



## SUPPORTING STATEMENT

Application for Lawful Development Certificate for an Existing Use or Operation or Activity Including Those in Breach of a Planning Condition – Use of Building as a Dwellinghouse at:

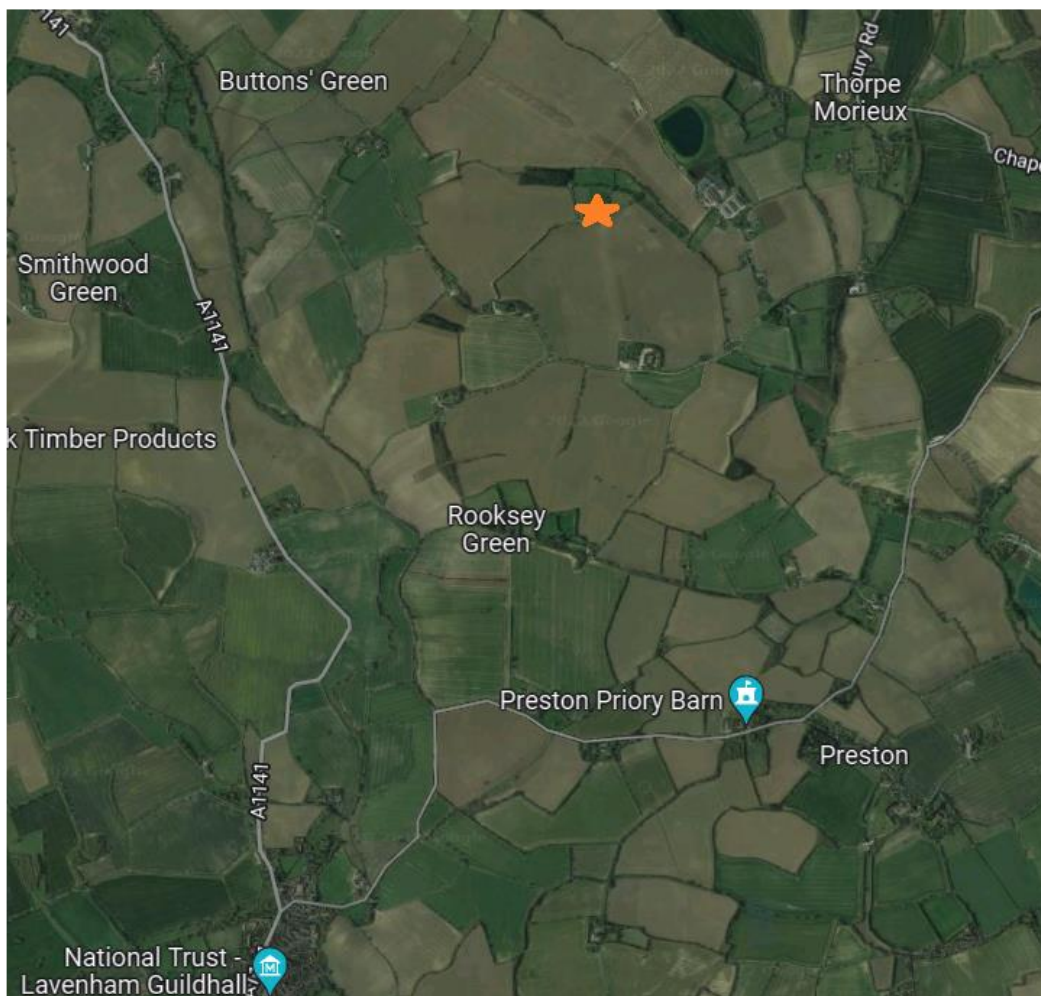
“The Stables”, Potash Farm, Thorpe Morieux,  
Suffolk, IP30 0NG

## **CONTENTS**

<b>1.0</b>	<b>Introduction</b>	<b>3</b>
<b>2.0</b>	<b>The Legislative Position</b>	<b>4</b>
<b>3.0</b>	<b>The Applicant's Evidence</b>	<b>6</b>
<b>4.0</b>	<b>Conclusions</b>	<b>8</b>

## 1. INTRODUCTION

- 1.1 This statement is prepared in support of an application for a Certificate of Lawfulness which seeks to establish the lawfulness of the occupation of a building at Potash Farm as residential dwelling.
- 1.2 The application is made by Mr Clarkson Webb, the owner of Potash Farm.
- 1.3 The extract below shows the location of the site relative to its surroundings, with the villages of Thorpe Morieux (to the northeast) and Lavenham (to the southwest).



- 1.4 This statement will consider the legislative provisions, set out the applicant's case and reach balanced conclusions on the lawfulness of these units.

## 2. THE LEGISLATIVE POSITION

2.1 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.*

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

*(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 the period of four years beginning with the date on which the operations were substantially completed.*

2.3 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.*

2.4 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 stated (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

2.5 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*".

2.6 Thereby, the considerations here are not ones of 'planning merit' but more simply an evidential assessment of the use of the building and the period of time in which such use can be evidenced to have occurred. The applicant thereby sets out their evidence below.

### **3. THE APPLICANT'S EVIDENCE**

3.1 The applicant purchased the property known as Potash Farm on 21<sup>st</sup> July 2017. At the time of completing their purchase, the applicant agreed to let the previous owner (Mr Ward) rent the property next to the farmhouse (known as 'The Cottage') whilst Mr Ward converted The Stables into residential accommodation.

3.2 Mr Ward remained in The Cottage until he completed the work on The Stables in February 2018. Mr Ward then moved into The Stables on 1<sup>st</sup> February 2018, and lived there until he moved to Australia in late 2019. At that point, The Stables were then rented to Shannon Stratton and her partner who remained in the property until 31<sup>st</sup> July 2021.

3.3 Shortly after purchasing Potash Farm, the applicant had reached an informal ("gentleman's") agreement with Mr Ward to purchase both Potash Barn and The Stables if they ever became available to sell. The applicant purchased Potash Barn on 16<sup>th</sup> April 2020 with the benefit of permission to convert the building into a four bedroom dwelling. In August 2021, Mr Ward also agreed to sell The Stables and the applicant bought that property also on 31<sup>st</sup> August 2021, with the tenants having vacated. A new tenant, Ms Zoe Baxter, moved into The Stables on 18<sup>th</sup> September 2021 and occupied the unit until 31<sup>st</sup> July 2022. A copy of the shorthold tenancy agreement confirming this is attached as Appendix 1 to this statement.

3.4 At that time, the applicant took on payment of the ongoing Council Tax obligation on The Stables and has continued to pay the Council Tax consistently since that time. Subsequently the applicant contacted the Council's Council Tax team in August 2022 to seek clarification as to the historic payment of Council Tax (Council Tax account number 41909922) It was confirmed to the applicant that the Valuation Office assessed the property on 13<sup>th</sup> February

2018 and that Council Tax has been paid consistently since that time. A copy of the most recent Council Tax demand for the property is attached as Appendix 2 to this statement.

- 3.5 The building is completely self sufficient in terms of the accommodation within it. It is on mains water, is served by a private septic tank and is on an electricity supply served from the adjacent barn.
- 3.6 The building is currently vacant and has been since 31<sup>st</sup> July 2022. The recent High Court case *R (on the application of Ocado Retail Ltd) v Islington London Borough Council [2021] EWHC 1509 (Admin) [2021] EWHC 1509 (Admin) 7 June 2021*, considered certificates of lawfulness of existing use or development (CLEUD) pursuant to s.191 Town and Country Planning Act 1990 (TCPA90). The High Court rejected Ocado's challenge to the revocation of a CLEUD by the London Borough of Islington (LBI). Local residents had identified that material information had been withheld when the CLEUD application was made. Holgate J held (i) withholding of information does not have to be deliberate; (ii) a breach of condition, or material change of use must be continuous for the relevant period for immunity from enforcement to be gained; (iii) once a lawful use right accrues its continued existence does not depend upon that right continuing to be exercised; (iv) once immunity is gained, the right can only be lost via abandonment or a supervening event.
- 3.7 This judgment is important because it demonstrates that applications for CLEUDs can be made relying on a lawful use having accrued that is not continuous at the point of application. The Ocado case looked at what happens after the immunity period ends, and it was held that the use does not have to be continuous after immunity is gained - once gained, the test is whether the use has been abandoned, there is a subsequent change of use, or a new planning unit is created. Therefore, when an application such as this one is made for a CLEUD, the period relied upon can be sometime in the past, and does not have to be the period immediately preceding the date of application.
- 3.8 The judgement also confirmed that s.191 requires the LPA to be satisfied of the lawfulness of the matter in question at the date of the application for a CLEUD, and not that that matter became lawful on that date. Sections 191(2) and (3) declare that any use, operation or breach

of condition is lawful at any time if the time for enforcement action had then expired. That language makes it plain that the time limit for enforcement may have expired at some point prior to the application date. That approach aligns with the language in s.171B that "*no enforcement action may be taken after the end of*" the relevant time limit.

- 3.9 In this case, Mr Clarkson Webb has demonstrated that The Stables was valued as a residential dwelling in February 2018. The use of the property throughout the following four year period (until 31<sup>st</sup> July 2022) has been consistent, with the property being vacant for a totality of 18 days throughout that 52 month period. Council Tax has been paid on the property for the entirety of the occupancy period.
- 3.10 The time in which the LPA could have taken enforcement action has expired. The fact that the building is currently unoccupied (for the last two months) is not such that would result in an abandonment of the use, and there has been no alternative/intervening use that would change the lawful use of this building as a dwellinghouse.
- 3.11 The occupancy of the building has occurred in excess of the four year period such that the use is now lawful. The evidence provided by the applicants demonstrate this such that wholly satisfies the 'balance of probability' test, and the use of the building as a separate dwellinghouse is therefore lawful.

#### **4. CONCLUSIONS**

- 4.1 In conclusion, the applicant contends that 'on the balance of probability', the evidence provided to satisfy the Local Planning Authority that the building has been occupied as a separate residential dwellinghouse is sufficient to justify the issue of the Certificate of Lawfulness.
- 4.2 In addition, as the Local Planning 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 four years prior to the date of the application.



4.3 Whilst the applicant considers that they have provided sufficient evidence to exceed the balance of probability test, if any doubt exists then it is requested that further evidence is sought by the LPA before the issue of a decision.