

SUPPORTING STATEMENT
For a Lawful Development Certificate (Existing Use)

Springfield Farmhouse
Wolverton Common
Tadley
RG26 5RY

Appraisal by:

SIMMONS & SONS

12 Wote Street
Basingstoke
Hampshire
RG21 7NW

GW.FH 2007.150

1.0 Introduction

- 1.1 This statement is in support of an application for a Certificate of Lawful Development of the existing use of the dwellinghouse at Springfield Farmhouse under Section 191 of the Town and Country Planning Act 1990 (as amended by Section 10 of the Planning and Compensation Act 1991). This application argues for the remove the agricultural occupancy condition currently applied to the property.
- 1.2 Springfield Farmhouse has been continuously occupied by a resident not involved or related to agriculture for an excess of 10 years prior to the application date.
- 1.3 A breach of the relevant occupancy condition has been ongoing in excess of 10 years prior to the application date.
- 1.4 There has been no enforcement action by Basingstoke and Deane Borough Council during this 10 year period. In view of this the occupancy condition is no longer enforceable and therefore a certificate should be issued confirming that is it lawful for person not in compliance with the restriction to occupy the dwelling.

2.0 Planning History

- 2.1 From Basingstoke and Deane Borough Council's planning register Planning permission was granted in 1974 under application KWR 9015/1 with construction beginning the same year. The permission was approved subject to the imposition of an agricultural occupancy condition under condition 4 which stated:

"The occupier of the dwelling shall be a person employed or last employed in agriculture, as defined by section 290(1) of the Town and Country Planning Act 1971, or in forestry, or dependent of such a person."

- 2.2 Attached as **Appendix 1** is a letter from Basingstoke and Deane Council dated 16th November 1993 confirming the condition.

3.0 Breach of Condition

- 3.1 **Section 171A of the Town and Country Planning Act 1990 (as amended by Section 10 of the Planning and Compensation Act 1991):**

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 and Country Planning Act 1990 as amended:

- (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) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

3.3 Section 191 of the Town and Country Planning Act 1990 as amended:

- (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 local planning authority specifying the land and describing the use, operations or other matter.
- (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.
- (3) If, on an 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.

3.4 Government Advice

The Government Planning Practice Guidance on Lawful Development Certificate (6th March 2014) states that the applicant is responsible for providing sufficient information to support an application for existing use.

The local authority is to consider case and planning law in determining whether the matter is lawful. There is no good reason to refuse the application if the local planning authority has no evidence itself, nor from any others to contradict it and provided that the applicant's evidence alone is sufficient. The local planning authority considering case and planning law must determine if the matter is lawful.

3.5 Balance of Probability

To establish proof for a Lawful Development Certificate, the case law has held that "the balance of probability" is relevant. The applicant's own evidence does not need to be validated by independent evidence to be accepted, therefore "on the balance of probability" the local planning authority should grant a certificate. Case Law evidence of this is provided by *F W Gabbittas v Secretary of State for Environment and Newham LBC 1985*.

3.6 "The 10 year Stop Clock"

During the past 10 years that the dwelling has been occupied in breach of the relevant agricultural occupancy condition, there has been no enforcement action by the local authority. The 10-year period for the purposes of the application under the Town and Country Planning Act 1990 (amended) has therefore been achieved.

3.7 Definition of Agriculture

Section 336 (i) of the Town and Country Planning Act 1990 which defines agriculture to include: "horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purposes of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of the land for other agricultural purposes, and "agricultural" shall be construed accordingly".

4.0 Applicant's Evidence

4.1 Springfield Farmhouse has been occupied in breach of the relevant agricultural occupancy restriction for a period of at least 10 years prior to the date of application.

4.2 Statutory Declaration of the Applicant


- 4.2.1 Mr Aird states that along with his wife Lilia Aird and family have been the occupiers of Springfield Farmhouse since 2nd March 2013 to this the present . Attached as **Appendix 2** is a copy of the statutory declaration.
- 4.2.2 Planning permission for the dwelling was granted in 1974 and was then occupied by the applicant's father from October 1975 to November 2001. Between 2001 and 2012 the property was occupied by a series of private tenants, none of whom were or had been employed in agriculture or forestry. The property was empty from 24th August 2012 to 2nd March 2013 as the house was modernised and decorated.
- 4.2.3 Mr Aird is a Chartered Accountant and has been his whole working life. His professional is evidenced as **Appendix 3**. They also included the property's address showing his occupation during this time.
- 4.2.4 Chartered accountancy has no relation at all to agriculture as defined by Section 336 (i) of the Town and Country Planning Act 1990.
- 4.2.5 Mr Aird's wife, Lilia, is a Teacher and has also not been or has ever been employed in agriculture or For which as well has no relation to agriculture. Attached as **Appendix 4** is a Statutory Declaration from Lilia Aird. Attached **Appendix 5** is a copy of her latest teaching certificate.
- 4.2.6 On the balance of probability, their employment has not amounted to compliance with the agricultural occupancy condition and therefore it is clear it has been breached continuously for the last 10 years.

5.0 Possible Issue of Deliberate Concealment

- 5.1 It is important to consider the issues resulting from the Localism Act 2011 and consequential additions to Section 181 of the Town and Country Planning Act 1990 that addresses deliberate concealment of a breach of planning conditions.
- 5.2 Certificates of Lawful Development can be unsuccessful where there has been to any extent deliberate concealment.
- 5.3 At no point has the applicant, or anyone else made any attempt to conceal the breach of planning conditions.
- 5.4 Evidence is provided in this supporting statement by both the applicant and his wife.

6.0 Conclusion

- 6.1 All the evidence in this case shows that neither the applicant nor his wife have been in compliance with the agricultural occupancy condition placed upon the dwelling at Springfield Farm, as they do not comply with the definition of agricultural as outlined by Section 336 (i) of the Town and Country Planning Act 1990 in any form whatsoever.
- 6.2 It is unambiguous that there has been a continuous breach of the relevant condition of planning permission.
- 6.3 Basingstoke and Deane Borough Council as the Local Authority has not at any point instituted enforcement action during the last 10 years. The last 10 years prior to the date of application represents the period of time that a breach of the planning condition has continuously occurred in order to justify a certificate.
- 6.4 The government's guidance and case law have held that the "balance of probability" is an evidential test useful in ascertaining whether that a breach has continuously occurred for at least the last 10 years. The burden of proof is provided by the applicant in this case.
- 6.5 The evidence included within this supporting statement does not need to be verified by further independent evidence in order to be accepted. However, additional evidence has been provided to solidify this case further.
- 6.6 If the Local Authority has no evidence of its own, or from other, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application.
- 6.7 Evidence provided by the applicant goes beyond the standards required by previous case law (*F W Gabbittas v Secretary of State for Environment and Newham LBC 1985*).
- 6.8 A Certificate of Lawful Development regarding existing use, should be granted in accordance with the Town and Country Planning Act 1990 Section 191 (amended), as the local authority has been provided with sufficient information to satisfy them of the lawfulness at the time of the application of the use.



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31st May 2023