MME PLANNING SERVICES

LDC – Use of Building as Self-Contained, Independent Dwelling for more than 4 years

at

‘The Old Dairy’, Five Oaks Farm, Stane Street, Five Oaks, Billingshurst, West Sussex, RH14 9AZ

Planning Statement

Ref: P-029a

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Version 1

Mr Oguzhan Denizer
MME Planning Services
Email: mmeplanningservices@gmail.com
Tel: 07720 718434



Figure 1: Site Location / Red Line Area

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1. Introduction

1.1 This statement is submitted in support of an application for a Certificate of Lawfulness (Existing) under Section 191 of the Town and Country Planning Act (1990) relating to the use of 'The Old Dairy', Five Oaks Farm, Stane Street, Five Oaks, Billingshurst, West Sussex, RH14 9AZ, and outlined in red on the accompanying map at **Appendix A**, as a self-contained, independent dwelling.

1.2 The building identified as 'The Old Dairy' has been in continuous use as a self-contained, independent residential dwelling in the existing arrangement since at least January 2003 and before 25 April 2024, as per the current requirement / legislation, up to the present day. The application to which this statement relates seeks confirmation from the planning authority that the use of 'The Old Dairy' as a self-contained, independent residential dwelling would also be lawful.

1.3 This report sets out the following:

- Background and relevant history
- The appropriate tests and considerations.
- The evidence submitted to support the application.

1.4 The appendices provide all relevant evidence including signed Statutory Declarations.

2. Site, Surroundings and Background

2.1 The application site relates to a part single storey, part two-storey building with a Gross Internal Area (GIA) of approximately 66sqm located within the wider holding of Five Oaks Farm on the western side of Stane Street, Five Oaks. The building that is the subject of this application consists of brick facing to the external walls, a tiled roof and UPVC fenestration.

2.2 Mr Neil Morris and Mrs Penny Morris (the Applicants) are the owners of the wider holding of Five Oaks Farm, Stane Street, Five Oaks, Billingshurst, West Sussex, RH14 9AZ. Five Oaks Farm has been in Mr Neil Morris' family's ownership since 1835 and the Applicants currently reside at the property known as Little Slinfoldland, Stane Street, Five Oaks, Billingshurst, West Sussex, RH14 9AZ with their immediate family.

2.3 The holding of Five Oaks Farm contains a number of agricultural buildings, two dwellings, including the Applicants' dwelling at Little Slinfoldland, and a building known as 'The Old Dairy', as shown within **Appendix A** (which also includes its associated curtilage).

2.4 Google Earth image history, as detailed within **Appendix B**, shows the building that is the subject of this application in situ since at least 2005 (last date available on Google Earth's historic mapping).

2.5 Notwithstanding this, it is noted that 'The Old Dairy' building pre-dates 1934 when Mr Neil Morris' grandfather started bottling milk for local sale.

2.6 'The Old Dairy' building, as shown at **Appendix A**, was converted into ancillary residential accommodation following the granting of planning permission in August 2000 under planning reference BL/81/00.

2.7 Following the granting of planning permission reference BL/81/00, the works to convert 'The Old Dairy' into ancillary residential accommodation commenced and were completed between late 2001 and early 2002. 'The Old Dairy' consists of a living / dining room, a kitchen and a shower room on the ground floor and a bedroom within a mezzanine level.

2.8 After completion of the conversion works, 'The Old Dairy' was occupied by the Applicants' children as ancillary residential accommodation in association with their dwelling at Little Slinfoldland.

2.9 Subsequently, the Applicants started to rent out 'The Old Dairy' as a self-contained, independent dwelling from January 2003.

2.10 'The Old Dairy' was initially rented out to Mayes and Scrine Veterinary Practice and used as veterinary accommodation between 2003 and 2005. The practice provided care and support to the Applicants' animals on the farm, as well as the surrounding area, however their occupation of 'The Old Dairy' was completely separate from that of Little Slinfoldland, and as a self-contained independent dwelling.

2.11 'The Old Dairy' was then rented out to [redacted] from 2005 until March 2019. [redacted] resided in and occupied 'The Old Dairy' as his main / sole residence and as a self-contained, independent dwelling continuously until his departure in March 2019. His occupation of 'The Old Dairy' was completely separate and independent from the occupation and use of the Applicants' home at Little Slinfoldland and the Applicants and [redacted] were unrelated.

2.12 'The Old Dairy' is registered with the Council for separate Council Tax from that of Little Slinfoldland. [redacted] paid rent continuously during his occupation and was also responsible for Council Tax payments and other bills such as broadband.

2.13 After [redacted] moved out, 'The Old Dairy' was rented to [redacted] from April 2019. [redacted] has resided in and occupied 'The Old Dairy' as his main / sole residence and as a self-contained, independent dwelling continuously to the present day. His occupation of 'The Old Dairy' is completely separate and independent from that of the Applicants' home at Little Slinfoldland. The Applicants and [redacted] are unrelated.

2.14 [redacted] is responsible for payment of Council Tax and other bills. Bank statements showing the payment of rent by [redacted] to the Applicants over the time of his occupancy from April 2019 to the present day, as well as Council Tax payments and tenancy agreements covering this period, are provided at **Appendices M**, **N** and **F - L** respectively.

2.15 [redacted] has a current tenancy agreement in place covering the period up to 31st March 2026, as detailed at **Appendix L**.

3. Tests & Considerations

3.1 The planning merits of the use, operation or activity on the land are not relevant in the assessment of a Certificate of Lawful Use. In considering whether to issue a certificate, an assessment must be made entirely on the factual evidence available to officers.

3.2 The Town and Country Planning Act 1990, Section 191(1)(b) states that: Any person who wishes to ascertain whether any operations which have been carried out in, on, over or under land are lawful, they can apply to the Local Planning Authority for a lawful development certificate. S.191(2) states that the uses can be lawful if the time of enforcement has expired.

3.3 S.191(4) of the 1990 Act states that: If the Local Planning Authority is satisfied that operation is lawful, it must grant the certificate. In any other case it must refuse the certificate. The applicants have the burden of proving that the use is lawful on the balance of probability i.e., that it is more likely than not that the use is lawful.

3.4 National Planning Practice Guidance (NPPG) Index states that: The applicant is responsible for providing sufficient information to support an application, although a Local Planning Authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A Local Planning Authority is entitled to canvass evidence if it so wishes before determining an application.

3.5 If a Local Planning Authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter evidence.

3.6 In the case of applications for existing use, if a Local Planning Authority has no evidence itself, nor any 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'.

3.7 Section 171B (2) of the Act establishes that unauthorised development involving the change of use of buildings (or parts of buildings, as per the definition within Section 336) to dwellings becomes immune from enforcement action after a period of 4 years has elapsed. This remains the case even where a breach of condition is involved (FSS v Arun DC [2006] EWCA Civ 1172).

3.8 Section 171B (1) of the Act establishes that unauthorised operational development becomes immune from enforcement action after a period of 4 years has elapsed.

3.9 Section 115 amends section 171B(1) and (2) of the Act to extend the time period in which local planning authorities can take enforcement action against unauthorised development in England from 4 to 10 years.

3.10 In terms of the transitional provisions for enforcement time limits, these latest amendments will not apply where the operational development or change of use to a dwelling was substantially completed before 25 April 2024, which is the case in this instance.

3.11 Case law (Gabbitas v SSE and Newham LPC [1985] JPL 630) and Government advice, in paragraph 8.15 of Annex 8 of Circular 10/97 state, in an appeal against the refusal of a lawful development certificate, that the appellant's evidence does not need to be corroborated by independent evidence to be accepted.

3.12 The appellant's version of events should be accepted unless: It is not sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities - The LPA has evidence of their own that contradicts or makes the appellant's version of events less than probable - The LPA has evidence from a third party which has the same effect.

Considerations

3.13 It is contended that, on the balance of probability, the evidence submitted is sufficiently clear, concise and substantive to demonstrate that the dwelling known as 'The Old Dairy' which is the subject of this application, has been in continuous use as a self-contained, independent residential dwelling in excess of 4 years and that this use was established for the requisite period prior to the 25 April 2024.

3.14 The following chapter will outline that the Applicants can demonstrate that the dwelling has existed on the site for a period in excess of 4 years and that the building has been in continuous use as self-contained, independent dwelling for in excess of 4 years. Indeed, it is highlighted that the evidence provided by the Applicants shows that the use of the application building as a self-contained, independent residential dwelling has taken place for over 22 years.

4. Submissions and Evidence

4.1 As set out in Section 3, the test to satisfy in relation to Lawful Certificate applications for existing uses is 'on the balance of probability' provided the applicant's evidence is sufficiently precise and unambiguous.

4.2 'The Old Dairy' building, and its associated curtilage, as indicated at **Appendix A**, has been in use as a self-contained, independent residential dwelling since January 2003. Use as a self-contained dwelling would amount to a material change in the use. Section 55 (1) of the Act confirms that material changes of use constitute development.

4.3 In this instance and as detailed above, 'The Old Dairy' has existed in its current arrangement for in excess of 4 years and has been in continuous use as a self-contained, independent residential dwelling for in excess of 4 years.

4.4 We submit the following evidence in support of this submission:

1. Statutory Declarations from:
    i. Mr Neil Morris (Owner / Applicant)
    ii. Mrs Penny Morris (Owner / Applicant)
    iii. [redacted] (Current Tenant)

2. Other Evidence:
    i. Photographic Evidence
    ii. Tenancy Agreements
    iii. Bank Statements Showing Payment of Rent and Council Tax
    iv. Bills
    v. Additional Evidence

Statutory Declarations

4.5 We submit that the building known as and referred to as the 'The Old Dairy' has been occupied and used continuously for a period in excess of 4 years as self-contained, independent residential dwelling.

4.6 We have provided statutory declarations from the Applicants and current tenant, as detailed above, and these are contained within **Appendices C, D and E** confirming the details and the timescales of the use and occupancies, as set out in section 2 of this statement.

4.7 The declarations are clear, concise and unambiguous and are considered to be of significant weight in setting out the existing situation in relation to the application building and its use as a self-contained, independent dwelling.

Other Evidence

4.8 In addition to the statutory declarations provided, this application is supported by other evidence.

Photographic Evidence

4.9 **Appendix B** includes Google Earth images from 2005 to 2024, which show the building in situ, however as detailed above, it is noted that the application building pre-dates 1934.

Tenancy Agreements

4.10 **Appendices F - L** include an extensive set of tenancy agreements between the Applicants and [redacted] which cover the period from 2019 to 2026.

Bank Statements Showing Payment of Rent and Council Tax

4.11 **Appendices M** and **N** contain bank statements showing the payment of rent by the current tenant [redacted] to the Applicants between the dates of April 2019 to May 2025 and the payment of Council Tax by [redacted] to Horsham District Council between the dates of June 2019 and June 2025 respectively.

Bills

4.12 **Appendix O** contains a Council Tax bill and mobile phone bill in the name of the current tenant [redacted] in relation to, and addressed to 'The Old Dairy' / application building. As detailed above, the Council Tax for 'The Old Dairy' is paid by the [redacted], and is separate to that of Great Steeds Farm House which is paid by the applicant.

Additional Evidence

4.13 **Appendix P** includes a photo of the current tenant [redacted] current valid driving licence which has 'The Old Dairy', Five Oaks Farm, Stane Street, Five Oaks, Billingshurst, West Sussex, RH14 9AZ printed on it, confirming Mr Aston's current address.

5. Summary and Conclusion

5.1 In conclusion, it is contended that the above and attached supporting evidence clearly demonstrates, on the balance of probability, that the conversion works for the use of 'The Old Dairy' as a self-contained, independent dwelling were completed and the use (together with the associated curtilage as indicated on the attached plan) has continued for more than 4 years prior to the date of this application.

5.2 In addition, the works were completed and use of 'The Old Dairy' as a self-contained, independent dwelling was established, prior to 25 April 2024, as per the current requirement / legislation, and that this use was established for the requisite period prior to 25 April 2024.

5.3 Statutory declarations have been provided which confirm the above and the history of the application building and its use as a self-contained, independent dwelling. Additional evidence has also been provided to support the application.

5.4 The Planning and Compensation Act 1991 states that planning enforcement action against breaches of planning control must be taken within 4 years in respect of a residential use or operational development.

5.5 As the use of the building known as 'The Old Dairy' (together with the associated curtilage as indicated on the attached plan) as a self-contained, independent dwelling has taken place continuously for a period in excess of 4 years and the works to facilitate this use were substantially completed in its current form for a period in excess of 4 years and prior to 25 April 2024, the building / use is now immune from enforcement.

5.6 Indeed, it is contended that the evidence provided shows that the building that is the subject of this application has been used as a self-contained, independent dwelling for a period well in excess of 10 years. A Certificate of Lawful Development is therefore sought to establish that the use is lawful.

6. List of Appendices

6.1 The following Appendices are included together with this statement –

- Appendix A – Location / Site Plan
- Appendix B – Aerial Photographs
- Appendix C – Statutory Declaration – Mr Neil Morris
- Appendix D – Statutory Declaration – Mrs Penny Morris
- Appendix E – Statutory Declaration – [redacted]
- Appendix F – Tenancy Agreement with [redacted] – 2019 – 2020
- Appendix G – Tenancy Agreement with [redacted] – 2020 – 2021
- Appendix H – Tenancy Agreement with [redacted] – 2021 – 2022
- Appendix I – Tenancy Agreement with [redacted] – 2022 – 2023
- Appendix J – Tenancy Agreement with [redacted] – 2023 – 2024

- Appendix K – Tenancy Agreement with [redacted] – 2024 – 2025
- Appendix L – Tenancy Agreement with [redacted] - 2025 - 2026
- Appendix M – Bank Statements Showing Payment of Rent – April 2019 – May 2025
- Appendix N – Bank Statements Showing Payment of Council Tax – June 2019 – June 2025
- Appendix O – Bills
- Appendix P – Other Evidence