

15 December 2023

Planning Department
Buckinghamshire Council – Aylesbury Vale Area

Our Ref: 4029

Dear Sir/Madam

Application for certificate of lawfulness of existing use for:

Occupation of the dwelling known as Hillside Farm without compliance with condition 2 (agricultural occupancy restriction) of 07/03441/APP

At

Hillside Farm, Oakley Road, Brill, HP18 9SH

This letter accompanies an application for a certificate of lawfulness of existing use for the existing use of Hillside Farm without compliance with condition 2 (agricultural occupancy restriction) of 07/03441/APP.

The application comprises:

Site location plan

Cover letter

Statutory declarations made by Jeremy Leach, Susan Leach and Robert Whitehouse

Title Plan BM220174

Site Description

The application relates to the dwelling known as Hillside Farm, Oakley Road, Brill.

The dwelling at Hillside Farm comprises part of a larger land holding – identified within Title Plan BM220174 – along with a collection of agricultural buildings and surrounding agricultural land.

Mr and Mrs Leach have been the registered owners of title BM220174 since 26th June 2006 and have also resided at the property continuously since that date, along with their dependent children. They initially resided in the bungalow that previously existing on the site before seeking and obtaining planning permission for a replacement dwelling which was substantially completed and subsequently occupied in November 2010. Since that time, and continuing presently, the dwelling has been

occupied exclusively and continuously by Mr and Mrs Leach and their dependants as their primary residence.

Planning History

The planning history of most relevance to this application is that pertaining to the development of the existing dwelling. A dwelling on site was first permitted in 1966 with this original dwelling subsequently replaced (following a series of planning permissions as set out below) to provide the dwelling that now exist.

Reference	Application Type	Description	Decision
66/00137/AR	Full planning permission	Erection of agricultural dwelling	Approved
00/00984/APP	Full planning permission	Demolition of existing dwelling and erection of replacement	Approved
05/00505/APP	Full planning permission	Demolition of existing dwelling and erection of replacement - renewal of 00/00984/APP	Approved
07/01372/APP	Full planning permission	Demolition of existing bungalow and erection of two storey replacement detached dwelling.	Approved
07/03441/APP	Full planning permission	Erection of two storey replacement detached dwelling. (amendment to 07/01372/APP)	Approved

All of these permissions were subject to a form of 'agricultural occupancy condition' restricting the occupation of the dwelling approved to someone employed in agriculture. The most recent, and pertinent for the purposes of this application, permission 07/03441/APP included condition 2 requiring the following:

The occupation of the dwelling shall be limited to a person solely or mainly working, or last working in the locality in agriculture (as defined in Section 336 of the Town and Country Planning Act 1990), or in forestry, or a widow or widower of such a person and to any resident dependants.

It is this condition which is the subject of this application for a certificate of lawfulness of existing use.

No enforcement action has been commenced at any time against the owners of the property since their ownership of the land commenced in 2006.

Lawful Use

This application is made pursuant to Section 191 of the Town and Country Planning Act 1990 as amended by Section 10 of the Planning and Compensation Act 1991. Section 191 of the Act allows an application to be made to establish:

(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.

Lawfulness for this purpose, is dealt with in Section 191(2) which states that a use is lawful if no enforcement action may be taken against it, and it is not in contravention of any enforcement notice that is in force. The relevant timing for enforcement action is specified by Section 171(B) of the Act which sets out that “no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach” (in all cases other than those for the change of use to a dwelling or the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land).

This application therefore seeks to demonstrate that the occupation of the dwelling has been continuously occupied without compliance with condition 2 of 07/03441/APP for a period in excess of 10 years.

A certificate of lawfulness of existing use should be granted if, on the balance of probabilities, it is demonstrated that the condition has been continuously breached for a period in excess of 10 years and is not in contravention of an enforcement notice.

Evidence

The evidence submitted in support of this application comprises statutory declarations prepared by Mr and Mrs Leach which both certify the following relevant points:

Mr and Mrs Leach and their dependants have exclusively resided in the dwelling since its substantial completion in November 2010;

Neither Mr or Mrs Leach, nor their dependants, have been solely or mainly employed in agriculture, or last employed in the locality in agriculture (as defined in Section 336 of the Town and Country Planning Act 1990), or in forestry, or a widow or widower of such a person.

This evidence is further corroborated by a statutory declaration provided by Mr Robert Whitehouse (Mr and Mrs Leach’s accountant) who confirms the following pertinent information:

Mr Whitehouse has acted as tax advisor and accountant for Mr and Mrs Leach since 2007;

Mr Whitehouse has prepared accounts for Mr and Mrs Leach on an annual basis during this period;

No income has been declared or derived by Mr or Mrs Leach solely or mainly from employment in farming or forestry during this period.

The evidence comprised in these statutory declarations is considered to be clear and compelling. Should further corroboration be sought to confirm the occupancy of the dwelling, LPA officers may seek to review either Council Tax and/or Electoral Roll records for the property which will confirm both the period of occupancy and the residents of the dwelling during this period as described above and within the accompanying declarations.

However, in the absence of any evidence to the contrary and in any event, the evidence submitted is considered sufficient to prove the claim on the balance of probabilities.

Conclusion

The evidence presented provides clear and compelling proof that the dwelling known as Hillside Farm, Oakley Road, Brill has been continuously and exclusively occupied by Mr and Mrs Leach and their dependants for a continuous and ongoing period exceeding 10 years and that neither Mr or Mrs Leach, nor any other occupiers of the property during the period, have been solely or mainly working, or last working, in agriculture nor are they widow/widowers of such a person. Therefore, the dwelling has been, and continues to be, occupied in breach of condition 2 of permission 07/03441/APP for in excess of 10 years.

On this basis, the breach of condition is now immune from enforcement action under the provisions of 171(B) of the Town and Country Planning Act and a certificate of lawfulness of existing use should be granted in accordance with the provisions of Section 191 of the Act.

Should you have any queries in relation to the above please do not hesitate to contact me.

Yours sincerely



Seth Williams MRTPI

Director - Planning

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