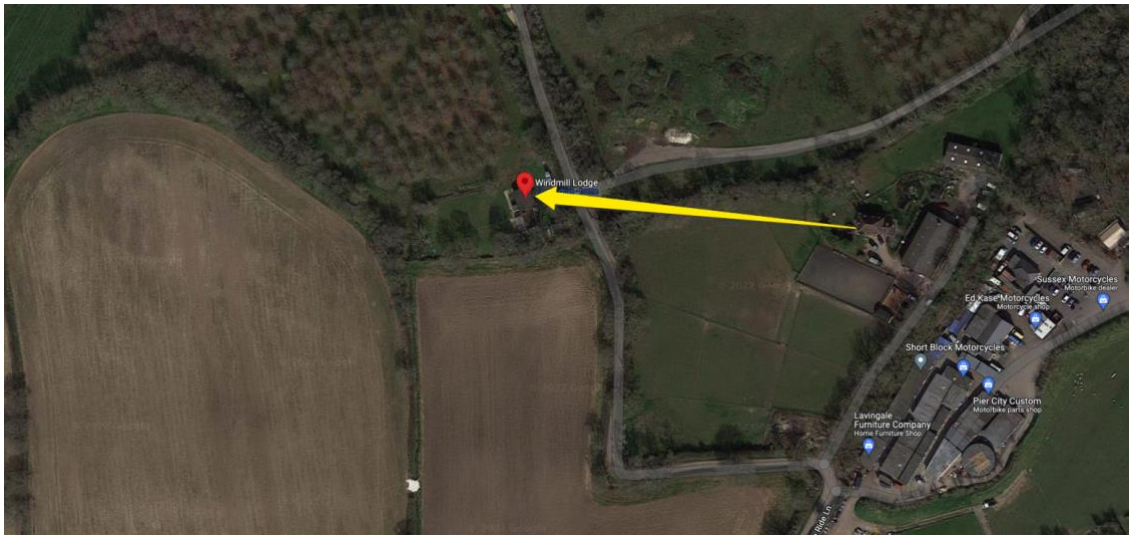
JUNE 20, 2022

Absolute TOWN PLANNING

Certificate of lawful proposed use for use of existing dwelling for residential purposes free from any agricultural occupancy condition



TOWN PLANNING STATEMENT
WINDMILL LODGE, WEATSHEAF ROAD, HENFIELD WEST SUSSEX BN5 9AS

IAN COOMBER BA(HONS) MRTPI
ABSOLUTE TOWN PLANNING LTD

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1. Introduction

1.1 Absolute Town Planning (ATP) acted for the property owner (Rony Brooks) hereafter referred to as 'the applicant'. The application site is a former agricultural dwelling located 1 ½ miles to the north-east of Henfield.

1.2 The original planning permission was dealt with in 1970 and an agricultural dwelling granted permission under reference HF/17/70 and a copy of the original consent has been requested from the LPA.

2. The Application and History

2.1 Whilst the property was built in the early 1970's and originally occupied as a farmhouse the occupancy changed and from 1990 the house was occupied by a retired farmer but from 1995 to date the property has been occupied by persons 'not' employed in, retired from, or associated with, farming.

2.2 In granting the original consent, which cannot be located, the LPA are likely to have limited occupation thus:

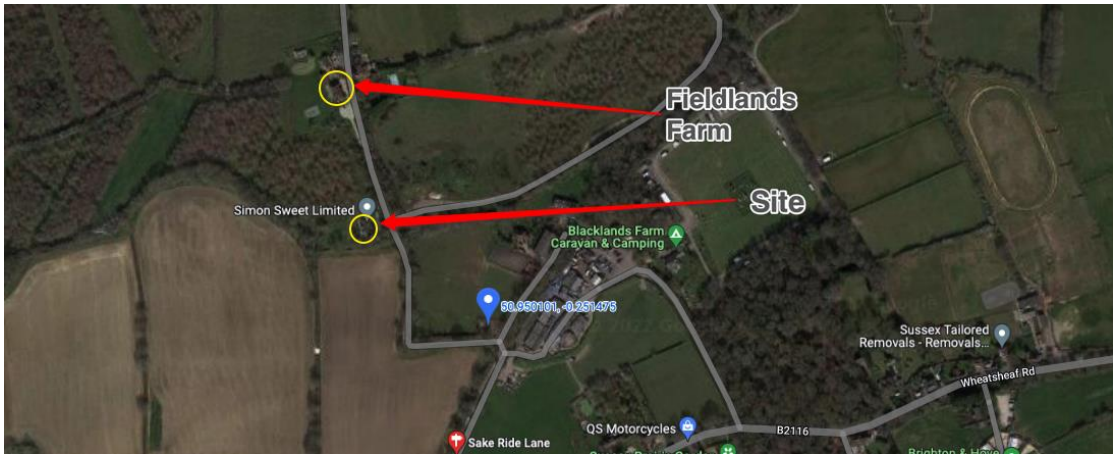
> *"The occupation of the house shall be limited to persons employed, or last employed, locally in agriculture as defined in Sect 119(1) of the Town and Country Planning Act, 1947, or in forestry, and the dependents of such persons."*

1.1 This application is for the grant of a lawful development certificate to reflect the continuous breach of that restriction for more than 10 years. The property has been occupied since 1996 by persons(s) NOT engaged in agriculture more than the ten-year rule by a considerable margin.

3. Evidence

3.1 Submitted in evidence is a sworn statement from 'Deborah Louise Baldwin' dated 25th May 2022 a former occupier of the neighbouring property 'Fieldlands farmhouse' 100 yards or so to the north of the site.

3.2 If the LPA consider further evidence is necessary Absolute Town Planning Ltd as Agent would be happy to assist further wherever possible. The site location is as shown in the insert below.



3.3 Deborah lived at Fieldlands farmhouse from December 1990 to December 2021 a period of 31 years.

3.4 In her statement Deborah states:

- Due to proximity, she was familiar with the various occupants over her time as neighbour to the site;
- In 1996 the current owner purchased, and the property let to various non-farm based occupants
- Since 1996 all occupants have been engaged in different businesses other than agriculture;
- No farmland was associated with the premises only domestic garden curtilage.

3.5 The statement also corroborates informal evidence provided by the property owner (the applicant) explains all tenancies were arranged for persons NOT employed in agriculture or horticulture.

4. Legal Basis

4.1 Article (2) of Section 191 of the Town and Country Planning Act 1990 states:

"For the purposes of this Act uses and operations are lawful at any time if

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason);

and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force."

4.2 Section 191(4) of the Town and Country Planning Act 1990 states that:

"If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application…they shall issue a certificate to that effect; and in any other case they shall refuse the application"

Case Law

4.4 F W Gabbitas v SSE and Newham LBC [1985] JPL 630 held that the applicant's own evidence does not need to be corroborated by "independent" evidence to be accepted. If the Local Planning Authority has no evidence of its 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".

Onus

4.5 In lodging such an application the onus is of course on the Applicant to supply evidence which must be sufficiently precise and unambiguous to prove that the breach of planning control existed continuously for at least 10 years on a balance of probability from the date of the breach. The Statutory Declaration of states that from 1996 to date the property has not been occupied by person(s) that meet the requirements of the condition but by other parties with no connection whatsoever with agriculture.

4.6 If the decision maker has 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 reason to refuse the application, provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a Certificate 'on the balance of probability'. The decision is to be based on legal issues and not planning merits.

5. Conclusion

5.1 It is hoped that the evidence submitted demonstrates that, 'on the balance of probability', the agricultural occupancy condition placed on the property has not been complied with, on a continual basis, for a period of more than 10 years.

5.2 The Declaration clearly demonstrates that residential occupiers at the site had no employment or connection with agriculture during her period of occupation.

5.3 Based on the evidence, it is considered appropriate to issue a Certificate of Lawful Use in respect of the non-compliance with the agricultural occupancy condition on the property.

Ian Coomber BA(Hons) Cert TP MRTPI

June 2022