

**Supporting Statement for Certificate of Lawfulness (Under Section 191 of The Planning and Compensation Act 1991) relating to the Change of Use of Part of Building to a Single Dwellinghouse**

---

**At:**

Hill Farm  
Akeley Road  
Lillingstone Lovell  
Buckingham  
MK18 5BL

**Supporting submission on behalf of the Applicant:**

Mrs M Porter

**Statement Prepared by:**

Salmon Planning Company  
2 Priors Road  
Wells  
Somerset  
BA5 1SY



Salmon Planning Company

**Date:** April 2024

**Reference:** PL5174

## **1.0 Background**

- 1.1 Hill Farmhouse has been in the Applicant Family's continuous ownership and occupation since 1924. It had been continuously occupied by Martin Roddis as his sole residence from the date of his birth in 1929 until three weeks before his death on 17<sup>th</sup> October 2019.
- 1.2 The last week of September 2019 was the last residential occupation of Hill Farmhouse. Residential resumption of use has not occurred.
- 1.3 Following pre-application advice, the Applicant's submitted a full application for the demolition of the existing farmhouse and its replacement with a four-bedroom dwelling under planning reference 24/00188/APP. The application was refused planning permission for three reasons. Firstly, the residential use of the farmhouse had been abandoned and therefore a replacement dwelling in this countryside location is contrary to policy. Secondly, the design and scale of the replacement building is not in keeping with its surroundings. Thirdly, lack of evidence to demonstrate no harm would arise to protected species.

## **2.0 The Application**

2.1 This application, made under Section 191 of The Act, provides evidence that the residential use of Hill Farmhouse has not been abandoned. If the application is successful, it will overcome the first reason for refusal. The second reason for refusal can be addressed by design modifications.

2.2 The evidence in support of this application is substantial, and set out below.

- (i) Last occupant, Martin Roddis Birth Certificate 1929 confirming Hill Farm as place of birth.
- (ii) Registration of Death of Martin Roddis 2019 giving home address at time of death as Hill Farm.
- (iii) Last Council Tax Bill April 2019 showing Mr Roddis as the Council Taxpayer.
- (iv) Bank Statement for period September – October 2019 giving Mr Roddis home address as Hill Farm.
- (v) Hospital appointment letter from the NHS dated June 2019 to Mr Roddis home address at Hill Farm.
- (vi) Winter Fuel Payment to Mr Roddis dated November 2019 at his home address at Hill Farm.
- (vii) Statutory Declaration of Michelle Elizebeth Porter dated April 2024.

Note: there are no invoices for energy or water because Hill Farm was off-grid.

2.3 The plans are submitted with this application - PL5174/1 identifies the location of the Site. PL5174/2 identifies the part of the house last occupied as a dwellinghouse.

### 3.0 **Procedural Context**

- 3.1 The online National Planning Policy Guidance (NPPG) says that anyone can apply to the local planning authority to obtain a decision on whether an existing use is lawful for planning purposes or not. The NPPG says that if the local planning authority is satisfied that the appropriate legal tests have been met, it is obliged to grant a lawful development certificate.
- 3.2 The NPPG says that a local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. Planning merits are not relevant at any stage in the application process.
- 3.3 The standard of proof for the determination of the application is the "*balance of probabilities*" rather than the higher criminal standard which is "*beyond reasonable doubt*" (as set out in the case law established in ***Thrasivoulou v SSE [1984] JPL 732***).
- 3.4 In ***Gabbitas v SSE & Newham LBC [1985] JPL 630*** the Court held that the evidence of an application should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the applicant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, the Certificate should be granted.

#### **4.0 Case for The Applicant**

##### **(i) Background**

- 4.1 This application for a Certificate of Lawful Use or Development (LDC) is not a planning permission. Its purpose is for the Applicant to ascertain whether specific uses, operations or other activities are or would be lawful. Lawfulness is equated with immunity from enforcement action.
- 4.2 The determination of this LDC application is whether the lawful use of Hill Farmhouse is residential. It turns entirely on factual evidence about the history and planning status of the building and the interpretation of relevant planning law and judicial authority.
- 4.3 The key dates of residential occupation are accurately described in paragraph 1.1 – 1.2 above and fully supported in the seven official documents tabulated in paragraph 2.2 above.
- 4.4 The Statutory Declaration of Michelle Elizebeth Porter also provides further background to Martin Roddis' lifestyle and occupation of Hill Farmhouse.
- 4.5 All of the above confirms the property has been unoccupied since the last week of September 2019 i.e. a period of 4½ year from the date of this application.
- 4.6 The application turns on whether or not this period of non-occupation means the residential use of the building has been abandoned.

##### **(ii) Case Law**

- 4.7 The concept of abandonment is a legal concept. In **Panton and Farmer v SSETR and White Vale Horse DC (1994)** it was held that a use which was merely dormant or inactive could still be existing.
- 4.8 In **Hartley v MHLG (1970)** it was held that if a building or land remains unused for a considerable time, in such circumstances then a reasonable man might conclude that the previous use had been abandoned.

4.9 In **Castell-y-Mynach Estate v Taff-Ely BC (1985)** the relevant building ceased to be occupied as a dwelling in 1965 and over a period of 16 – 17 years it was allowed to deteriorate to near derelict and totally uninhabitable condition. Nevertheless, the evidence showed that at no time had the owners intended abandoning the rights of existing use, despite their decision not to relet for residential use.

4.10 In that case, the Court established four-point criteria for assessing whether a use had been abandoned. These were:

- (1) the physical condition of the building;
- (2) the period of non-use
- (3) whether there had been any other use;
- (4) the owners intention.

4.11 In **Hughes v SSETR and South Holland DC (2000)** the Court of Appeal ruled that the test of what the owner's intention was at the time the use ceased was an objective one. Thus, it is what a reasonable man, with knowledge of all relevant circumstances, would conclude that matters.

**(iii) Analysis of the Evidence**

4.12 It is common practice to test abandonment cases against the four criteria identified in Castell-y-Mynach.

(1) Physical Condition of the Building

4.13 The western half of the farmhouse suffered a collapsed roof and first-floor within 2 years of Martin Roddis death. The three external walls are standing, but at the rear (north) suffered partial collapse in 2023. This part of the building is derelict and incapable of residential occupation without major rebuilding works including the installation of a new roof structure and first-floor.

4.14 The eastern half of the building comprises a continuation of the linear form of the building. It is in poor condition. A large gable projecting wing of the building collapsed some time ago. A range of single-storey lean-to's on the east elevation are intact.

- 4.15 In 2014, the first-floor residential occupation of the farmhouse by Martin Roddis was suspended due to his lack of mobility to use the first-floor stairs. From this date onwards, he confined his occupation to a single reception room used as a sitting, cooking and sleeping area. This, together with a lean-to pantry building and outside WC provided Martin Roddis with his independent living space right up until his death of the occupant in October 2019.
- 4.16 It would be feasible to renovate the eastern half of the farmhouse as repairs and maintenance under Section 55(2) of the 1990 Planning Act to allow the residential occupation of this part of the farmhouse.
- 4.17 Taking into account the above factors, the western half of the building is beyond economic repair but the eastern half, whilst in very poor condition, cannot be said to be derelict and was last occupied as a dwelling house as late as September 2019. As noted in Castell-y-Mynach, the physical condition of the building is not by itself decisive.

(2) Period of Non-Use

- 4.18 This is an easily quantifiable assessment. Evidence clearly indicates continuous residential occupation until the last week in September 2019 – some 4½ years before the date of this application. By any standards, this is a brief break in residential occupation of Hill Farmhouse as a separate dwelling and not within the abandonment test set out in **Panton and Farmer** case.

(3) Whether there has been Another Use

- 4.19 There is no evidence that any part of the building was used for anything other than residential use for the period in which it was occupied by Martin Roddis. After his death, his occupation of the property fell vacant, with no intervening uses having taken place between then and now.

(4) The Owners Intentions

- 4.20 The Farmhouse had been in continuous occupation by Martin Roddis between 1929 and September 2019. The evidence submitted is conclusive on this point. Hill Farmhouse has been viewed as a family legacy, with the Applicant wanting to live there with her Family. This was Martin Roddis' intention in his Will. To realise this intention, the Applicant pursued an application to redevelop the site with a new dwelling for their occupation. This application was delayed until she secured the freehold title of the farm in February 2023.
- 4.21 While the Applicant's intentions cannot reasonably be questioned, this factor is again also not decisive in the consideration of abandonment. In **Hartley**, the test was whether 'a reasonable man with knowledge of all the relevant circumstances' might conclude a previous use has been abandoned.
- 4.22 **In Gravesham BC v SSE and Another** (1982) it was held that a distinctive characteristic of a dwelling house was its ability to afford to those who used it the facilities required for day-to-day private domestic existence.
- 4.23 During September 2019, that 'reasonable man', referred to in **Hartley** would have seen a man living completely independently occupying a small part of the original dwelling. He was occupying a dwelling house within the meaning given in **Graham**. The absence of a bathroom and inside WC did not preclude a building being used as a dwelling house, as this is the correct planning status of the building and its curtilage land.



## **5.0 Conclusion**

- 5.1 It is accepted that the western half of the house is incapable of re-occupation as a dwelling because of its state of dereliction; and has not been occupied since the early 1980's. The eastern half of the farmhouse is not derelict. The ground floor of this part of the building has been in continuous residential occupation by Martin Roddis as a dwelling house until his death 4½ years ago. The ensuing 4½ years of non -occupation during which the property was vandalised, has not extinguished the residential Lawful Use of the property.
- 5.2 It is therefore requested a Certificate of Lawful Use is granted for the use of part of the property known as Hill Farm as a single dwelling house.