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Senior Planning Officer
Chester City Council
The Forum
Chester
CH1 1HS
FAO: LAURA SMITH

Our ref: JCHJ/DW/

Your ref: 00 01328 LDC

10th April 2001

copy letter

Dear Sirs

**Re: Lawful use certificate for residential use
Heron Lodge Townfield Lane Farndon Chester**

We have been consulted by Mr Peter James Johnson of Heron Lodge in place of Hallows Associates who were previously instructed. We have before us your refusal of a lawful use certificate dated 26th March 2001.

We have looked through a quantity of paperwork left with us by Mr Johnson but we must at the outset express ourselves as thoroughly bewildered by your position in this matter and we would be grateful if you could cast some light.

It is apparent and we assume you do not challenge that Heron Lodge was erected well before 1st July 1948. It therefore had an existing use at the date of implementation of the Town & Country Planning Act 1947. No planning application or consent was needed subsequently. We are not aware that the definition of dwelling house has changed since 1947, the current definition in the Town & Country Planning (General permitted development) Order 1995 simply defines dwelling house as not including a building containing one or more flats or a flat contained within such a building. There is thus no special meaning of dwellinghouse and its meaning is we believe well understood. We do not know if you were suggesting that there

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was some limitation on occupation to the summer months prior to 1st July 1948 but if there is such a suggestion on your part it does not seem to be mentioned in correspondence. Will you therefore please tell us from where you seek to import this condition that the dwellinghouse can only be occupied for the summer months. We assume that you have considered the case of *Gravesham Borough Council v Secretary of State for the Environment* 1984 47P and CR 143 when it was determined that the common feature of all premises that could ordinarily be described as dwelling houses was that they were buildings which ordinarily afford the facilities required for day to day private domestic existence. It was suggested that, that characteristic was lacking in hotels, holiday camps, hostels, residential schools and naval and military barracks but it was present in houses which were used as second homes. In that case the Secretary of State had found and the Court upheld the finding that a small holiday chalet 20 feet by 17 feet comprising a living room, kitchen and bedroom did constitute a dwelling house notwithstanding that there was no bathroom or WC because it could reasonably be said to provide for the main activities of day to day existence. We observe from the plan lodged with your Council in connection with what we understand to have been an application for building regulation approval that the premises include the kitchen, a living area, a bedroom, a shower room and a toilet. It is therefore clearly a dwelling house and has an existing use as such.

There does not appear to be any time limit in respect of an appeal against a refusal to issue a lawful use certificate but no doubt you would wish to resolve the matter amicably without the necessity for an appeal. Perhaps you would therefore write to us explaining on what planning ground you have determined that Heron Lodge does not have existing use as a dwelling house.

Yours faithfully

CLIVE JONES
GWILYM HUGHES & PARTNERS