



SUPPORTING STATEMENT

Application for Lawful Development Certificate for an Existing Use or Operation or Activity Including Those in Breach of a Planning Condition – Continued Occupation of Dwelling Without Compliance with Condition 2 of Planning Permission B/92/0396

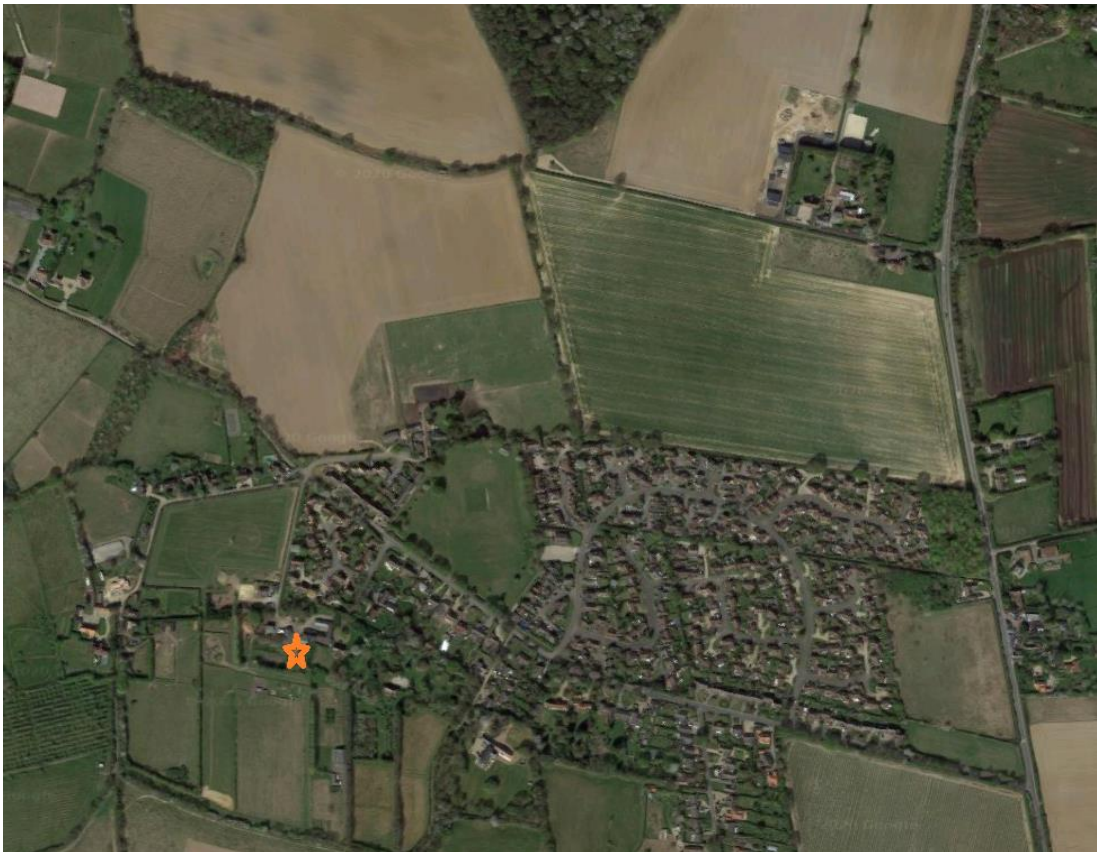
Pecks, Orchard Farm, Locks Lane,
Leavenheath, CO6 4PF

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1. INTRODUCTION

- 1.1 This statement is prepared in support of an application for a Certificate of Lawfulness for the occupation of the dwelling known as Pecks, Locks Lane, Leavenheath in breach of a condition requiring it's occupation to be *"limited to a person solely or mainly employed, or last employed in the locality in agriculture as defined in Section 336(1) of the Town and Country Planning Act 1990, or in forestry or a dependent of such a person residing with him or her or a widow or widower of such a person"*.
- 1.2 The application is made by Mr Peter Irving, the owner of Pecks.
- 1.3 The extract below shows the location of the site relative to its surroundings, with the village of Leavenheath to the east.



2. THE RELEVANT PLANNING CONDITION

- 2.1 In May 1992, planning permission was granted for the “Erection of a two-storey dwelling for agricultural worker”. The Council reference given to that application was B/92/0396, though the Council’s website record shows it as B/92/00396.
- 2.2 Condition 2 of planning permission B/92/00396 states; *“The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed in the locality in agriculture as defined in Section 336(1) of the Town and Country Planning Act 1990, or in forestry or a dependent of such a person residing with him or her or a widow or widower of such a person”*.
- 2.3 This application for a Certificate of Lawfulness seeks to demonstrate that the dwelling has been occupied for a period in excess of 10 years without compliance with this condition.

3. THE LEGISLATIVE POSITION

- 3.1 The statutory framework covering “lawfulness” is set out in section 191(2) of the Town and County Planning Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required. Section 171A of the Town & Country Planning Act 1990 (as amended by Section 10 of the Planning & Compensation Act 1991) states:

(1) For the purposes of this Act—

(a) carrying out development without the required planning permission; Or

(b) failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.

- 3.2 Section 171B of the Town & Country Planning Act 1990 (as amended) adds;

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

3.3 S.191 of Town & Country Planning Act 1990 (as amended) is also relevant:

(1) If any person wishes to ascertain whether—

- (a) Any existing use of buildings or other land is lawful;*
- (b) Any operations which have been carried out in, on, over or under land are lawful; or*
- (c) 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 planning authority specifying the land and describing the use, operations or other matters.*

(2) 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) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.*

(3) 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.*

(4) If, on an application under this section, the 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 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.

3.4 It is accepted that the burden of proof is on the applicant, and the Courts have held that the relevant test of the evidence on such matters is "*the balance of probability*". The Courts have

held (see *F W Gabbitas v Secretary of State for Environment and Newham LBC 1985*) that the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the LPA have no evidence of their 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 a certificate *"on the balance of probability"*.

- 3.5 The above is echoed in the Planning Practice Guidance launched 6 March 2014 in paragraph 6 which states *"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. THE APPLICANTS' EVIDENCE

- 4.1 Supporting this application is a statutory declaration prepared by Mr Peter Irving. This provides the main element of the applicant's evidence, and is summarised below for clarity.
- 4.2 The statutory declaration is signed and dated in the presence of a solicitor and should therefore be afforded significant weight in reaching a decision on this application. This statement will set out a summary of the position established by the declaration.
- 4.3 Mr Irving has owned the property known as Pecks since August 2000. In September 2005, he incorporated his limited company 'Pete Irving Tree Services' and has been employed as a tree surgeon throughout the entirety of that time. He has continually resided at Pecks throughout the entirety of his ownership of the property.
- 4.4 Whilst his tree surgery business was in its infancy, Mr Irving continued to help his family on the farm also. However, the totality of turnover from the farm totalled £33000 across the

entirety of the five-year period of 2010-2014 before it ceased totally in 2015. This period is important as it relates explicitly to the first four years of the requisite ten-year period.

- 4.5 Across that same period, Pete Irving Tree Services turned over approximately £250000 and has continued to post over £50000 per annum since that time, up to the current day. It is abundantly clear, therefore, that even when Mr Irving continued to work in the farm business between 2010 and 2014, this was not his primary income and he was in breach of the occupancy condition.
- 4.6 The Council have not issued an enforcement notice to cease the accumulation of the passage of time, and there have been no substantive breaks in occupation that would preclude continuous occupation of the unit being established.
- 4.7 This application seeks to assert that there has indeed been a breach of planning control. The evidence must prove that the occupant has occupied the dwelling contrary to the requirements of condition 2 of planning permission B/92/00396 for a period in excess of ten years. The supporting evidence from Mr Irving and the associated statutory declarations confirm this, and the council's own records including Council tax and electoral roll information would confirm this.

5. CONCLUSION

- 5.1 In conclusion, the applicant contends that 'on the balance of probability', the evidence provided to satisfy the Local Planning Authority that the continuous occupation of the dwelling in breach of the relevant condition for a period of more than 10 years is sufficient to justify the issue of the Certificate of Lawfulness.
- 5.2 In addition, as the Authority has not at any point instituted enforcement action the effect of which would have been to 'stop the clock', the relevant period for the purposes of the application therefore commenced more than ten years prior to the date of the application.

5.3 Whilst the applicants consider that they have provided sufficient information for the purposes of demonstrating their claim, if any doubt exists then it is requested that further evidence is sought by the LPA before the issue of a decision.