

## BROADLANDS - HOLMPTON

### APPLICATION FOR CERTIFICATE OF LAWFUL USE

#### INTRODUCTION

1. I am instructed by Margaret Anne Bradley to make an application for a Certificate of Lawfulness for the existing use of Broadlands without complying with condition 2 on planning permission N.3067. This condition seeks to restrict occupation of Broadlands ("the Property") to a person connected with the working of the adjacent West Farm, Holmpton.

#### PLANNING HISTORY

2. Planning permission was granted in 1967 for the erection of a bungalow under reference N3067. This permission was subject to a condition in the following terms –

*The dwelling shall be occupied only in connection with the working of West Farm, Holmpton, on which it will be erected, as the proposed development is included within an area without notation on the Development Plan where the existing uses of land are intended for the most part to remain undisturbed.*

This property was built for Harry Herd (dairy farmer) and known as Broadlands.

3. An extract from The East Yorkshire Village Book, collated by the Women's Institute records that Manor Farm and North Farm (part of the Holmpton Estate) were sold to J W Herd in 1917. He also acquired West Farm in 1936. He later conveyed the three farms to his three sons.
4. In November 1989 Mr Pip Herd (grandson of Harry) applied for 'Retention of the dwelling without complying with the agricultural condition' under reference N3067-B. This application was approved but the standard agricultural occupancy condition was imposed, limiting occupation to those employed or last employed locally in agriculture. Around the same time West Farm was sold off to Mr Leckonby.
5. From 1989 to 2002 Pip Herd applied to have the condition removed but was refused. The Committee Report for 02/1416/VAR dated 30 April 2002 records the following facts;
  - The Herd family has retired from farming
  - West Farm has been sold to Mr Leckonby
  - The Property is owned by Pip Herd and his mother Mrs G Marsh with 3.18 ha of land
  - Pip Herd has never been employed in agriculture and worked in Africa for years

6. The Committee Report from 1992 records the following planning history –

PLANNING HISTORY

348-10031 - Certificate of lawfulness for existing use of dwelling – Withdrawn 13/12/2001.

N3067G – Removal of agricultural occupancy condition – Appeal Dismissed 21/09/1994.

N3067F – Removal of agricultural occupancy condition – Appeal Dismissed 21/02/1992.

N3067E – Removal of agricultural occupancy condition – Refused 12/09/1990.

N3067D – Removal of agricultural occupancy condition – Condition Modified 02/01/1990.

N3067 – Erection of a dwelling in connection with an agricultural smallholding – Approved 06/04/1968.

THE LAW

7. The definition of agriculture is in s.336 of the Planning Act 1990 and includes the “keeping and breeding of livestock”. The TCPA does not define livestock but the Oxford English dictionary defines them as “animals such as cows, sheep, etc. that are kept or traded as a source of income: *livestock* farmers/industry/market. The organic *livestock* ...”
8. It is also the case that the permitted development rights under the General Permitted Development Order Part 6 Class A (units of 5 hectares or more) and Class B (units of less than 5 hectares) are only available on land which comprises an agricultural unit which is in use for agriculture for the *purpose of a trade or business*. “Agricultural unit” is defined in Part 6 Class d.1 as “agricultural land which is occupied as a unit for the purposes of agriculture”.
9. The commentary to the Encyclopaedia of Planning Law confirms that part 6 rights do not apply where the agricultural use is purely recreational “such as where the keeping or breeding of a particular species is undertaken as a hobby”. This is based upon the findings of Gibson J in *Customs and Excise Commissioners v Fisher (Lord) [1981] 2 All E.R. 147*. In that case the court had to determine whether the expression “business, trade, profession and vocation” in s.45 of the Finance Act 1972, applied to a shoot in Norfolk. Gibson J stated (p.57):
- “It is clear, and there is much authority to support it, that ‘business’ is or may be in particular contexts a word of very wide meaning. Nevertheless, the ordinary meaning of the word ‘business’ in the context of this Act excludes, in my judgment, any activity which is no more than an activity for pleasure and social enjoyment.”
10. The tests for a breach of condition which is a continuing breach (including occupation in connection with West Farm) is whether the breach has been continuous for the period claimed. There is also the requirement that the breach is subsisting at the time of the application, following the case of *Nicholson v SSETR [1998] 76 P&CR 191*.

11. Planning Practice Guidance (PPG) advises that if the council has no evidence itself, nor from others, to contradict or 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 probabilities.
12. The Court has held that the appellant's own evidence does not need to be corroborated by "independent" evidence, particularly if it is unchallenged, in order to be accepted. The onus of proof however is firmly on the appellant to provide evidence which is sufficiently precise and unambiguous to justify the grant of a certificate.

#### THE APPLICANTS CASE

13. It is known from local history that H Herd & Sons farmed at West Farm. The application made in 1967 was to support the dairy farm at West Farm and this was reflected in the occupancy condition. It is not clear what "working" really means but I would submit it means the business which was taking place at that time (or any time) and which justified the erection of a dwelling in the open countryside contrary to planning policy.
14. By November 1989 West Farm had been sold off and the ownership link to Broadlands was severed. Thereafter Pip Herd owned the Property and 3ha of land but worked in Africa, returning to Broadlands on occasion. At no stage since 1989 has this condition been complied with. Upon first occupation Pip Herd made an application to have the condition removed [N3067-D] and this was granted subject to two conditions; (1) the standard time condition requiring the permission to be implemented within 5 years and (2) the standard agricultural occupancy condition.
15. However as Pip Herd never occupied Broadlands in compliance with the 1990 permission and its conditions then it was never lawfully implemented. Therefore this permission would have lapsed after 5 years. It follows that Broadlands is subject only to the condition imposed in 1967 requiring it to be occupied by a person working at West Farm. On that basis the Property has been occupied in breach of condition 2 on permission N3067 for at least 32 years.
16. The evidence demonstrates that Broadlands has been in continuous occupation in breach of condition 2 on N3067 for over 10 years and a CLU is sought on this basis.
17. The alternative submission is that even if the permission granted in 1990 was implemented (which is denied) Broadlands has still been occupied in breach of the standard agriculture condition for the last 10 years, by Mr & Mrs Bradley, and for 13 years before that by Pip Herd. None of these occupiers have been employed in agriculture at all.

18. The keeping of a few longhorn cattle by Mr Bradley for a couple of years from around 2003 does not constitute an agricultural unit or using the land for agriculture as a trade or business. This use can best be described as the keeping of pedigree cattle as a hobby which was specifically held not to be agriculture by Gibson J in the case quoted above.
19. At the date of the application Anne Bradley continues to occupy the Property in breach of the condition.
20. It has been open to the Council at any stage since 1989 to take enforcement action for breach of the condition and this has not occurred. The Council has been well aware that the condition has continuously been breached as evidenced in the numerous applications made by P Herd from 1990 to 1994. The breach is therefore immune from enforcement action by reason of s.171B(3).
21. It is noted that Mr Pip Herd applied to remove condition 2 on the permission granted in 1990. However it is the case that this permission was never lawfully implemented and these applications, made on a mistaken basis, do not create an estoppel such that this applicant cannot pursue this application now.
22. A CLU is sought for "Occupation of Dwellinghouse in breach of condition on Permission N3067" on the basis of the Statutory Declaration of Margaret Anne Bradley.

MISS NICOLA ALLAN  
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Dated this sixteenth day of March 2022