

**CERTIFICATE OF LAWFULNESS OF PROPOSED USE OR DEVELOPMENT**

**Planning Act (Northern Ireland) 2011: Section 170 Planning (General  
Development Procedure) Order (Northern Ireland) 2015: Article 11**

Application No: **LA08/2021/0728/LDP**

Date of Application: **10th May 2021**

Site of Proposed  
Development:

**160m south east of 47 Ballylough Road  
Craigavon**

Description of Proposal:

**Proposed completion of dwelling as approved under  
N/2007/0194/RM**

Applicant: **Geoffrey Wilson**  
Address: **123 Hillsborough Road**  
**Dromore**  
**BT25 1QW**

Drawing Ref: **01**

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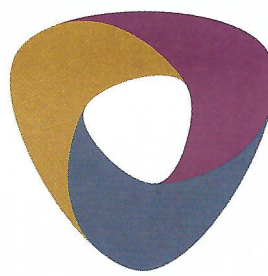
The Council hereby

**CERTIFIES**

that on 9th July 2021 the operations described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged in red on the plan attached to this certificate, would be lawful within the meaning of Section 170 of the Planning Act (Northern Ireland) 2011, for the following reason:







The Council, having considered the information provided, is satisfied that the proposed operations specified in the First Schedule and shown on the attached drawing No 01 which was received on 10th May 2021 benefit from the planning permission granted by planning approvals ref: N/2004/0414/O and N/2007/0194/RM under the Planning (Northern Ireland) Order 1991 and can therefore be lawfully completed.

Dated: 9th July 2021

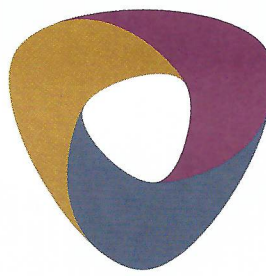
Authorised Officer:

*Kevin Gurney*

The First and Second Schedule are attached hereto together with a plan. Please read the footnotes including your rights of appeal.







Schedules and Notes attached to:

**CERTIFICATE OF LAWFULNESS OF PROPOSED USE OR DEVELOPMENT**

Application No: LA08/2021/0728/LDP  
Applicant: Geoffrey Wilson  
Location: 160m south east of 47 Ballylough Road  
Craigavon

**FIRST SCHEDULE**

**Description of use certified:**

**Proposed completion of dwelling as approved under N/2007/0194/RM**

**SECOND SCHEDULE**

**Land specified in the Certificate:**

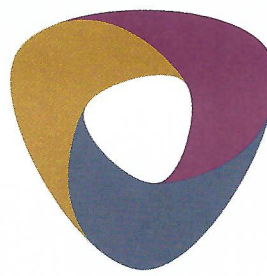
160m south east of 47 Ballylough Road  
Craigavon

**NOTES:**

1. This certificate is issued solely for the purpose of Section 170 of the Planning Act (Northern Ireland) 2011.
2. It certifies that the use specified in the First Schedule taking place on the land described in the Second Schedule would be lawful and thus, would not be liable to enforcement action under Section 138 or 139 of the Planning Act (Northern Ireland) 2011.
3. This certificate applies only to the extent of the (use/operation(s)) described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any (use/operation (s)) which (is/are) materially different from that described or which relate(s) to other land may render the owner or occupier liable to enforcement action.
4. The effect of this certificate is also qualified by the provision in Section 170 (4) of the Planning Act (Northern Ireland) 2011, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.



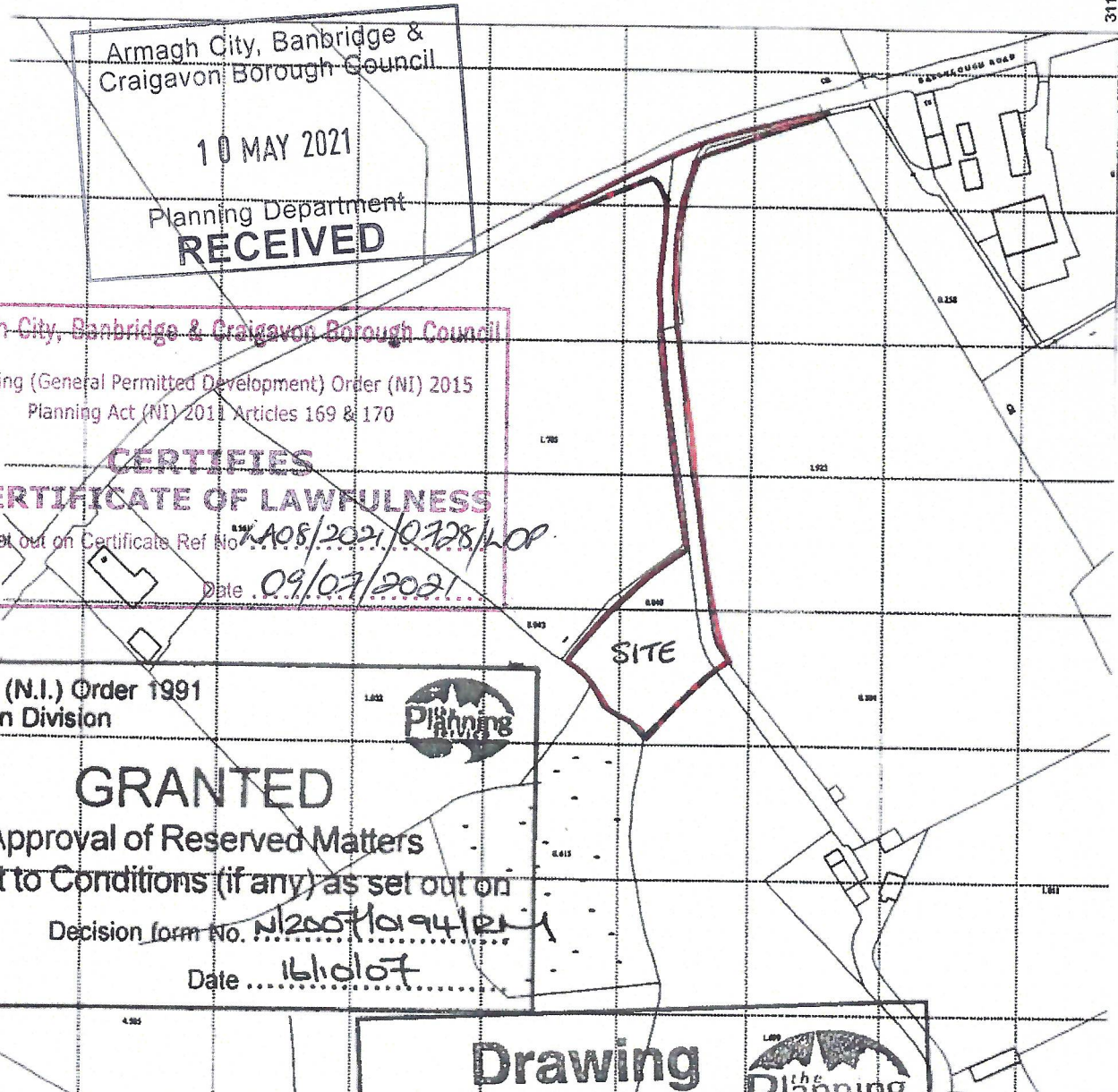




5. If this Certificate has been granted in a form which the Council has modified the description of the use, operations or other matter in your application or has substituted an alternative description for that description and if you do not accept the Council's decision you may appeal by giving notice to the Planning Appeals Commission under Section 173 of the Planning Act (Northern Ireland) 2011 and Article 11(6) of the Planning (General Development Procedure) Order (Northern Ireland) 2015.





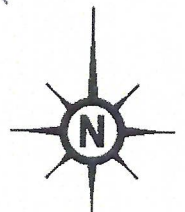


## LOCATION MAP

Reproduced from the 2007 (year) Ordnance Survey of Northern Ireland 20112NWmap with the permission of the controller of HMSO, Crown Copyright 2006

LICENCE NO. 2267

23 Drumdreenagh Road BT34 5NG



<b>JOB TITLE</b> WILSON CONSERVATION HOMES ERECTION OF DETACHED DWELLING AND GARAGE LAND 160M SOUTH EAST OF 47 BALLYLOUGH ROAD CRAIGAVON		<b>THE PLANNING SERVICE</b> RECEIVED 28 FEB 2007 FILE NO. N/03/0194 CRAIGAVON	<b>DWG NO</b> LMO1
<b>REVISIONS</b> Armagh City, Banbridge & Craigavon Borough Council Drawing Number 01	<b>TL</b> DATE	<b>SCALES</b> 1/2500	
<b>MARCUS BINGHAM MCIAT</b> 9 TULLYQUILLY ROAD RATHFRILAND		<b>TELEPHONE</b> 028 406 38842	<b>MOBILE</b> 07780 937 420



# Supporting Document

Certificate of Lawful Development - Lands at 160 metres southeast of 47 Ballylough Road, Craigavon

Condition No 6 of Planning permission N/2007/0194/RM reads;

*"No development shall take place until a Consent to Discharge notice under the terms of the Water Order (NI) 1999 can be obtained for the proposed effluent dispersal system. Applications for such must be made to the Water Management Unit, Calvert House, 23 Castle Place, Belfast, BT1 1FY.*

*Reason: To ensure a satisfactory means of effluent disposal can be achieved within the site."*

As the Consent to Discharge of Effluent certificate indicates this was not obtained prior to development commencing. It is contended that this was not necessary to be obtained prior to development commencing and therefore does not meet the tests of a condition. This permission was granted in the context of PPS1 General Principles which stated that the: 'The Department will not use its planning powers to secure objectives achievable under non-planning legislation, such as the Building Regulations or the Water Act.' (para. 51).

In considering whether a condition is necessary one should ask whether planning permission would have to be refused if the requirements of that condition were not imposed. The argument that a condition will do no harm is no justification for its imposition: a condition ought not to be imposed unless there is a definite need for it. Given that the need to obtain a Discharge Consent exists under a separate legislative regime there was no need for DOE Planning to attempt to duplicate the control already imposed by the legislation through the use of a planning condition.

Caselaw makes it clear for planning permission to be lawfully implemented the developer must first ensure that all pre-commencement conditions are complied with (the 'Whitley principle'). This approach was altered where the court ruled that this principle does not apply to all conditions but only to those which 'go to the heart of the permission' (Harts Aggregate) and whether the condition represented a 'true condition precedent'. In this case, obtaining the Consent to Discharge of Effluent prior to development commencing does not 'go to the heart of the permission'. Furthermore the Consent to Discharge is dealt with under a different legislative framework Water Order (NI) 1999.

It is considered that not obtaining the Discharge Consent prior to the works commencing is not fatal to the lawful commencement of development in accordance with the grant of planning permission N/2007/0194/RM. All other pre-commencement conditions have been complied with and works commenced prior to the expiry date, as the supporting documentation will indicate.

Armagh City, Banbridge &  
Craigavon Borough Council

10 MAY 2021

Planning Department  
**RECEIVED**

## Form P19

### EXPLANATORY NOTES TO ACCOMPANY APPROVALS

Type of Approval	See Notes
(a) Planning Permission or Approval of Reserved Matters	1, 2, 3 & 4
(b) Consent to Display Advertisements	1, 2, 4 & 5
(c) Listed Building Consent	1, 2, 4 & 6

#### Notes

1. If you are unhappy with the conditions placed on the permission/approval/consent granted by the Council or Department for Infrastructure (the Department) you may appeal to the Planning Appeals Commission, Park House, 87-91 Great Victoria Street, Belfast BT2 7AG [Tel: (028) 9024 4710] within 4 months of receipt of the notice. Guidance on Appeal procedures is available on the Planning Appeals Commission's website ([www.pacni.gov.uk](http://www.pacni.gov.uk)) or by contacting the Commission directly at the aforementioned address.
2. You should check whether further approval is required under other legislation, such as the Building Regulations or the Water Act.
3. If your proposal involves an access or any vehicular crossing of the highway, it is in your interest to notify your intentions to the authorities responsible for electricity, telephones, water, etc to allow them the opportunity to carry out any planned works first and so avoid breaking through any newly made surfaces.
4. Failure to adhere to the approval plans or comply with conditions attached to this permission is a contravention of the Planning Act (Northern Ireland) 2011 [or the Planning (Control of Advertisements) Regulations (Northern Ireland) 1973 in the case of advertisements], and may result in enforcement action.
5. If you intend to display an advertisement on land which is not in your possession you should first obtain the consent of the landowner or the person(s) entitled to grant such permission.
6. If you have obtained Listed Building Consent to demolish a building you must not do so before the Department for Communities Historic Environment Division has:
  - (i) Been given reasonable access to the building for one month following the granting of consent; or
  - (ii) Stated that it has completed its record of the building; or
  - (iii) Stated that it does not wish to record it.

The Department for Communities Historic Environment Division can be contacted at [HEDPlanning.General@doeni.gov.uk](mailto:HEDPlanning.General@doeni.gov.uk) or Tel: (028) 9082 3177 or (028) 9082 3126.