My Ref: ITHL/G1/85/2678

Your Ref: PAB/JB/MOUNTSTEPHENS

6th February, 1986

Dear Sir,

White Gates, Mill Lane, Hatch Beauchamp, Taunton
Search No. 85/2678

I refer to your letter of 31st January. I cannot agree that there has been any negligence on the part of the Council. In your search you asked whether there were any entries in the Land Charges Register against the particular property referred to. The answer was yes and the information was given. In Enquiry 11 you asked whether there were any entries in the planning register relating to the property. Again the answer was yes and the details were given. Once the basic information is given it is then up to the purchaser to satisfy himself what the effects on the property are of the various entries referred to. No where is there any statement or implication by the Council that any particular entry relates to any particular or the whole of the property searched against.

I would repeat that it is up to the purchaser to obtain, if he so wishes, a copy of the relevant planning consent, not only to satisfy himself as to the area referred to but also as to any conditions which may apply.

I would confirm therefore that as far as the Council are concerned there is nothing to rectify and I will be taking no further action.

Yours faithfully,

[redacted]

[redacted]retary and Solicitor

E. J. Watson, Cox & Counsell,
Soldicitors,
12 John Street,
Bristol.
BS1 2HS

Department of the Environment and
Department of Transport
Common Services
Room 1408
Tollgate House Houlton Street Bristol BS2 9DJ
Telex 449321

Direct line 0272-218936
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CC 4 DPHC
1 CEO
1 County Surveyor
15/1/85

Council Ref: MF/GI/PD.11/A/180(19/83/005)

Messrs Clarke Wilmott and Clarke
Solicitors
6 Hammet Street
TAUNTON
Somerset
TA1 1RG

14 JAN 85

Your reference
400/86
Our reference
T/APP/D3315/C/84/1908/P6
Date
11 JAN 85

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
APPEAL BY [redacted]
LAND AND BUILDINGS AT WHITEGATES, MILL LANE, HATCH BEAUCHAMP

1. I have been appointed by the Secretary of State for the Environment to determine the above appeal against an enforcement notice issued by the Taunton Deane Borough Council concerning the above land and buildings. I held an inquiry into the appeal on 29 November 1984.

2. a. The date of the notice is 17 May 1984.

b. The breach of planning control alleged in the notice is the making of a material change of use of the building shaded blue on Plan A from a use for the purposes of a summer house to a use for the purposes of a dwellinghouse.

c. The requirements of the notice are to discontinue the use of the building for the purposes of a dwellinghouse.

d. The period for compliance with the notice is 9 calendar months.

e. The appeal was made on grounds 88(2)(a), (b), (c), (d), (e) and (g) but at the inquiry ground 88(2)(e) was withdrawn and ground 88(2)(h) was added.

3. The evidence was taken on oath.

4. The appeal building is a long narrow single-storey building with a gable roof. It contains 3 main rooms: kitchen/diner, sittingroom and double bedroom with shower-room and WC. Water and electricity are connected and there is a 2-chamber septic tank.

5. The building stands in a plot of about .66 of an acre (plot OS 9372 on Plan A), a rather larger area than the appeal site defined on Plan A. On the land are also a garage and 2 sheds. There is a small greenhouse and huts for chickens. The whole appears to be well kept and in good order.

6. The following facts affecting the legal issues were not in dispute. Planning permission was granted in 1955 (Document 16) for "the erection of a summer house on land near Elm Cottages, Hatch Beauchamp, as described in the amended plans and drawings submitted on 26 October 1955". A letter had been written by the applicant

to the council before the grant of this planning permission (Document 16) which stated that "the above summer house will not be used as a dwellinghouse either permanently or temporarily. Neither do I intend to use it for sleeping purposes at any time but only for picnics and sunbathing". The difference between the original plans accompanying the planning application (Document 14) and the approved plans with the planning approval (Document 18) is the siting of the building. Its size and design were not changed and the permission was for a building about 18 ft by 24 ft including a verandah about 4 ft deep at one end, with a gable roof over the length of it. The building which now exists is rather larger. It is longer and narrower and measures 38 ft 4 ins long by 12 ft 2 ins wide with a small addition of 10 ft 7 ins by 2 ft 1 in. at one corner. The fact that the building erected differed from that approved was brought to the attention of the then owner by the council in March 1963 (Document 19) and it is clear from Document 20 that the building was built as it now stands except that the verandah was filled in in 1957. The building was erected and owned by [redacted]. He sold it to [redacted] on some date after April 1963 (Document 20) and Mr Webber sold it to [redacted] in August 1966 (Document 9). [redacted] it to your client in August 1980. The Valuation Officer inspected the hereditament in 1956 and the property has since then been rated as "bungalow and garages".

7. Giving evidence for your client, [redacted], who lives next-door at 1 Elm Cottage, stated that she had lived there since September 1955. She remembered the appeal building being erected a few weeks after she arrived. She was sure that there had been no material change since it was built. Electricity had come to Mill Lane in 1957 and had been installed in Elm Cottage and in the appeal building at the same time. The septic tank had been built when the building was erected. [redacted] had visited the appeal building by day, primarily at weekends. He came often but she was not sure whether he stayed the night. During [redacted] ownership it had been let. It was occupied by a young couple, [redacted], for about 18 months. She had checked the dates with them recently and they had been able to be sure of their dates because they had a daughter born shortly after they left. They had been there from the summer of 1963 to the winter of 1964. After them, or possibly immediately before, there had been another family consisting of 3 adults and a small baby. They had also been there for about 18 months or perhaps rather longer. In both cases these families had lived at Whitegates as a dwellinghouse. After [redacted] bought Whitegates he had been living near London and had come for holidays and for weekends in summer. He had also come for the odd night during the winter to check over the property. Living so far away he always stopped the night when he came.

8. Your client produced a statutory declaration by [redacted] (Document 9) in which he stated that he had "regularly used the buildings on the land as a dwellinghouse, having stayed there for holidays and weekends and having slept there on many occasions. I have kept the gardens at the property, mowed the lawn and carried out a number of other tasks there".

9. Your client had bought the property in August 1980. He had been a working builder and initially he had been away quite a lot staying at the sites at which he was working. He had occupied the property more continuously since the beginning of 1982.

10. On behalf of your client it was pointed out that the search when he purchased the property disclosed the 1955 planning permission without conditions. The fact that the council were relying on that permission being qualified by the letter at Document 16 was not then made known to your client. You did not consider that the letter formed part of the permission granted. This point of view was supported by the case at Document 10 and in particular by the remarks at 217c and 218e. Further support was given by the case at Document 11 page 463F. Since the permission was

therefore for a summer house without qualification, the permitted use depended on the meaning of "summer house". It was suggested that the word "summer" in the original planning application had been intended to be descriptive of the design of the house and not as a condition limiting the nature of its use. Even if its permitted use were meant to be limited to summer only there would be no material change of use if it were used for permanent occupation.

11. It was clear that the building had been occupied as a dwelling in the 1960s for at least 3 years and that it had been used as a holiday cottage during [redacted] time. Full-time use had resumed with [redacted]. The use of the building as a dwelling had clearly started more than 4 years before issue of the enforcement notice and had not been abandoned. Even if it were considered that in [redacted] time there had been a gap, which was not conceded, it was pointed out that a gap of as much as 12 years without abandonment had been accepted in the case at Document 12.

12. The council considered that the letter at Document 16, which had clearly been material to the decision to grant permission, formed a part of that permission. The case at Document 35 supported this view. Even without this qualification grant of permission for a summerhouse did not convey permission for a dwellinghouse. Various dictionary definitions of summerhouse were offered (Document 32). These clearly bore no relation to a dwellinghouse.

13. The council took the view that the first time that the building had been regularly occupied as a dwellinghouse was some time after your client bought it. This had been less than 4 years before service of the notice. Your client had written to the council in December 1980 to say that it had "always been my understanding that Whitegates is not a residential dwellinghouse and it is not my intention to use it as such". He had repeated this on 3 November 1981 (Document 27). The council's view of the status of this building had been confirmed by the decision letter in May 1984 (Document 31) in which the Inspector had said "I believe over the years the local planning authority has consistently established that this was not a permanent dwelling ....".

14. I take the view that the building which was erected on this land was materially different from that for which permission was granted. It was therefore built without permission. The exact meaning of that permission is therefore not relevant. Up to about 1963 there is not sufficient evidence to show clearly the use to which the building was put. There was, however, undisputed evidence that for about 3 years in the mid-1960s the building was used continuously as a dwellinghouse. The use continued after that as a weekend cottage and this is also a dwellinghouse use. It seems to have been used intermittently in 1981 and continuously from 1982. I consider that it is clear that a material change of use without planning permission occurred about 1963. The appeal therefore fails on grounds (b) and (c).

15. That use introduced in 1963 without planning permission has continued since then and under section 87(4)(c) of the 1971 Act is therefore immune from enforcement action. The appeal therefore succeeds on ground (d). Other grounds of appeal and the deemed application do not therefore fall to be considered.

16. In reaching this conclusion I have noted the remarks made by your client to the council in 1980 and 1981 to the effect that he did not then wish to use the building as a dwelling but these remarks do not affect its legal position. I have also noted the conclusions reached by the inspector in his appeal decision in May 1984 (Document 31) but the evidence which was presented at this inquiry was not all made available at the time of the previous appeal.

FORMAL DECISION

17. In exercise of the powers transferred to me, I hereby allow this appeal and direct that the enforcement notice be quashed. No deemed application falls to be considered.

RIGHT OF APPEAL AGAINST DECISION

18. This letter is issued as the determination of the appeal before me. Particulars of the rights of appeal against the decision to the High Court are enclosed for those concerned.

I am Gentlemen
Your obedient Servant

M S HANCOCK CB MBE CEng FIEE ACIArb
Inspector

ENC

APPEARANCES

FOR THE APPELLANT

[redacted] - Solicitor, Messrs Clarke Willmott and Clarke, 6 Hammet Street, Taunton, Somerset, TA1 1RG.

He called:

[redacted]
- Appellant.
- [redacted]
- [redacted]
- Messrs Stanley Alder and Price, Taunton, Somerset.

FOR THE PLANNING AUTHORITY

[redacted] - Solicitor, Taunton Deane Borough Council.

He called:

[redacted] - Planning Officer, Taunton Deane Borough Council.

INTERESTED PERSONS

[redacted] - Chairmain, Hatch Beauchamp Parish Council, St Felix, Hatch Beauchamp, Taunton, Somerset.

[redacted]

[redacted]

DOCUMENTS

Document 1 - List of persons present at the inquiry.

Document 2 - 5 October 1984: to local residents.

Document 3 - 17 July 1984: from Hatch Beauchamp Parish Council.

Document 4 - 9 October 1984: [redacted]

DOCUMENTS (CONT'D)

Document 5	-	12 October 1984: [redacted]	
Document 6	-	22 October 1984: from Hatch Beauchamp Parish Council.	
Document 7	-	1 November 1984: [redacted]	
Document 8	-	13 November 1984: [redacted]	
Document 9	-	2 February 1980: statutory declaration by [redacted]	Appellant's Documents.
Document 10	-	Slough Estates Ltd v Slough Borough Council (1970) 2 AER 216-225.	
Document 11	-	Miller-Mead v MHLG (1963) 1 AER 459-481.	
Document 12	-	17 July 1978: Bilboe v Secretary of State for the Environment.	
Document 13	-	List of planning applications in vicinity (see Plan D).	
Document 14	-	11 August 1955: planning application 27503 with 3 plans.	
Document 15	-	26 September 1955: council to [redacted]	
Document 16	-	29 September 1955: [redacted] to council.	
Document 17	-	5 October 1955: council to [redacted]	
Document 18	-	8 November 1955: planning approval with revised plans.	
Document 19	-	19 March 1963: council to [redacted]	Council's Documents
Document 20	-	16 April 1963: [redacted] to council.	
Document 21	-	14 February 1977: Solicitors for [redacted] to council.	
Document 22	-	19 May 1977: Council to Solicitors for [redacted]	
Document 23	-	6 March 1979: Solicitors for [redacted] to council.	
Document 24	-	21 September 1979: Council to Mr [redacted]	
Document 25	-	15 December 1980: Council to Appellant.	
Document 26	-	18 December 1980: Appellant to Council.	
Document 27	-	3 November 1981: Appellant to Council.	

DOCUMENTS (CONT'D)

Document 28	-	30 November 1981: planning application No. 4/19/81/019.	Council's Documents
Document 29	-	5 February 1982: appellant to council.	
Document 30	-	19 April 1983: planning application No. 4/19/83/005.	
Document 31	-	10 May 1984: decision letter Ref: T/APP/D3315/A/83/10076/P6.	
Document 32	-	Definitions of "summerhouse".	
Document 33	-	Extract from Structure Plan (SP7-SP13).	
Document 34	-	14 May 1964: County Council to Mr du Cann.	
Document 35	-	Kwik Save Discount Group Ltd v Secretary of State for Wales (1981) JPEL 198-202.	

PLANS

Plan A	-	No Scale: plan accompanying enforcement notice.	Council's Plans
Plan B	-	1 in. to 1 mile: location plan.	
Plan C	-	1 in. to 1 mile: extract from development plan.	
Plan D	-	1/2500: site plan (see Document 13).	

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT, 1971

ENFORCEMENT NOTICE

To: [redacted]

of:

WHEREAS :-

1. You are the owner and occupier of land situate at 'Whitegates' Mill Lane Hatch Beauchamp in the Borough of Taunton Deane in the County of Somerset which is more particularly delineated on the attached plan and thereon edged red ('the Land')

2. The TAUNTON DEANE BOROUGH COUNCIL ('the Council') are the District Planning Authority and exercise the functions of the Local Planning Authority for the purpose of Section 87 of the Town and Country Planning Act, 1971, ('the Act')

3. It appears to the Council that within the period of four years before the date of this notice there has been a breach of planning control in that the Land has been developed by the making of a material change of use of the building shown shaded blue on the attached plan ('the building') from a use for the purposes of a summer house to a use for the purposes of a dwellinghouse without the grant of planning permission required in that behalf under Part III of the Act

4. The Council consider it expedient having regard to the provisions of the Structure Plan and to all other material considerations to issue this enforcement notice in exercise of their powers contained in Section 87 of the Act for the reasons set out in the Annex to this notice

NOW THEREFORE TAKE NOTICE that in exercise of the powers contained in Section 87 of the Act the Council HEREBY REQUIRE YOU within a period of nine calendar months beginning with the date on which this notice takes effect to :-

Discontinue the use of the building for the purposes of a dwellinghouse
THIS NOTICE SHALL TAKE EFFECT subject to the provisions of Section 88 (10) of the Act

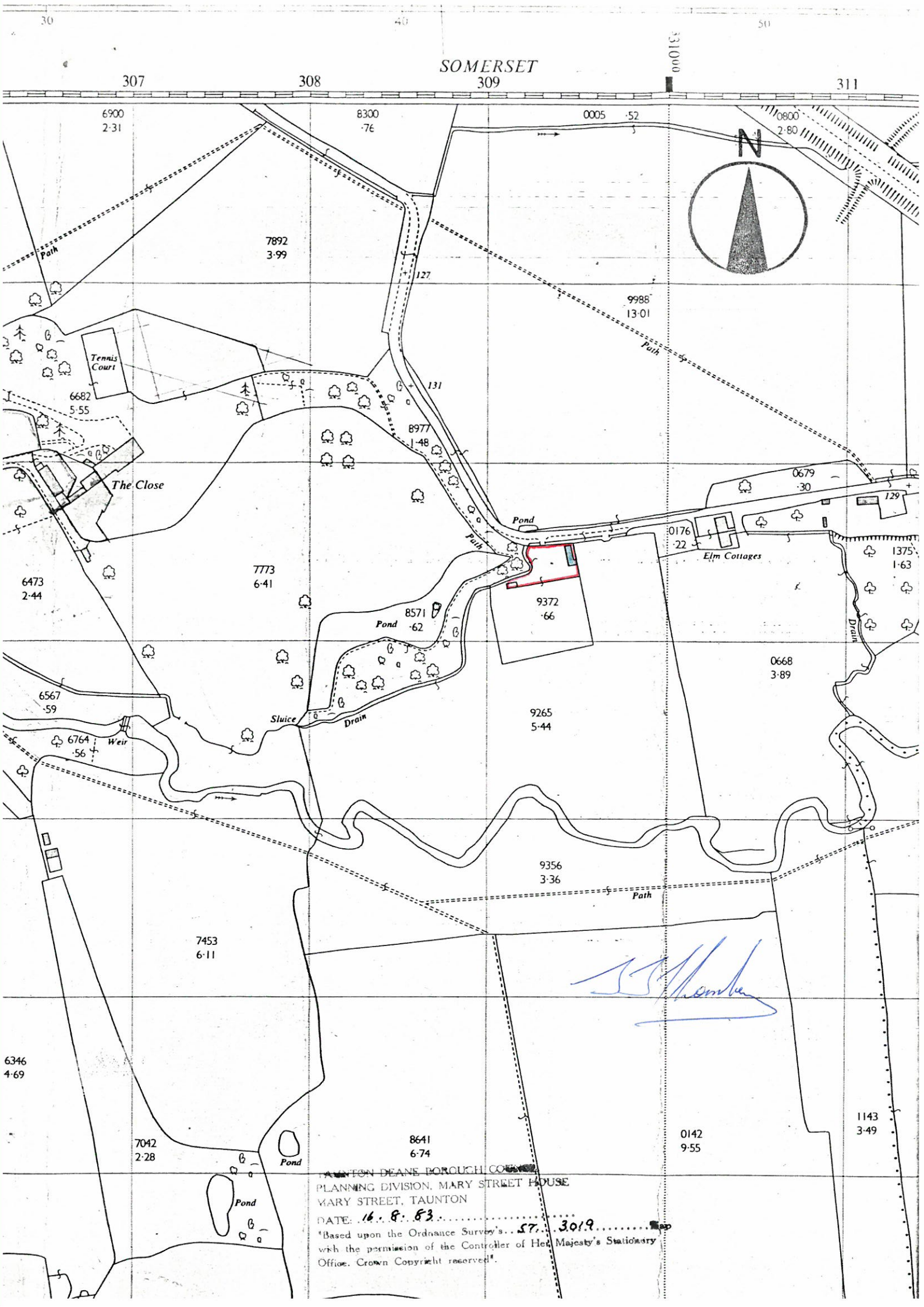
ON THE TWENTY SIXTH DAY OF JUNE 1984
DATED THIS SEVENTEENTH DAY OF MAY 1984

Signed .....

Secretary and Solicitor

Municipal Buildings,
Taunton, Somerset.
Ref. GW.EAW. PD.11/A/180

YOUR ATTENTION IS DRAWN TO THE RIGHTS OF APPEAL AGAINST AN ENFORCEMENT NOTICE contained in Section 88 of the Act which are set out in the explanatory booklet 'Enforcement Notice Appeals - A Guide to Procedure' enclosed herewith


SOMERSET
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The Close
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Pond
Path
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Elm Cottages
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TAUNTON DEANE BOROUGH COUNCIL
PLANNING DIVISION, MARY STREET HOUSE
MARY STREET, TAUNTON
DATE: 16. 8. 83
"Based upon the Ordnance Survey's ... 57 ... 3019 ... Map
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THE ANNEX hereinbefore referred to

Reasons why the Council consider it expedient to issue an Enforcement Notice in respect of the unauthorised use of a building on land at 'Whitegates' Mill Lane, Hatch Beauchamp, Taunton, Somerset for the purposes of a dwellinghouse

The land is in the open countryside where the Council is concerned to ensure that any new dwelling serves a genuine agricultural or other appropriate need. The unauthorised change of use of the building represents the formation of a new dwelling which is not used or required to serve such a need.

DATED this Seventeenth day of May 1984

Signed .....

Secretary and Solicitor

GW. EAW. PD11/A/180