

APPLICATION FOR
CERTIFICATE OF LAWFULNESS

The dwelling at Hawthorns Farm
Mortimers Lane
Lower Upham
Southampton
Hampshire
SO32 1HF

PLANNING STATEMENT

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MSc Devt Planning

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Contents: **Page**

1.0 INTRODUCTION 3

2.0 THE APPLICATION SITE 4

3.0 GROUNDS UNDER WHICH A CERTIFICATE IS SOUGHT 4

4.0 USE OF THE APPLICATION SITE 6

5.0 CONCLUSION 7

Appendices:

A Site location plan

B Planning Permission Ref: 27898/002 dated 04 June 1987

C Planning Permission Ref: 27898/005 dated 08 September 2003

Exhibit 1 Statutory declaration of Helen Ruth Alnassar
Exhibit 2 the plan edged red

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1.0 INTRODUCTION

1.1 The property at Hawthorn Farm is owned and occupied by Mrs Alnassar. It lies to the west of Mortimer Lane near Fair Oak. The dwelling is a detached house set within its own curtilage and is accessed via a private track from the road. A plan of the property under Mrs Alnassar's ownership is included at **Appendix A.**

1.2 An agricultural workers dwelling at this site was granted permission on 04 June 1987, under Planning Ref: 27898/002. **(See Appendix B**). Condition 2 of the planning permission restricted the occupancy of the dwelling to a person mainly employed or last employed in the locality in agriculture or their dependants. Relief of Condition 2 was permitted on 08 September 2003 under Planning Ref: 27898/005 (**see Appendix C**) to expand the occupancy condition to a person soley or mainly working or last working in the locality in connection with the keeping of horses, in addition to agriculture or forestry, or their resident dependants. This statement is in support of an application for a Certificate of Lawful Use under section 191 (b) of the Town and Country Planning Act 1990 (as amended) for use of the dwelling as a private house without complying with an occupancy condition.

1.3 The extent of the property at Hawthorns Farm is shown edged red and blue on the site plan accompanying the application and included as Appendix A..

1.4 The application is explained and amplified in this statement and attached appendices and documents. In particular, Ms Helen Ruth Alnassar, who has owned and occupied the dwelling since beginning May 2004, has produced and submitted a Statutory Declaration with exhibit plan in support of the application.

2.0 THE APPLICATION SITE

2.1 The dwelling at Hawthorns Farm is accessed via a private drive from Mortimers Lane to the south. Parking and turning of vehicles within the site is to the south-east of the dwelling.

3.0 GROUNDS UNDER WHICH A CERTIFICATE IS SOUGHT

3.1 Section 191 of the Town and Country Planning Act 1990 (as substituted by the Planning and Compensation Act 1991) provides for any person wishing to ascertain whether an existing use of buildings or land is lawful to submit an application for a Certificate of Lawfulness of an existing use. This application is submitted under section 191(b) on the grounds that condition 1 of planning permission 27898/005 has not been complied with for more than ten years.

3.2 The condition at issue is set out below and requires:

"The occupation of the dwelling shall be limited to a person solely or mainly working or last working in the locality in connection with the keeping of horses, in agriculture or forestry, or a widow or widower of any such person and to any resident dependants."

3.3 The requirements of the condition are such that occupancy of the dwelling is restricted to the following:

- Person whose sole or main employment is in agriculture or forestry or in connection with the keeping of horses
- Person whose last employment in the locality was in agriculture or forestry or in connection with the keeping of horses

- The widow or widower or any resident dependents of such a person

3.4 It will be explained that the occupancy condition has not been complied with since Mrs Alnassar has owned and occupied the property more than 10 years ago. As a consequence the use as a private dwelling has continued uninterrupted for more than ten years in breach of the occupancy condition. By virtue of section 171B (2) of the 1990 Act, no enforcement action can be taken against the use.

3.5 The attached Statutory Declaration of Mrs Alnassar and exhibits identify the facts in this case.

3.6 Prior to the publication of the National Planning Practice Guidance (NPPG) in April 2014 advice on applications of Certificates of Lawfulness was contained in Circular 10/97. The Circular has been cancelled by the NPPG but the latter offers very little in the way of the approach to be taken regarding the breach of conditions. Previously Circular 10/97 Annexe 2, para.2.4 reads:

- for breaches of planning control consisting in the change of use of any building [which for the purposes of the 1990 Act includes part of a building] to 'use as a single dwelling house' – four years from the date of the breach. *This time limit applies either where the change of use as a single dwelling house involves development without planning permission or where it involves a failure to comply with a condition or limitation subject to which planning permission has been granted.*

- in the case of any other breach of planning control (i.e. other than those already referred to in sub-paragraphs (1) and (2) above) - ten years from the date of the breach. *In practice, this ten-year time-limit therefore applies to breaches of planning control involving any material change in the use of land (other than a change to use as a single dwellinghouse)* ***and to any breach of condition or limitation (including one where the breach is of an occupancy condition imposed on permission for the erection of a dwelling house,*** *but not including one where the breach consists in using a building as a single dwelling house).*

3.7 The 10-year rule at section171B (3) of the Town and Country Planning Act 1990 (as amended) provides immunity from enforcement for a breach of planning control that isn't operational development or the change of use of any building to use as a single dwelling house. As will be demonstrated in this statement and supporting evidence the occupancy restriction that applies to the dwelling at Hawthorns Farm has not been complied with for more than ten years.

4.0 USE OF THE APPLICATION SITE

4.1 The requirements of the occupancy condition restrict occupation of the dwelling to the following:

- Person solely or mainly working in agriculture or forestry or in connection with the keeping of horses
- Person last working in the locality in agriculture or forestry or in connection with the keeping of horses
- A widow or widower or any resident dependants of such a person

4.2 It is clear from the information provided to the Council by Giles Wheeler-Bennett Limited in 2003 that the occupancy conditions arising from the 1987 and 2003 permissions related to Mr & Mrs Pitters who were the previous owners of the property. The Planning Appraisal by Giles Wheeler-Bennett Ltd identifies that, to begin with, Mr & Mrs Pitters ran a successful egg production business from the property and then, when the market for eggs collapsed, Mrs Pitters proposed to run an equestrian livery business from the land and the occupational tie on the agricultural workers dwelling was consequently amended to include the keeping of horses.

4.3 It is understood that Mr Pitters had passed away by the time the Relief from the condition was granted in 2003 under Planning Ref: 27898/005. Mrs Alnassar affidavit confirms that Mrs Pitters subsequently sold the property to her in May 2004.

4.4 Mrs Alnassar's affidavit confirms that she purchased the property at Hawthorns Farm in May 2004 and has occupied the property since that time. Mrs Alnassar also confirms that since she took up possession and occupancy of the property she has not worked soley or mainly in an agricultural, forestry or in connection with the keeping of horses at the property or elsewhere in the locality. Mrs Alnassar affidavit explains that she has kept three family ponies or horses on the land purely for personal use and leisure and there has been and continues to be no income arising from them.

4.5 Mrs Alnassar also confirms that she is not a widow or a dependent of a person who is or was employed in agriculture, forestry or in connection with the keeping of horses.

4.6 It is therefore clear that since Mrs Alnassar took up possession and occupation of the property at Hawthorns Farm in May 2004 that she was never:

- solely or mainly employed in any activity that could be said to be "agriculture or forestry or in connection with the keeping of horses" or
- so engaged at any time since moving on to the property

and there is no doubt that her occupation of the dwelling from May 2004 did not meet the occupancy requirement by persons whose employment is mainly in agriculture, forestry or in connection with the keeping of horses.

For these reasons the dwelling has not been occupied in compliance with the occupancy condition for a period of more than 10 years.

5.0 CONCLUSION

5.1 It is therefore submitted that since May 2004 the dwelling at Hawthorns Farm has been occupied by a person who has not complied with condition 1 of planning permission 27898/005. The non-compliance with the occupancy condition is immune from enforcement action under the ten-year rule.

5.2 The correct application of planning law is that condition 1 of planning permission 27898/005 has not been complied with for more than ten years. Therefore, a Certificate of Lawfulness for this proposed development should be granted.