Statement Of Lawful Use

We are seeking a Lawful Development Certificate for the proposed rebuilding of the dwelling that once stood on our land.

Schedule 3 paragraph 1 of the TCPA 1990 clearly states that the rebuilding as often as occasion may require of any building that was in existence on 1st of July 1948 does not constitute new development.

Schedule 3 is titled Development Not Constituting New Development. Paragraph 1 is subtitled Development Not Ranking for Compensation Under s. 114

The specified type of development in paragraph 1 does not rank for compensation under sec.114 and does not therefore bear any relevance to sec. 114. Consequently it remains a statute law and was unaffected by the repeal of sec.114 and the subsequent repeal of paragraph 2 of Schedule 3 which specified development that did rank for compensation.

Schedule 3 has affect in relation to sections 55, 107 and 114. The crucial affect in this case is its meaning in the context of section 55. Section 55 is titled "The Meaning of Development and New Development" (confirming they are one and the same) it defines what is considered to be development and new development. According to Sec. 55 rebuilding a dwelling would be defined as development and new development. Schedule 3 states that providing the building was in existence before 1st of July 1948 the rebuilding of the dwelling does not constitute a new development.

We have sufficient evidence that confirms the dwelling we wish to rebuild was in existence as such on the1st of July 1948. An aerial photograph of the site proving the existence of the dwelling is available from English Heritage Ref no. RAF/CPE/UK/2555 FR 4156. dated 27th March 1948. The rebuilding of that dwelling falls within the remit of paragraph 1 of Schedule 3 and therefore Schedule 3 is applicable.

Section 56 determines the time when a development is begun. S. 56 (2) makes clear that a development shall be taken to be begun on the earliest date on which a material operation comprised in the development begins to be carried out making reference to the provisions of the act in subsection 3.

(3) The provisions referred to in subsection (2) are sections 85(2), 86(6), 87(4), [F189] 91, 92 and 94.

Section 91 states that every planning permission granted or deemed to be granted is subject to the condition that the development to which it relates must be begun no later than the expiration of three years. The dwelling was built before the 1st of July 1948, planning permission was therefore deemed to

be granted at the time the dwelling was built and would coincide with the carrying out of a material operation. The material operation of digging a trench to contain the foundations or part of the foundations of a building constitutes an already begun development. The foundations of the dwelling are still present confirming them as an already begun development. Planning permission must therefore remain extant under section 91.

Section 56 (5) (b) goes on to clarify that material development means any development other than development of a class specified in paragraph 1 of schedule 3.

Schedule 3 confirms that the rebuilding of the dwelling does not constitute new development and therefore does not require a new planning permission.

Schedule 4 also confirms that the primary, temporary and occasional uses of land prior to 1948 do not require a new planning permission if those uses have taken place before the 6th of December 1968.

Section 57 (1) Subject to the following provisions of this section, planning permission is required for the carrying out of any development of land.

Section 57 (7) Subsection (1) has effect subject to Schedule 4 (which makes special provision about use of land on 1st July 1948).

The discontinued residential use of the dwelling was forced by the damage caused to the house by subsidence, requiring it to be demolished for safety reasons. The discontinued use was further prolonged by the refusal of the LPA to grant a new planning permission.

There is overwhelming evidence that proves the dwelling was demolished because of subsidence. There is no evidence to support that the residential use was ever voluntarily relinquished or permanently abandoned. The application to rebuild the dwelling confirms there was no intention to do so. There is no statute law relating to abandonment, if there is no law to contravene then it could not be deemed unlawful on that basis.