

CLEUD REGARDING THE CHANGE OF USE OF A BUILDING TO A DWELLING UNDER SECTION 171B(2) OF THE TCPA 1990 (AS AMENDED)

Land at Arundel Acre, Arundel Road/A27, Angmering, BN16 4EU

PPS1372
CLEUD for the change of
use of a building to a
dwelling
Final
April 2022

REPORT

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1 INTRODUCTION

- 1.1 On behalf of the applicant, Nic and Ben Entertainments Ltd ('the Applicant'), please find enclosed an application under Section 191 (S191) of the Town and Country Planning Act 1990 (as amended) ('the 1990 Act'), for a Lawful Development Certificate (LDC) to demonstrate the use of the application site as a single dwellinghouse as a sole or main place of residence has taken place for a continuous period of over 4 years at Arundel Acre, Arundel Road, and therefore the use of the site in the current manner has become lawful by virtue of time.
- 1.2 This Planning Statement provides evidence to demonstrate the use of the site as a single dwellinghouse has been taken place for 4 continuous years from the date on which the breach of planning control commenced and therefore enforcement action cannot longer be taken for their compliance. The application comprises:
- Application Form;
 - Site location Plan (Drawing No. 1);
 - Statutory Declarations from:
 - ... Mr Nicholas Burrell;
 - ... Mr Benjamin Burrell;
 - ... Mr Andrew Burrows;
 - ... Mr Michel Lumley.
 - Exhibits in the form of dated photos and receipts which accompany the abovementioned Statutory Declarations and form part of the evidence pack.
 - Google Streetview photos dated 2016 - 2020 and;
 - Dated letters from energy suppliers - **Appendix A**.
 - CIL form;
 - Application fee (to follow).
- 1.3 This application seeks to establish that the site in question (as defined in red on the Site Location Plan, Drawing No. 1) has been used as a dwellinghouse for at least 4 continuous years taking into account the provisions of Section 171B(2) of the Town & Country Planning Act (1990).

2 THE SITE AND SURROUNDINGS

- 2.1 The application site forms part of a larger plot of land owned by the Applicant which is known as 'Arundel Acre'. Arundel Acre is located to the south of the junction between the A27 and Arundel Road, with access taken from Arundel Road.
- 2.2 To the east is land covered by mature trees whilst to the south is a camp site ('Acoms Camp Site'), screened from the application site by mature trees. Further to the south is the built-up area of the village of Angmering.
- 2.3 To the west is Arundel Road with two detached residential dwellings on the opposite side of the road, and further beyond is a two-storey detached building (Hammerpot Garage) which is used as a car sales business.
- 2.4 To the north is the A27, with South Downs National Park boundary beyond. The western portion of the site has a lawful use for the storage of fairground rides whereas the south and eastern section of the site, which are the subject to this application, were used as agricultural land before the agricultural building on site started to be used as a single dwellinghouse from March 2016.
- 2.5 Services such as schools, recreational spaces and retail areas can be accessed within Angmering village to the south, with the closest school to the site being less than 500m. Public bus services serve the village with bus stops along Arundel Road, less than 10 minutes' walk from the application site. There is a footpath alongside Arundel Road, which connects the site to the village and bus stops.
- 2.6 The village of Angmering is covered by a 'made' Neighbourhood Development Plan, the boundary of which includes the application site.

3 PURPOSE OF AN APPLICATION UNDER SECTION 191 OF THE PLANNING ACT

- 3.1 The purpose of a LDC application is to establish that "...an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990" (Planning Practice Guidance (PPG) 001 Reference ID: 17c-001-20140306, emphasis our own).
- 3.2 The burden of proof to demonstrate the development is lawful rests with the Applicant and when considering LDCs, a Local Planning Authority (LPA) needs to consider "*whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process*" (PPG, 009 Reference ID: 17c-009-20140306).
- 3.3 The PPG further adds "*...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*" (PPG, 006 Reference ID: 17c-006-20140306).
- 3.4 It is worth highlighting that although the burden of proof is on the Applicant, the Courts have held that the relevant test of the evidence on such matters is on the balance of probability. This test will be applied by the Secretary of State in any appeal and therefore an LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely 'beyond reasonable doubt'.
- 3.5 Moreover, the Court has held (see *F.W. Gabbitts v SSE and Newham LBC* [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by 'independent' evidence in order to be accepted.
- 3.6 If the LPA has no evidence of its own, or 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 the certificate 'on the balance of probabilities'.
- 3.7 The guidance quoted above provides the basis on which any LDC application under S191 of the 1990 Act must be assessed. This approach has been followed by the Applicant, as shown in this Planning Statement, to demonstrate that, on the balance of probabilities, the site has been used as a single dwellinghouse for a continuous period of 4 years from the date this application, and therefore the time to take enforcement action with respect of the use has expired, indicating the development is lawful.
- 3.8 It is worth noting that, Section 171B(2) states:
- "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."*
- 3.9 In this case, the use of the land as a single dwellinghouse began and has been continuous for a period of more than 4 years, since at least 15th March 2016 to the date of this application, and no enforcement action has been taken against this breach.
- 3.10 It is considered that the key elements to demonstrate that the use of the land as a single dwellinghouse is now immune from enforcement action comprise:
- Establishing the date on which the breach of planning control commenced; and,
 - Evidencing that four years or more since the date of the breach has passed.

4 ASSESSMENT

Establishing the date on which the breach of planning control commenced

- 4.1 Mr Benjamin Burrell's statutory declaration indicates in Paragraph 1 that he and Mr Nicholas Burrell acquired the site at the end of 2015. Paragraph 2 states that works were carried out by themselves to make the site habitable between January 2016 and March 2016. Dated receipts dated between 31st December 2015 to 19th November 2016 are provided within Exhibit B of Mr Benjamin Burrell's statutory declaration related to various purchases of building materials which support this assertion.
- 4.2 Mr Nicholas Burrell's statutory declaration at Paragraph 1 states that he started using the site as his sole or main residence since 15th March 2016 with Exhibit B containing dated photos supporting this assertion which show the dwelling fitted with kitchen and sink, fridge, microwave, sofa/bed, electric heaters, washing machine, TV and other furniture, aligning to Mr Benjamin Burrell's statement regarding the dates on which the site began to be used as a single dwellinghouse.
- 4.3 Paragraph 3 of Mr Nicholas Burrell's declaration also indicates that, between January 2016 and March 2016, he carried out maintenance to the roof of the building to make it watertight and habitable. He also carried DIY activities to paint the inside and outside of the building. Copies of dated receipts and invoices showing the items bought to carry out the roof repairs, paints, stains and maintenance items are included as Exhibit C.
- 4.4 On the above basis, the Applicant is of the view that unambiguous evidence has been provided to establish the site has been used as a single dwellinghouse since 15th March 2016.

Evidence that 4 years or more have passed from the date the use of the site as a single dwellinghouse commenced

- 4.5 As shown on Paragraph 3.8 of this Statement, and in order for the LDC to be issued it must be proved, on the balance of probability, that the use of the site as a single dwellinghouse has taken place in a continuous manner for 4 years, commencing on the date the use was first established.
- 4.6 It has been demonstrated in the section above that the use of the site as a single dwellinghouse commenced on 15th March 2016 and therefore evidence to demonstrate continuous use for 4 years must cover the period 15th March 2016 to 15th March 2020.
- 4.7 The following statutory declarations with exhibits are provided as part of the evidence to support this application:
- Statutory declaration from Mr Nicholas Burrell;
 - Statutory declaration from Mr Benjamin Burrell;
 - Statutory declaration from Mr Michael Lumley; and -
 - Statutory declaration from Mr Andrew Burrows.
- 4.8 Google Streetview photos are also included within this Statement as further evidence from an independent source which corroborates the statements made within the statutory declarations and letters from energy suppliers are also provided as additional evidence.

Statutory declaration from Mr Nicholas Burrell

- 4.10 Mr Nicholas Burrell declares that he has been using the application site as his sole of main place of residence since 15th March 2016, after one of the two existing buildings on site was improved by him and his brother, Benjamin Burrell, by carrying out DIY works between January and March 2016 to paint and waterproof the building (Point 3). Exhibit C of the declaration contains dated receipts which support this assertion. The statement also confirms that they brought into the site a microwave, kettle, sofa/bed, electric heaters, washing machine among other items of furniture. He states at the end of Point 1 of the statutory declaration that the building where he lives already had a kitchen, sink and lights prior to March 2016. Photos of the equipped building being lived in are included in Exhibit B of his declaration.
- 4.11 Point 2 of the declaration states that Mr Nicholas Burrell started living on the site to act as security for the equipment and rides stored to the west and north/west of the site and on Point 6 it is stated that a lot of elements of his business are carried out from the site, with annual points safety inspectors for the rides and equipment coming into the site and into his home to complete paperwork relating to their inspection.
- 4.12 Points 4 & 5 of the declaration state the way in which the site has been used as his sole and main residence, with the presence of a pet pig named Spider (Exhibit F) and with a number of celebrations being held on site, for which dated photos of 12 November 2017; 25 December 2019; 25 May 2020; 13 June 2020 and 13/01/2021 are provided within Exhibits D – G.
- 4.13 We are of the view that the statutory declarations and exhibits provide with unambiguous and continuous evidence of the use of the site as the applicant's main or sole residence.

Statutory declaration from Mr Benjamin Burrell

- 4.14 Mr Benjamin Burrell declares at Point 1 that he and his brother, Nicholas Burrell, bought the site at the end of 2015 and it contained a building which already had installed a number of kitchen units, sink and lights.
- 4.15 Point 2 states that, between January 2016 and March 2016 Mr Benjamin Burrell worked with his brother to improve the building and refers to photos of dated receipts supporting this assertion, included as Exhibit B.
- 4.16 Then, at points 3 – 5 Mr Benjamin Burrell declares that his brother installed a number of residential equipment and furniture (kettle, heaters, etc) to create a *"bedsit type of environment"* and that his brother started living on site as his main or sole place of residence for security purposes. He then refers to dated photos of celebrations and residential activities on site dated 2017, 2019, 2020 and 2021 included as Exhibits D – G.
- 4.17 Finally, at Points 6 & 7, Mr Benjamin Burrell states that planning applications for the site have been put forward to the Council regarding the site since 2017, with a number of site visits from the Council taking place and that at no time the fact the building has been in use on a residential basis has been hidden and that such use has been continuous since March 2016.
- 4.18 The evidence and information submitted within this statutory declaration clearly relates and supports the use of the site as a sole and/or main residence.

Statutory declaration from Mr Michael Lumley

- 4.19 Mr Michael Lumley declares that he is a friend of Mr Nicholas Burrell and that he has visited the site on several occasions for celebrations and events, with dated photos of activities included in Exhibits C – F. He confirms that Mr Burrell has been living on site since March 2016 on a continuous basis.

Statutory declaration from Mr Andrew Burrows

- 4.20 Mr Andrew Burrows declares that he is a friend of Mr Nicholas Burrell and that he has visited the site on several occasions for celebrations and events, with dated photos of activities included in Exhibits C – F. He confirms that Mr Burrell has been living on site since March 2016 on a continuous basis.

Google Streetview photos

- 4.21 A Google Streetview photo dated October 2015 is included as Image 1 below. At the centre of the photo, under the tree branch two grey buildings can be seen.



Image 1 Google Streetview of the site, October 2015

- 4.22 Image 2 shows the same two buildings from the October 2015 photo, but for May 2016. The buildings have been painted red and the roofs have been cleaned and improved. A low fence has been installed between the buildings and the rest of the site. A small tree in the grassed area can be seen.
- 4.23 Image 2 supports the evidence submitted with this application that, by March 2016, the buildings had been improved by Mr Nicholas and Benjamin Burrell, as mentioned in their statutory declarations and shown by exhibits attached to these.



Image 2 Google Streetview of the site, May 2016

- 4.24 There is no significant change in the appearance between Image 2 and Image 3 below, which corresponds to a Google Streetview photo dated May 2017, although a small swing can be seen against one of the buildings, which is considered to be typical from a residential garden paraphernalia.



Image 3 Google Streetview photo of the site, May 2017

- 4.25 There is no significant change between Image 3 from May 2017 and Image 4 below dated June 2018. A trampoline can clearly be seen a different angle of the June 2018 Google Streetview photo, as shown in Image 5.



Image 4 Google Streetview photo of the site, June 2018

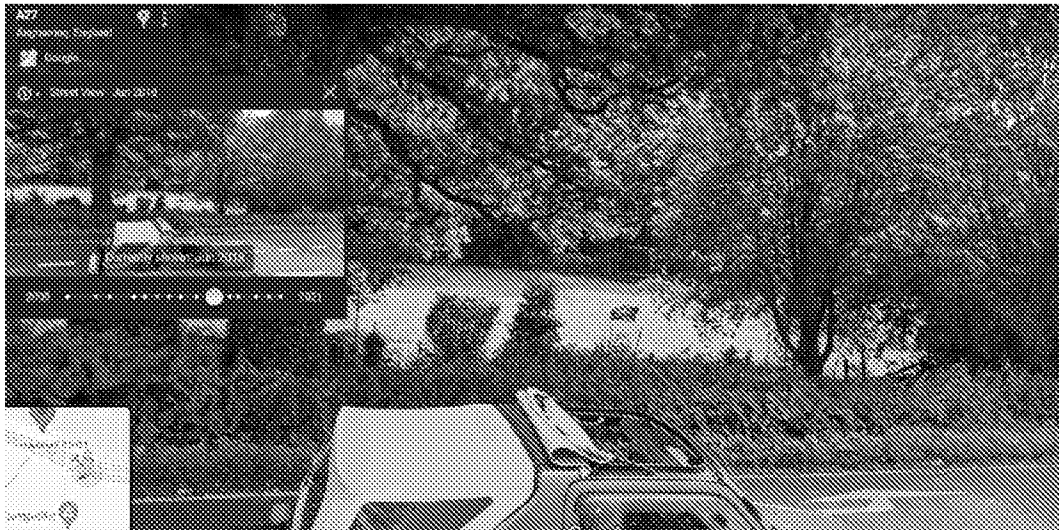


Image 5 Google Streetview photo of the site, June 2018 showing a trampoline on site.

- 4.26 By April 2019 (Images 6 & 7) the Streetview photo shows no significant changes to previous years. A trampoline and swing can clearly be seen Image 7.



Image 6 Google Streetview photo of the site, April 2019



Image 7 Google Streetview photo of the site, April 2019 showing a trampoline as domestic paraphernalia.

- 4.27 The main difference between Image 6 and 8 below relates to the boundary enclosure of the overall site, which changed from hedging to low timber fencing. However, there are no visible changes to the site which could suggest a different use from residential is happening on this part of the site.
- 4.28 Image 9 appears to show what it looks like a children's climbing frame on the site and other domestic paraphernalia.



Image 8 Google Streetview photo of the site, September 2020

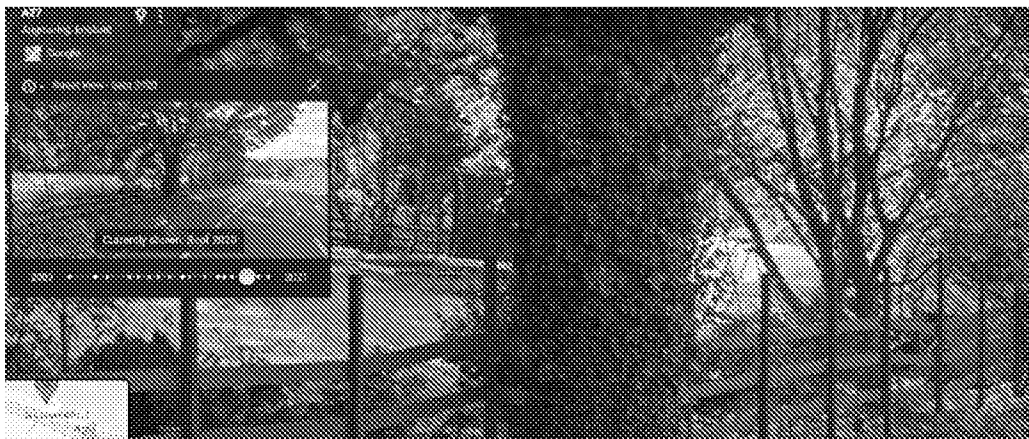


Image 9 Google Streetview photo of the site, September 2020 showing a trampoline and what appears to be a children's climbing frame.

- 4.29 Finally, the most recent Streetview photo of the site, dated September 2021 included as Image 10 shows, once again, no significant change on the appearance of the site, with further residential paraphernalia shown in Image 11 including a children's trampoline, climbing frame with slide and other outdoor toys within the garden.



Image 10 Google Streetview photo of the site, September 2021

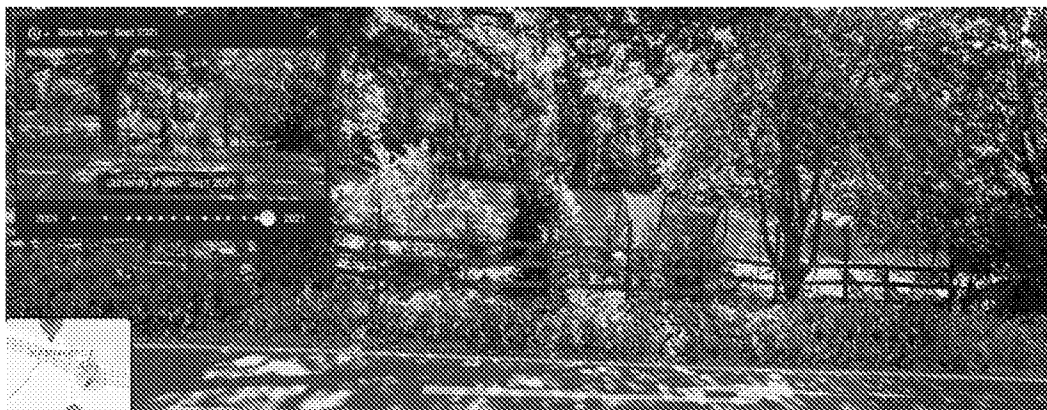


Image 11 Google Streetview photo of the site showing trampoline, climbing frame and outdoor toys, September 2021

Energy suppliers' letters

- 4.30 Appendix A to this Statement contains dated letters from EDF (energy supplier) dated December 2015, December 2018 and March 2019 sent to the attention of Mr Nick [sic] Burrell at Mouse Mansion, Pond Lane, Worthing, BN13 2RH for energy supply services at Arundel Acre, Church Hill, BN16 4EG and one letter from British Gas dated October 2020 indicating to Mr Burrell they took over the energy supply services at Arundel Acre, Church Hill, BN16 4EG.
- 4.31 All these letters clearly relate to the site subject to this application as shown on their 'supply address' section, with the letter from EDF dated March 2019 referring to the changes to the energy price cap which directly relates to household supply, confirming the energy supply indeed relates to domestic/residential premises.
- 4.32 These letters from a third party are consistent with the rest of the evidence provided with this application regarding the dates of use of the site as a single dwellinghouse.

5 CONCLUSIONS

- 5.1 This application has established that the site in question (as defined in red on the Site Location Plan, Drawing No. 1) has been used as a dwellinghouse for at least 4 continuous years taking into account the provisions of Section 171B(2) of the Town & Country Planning Act (1990) and therefore its use as a single dwellinghouse is now immune from enforcement action and thus lawful.
- 5.2 The application has established that the date of commencement of the breach of planning control was 15th March 2016, as demonstrated in the submitted Statutory Declarations, dated photos, Google Streetview images and dated letters from energy suppliers.
- 5.3 Evidence has also been provided to demonstrate the continuous 4 year period of use of the site as a single dwellinghouse and these provide unambiguous and clear evidence that, on the balance of probabilities, the use of the land subject to this application is now lawful.
- 5.4 We look forward to your confirmation that the certificate can be issued on this basis.

Appendix A

Dated letters from energy suppliers

29 December 2015
MOV02



#0005703 11

Mr Nick Burrell
Mouse Mansion
Pond Lane
Worthing
BN13 2RH

#0005703 11



Dear Mr Nick Burrell

Supply Address: Arundel Acre, Church Hill, Angmering, Littlehampton, BN16 4EG

Contract Account Number: 671 073 153 199

We're your new energy supplier

We hope your move went well. We're already supplying your property with energy through what's called a deemed contract†. This contract sets out the terms that apply when you haven't been in touch to choose a specific tariff.

Make sure you're on the right tariff

Being on a deemed tariff means you might not be on the right tariff for you. It's easy to get your EDF Energy account set up properly. Just give us a call on [REDACTED]* and our advisers will help find the right deal for you.

Give us a quick call - we'll set you up

We need you to call us and give us an up-to-date meter reading. This will help make sure you only pay for the energy you use. While you're on the phone, we'll also take a few personal details to get you fully set up. The number is [REDACTED]. We're open Mon-Fri 8am to 8pm, Sat 8am to 2pm.

Be safe when reading your meter

Before reading your meter please make sure it's safe to do so - you shouldn't touch or interfere with your meter. If you're worried about the safety of your meter please call us on [REDACTED]

We look forward to hearing from you.

Yours faithfully

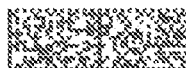
[REDACTED]
Steve Hayfield
Customer Services Director

* Calls may be monitored and recorded as part of our customer care programme. Calls to 0800 numbers are free from BT landlines, but other networks may charge for these calls.

† The terms and prices of our deemed contract scheme are published in accordance with Schedule 6 of the Electricity Act 1989 and Schedule 28 of the Gas Act 1986. A copy of these terms is available free of charge at edfenergy.com/dt

34208 023687 0153 2 38003

Mr Nick Burrell
Mouse Mansion
Pond Lane
Worthing
BN13 2RH



Claim your smart meter today

17 Dec 2018

We're still installing smart meters* in BN16

Dear Customer

Account No: 671 073 153 199

Supply address: Arundel Acre, Church Hill, Angmering, Littlehampton, BN16 4EG

The facts about smart meters

They are the new generation of electricity and gas meters that have smart functionality, and are being offered as part of the government's national roll-out. They're completely safe and there's no extra cost for a smart meter, 'in-home display' or installation. Your tariff, price and billing frequency won't change once you have one*, but you'll be able to track your usage on your 'in-home display'.

The benefits of getting your smart meter

- * No more estimated bills – you'll only pay for the energy you use*
- * No more wasting energy – monitor your usage in pounds and pence on your 'in-home display'
- * No more meter reads – you'll no longer have to provide meter reads as your smart meter will automatically provide them*.

We've made it really simple to claim your smart meter, at no extra cost

The easiest way to book your appointment is to visit [\[redacted\]](#) where you can log in or register for our Online service 'MyAccount'. Don't worry if you're unable to find an appointment that works for you, as availability is refreshed daily, so you can log in the next day and see if there's another more suitable slot. Alternatively give us a call on 0333 200 5104 (please note our advisers will only be able to see the same availability you see in MyAccount). Our lines are open Monday to Friday 10am to 8pm.

Yours sincerely



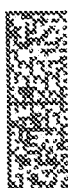
Steve Hayfield
Customer Services Director



Smart Energy GB is the independent organisation set up by government to run the national campaign for the smart meter rollout. It is working alongside energy suppliers, including EDF Energy, to ensure everyone has access to the information they need about smart meters. Please visit [smarterenergygb.org](#)

[edfenergy.com](#) EDF Energy, 334 Outland Road, Plymouth, PL3 5TU

EDF Energy is a trading name used by EDF Energy Customer Ltd, Reg. No. 06731077 whose registered office is at 30 Whitefield Street, Covent, W11 4EJ, a company in England and Wales.



Mr Nick Burrell
Mouse Mansion
Pond Lane
Worthing
BN13 2RH

4/071692
38500

For supply at: Arundel Acre, Church Hill, Angmering, Littlehampton, BN16 4EG

Dear Mr Burrell

Your electricity prices are going up on 1 April 2019

Following a rise in the cost to supply energy, industry regulator Ofgem has increased the level of the price cap. We know a price rise is never welcome, however you can be confident that the cap is set to ensure you pay a fair price for energy.

The energy price cap

On 1 January 2019, Ofgem introduced a cap on prices for our Standard (Variable) and Deemed tariffs. The cap sets a limit on the prices we charge for each unit of energy and on standing charges. The overall amount you pay can still vary, depending on how much energy you use. The next review will be for October 2019 when the cap could increase or decrease. If the cap comes down, your prices will come down too. If it goes up and we increase your prices, we'll give you advance notice.

How this increase changes your yearly energy spend

	Current spend	New spend from 1 April 2019	Increase of
Electricity			

The figures above assume you continue to use the same amount of energy and are based on an estimate of your usage last year. They include any relevant discounts, or charges like VAT. They assume no further price changes in October 2019.

Are you on the right tariff?

You'll see details of your current tariff over the page and how this increase affects the prices you pay. We also show how much you could save by switching to our cheapest available tariff. You can use the information to compare tariffs and avoid this increase.

Our new Flexible Control tariff

If you're interested in a tariff with similar benefits to your current tariff, 'Flexible Control' gives variable prices for a fixed term. It tracks the price cap that Ofgem sets and guarantees the unit rates you pay will be at least 2.5% less. The standing charge you pay will never exceed the price cap. All this is guaranteed until March 2021 and there are no exit fees if you want to leave.

Change tariff or access our 24/7 'Chat' service at



Welcome to British Gas

Hello Mr Burrell

We've recently taken over your electricity supply and we're so happy to have you on board. This is your contract pack and it explains everything you need to know.

In this email you'll find:

- Your tariff information
- Your Personal Projection
- Your tariff terms and conditions
- Where your electricity comes from

You might also like to take a look at:

- [Our energy supply terms and conditions](#)
- [Your switching guide](#)

What happens next

We've already been in touch with your previous supplier to arrange the switch over to us. We'll make sure everything is sorted so there's nothing you need to do.

My Account

Your sales order
number

[REDACTED]

You've Chosen
Electricity

Your estimated
supply start date
Electricity

14th October 2020

Your supply address
ARUNDEL ACRE ARUNDEL
ACRE ARUNDEL ROAD
ANGMERING
LITTLEHAMPTON
WEST SUSSEX
BN16 4EG

You'll be paying for
your
Electricity - by Cash or
Cheques