

PLANNING STATEMENT & EVIDENCE STATEMENT

Location	Birkland Farm, Fulshaw Lane, Penistone, Sheffield, S36 9FD
application	Certificate of Existing Lawful Development – Formation of Dwelling
client/applicant	Mrs Janet Birkett
job number	23/900
date	September 2023

Ltd
PAUL MATTHEWSARCHITECTURAL

ARCHITECTURE | PLANNING | DESIGN

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Company Registration Number: 09898149 - Company Registered in England and Wales

INTRODUCTION

This application for a Certificate of Existing Lawful Development is submitted to the Local Planning authority (Barnsley Metropolitan Borough Council) under section 191 of the Town and Country Planning Act 1990 (as amended).

The date of this application is 25th September 2023.

The applicant is Mrs Janet Birkett.

PLANNING HISTORY

The following planning history has been taken from the public, online database;

B/91/0269/PR	Erection of agricultural building (Field No. 8691).
The above application has a received date of 20/03/1992, registered on 04/03/1992, with an unknown decision status	
B/92/0725/PR	Erection of extension to barn
The above application has a received date of 19/08/1992, registered on 15/07/1992, with an unknown decision status	

APPLICATION

This application is made under the ten-year immunity rule of Section 171B Town & Country Planning Act 1990 (as amended) – Paragraph (3) (*In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.*)

The development in question relates to the following aspect of ‘development’ as defined under Section 55 of The Town and Country Planning Act (meaning of development);

“Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.”

We contend, and provide substantial justification and evidence to support the material change in the use of the building(s) from agricultural to a residential dwelling (non-agricultural associated). Other non-agricultural uses are clearly evident and also appear to have existed, continuously for in excess of the 10 year period but to simplify this application these are not being formally applied for, only the domestic/residential associated aspect.

The residential use, operation and ancillary areas including the gardens, have been carried out and used for in excess of ten years prior to the date of this application.

This application relates to the buildings shown hatch red within the red line on the accompanying OS location plan. Buildings shown on the OS Location plan, but not hatched in red, are not in residential use and form no part of this application.

Accompanying this application is a 'Building Mass Record + Photos'. This, based upon a detailed site survey and photographs (taken on Friday 21st July 2023). This document clearly demonstrates the use of each building at the time of the survey.

Appendix A contains other documentary evidence;

- Pg 9 - Register of electors dated 2004 (evidencing the presence and registration of Mr Michael Sam Birkett and Mrs Janet Birkett at the property)
- Pg 10 - Lloyds TBS letter dated 19th March 2009 Addressed to Mrs J Birkett at the subject property regarding the land.
- Pg 11 - Letter dated 29/01/1996 addressed to Mr Michael Birkett at the property, from Barnsley MBC Exchequer Division re confirmation of payment agreement (council tax)
- Pg 12 - A Lloyds TSB Bank statement addressed to Mrs Birkett at the subject property, dated 28 May 2012.
- Pg 13 - A photo (pg 14) of Mrs Birkett and her sister in May 2007 within the garden area. Mobile/static clearly evident within the side lean to of the barn (refer to window). Note Mrs Birkett's sister emigrated to New Zealand in 2008

Further accompanying letters (witness statements) accompany the application, these are from other local residents with a long standing historical knowledge and recollection of the subject site, that the 'Building Mass Record + Photos' refers to. These can be found within Appendix B of this statement.

Appendix C contains the applicants sworn statement, Mrs J Birkett.

We contend this application, considered as a whole, demonstrates the 'balance of probability' in favour of the application.

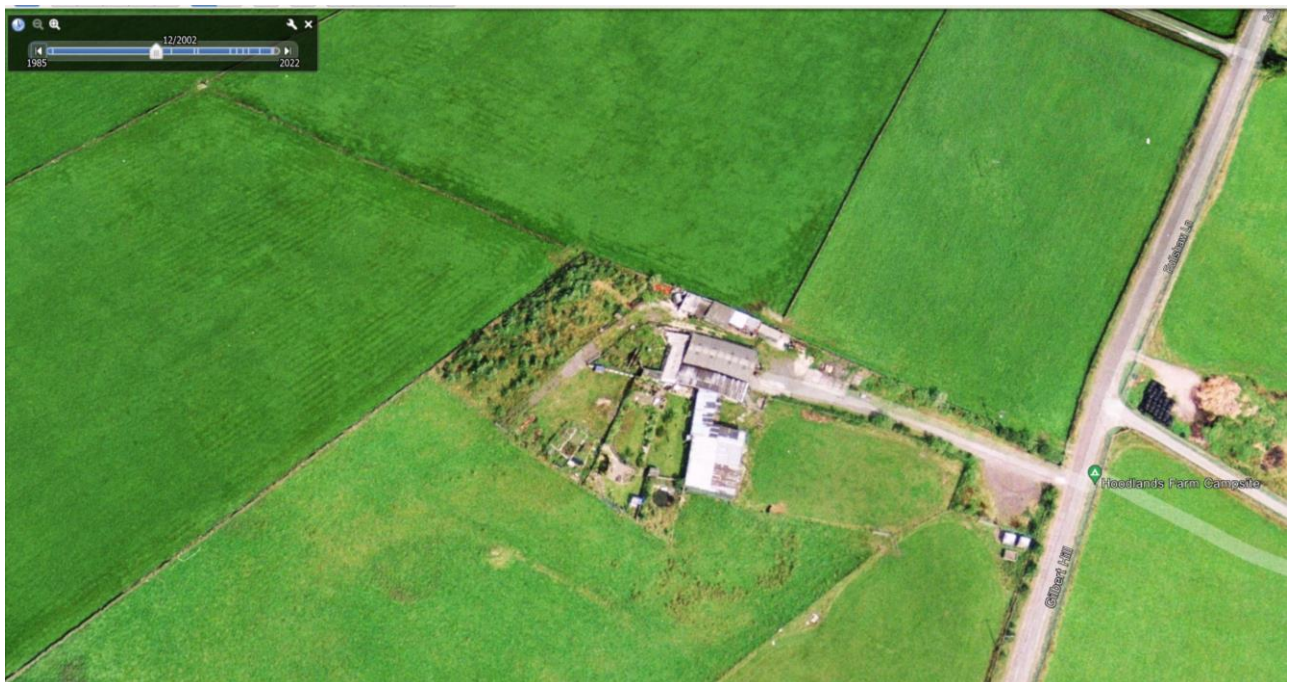
There are three distinct areas that this application focuses on;

1 – The formal dwelling area. The rear area of the barn (living room), the mobile home within the barn (forming additional living accommodation and the Kitchen/bathroom area (within the former/original barn).

2 – The ancillary domestic rooms/outbuildings. These are clearly used for domestic purposes, such as the processing of firewood/ logs, coal store, garage, workshop, store gardening equipment, tool stores, etc (all non-agricultural but all akin with the established residential use).

3 – The Domestic area (curtilage). The extensive garden areas to the West and South West of the building domestic buildings. The google earth extract image below clearly shows these domestic garden areas, all as also identified shaded red on the accompanying existing plan/survey record. The google earth image is dated December 2002, subsequent images repeatedly show the well tended to garden areas. These are clearly fenced off from the adjoining agricultural areas and have mature hedges/physical boundaries separating them from the adjoining agricultural fields.

The secondary access track up the North side of the main building, round the back (West) is not included within the shaded domestic garden area. This, although not fenced off (is has only been used for vehicle access), is a secondary access to the agricultural land. The principle access to the same parcel of land is via an alternative gate from the front paddock.



Google earth December 2002 image.

Agriculture is defined within section 336 of the Town and Country Planning Act 1990 as;

“‘agriculture’ includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and ‘agricultural’ shall be construed accordingly;”. Parts of the applicants land and other buildings are, and have historically been, in agricultural use, these are omitted from this application.

LAWFUL DEVELOPMENT LEGISLATION

The legislation sets out (Section 191 – 1);

“If any person wishes to ascertain whether—

- (a) any existing use of buildings or other land is lawful;*
- (b) any operations which have been carried out in, on, over or under land are lawful; or*
- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,*

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.”

Point A above is relevant in this application.

Section 191 (2) goes on to state:

“For the purposes of this Act uses and operations are lawful at any time if -

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and*
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.*

Section 171B (3) confirms the time limits for enforcement action in respect of a change of use:

“In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.”

Statutory requirements of the Town and Country Planning (Development Management Procedure) Order 2010

As required by this secondary legislation, Part 8 (39) states that such an application must be accompanied by the following information (responses shown in RED):

(a) A plan identifying the land to which the application relates drawn to an identified scale and showing the direction of North; (SUBMITTED WITH THIS APPLICATION - SEE THE ACCOMPANYING 1:1250 LOCATION PLAN, 1:500 EXISTING BLOCK PLAN AND 1:100 MORE DETAILED PLAN CLEARLY INDICATING THE AREAS SUBJECT OF THIS APPLICATION)

(b) such evidence verifying the information included in the application as the applicant can provide; (THIS PLANNING & EVIDENCE STATEMENT ALONG WITH THE APPENDICES, ACCOMPANYING PLANS AND WITNESS STATEMENTS (FROM LONGSTANDING LOCAL RESIDENTS WITH AN EVIDENTLY CLEAR KNOWLEDGE OF BIRKETT FARM) and;

(c) A statement setting out the applicant's interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application. THE APPLICANT MRS JANET BIRKETT IS THE FREEHOLD OWNER OF THE PROPERTY AND LAND IN QUESTION.

Guidance and case law for Lawful Development Certificate applications

The National Planning Practice Guidance 'Lawful Development Certificates', paragraph 006, states;

"In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."

Case law notes that the '**balance of probability**' test is less onerous than that of '**beyond reasonable doubt**'. Moreover, the courts have held that the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted (*Gabbitts v Secretary of State for the Environment and Newham LBC* [1985] J.P.L. 630).

SITE HISTORY & INFORMATION

The late Mr Michael Steven Birkett (known to many locals as Sam) & Mrs Birkett bought the land, 7.9 Acres, back in July 1990. The planning history is reference on page 1 of this statement.

Formerly of 412 Wakefield Road, Denby Dale, Huddersfield. Mr & Mrs Birkett moved up to Birkett Farm in 1993 residing in a self-contained mobile home/static. The mobile home/static, now located within the barn, was initially located to the East of the Poultry coop just to the North of the private drive (refer to 1:100 scale A1 Plan). In autumn 1994 the mobile home/static roof developed a leak which resulted in the mobile home/static being moved into the barn, within the side lean to. It still remains there to this day and is still being used a self-contained dwelling.

Further works were carried out internally within the barn. In 1996, the kitchen area was formed with the living area to the rear of the barn being formed in 2003

The late Mr Michael Birkett was a butcher by trade, but worked within a local abattoir in Huddersfield. He kept on with his own butchery for friends and other small scale local farmers. We contend the butchery and meat processing aspect is **not** an agricultural operation and more of a commercial operation, it was not Mr Birketts own meat for their own consumption that was processed. We understand Barnsley Environmental health visited the site and put a stop to killing of stock on site but allowing the butchery aspect to continue. The area used for butchery purposes, *meat hanging/food prep and butchery store*, is not included within this residential COL application.

Mrs Janet Birkett worked at Bridgewood House, in Denby Dale. A carer for people with learning difficulties.

Mr Birkett passed away on 04/04/2023 leaving Mrs Birkett alone at the remote property.

EVIDENCE OF LAWFULNESS

Appendix B contains Witness Statements of declaration from Two local witnesses (please note this area is rural).

One sworn statement is provided by the applicant, Mrs J Birkett and is enclosed with this application at Appendix C.

In summary, the agricultural building has been partly used as a dwelling by the applicant along with other buildings on site for associated domestic purposes.

This demonstrates that the use of part of the building for residential (non-agricultural) use which has been in continued existence well in excess of the requisite ten years.

CONCLUSION

It is submitted that the change of use described above is lawful at the date of this application under Section 191 of the Town & Country Planning Act.

The evidence listed above is considered to be sufficiently precise and unambiguous to prove, on the balance of probabilities, that the change of use from agricultural to residential, domestic curtilage and ancillary domestic associated buildings has been carried out for a period of more than ten years from the date of this application. This comprises the minimum required ten-year immunity time period before the date of this S191 Certificate of Lawfulness application.

Finally, as the Planning Practice Guidance recommends, at paragraph 006, should the Local Authority obtain its own evidence, this needs to be shared with the applicant to enable comment and the opportunity, if necessary, to produce counter-evidence. In the light of the above, we respectfully submit that the aforementioned development is indeed lawful, and request that the Local Planning Authority grant the Certificate of Lawfulness accordingly.

Should any further information or clarification be required please don't hesitate to contact us.

It would be appreciated if you could contact Paul Matthews Architectural prior to drafting up your recommendation for determination.

APPENDIX A

Other documentary evidence

REGISTER OF ELECTORS ANNUAL CANVASS 2004



By Law you must give the information we ask for on this form.
Please fill it in and return it immediately.
A pre-paid envelope is provided for use.
It is an offence to give false information - maximum fine - £1,000.

YOU WILL NEED TO REFER TO THE NOTES OVERLEAF TO COMPLETE THIS FORM

1. ADDRESS (See Note 1)		2a		2b	2c	2d	2e
THE ADDRESS OCCUPIER BIRKLANDS FULSHAW CROSS PENISTONE SHEFFIELD S35 9FQ 34611 - 631		WA 006375 +500904906					
2. NAMES (See Note 2)		Date of birth (dd/mm/yy)		Sex	Is your name on the Electoral Register?	Is your name on the Electoral Register?	Is your name on the Electoral Register?
BIRKETT	Jamet						
BIRKETT	Michael S						
DO NOT INCLUDE CHILDREN UNDER 16							
3. OTHER OCCUPANTS (See Note 3)		4. NO-ONE ELIGIBLE TO VOTE LIVES HERE (See Note 4)					
If this property is divided into flats, maisonettes, etc. please give full name of occupant in this box:		Property unoccupied on 15 October 2004 ☐ Everyone here is a foreign national ☐ Everyone is registered somewhere else ☐ This property is only used for business and not residential purposes ☐					
5. DECLARATION							
I declare that to the best of my knowledge and belief the details given are true and accurate and relate to the address of Part 1. SIGN HERE <i>M. S. Birkett</i> DATE <i>16/10/2004</i> Signature <i>MICHAEL BIRKETT</i>		Please use the notes overleaf to help you complete this form. If you need more help ring Electoral Services on 01226 773071/1. HAVE YOU SIGNED PART 3?					



Lloyds TSB | Commercial

Leicester Securities Centre
Charnwood House
Harcourt Way
Meridian Business Park
Leicester LE19 1WF
DX 152280 LEICESTER 33

Telephone: 0116 2408 900
Facsimile: 0116 2891 274

Contact Name:
Leicester Securities

Date:
19 March 2009

Our ref:
129174/Comp/JN
Your ref:

Private & Confidential
Mrs J Birkett
Birkland
Gilbert Hill#Fulshaw Cross
Penistone
SHEFFIELD
S36 9FQ

Dear Mrs Birkett

Property: Land on the West side of Gilbert Hill Lane Langsett

Having sent you the above security on 3rd March 2009, I am writing to check that it has arrived safely. According to our records, we have not received your confirmation that it did.

If you have received this security, please confirm its arrival by signing the enclosed copy letter and returning it in the prepaid envelope.

If the security did not arrive, please contact me on the above telephone number as soon as possible.

If I do not hear from you either way within 2 weeks of the date on this letter, I will have to assume that you have received the security, meaning Lloyds TSB is no longer liable.

Thank you for your help with this.

Yours sincerely,

J Neale
Customer Service Officer

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BARNSELEY METROPOLITAN
BOROUGH COUNCIL
Exchequer Division

Borough Treasurer: D. Hoyland IPFA
P.O. Box 63, County Way, Barnsley
S70 2TJ

Telephone (01226)

CONFIRMATION OF PAYMENT AGREEMENT

Payment arrangements agreed for:-

Name MR MICHAEL BIRNEY Payment Reference Number 5001802314
Address FULSHAW CROSS Account Balance: £ 244.94
FULSHAW LANE Date 29/1/96
PENISTONE
SHEFFIELD S30 6FD.
To pay by CONSECUTIVE WEEKLY PAYMENTS OF £3.00
FIRST PAYMENT BY 3/1/96
TO REVIEW BY 15/4/96

If the payments shown above are not maintained, recovery action may be taken against you for the full balance then outstanding, without further notice. If at any time you are unable to maintain these payments you must contact my staff at County Way, Barnsley, S70 2TJ.

Message if applicable:-
COUNCIL TAX STILL DUE
CONTACT MR. BATES BY 15/6/96
TEL. 774752
Contact Officer MR. BATES Telephone Number (01226) 774752

PLEASE RETAIN THIS AGREEMENT FOR YOUR INFORMATION

NOTES ON RECOVERY PROCEDURES ARE DETAIL

Page 1 of 4

MRS J BIRKETT
BIRKLAND
GILBERT HILL
FULSHAW CROSS
PENISTONE
S36 9FQ



C3603444E15779 1420 471/1/6502

CLASSIC



Lloyds TSB

Statement number 101

Issue date	28 May 2012
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Sort Code	30-94-43
Account Number	02830799
IBAN	GB88 LOYD 3094 4302 8307 99
BIC	LOYDGB21026

28 April 2012 to 28 May 2012



APPENDIX B

Witness Statements

Gill & Steve Drewery
Field House Farm,
Netherhouse Lane,
Penistone,
Sheffield.
S36 9FL

13th September 2023

To whom it may concern

Re: Mrs. Janet Birkett, Birklands Farm,
Fulshaw Lane, Penistone. S36 9FL

We have been asked by Janet's architect, Paul Matthews, to confirm that Michael (known to us as Sam) and Janet Birkett have resided at Birklands Farm for about 35 years. We have looked at the drawings from Paul Matthews and can confirm the plan 23/900/03 is Janet's current dwelling.

Having being friends of Sam and Janet for over 30 years and visiting their home, we can confirm that they resided in the converted part of

of the barn and lean to.

Sam (upto his passing in April) kept a variety of livestock and also did butchery for local farms. Janet has always been a keen gardener and has grown a variety of fruit and vegetables. She has also had poly tunnels and built her own fish-pond, besides being a carer at Bridgewood Care Home in Denby Dale, which she retired from a few years ago.

Since losing Sam, Janet has altered some of the areas that he used for his butchery and is now using them for domestic storage.

If you have any ~~queries~~ queries please phone 07917605329.

Yours faithfully

J. Drewery
J. Drewery

Mrs. M. Whiteley,
Fulshaw Cross Farm
Penistone
N.E. Sheffield
S36 9FQ
(01226 762334)

To whom it may concern,
I have lived at this
address since 1967 with
my late husband who
passed away 1998, I have
been with my partner
John Walker since
2000. They were both
good friends of Janet's
husband (Known as Sam
for 33 years. At Bucklands
Farm, Fulshaw Lane,

Yours Sincerely,
M. Whiteley,
J Walker

APPENDIX C

Sworn Statement

Janet Birkett
~~The Bungalow~~, Birklands Farm, Fulshaw Lane, Penistone, Sheffield, S36 9FD

I, Janet Birkett as owner of the Land and buildings subject to this application since July 1990 (erection of buildings followed the purchase of the land) (the buildings referred to as shaded in red on the accompanying planning application, A1 1:100 scale, drawing), do solemnly and sincerely declare the following.

The land associated with this application was previously used for agricultural purposes, owned and farmed by Peter Charles Hewitt & Julie Hewitt prior to me purchasing the land. The buildings hatched red and associated domestic curtilage land (garden) also hatched red has been used for domestic purposes (dwelling and ancillary accommodation and garden) since 1993.

Whilst the unshaded buildings and agricultural land, also within my ownership at Birklands Farm, have been used for agricultural purposes until the passing on my husband on 04/04/2023. The agricultural buildings/land do not form part of the associated planning application.

As a result of the above, the use of the agricultural building(s), shown shaded in red on the A1 1:100 scale accompanying plan, ceased in 1994 & 1996 (29 & 27 years ago). My late husband and I have used the building(s) and garden area (also shown shaded red on the same plan) for domestic purposes (dwelling and associated residential uses) from 1994 & 1996 onwards to the current date. The continuous uses are: Dwelling, garage and car port, log store (fuel), log cutting shed, store, log store/bin store, workshop, storage, garden areas and living areas consisting of Hallway, Kitchen, Bathroom, Lounge (x2) Bedroom and Porch - all as indicated on the accompanying Paul Matthews Architectural A1 plan reference 23/900/03.

These dwelling and associated dwelling use, together with their Intensity of use, have remained unchanged to the present day.

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

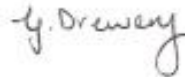
SIGNED by the above named Janet Birkett



in the presence of

Witnessed by:

Signature



Name

MRS. G. DREWERY

Address

FIELD HOUSE FARM
NETHERHOUSE LANE
PENISTONE
SHEFFIELD
S36 9FL

Date: 16-9-23