opinion should be borne by the site owner Mrs Pannikar. Mrs Pannikar and her agent have been given the opportunity to authorise a request for Counsel's opinion.
19. As no such authority has been given, the applicant's agent has requested that a decision be made on the application and that, if it is refused, and legal advice is subsequently obtained that is in favour of the applicant, then they would have the opportunity to either reapply for the LDC or appeal against the refusal.

It is accordingly considered that the application should be refused on the grounds that evidence has

not been provided that proves beyond reasonable doubt that any "specified operation" (as defined by Section 43 of the Town and Country Planning Act 1971) has been carried out in respect of planning permission 6/9/548 dated 31 January 1955 and that (by virtue of Section 65 of the Town and Country Planning Act 1968) that permission therefore lapsed on 25 February 1973.

RECOMMENDATION: That the application for a Certificate of Lawfulness – Existing, be refused

