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Mr P Isbell
Chief Planning Officer
Mid Suffolk District Council
Endeavour House
Russell Road
Ipswich IP1 2BX

18 September 2023
My Ref: 2678

Dear Mr Isbell,

Town and Country Planning Act 1990 Section 191
Planning and Compensation Act 1991 Section 10
Application for a Certificate of Lawful Use
Occupation of dwelling without compliance with condition 3 of planning permission B/69/66/Tw.
Loke Farm, Wood Road, Woolpit, IP30 9RR.

I am instructed by Mr J Roper to submit an application for a Certificate of Lawful Use as described above.

The basis for this application is that Loke Farm has been occupied without compliance with condition 3 of planning permission B/69/66/Tw for a period in excess of 10 years and therefore the breach of planning control has become lawful through the passage of time.

On 18th February 1969, West Suffolk County Council granted planning permission under reference B/69/66/Tw for "Erection of dwelling and pig breeding unit with access" on land near the Warren, Woolpit. The planning permission was subject to 3 conditions. Condition 3 states:

"The occupation of the dwelling shall be limited to a person wholly or mainly employed or last employed, locally in agriculture as defined in Section 221(1) of the Town and Country Planning Act 1962, or in forestry or a dependent of such a person residing with him (but including a widow or widower of such a person)."

Loke Farm has been in the ownership of the applicant's family since 1979. The farm operated as a pig breeding unit from 1979 to 2004. The last livestock left the premises in August 2004.

Since 2005, the applicant, Mr Roper, has not been employed in agricultural work. From 2005 to 2011, Mr Roper traded as JRS undertaking general maintenance work for various locations for various customers. The maintenance work included painting, decorating, fencing, fabrication, building, construction and ground work etc. Mr Roper was contracted by local businesses included G.E Baker (UK) Ltd, Quality Equipment, Heath Road, Woolpit, IP30 9RN and Limagrain UK Ltd, Woolpit Business Park, Windmill Avenue, Woolpit, IP30 9UP.

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From July 2011 to January 2017 Mr Roper was employed directly by Limagrain UK Ltd as a technician. From February 2017 to June 2022 Mr Roper was employed by F1 Seeds Ltd as a technician. F1 Seeds Ltd operates from Woolpit Business Park, Windmill Avenue, Woolpit, IP30 9UP. Confirmation letters from Mr Roper's employers are included with this submission. Mr Roper is now retired.

The Council's own Council Tax records will confirm that Mr Roper has occupied Loke Farm for a period in excess of 10 years.

The Courts have held that the relevant test of the evidence on such matters is "*the balance of probability*" and that the Local Planning authority (LPA) should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "*beyond reasonable doubt*". Furthermore, the Courts have held (*F W Gabbitts v SSE and Newham LBC* [1985]) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted.

Planning Practice Guidance states that 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*". The LPA should proceed on the basis that neither the identity of the applicant nor the planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application.

A development, which does not have planning permission, becomes "immune" from planning enforcement action if no such action has been taken within certain time-limits. By virtue of section 191 (2) and (3) of the 1990 Act, a breach of planning control which has obtained immunity by the passage of time also becomes "lawful" for planning purposes. The time-limits for taking enforcement action are specified by Section 171B of the 1990 Act. Section 171 B(3) confirms that where there has been a breach of planning control consisting in the breach of a planning condition, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

In this case, the occupation of Loke Farm without compliance with condition 3 of planning permission B/69/66/Tw has taken place continuously for a period in excess of 10 years and so has become lawful through the passage of time.

The planning merits of the use are not relevant to the consideration of this application. The application can only be considered on the basis of whether the breach of the condition has been carried out for a period within which it has become immune from enforcement action having regard to the evidence provided.

The evidence submitted with this application clearly demonstrates that the occupation of Loke Farm without compliance with condition 3 of planning permission B/69/66/Tw has become lawful.

Please do not hesitate to contact me should you require any further information or clarification on any matters.

Yours sincerely

Phil Cobbold BA(Hons) PG Dip MRTPI