

**A.E. Planning Consultants.**

**THE ORCHARDS, OVERTON ROAD, BIDDULPH, ST8 7ST.**

**PLANNING STATEMENT TO SUPPORT AN APPLICATION FOR A CERTIFICATE OF EXISTING  
LAWFUL DEVELOPMENT.**

**APPLICATION BY MR & MRS R BROWN IN RESPECT OF THE OCCUPATION OF THE  
DWELLING IN BREACH OF AN AGRICULTURAL OCCUPANCY CONDITION AT THE ORCHARDS,  
OVERTON ROAD, BIDDULPH, ST8 7ST.**

**JULY 2018**

A.E. Planning Consultants Ltd  
57 Bollington Road  
Bollington  
Macclesfield  
Cheshire  
SK10 5EJ  
07765 308 547

## 1 INTRODUCTION

1.1 This statement is submitted in support of an application for a Certificate of Lawful Existing Use in relation to the occupation of the dwelling known as The Orchards in breach of an agricultural occupancy condition. The application site is shown edged red on the ordnance survey plan attached as Document: AE01.

1.2 Planning permission was granted for the erection of the dwelling that is the subject of this application by application reference SM.3460 on the 25<sup>th</sup> February 1977. Condition No.1 attached to the permission stated that: -

*“The occupation of the dwelling shall be limited to a person solely of mainly employed, or last employed locally in agriculture as defined in Section 290 (i) of the Town and Country Planning Act, 1971, or in forestry or a dependent of such a person residing with him (but including a widow or widower of such a person.)*

1.2 The application arises from the fact that the dwelling has been occupied by Mr and Mrs Brown since July 1987 and they still remain in residence. Evidence is submitted with the application to demonstrate that the building has been occupied in breach of the agricultural occupancy condition for a period in excess of 10 years.

## 2 LIST OF DOCUMENTS SUBMITTED WITH THE APPLICATION

### Document Ref:

- AE01: Location Plan – 1:1250@A4.
- AE02: Statutory Declaration of Mr R. Brown and Mrs E.M. Brown.
- AE03: Electricity and Water Rates Bills.
- AE04: Letter from Mr Geoff Watson dated 16<sup>th</sup> July 2018.
- Decision Notice SM.3460 – Dated 25<sup>th</sup> February 1977.
- Decision Notice SM0148-87 – Dated 24<sup>th</sup> April 1987.
- Letter from Council dated 24<sup>th</sup> April 1987.

## 3 LEGAL TESTS

3.1 Section 171B of the Town and Country Planning Act 1990 states that:

*“(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 four years beginning with the date when 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 dwelling house, no enforcement action may be taken after the end of the period of 4 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 10 years beginning with the date of the breach.”*

3.2 Section 171B.17 confirms that breaches of conditions fall within sub-section 3, as “any other breach”.

3.3 Section 191(1) refers to Certificates of Lawfulness of Existing Use or Development and states; -

*“If any person wishes to ascertain whether:*

- Any existing use of buildings or other land is lawful;*
- Any other operations which have been carried out in, on, over, or under land are lawful; or*
- 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.”*

3.4 Section 191 (2) states: -

*“For the purposes of this Act uses and operations are lawful at any time if –*

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and*
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.”*

3.5 Section 191(3) states: -

*“For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if-*

- (a) the time for taking enforcement action in respect of the failure has then expired; and*
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.*

3.6 Section 191 (4) states: -

*“If, on application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect, and in any other case they shall refuse the application.”*

3.7 Circular 10/97: Enforcing Planning Control at Annex B *“Lawfulness and the Lawful Development Certificate”* gives general advice on the tests to be applied when considering such applications. Paragraph 8.15 of Annex B indicates the relevant test of the evidence is on *“the balance of probability”*.

3.8 The National Planning Practice Guidance states that:

*“The applicant is responsible for providing sufficient information to support an application, seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter evidence. 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.”*

#### **4 CASE FOR GRANTING THE CERTIFICATE**

4.1 The following paragraphs provide information and reference to the documents that are submitted in support of this application to demonstrate that the occupation of the dwelling in breach of the agricultural occupancy condition is now lawful.

4.2 An examination of the available planning history at the Council Offices reveals that an approval of a reserved matters application was initially granted on the 30<sup>th</sup> December 1975 under application reference SM1910. The application related to the erection of a dwelling for an agricultural worker at Rose Cottage Farm, Overton Road, Biddulph Park for a Mr S. Hine. Condition 2 stated that: -

*“The occupation of the dwelling shall be limited to a person solely of mainly employed, or last employed locally in agriculture as defined in Section 290 (i) of the Town and Country Planning Act, 1971.”*

4.3 Subsequently, application reference SM.3460 granted permission on the 25<sup>th</sup> February 1977 for the erection of a dwelling at Rose Cottage Farm for Mr S. Hine. Condition 1 stated that: -

*“The occupation of the dwelling shall be limited to a person solely of mainly employed, or last employed locally in agriculture as defined in Section 290 (i) of the Town and Country Planning Act, 1971, or in forestry or a dependent of such a person residing with him (but including a widow or widower of such a person.)*

- 4.4 The bungalow was originally occupied by Mr S. Hine and his wife. Following the death of Mr Hine, the bungalow was occupied by his wife who would have continued to comply with the requirements of the occupancy condition. During this period the adjoining farm house was occupied by Mr C.E. Hine (Mrs E.M. Browns brother)
- 4.5 In 1987 an application was submitted to the Council which sought the removal of the agricultural occupancy condition that had been imposed on SM 1910 and SM3460. The application was submitted by Mr C.E. Hine and was refused on the 24<sup>th</sup> April 1987. At this time the Council did not consider that there was *“sufficient justification for removing the agricultural workers occupancy condition”*. The Council did, however, send a letter to the solicitors acting on behalf of the applicant which acknowledged the fact that should the dwelling be occupied by the applicant’s sister (Mrs E.M. Brown) and her family they would not take enforcement action in relation to the breach of the condition. Mrs Brown and her family moved into the dwelling in July 1987 and have resided there ever since. The property was re-named The Orchards shortly after they moved in.
- 4.6 The Statutory Declaration of Mr and Mrs Brown confirms that they moved into the property in July 1987 and that they have lived there since that date with no interruption. They have never been employed in agriculture. Mr Brown was a self-employed driving instructor working with Biddulph and District School of Motoring until his retirement in 2008. Mrs Brown was a Paintress working with W.H Bossons (Artware) until her redundancy in 1996. The letter provided by Mr Geoff Watson (AE04) confirms the above.
- 4.7 The application is accompanied by an electricity bill from January 1988 and a water rates bill from September 2017. The bills are made out to Mr and Mrs Brown and provide further evidence in relation to their occupation of the property since 1987. Additional evidence of this nature can be provided on request.
- 4.8 The letter from the Council to Bowcock and Pursall Solicitors dated the 24<sup>th</sup> April 1987 provides clear evidence that the Council were aware that the dwelling was to be occupied by Mrs E.M Brown as Mr. C.E Hines sister and that they considered such occupancy to be in breach of the condition.
- 4.9 The general rule is that breaches of condition are subject to the 10-year rule (i.e. they will not become immune from enforcement until they have continued without a break for 10 years – section 171B (3). The application property has clearly been occupied in breach of the agricultural occupancy condition for a period well in excess of 10 years and this occupancy is lawful.

## **5.0 CONCLUSION**

- 5.1 Considering the information contained in section 4 of this statement, supported by the Statutory Declaration of Mr and Mrs Brown, the balance of probability is that the dwelling shown edged red on the location plan attached as AE01 has been occupied in breach of the agricultural condition for some 31 years. It is, therefore, requested that the Council issue a positive Lawful Development Certificate in respect of the dwelling at The Orchards, Overton Road, Biddulph.

**Andrew Ellis BA (Hons) DipEp MRTPI**

**Chartered Planning Consultant**

**July 2018.**