

PLANNING STATEMENT

**PROPOSAL : CERTIFICATE OF LAWFULNESS
APPLICATION TO ESTABLISH THAT THE
EXISTING BUILDING IS USED FOR BOTH
COMMERCIAL B2/B8 USE AND DOMESTIC USE
C3 AND THAT THE EXISTING DOMESTIC
EXTENSIONS AND OUTBUILDINGS ARE
LAWFUL**

**ADDRESS : GRATTON HAYE FARM, DAMS LANE,
GRATTON, ST9 9AJ**

APPLICANT : MR & MRS K TYLER

DATE : MARCH 2024 JOB No.: 2023-2824

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1 INTRODUCTION

Planning permission for a replacement dwelling was submitted by the applicant to Staffordshire Moorlands District Council under application reference SMD/2023/0570 on the 13th November 2023. It was validated the same day and refused on the 8th January 2024 for the following reason:

“The applicant has failed to establish the current lawful use of the site and building described as “workshop / store” and has failed to demonstrate that the proposal benefits from one of the exceptions at paragraph 154 of the NPPF, including d) “the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces”; or g) “the partial or complete redevelopment of previously developed land”. Consequently, the proposal is regarded as “inappropriate development” in the Green Belt. No very special circumstances have been demonstrated to outweigh the harm by way of inappropriateness and other harm and the proposal is therefore considered to be contrary to Policy SS10 of the adopted Staffordshire Moorlands Local Plan 2020 and the provisions of the NPPF.”

This statement is therefore submitted in support of a certificate of lawfulness application under S191 of the Town & Country Planning Act 1990 (as amended) to establish that the existing use of the application building and land as edged red on the location plan for mixed commercial and domestic uses are lawful and therefore immune from enforcement action by the Local Authority. In addition it also seeks consent that the domestic extensions and outbuildings shown in green within the site area are also lawful through the passage of time and again immune from enforcement from enforcement action by the Local Authority.

The application has been submitted by Sammons Architectural Ltd on behalf of Mr & Mrs K Tyler. This planning statement sets out a precise and unambiguous justification for the lawful development certificate to be granted. The statement is accompanied by the following documentation:-

- Location Plan numbered 2023-2824-10
- Plans and Elevations numbered 2023-2824-11
- Screenshot of Council's Interactive Planning Map – Appendix 1
- Letter from West Midland Traffic Area – Appendix 2
- Photograph of Mr G L Birch's wagon – Appendix 3
- Death Certificate of Mr G L Birch – Appendix 4
- Aerial Photograph dated 1977 – Appendix 5
- Aerial Photograph dated 1990's – Appendix 6
- Google Maps © Street View Image dated July 2009 – Appendix 7
- Statutory Declaration by Mr Paul Birch - Appendix 8
- Death Certificate of Mr J Morgan – Appendix 9
- Statutory Declaration by Mr J Fryer – Appendix 10
- Letter from Mr Fryer's Accountants – Appendix 11
- Photos from Sharon Birch's wedding – Appendix 12
- Copy of wedding invite from Sharon Birch's wedding – Appendix 13
- Google Maps © Street View Image dated July 2009 – Appendix 14

2. SITE & LOCATION

Gratton Haye Farm comprises of a detached two storey dwelling and a number of associated outbuildings which lies on the northern side of Dams Lane close to its junction with Lea Laughton Lane and Chapel Lane.

Constructed from coursed stone walls under a plain clay Staffordshire Blue roof the dwellinghouse has a double fronted twin cell arrangement with a two storey projecting rear gable. A single storey flat roof extension which wraps around the eastern side and rear wall of the original dwelling provides a link from the main dwellinghouse to a larger portal frame building which lies immediately to the north. Part of this outbuilding, approximately one third, has historically been used for domestic purposes and currently provides additional accommodation in the form of a bedroom, study, utility, store and garage. A sunroom has also been added to the western elevation of the portal framed building with a further store added to the eastern gable. The remainder of the portal frame building has previously been used as a workshop / store in conjunction with a commercial use which has been carried out from the site. A later monopitch extension which wraps around the north western corner of the portal frame building provides further storage accommodation whilst a garden shed and greenhouse are located to the east.

Access to the site is provided within the south eastern, corner directly off Dams Lane, and leads to an extensive parking and yard area. A patio area is provided on the western side of the dwelling with a substantial domestic curtilage beyond. The existing dwelling sits within close proximity of Dams Lane and both it and the adjacent portal frame building have their ridge running in an east to west direction. The roadside boundary is formed by a coursed decorative stone wall supplemented with hedgerow planting with hedgerows also forming the boundaries to the north, east and west. The red edged site area which extends to some 4,024 sq metres within an overall 3.6789 ha (c 9.09 acre) ownership, the remainder of which comprises of grassland laid to pasture.

The application site lies within an area characterised by open countryside interspersed with sporadic dwellings with Dams Lane Cottage lying approximately 130m to the west north west on the opposite side of the highway and other dwellings clustered around the Lea Laughton, Gratton Hall and Chapel Lane crossroads approximately 140m to the south east. For the purposes of the development plan the application site lies within the North Staffordshire Green Belt where restrictive development plan policies apply.

3 APPLICATION

The application is to establish, in the form of a Certificate of Lawful Existing Use, that :-

(i) The application building outlined in magenta on the accompanying site location plan (drawing number 2023-2824-10) has been used for mixed commercial and domestic uses in excess of 10 years and that those uses are therefore now lawful through the passage of time; and that

(ii) that the operational development comprising of the erection of domestic extensions shaded green within the red edged site area on drawing number 2023-2824-10 were undertaken and substantially completed more than 4 years ago and are therefore also lawful through the passage of time.

4. LEGAL & POLICY

This is a certificate of lawful use application and for the avoidance of doubt it should be noted that the planning merits of the use, works or operations referred to in this certificate of lawfulness are not relevant, and are not therefore an issue to consider in the context of this application.

Section 191 of the Town and Country Planning Act 1990 (the 1990 Act) provides for anyone (not just a person with a legal interest in the land) to apply to the local planning authority (LPA) for a lawful development certificate. A certificate is a statutory document certifying the lawfulness for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition.

The Act, as amended, requires planning authorities, upon application, where the appropriate evidential tests are considered to be met, to grant a certificate stating that an existing use of land, operational development, or activity in breach of planning condition, is lawful. Where the evidence submitted does not support the lawfulness of the existing use, then it would fall to the Planning Authority to refuse the application. Unlike a conventional planning application, each application for a Certificate of Lawfulness of an Existing Use or Development (CLEUD) is assessed entirely on its available factual evidence about planning history, the interpretation of any relevant planning law or judicial authority and judged on 'the balance of probabilities'.

Moreover the Courts have held (see *F W Gabbittas 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. Guidance in the National Planning Practice Guidance confirms that an applicant is responsible for providing sufficient information to support an application for a lawful development certificate to be granted, and that 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, then there is no good reason to refuse the issuance of a Lawful Development Certificate.

5. DETERMINING ISSUES

This submission seeks to demonstrate two things. Firstly that the application building as edged magenta on the submitted location plan numbered 2023-2824-10 has been used continually for a mix of commercial and domestic uses being carried out on this site having been occurring for a period in excess of 10 years from the date of the first breach of planning control and is therefore now lawful in the context of paragraph 171B of the Town & Country Planning Act 1990 (as amended).

Secondly that the operational development comprising of domestic extensions and outbuildings shaded in green on the submitted location plan numbered 2023-2824-10 were constructed and substantially completed more than 4 years ago from the date of the first breach of planning control and accordingly they are also now lawful in the context of paragraph 171B of the Town & Country Planning Act 1990 (as amended). Each of these will be discussed in more detail below.

Lawful use of building for mixed commercial and domestic purposes

Section 171B of the Town & Country Planning Act 1990 (As Amended) confirms that where there has been a breach of planning control that doesn't involve building, engineering, mining or other operations, in on over or under land or doesn't involve the change of use of a building to create a single dwellinghouse, no enforcement action may be taken after the end of a period of ten years beginning with the date of the breach.

Gratton Haye Farm was purchased by Mr George Leslie Birch and his wife Mrs Audrey Birch in 1958. At the time of purchase it comprised of a detached dwellinghouse with a long but narrow single storey outbuilding to the rear. It was set in a substantial plot with parking and yard area to the south east and south west of the dwelling and had 3.6789 hectares (9.09 acres) of land with it.

Upon first occupation of the site Mr and Mrs Birch farmed the land and had a small herd of cows however this was not productive enough and a year later, in 1959, Mr Birch purchased a wagon and set up business as a haulage contractor. He focused on bulk tipper work and the site was registered as a haulage depot and had an operators licence from 1959 until his retirement in 1998. In order to corroborate this a screenshot from the council's own website which clearly refers to the site at as a "depot" is attached at Appendix 1 and a copy of a letter from the West Midland Traffic Area dated 03/08/1993 addressed to Mr George Leslie Birch at Gratton Hayes Farm, Gratton, Nr Endon, Stoke on Trent, ST9 9AW reminding him that his operators licence would expire on 30/11/1993 is attached at Appendix 2.

Furthermore, an old photograph which has been provided by Mr Paul Birch, Mr George Leslie & Mrs Audrey Birch's son shows the wagon of Mr George Leslie Birch at the application site and is attached at Appendix 3. The wagon is clearly sign written and bears the trading name of "G L Birch" it also lists the place of business as Gratton Hayes Farm, Nr. Endon, Stoke on Trent. Whilst the photograph is undated it is clearly a historic photograph, as can be seen by its quality and the age of the vehicle contained therein whose number plate reads 4682 JWU. Older style registrations such as this predated the pre-fix style registrations which were introduced in August 1983. It is also worth noting that the business telephone number listed on the side of the wagon in the photograph uses the area code 0782 and not 01782 as is now the case. Google confirms that all area codes were updated to include a 1 by the 16th April 1995 and therefore the picture can reasonably be considered to predate this date. The photograph also clearly shows the application building in situ. The death certificate for Mr George Leslie Birch which has been attached at Appendix 4 to this statement corroborates his address as Gratton Hayes Farm and also records his occupation as a "Business Proprietor (Haulage) (Retired)."

In the early years the agricultural use and the haulage use co-existed with the light farming tasks being undertaken by Mrs Birch in between raising their family of 4 children and the more manual jobs being undertaken by Mr Birch either before or after his day job as a haulage contractor. The cows were housed in the adjacent stone and tile barn with the furthest two bays of it being given over as a workshop and corn store. The agricultural use however continued to remain unviable and had ceased by 1972.

The requirement to house the wagon internally and provide a workshop facility where maintenance and repairs could be undertaken became a priority and such a facility was advocated by Department of Transport in their publication Goods Vehicle Operator Licensing A Guide for Operators. Mr Paul Birch states that in the early 1970's following the cessation of the agricultural

activity on site the tiles, roof trusses and spas were removed from the roof of the long and narrow agricultural building and a wider single span portal framed building was constructed over the entire length of this building which was encompassed within it. The front wall of the former stone building now formed the southern elevation of the wider application building and the rear wall was also retained and remains in situ today and can clearly be seen internally within the application building.

The portal framed building was provided with a large opening in the eastern gable (as evidenced in the photograph attached at Appendix 3) to accommodate Mr Birch's wagon and an inspection pit which still remains was fitted within the floor to aid servicing and repairs on the wagons.

An aerial photograph which shows the application building in situ has been provided at appendix 5. The date written on the back of this photograph is 1977 and would therefore add weight to this testament. This photograph clearly shows part of the application building being in domestic use and housing a car. A later aerial photograph submitted at Appendix 6 shows a wagon parked in the yard to the side of the application building dates to sometime in the 1990's and confirms the continued mixed use of the application site and building. A Google Street View © image attached at Appendix 7 shows the application building clearly in situ in July 2009.

The enclosed Statutory Declaration prepared by Mr Paul Birch confirms the above (attached as Appendix 8) and sets out a detailed chronological history of the application site since the erection of the building more than 50 years ago and its use. This statement clearly sets out that the application building has historically been in a mixed use comprising of B2/B8 use and C3 domestic use.

Mr Paul Birch who was one of four children born to Mr George Leslie & Mrs Audrey Birch at Gratton Hayes Farm clearly recollects the roof of the former cow byre being removed and a larger portal framed structure erected over it. He remembers his father using part of the application building (that coloured magenta on the submitted location plan numbered 2023-2824-10) to store, service and repair his wagons.

He also recollects how around the same time (in or around 1972) his grandparents (Mr & Mrs Joseph Morgan) came to reside with them in due to ill health. Whilst they initially resided in a caravan in the garden they eventually (in 1975) came to live with them in the main house after his grandfather, developed dementia. The accommodation provided at the time of Mr & Mrs Morgan's occupation (from 1975) comprised of a bedroom with separate lounge area (which was later divided to form a study and utility) area as shown on the submitted floor plan and elevation drawing numbered 2023-2824-11. The store and garage shown on the submitted floor plan numbered 2023-2824-11 remained in use by Mr & Mrs George Leslie Birch. Mr Joseph Morgan died on the 23rd February 1977 and a copy of his death certificate which has been attached at Appendix 9 clearly records his place of residence as Gratton Hayes Farm.

Mr Paul Birch's testimony goes on to state that from 2010 the floor area of the application building coloured magenta on the submitted location plan numbered 2023-2824-10 was utilised by Mr J Fryer and his son Mr J G Fryer in conjunction with their agricultural contracting business. This part of the application building continued to be used for the storage of vehicles and machinery as well as a repair workshop. This use has been continuous, without any intervening use and is ongoing to the present day.

In addition to the above separate sworn testimony has been provided by Mr John Fryer of J & J G Fryer (copy attached at Appendix 10). This statement confirms that for the last 20 years or more he has farmed the land holding attached to Gratton Haye Farm as part of his agricultural business. This has been a reciprocal in kind arrangement with no money changing hands but Mr & Mrs Birch receiving “payment” by way of ensuring that the land is managed and kept in a reasonable and tidy condition. Mr Fryer’s statement goes on to confirm that following establishment of an agricultural contracting business with his son Mr J G Fryer in 2010 they have utilised part of the the application building coloured magenta on the submitted location plan numbered 2023-2824-10 in conjunction with this business. This business is run separately and independently to their farming enterprise as corroborated by their accountant in a letter attached at Appendix 11 and that their occupation of the application building has been for storage of vehicles, machinery, implements etc and use as a workshop for the servicing and repair of the same. Such use would therefore be equivalent to a B2/B8 commercial use. This use has been continuous from 2010 until present date and the use is ongoing without any intervening use.

In order for the use to be immune from enforcement action under the criteria laid out in paragraph 171B of the Town & Country Planning Act 1990 (as amended) it would need to have been carried out for a period in excess of 10 years from the date of the first breach. The submitted documentation provides clear and unambiguous evidence that the mixed commercial use of the building as shown on drawing number 2023-2824-11 has been carried out for a period in excess of 10 years and is now immune from enforcement action.

Domestic Extensions

The submitted application seeks determination that the operational development carried out to the dwellinghouse known as Gratton Haye Farm and within its grounds are lawful. Section 171B(1) and 191(2) of the Town and Country Planning Act 1990 confirm that operational development can be considered to be lawful after a period of 4 years from the date that the works were substantially completed.

Section 191(4) states that if the Local Planning Authority are provided with information satisfying them of the lawfulness at the time of the application the operations in the application then a certificate should be issued to that effect. In this instance the test is whether there is sufficient evidence to demonstrate on the balance of probabilities that the operational works have been carried out for a period in excess of 4 years. The planning merits of the works are not for consideration. The test is to consider whether the proposed works were substantially completed 4 years from the date that the application was made to be considered to be lawful for the purposes of S191 of the Act.

Mr John Fryer’s statement attached at appendix 10 confirms that his commercial use of the application building was limited to that shaded as magenta on the submitted location plan numbered 2023-2824-10 and that the remaining use of the application building, as shaded in yellow on the aforementioned location plan, was in domestic use by the residents of the main dwellinghouse known as Gratton Hayes Farm.

Furthermore, Mr Paul Birch has also confirmed in his sworn testimony that the domestic use of the application building commenced on or around 1975 and was originally occupied by his grandparents Mr & Mrs Morgan and upon their death remained in domestic use being used by the remaining family.

Mr Paul Birch has also provided photographic evidence (attached at Appendix 12) from his sister Sharon's wedding reception which took place on the 16th May 1992. A copy of the wedding invite confirming the date and place of reception is attached at Appendix 13. The first image provided shows the western gable of the dwellinghouse and application building and clearly shows the wrap around link between the projecting two storey rear gable and the application building. Please note the domestic style door into the extension and the window in the gable end of the application building and also the detached greenhouse located within the curtilage of the dwellinghouse. The second image shows a close up of the western gable of the application building including the window formerly located within this elevation which is clearly adorned internally with curtains indicating its domestic use.

The Google Maps © street view image attached at Appendix 7 shows the dwelling known as Gratton Hayes Farm. The view is taken from Dams Lane looking north west and clearly shows the main farmhouse with two storey projecting gable in front of which is a single storey addition which links the farmhouse to the application building. A further Google Maps image attached at Appendix 14 and taken on the same date (July 2009) depicts a view further along Dams Lane looking north and clearly shows the existence of the rear flat roof link connecting the two storey projecting gable to the application building along with the sun room, greenhouse and later store which wraps around the north western corner of the application building. Both of these images show the works to which this certificate relates in situ. The information is sufficiently clear and unambiguous and adequately demonstrates that the structures are now immune from enforcement action.

6. CONCLUSION

For the reasons set out within the planning statement above it is considered that it has been clearly demonstrated that application building outlined in magenta on the accompanying site location plan (drawing number 2023-2824-10) has been used for mixed commercial and domestic uses in excess of 10 years and that those uses are therefore now lawful through the passage of time; and that that the operational development comprising of the erection of domestic extensions and outbuildings shaded green within the red edged site area on drawing number 2023-2824-10 were undertaken and substantially completed more than 4 years ago and are therefore also lawful through the passage of time.

Having regard to these conclusions, the Local Authority is respectfully requested to issue a Lawful Development Certificate to confirm that these developments are now lawful and therefore immune from enforcement action.