

Certificate of Lawfulness Application

Little Hunters Lodge, Penhow, Newport
Supporting Statement | August 2026



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1. Introduction

- 1.1 This statement has been prepared to support our Client's application, which seeks a Lawful Development Certificate made under Section 191 of the Town and Country Planning Act 1990 (as amended), to establish the lawfulness of the residential curtilage at Little Hunters Lodge, Penhow.
- 1.2 The application is supported by the following documents:
- Completed and signed Lawful Development Certificate Application Forms
 - Completed and dated Ownership Certificate
 - Sworn statement (Owner)
 - Appendix A – Historic Aerial Photographs
 - Appendix B- Location Plan from application 12/0664
 - Appendix C- Pre-Application Advice Response Extract
- 1.3 The application will confirm the respective land has been in continuous use as residential curtilage for in excess of 10 years.



2. Site & Surroundings

- 2.1 The site is located in Penhow, to the south of A48 Chepstow Road mid-way between Parc Seymour and Llandeudaud. It is accessed via a private lane approximately 250 metres in length and is located to the south of the existing Hunters Lodge dwelling, which forms part of the larger Hunters Livery.
- 2.2 The application site contains Little Hunters Lodge, a two-storey dwelling, partly set into the topography, positioned in close proximity to Hunters Lodge. The dwelling has been finished with white render, upvc windows and a slate roof.
- 2.3 The dwelling is a former barn, which was converted into a dwelling under planning permission 1/15347, which was granted on 19th January 1987.
- 2.4 A condition (No. 3) relating to the occupancy of the dwelling was attached to the original planning permission, requiring that 'the development hereby permitted shall be used insofar as it forms an annex / extension to the dwelling known as Hunters Lodge and shall at no time be occupied as a separate or self-contained dwelling unit'.
- 2.5 Little Hunters Lodge has been recognised as an independent dwelling for Council Tax and services purposes since at least 1997 and has been occupied / existed as a dwellinghouse separate to the main house (Hunters Lodge) ever since.
- 2.6 Permission was granted on the 3rd October 2024 to remove condition 3 (development to be used as an annexe) of 1/15347 conversion of barn to dwelling (LPA Ref 24/0651).
- 2.7 An existing dwelling known as Hunters Lodge is located directly adjacent to the application site. It is a large two storey property which steps down towards the adjacent livery, that has been developed and extended over time and is under separate ownership from the application site. Access to both properties and the livery is via an existing private lane directly onto the A48.
- 2.8 Hunters Lodge has been subject to alterations and extensions over the years, with a large conservatory granted to the rear in 2012 overlooking the livery, which was accepted would not result in any increase of massing or any increase in apparent scale from public vantagepoints.

3. Planning History

- 3.1 The application site has a varied planning history as referenced on the Local Authority's website.

Application	Location and Proposal	Applicant	Decision	Decision Date
1/15347	Conversion of barn to dwelling	Gallagher Enterprises	Approved	19/01/1987
24/0651	Removal of condition 3 (annexe restriction) of 1/15347	Gallagher Enterprises	Approved	03/10/2024
26/0348	PROPOSED REPLACEMENT DWELLING	Michelle Gallagher	Refused	16/07/2026

4. National and Local Policy

4.1 Section 191 of the Town & Country Planning Act 1990 (as amended) states:

191 - Certificate of lawfulness of existing use or development.

(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.

4.2 The Planning and Compensation Act 1991 introduced rolling time limits within which Local Planning Authorities can take enforcement action against breaches of planning control.

4.3 Section 171B sets out the time limits which are as follows:

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(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.

4.4 In determining the extent of a residential curtilage, established legal precedent applies. In *Burford v Secretary of State for Communities and Local Government & Anor* [2017] EWHC 1493 (Admin), Mr Justice Supperstone reviewed the legal authority concerning the determination of the curtilage of a building and confirmed that there are three primary factors to be taken into account:

- The physical layout of the building and attached land;
- The ownership, past and present; and
- Their use or function, past and present.

4.5 In considering these factors, the judgment cited the following relevant principles:

- Curtilage is not a planning land-use question and may be separate to the planning unit(s).
- The curtilage of a building, within the context of the assessment of these three factors, is a matter of fact and degree for determination by the decision-maker, who decides what reasonable weight is to be given to each factor.
- There is no restriction as to size, but it must fairly be described as being part of the enclosure for the house to which it refers.
- The relationship between the main dwelling and the land in question is relevant when considering their function and use, though it is not determinative by itself.

5. Application proposal

- 5.1 This application seeks a Lawful Development Certificate made under Section 191 of the Town and Country Planning Act 1990 (as amended), to establish the lawfulness of the residential curtilage at Little Hunters Lodge.
- 5.2 It is accepted that originally the buildings formed part of the main dwelling at Hunters Lodge, however, the land in question has been in non-agricultural use for considerable time and in excess of 10 years as visually corroborated by the historic aerial photographs contained within **Annex A**.
- 5.3 In line with recent discussions with the Council regarding the site, it is considered on balance and upon review of the available evidence that the use of the land is as residential curtilage / garden associated with Little Hunters Lodge. This application seeks to confirm the existing use of the land is lawful by virtue of time, as residential curtilage.

THE RELEVANT TESTS FOR A CERTIFICATE OF LAWFUL USE

- 5.4 The burden of proof for the provision of evidence to support the application is on the Applicant. The Courts have held that the relevant test of the submitted evidence on such matters is 'the balance of probability'. Accordingly, it is for the Applicant to show that on 'the balance of probability' the use has been established for a time period in excess of the relevant time limit for enforcement. A Local Planning Authority (LPA) should not refuse a certificate because the Applicant has failed to satisfy the stricter 'beyond reasonable doubt' test.
- 5.5 The Courts have further held that the Applicant's submitted evidence does not need to be corroborated by 'independent' evidence in order to be accepted. If the Local Authority has no evidence of its own to contradict or make the Applicant's evidence less than probable, there is no reason to refuse the application.
- 5.6 Under the terms of the Planning & Compensation Act 1991, when ascertaining whether any existing use of a building or land is lawful, the Act introduced rolling time limits within which LPAs can take planning enforcement action against breaches of planning control. Section 171B sets out the time limits and 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.

CASE FOR THE APPLICANT

- 5.7 It is considered that the use of the land as residential curtilage is lawful in accord with Section 191 (1) (a) of the Town and Country Planning Act 1990 and also Section 171B (3) of the Planning and Compensation Act 1991.
- 5.8 The sworn statements and historic aerial photographs (Annex A) provided in support of this application confirm unequivocally that the use of the land forming this application at Little Hunters Lodge has been in continuous non-agricultural, residential curtilage use associated with the dwelling for in excess of 10 years, in accord with Section 171B (3) of the Planning and Compensation Act 1991.
- 5.9 Given the historical red line boundary identified in previous applications, specifically the Location Plan from application 12/0664 (Appendix B), and supported by the Council's own observations in the Pre-Application Advice Response (Appendix C), it is demonstrated that the land functioned cohesively as part of the residential enclosure of the main site at the time of that application.
- 5.10 Furthermore, following the successful removal of the restrictive occupancy condition which previously associated Little Hunters Lodge as an annexe of Hunters Lodge (LPA Ref 24/0651), the application of the three Burford factors confirms that the limits of the residential curtilage now lawfully encompass Little Hunters Lodge as an independent planning unit in its own right.
- 5.11 It is the Applicant's view, along with the supporting evidence, that the use of the land as residential curtilage is immune from any enforcement action, given that it has been in use for a continuous period in excess of 10 years in accordance with Section 171B (3) of the Planning and Compensation Act 1991.
- 5.12 Accordingly, this Certificate of Lawful Use or Development (CLEUD) and the supporting information has been submitted to deem that the use of the land as residential curtilage is immune from enforcement action by virtue of the passage of time and is the lawful existing use of the site in accordance with Section 191 of the Town and

Country Planning Act 1990 (as amended) and Section 171B (3) of the Planning and Compensation Act 1991.





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