APPLICATION FOR CERTIFICATE OF LAWFUL DEVELOPMENT

1. THE APPLICATION

1.1 The Application dated 15 April 2009 has been submitted by Messrs Fox Bennett on behalf of the applicant Mr Mark Ketcher of White Gate Farm, Mythe Lane, Witherley, Atherstone

1.2 The Application is for a Certificate of Lawful Use on the basis that a condition imposed by planning permission reference 3998/1971 granted by Market Bosworth Rural District Council has never been complied with

2. DOCUMENTATION IN SUPPORT

2.1 The documents submitted in support of the Application appear to be

a) The Application
b) Letter from Messrs Fox Bennett dated 11 June 2009
c) Copy letter from Peter Calcott dated 13 March 2009
d) Copy letter from Rodney Poulson dated 27 May 2009
e) Copy letter from Hinckley and Bosworth Borough Council to Fox Bennett dated 29 August 2006
f) Copy site plan reference 09/00296/CLU

2.2 In addition reference is made to planning permission 3998/1971

3. RELEVANT GUIDANCE AND OTHER DOCUMENTATION

3.1 It is considered that the following are relevant to the consideration of the Application

a) Section 171B of the Town and Country Planning Act 1990 (as amended) (the Act)
b) Section 191 of the Act
c) Circular 10/97 (the Circular)
d) The Town and Country Planning (Use Classes) Order 1987 (the 1987 Order)
f) Application for prior notification of agricultural development GPDO 1995 submitted on behalf of Mrs. Florendine of White Gate Farm, Mythe Lane, Witherley (Application 08/00719/GDO dated 7 July 2008)
g) Decision letter from the Council to Mrs. Florendine dated 20 August 2008 re application 08/00719/GDO

3.2 a) Section 191(2)(a) of the Act states that uses and operations are lawful at any time if no enforcement actions may then be taken in respect of them because the time for enforcement action has expired.

b) Section 171B of the Act provides that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

c) The relevant time for determining whether the time for taking enforcement action has expired is the date of the Application.

d) The Circular stipulates that the onus of proof in such conditions is firmly on the applicant.

e) The relevant test of the evidence in such applications is the balance of probability.

f) The applicant's evidence must be sufficiently precise and unambiguous.

3.3 a) Planning permission reference 3998/1971 granted by Market Bosworth Rural District Council granted permission to one R Florendine for the 'demolition of farmhouse and erection of new farmhouse, White Gate Farm, Mythe Lane, Witherley'.

b) The said permission imposed conditions as follows:-

i) The occupation of the dwelling shall be limited to a person employed or last employed locally in agriculture as defined in section 221(1) of the Town and Country Planning Act 1962 or in forestry or a dependant of such a person residing with him (but including a widow or widower of such person).

ii) This permission shall enure solely for the benefit of the applicant and shall not run with the land.

4. CONSIDERATION OF APPLICATION

4.1 The applicant himself has not submitted any direct evidence in support of the Application.

4.2 Although the Council could not insist on a Statutory Declaration it would have been preferable had the applicant sworn one.

Such a Declaration would have been expected to contain details of the following matters:-

A Does the applicant have an interest in the building?
b) When was that interest acquired?
c) Details of his knowledge as to the history of the occupation of the building.
d) Details of his knowledge of the occupation of the building by Mr. R. Florendine and Mr. Florendine's dependants.

4.3 a) The 1971 permission was granted to Mr. R. Florendine. It is not known if Mr. Florendine is still alive nor is the position of his dependants known.

b) Evidence from Mr. R. Florendine, if he is still alive, or his dependants, or family members who knew the history of the occupation of the building, would have been helpful.

4.4 Referring to the letters in support of the application.

a) Peter Calcott – states that to the best of his knowledge and belief Mr. R. and Mrs. B. Florendine did not farm the land from when the farmhouse was constructed and that he has farmed the land (`land` not specified) since 2002.

This is not sufficiently precise and unambiguous to demonstrate that the building was not being used in accordance with Condition One of the 1971 permission.

b) Rodney Poulson – states that he rented most (my underlining) of the grass at White Gate Farm for sheep grazing also was not actually involved in farming at that time.

The information is not clear as to whether the 'grass' at White Gate Farm comprised all of the farmland attached to White Gate Farm, is not sufficiently precise and unambiguous to demonstrate that Condition 1 of the 1971 permission was being breached, and refers to a period of nine years between 1982-2001 but does not deal with the period for 10 years back from the date of the Application.

4.5 Again, it would have been preferable had the information been given in a Statutory Declaration.

4.6 On 7 July 2008 Mrs. Florendine submitted a prior notification to the Council under the provisions of the GPDO 1995 in respect of the removal of two existing buildings (which were described as being inadequate in size to cope with modern machinery) and the erection of a new agricultural barn.

4.7 It is significant that the information set out in Section 5 of the notification form stated that the land on which the proposed development would be located had been in use for agriculture for the purposes of trade or business for 350 months (my underlining) i.e. almost 30 years.

5. SUMMARY AND CONCLUSION

5.1 An agricultural occupancy condition was imposed on the building in 1971.

5.2 In 2008 Mrs. Florendine (ostensibly a dependant of Mr. R. Florendine) gave notification to the Council of her intention to erect a new barn.

5.3 Her application stated that the land on which it was proposed to erect the new barn had been in use for agriculture for the purposes of a trade or business for more than 29 years.

5.4 In light of the information in paragraphs 5.1 – 5.3 hereof and the comments made in section 4 hereof it is considered that the applicant has not discharged the onus placed on him to provide sufficiently precise and unambiguous

evidence to satisfy the test that on the balance of probabilities a Certificate should be granted.

Mike Rice 27/08/09