

Our Ref: DJF/EVC/8764.50

Your Ref:

J Keenan
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Development Management & Building Control Services
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8 March 2019

Dear Madam

Application ref: 19/1204/192
Certificate of Lawfulness for Land/Buildings for the Purposes of Agriculture
SweetTree Fields, Marsh Lane London NW7 4EY

As with our letter of 4 March 2019, in relation to the related planning application 19/0581/RCU, we act on behalf of Simon and Rhona Conway, the owners of land adjacent to the above site.

We have reviewed the application documents for the above online. The application pack, however, is incomplete. The application form makes specific reference to the covering letter, and indeed presents no certificate of lawfulness argument whatsoever within the application form, simply saying "Please see covering letter". Without the covering letter it is difficult to be certain of and to assess the validity and content of this application. Please provide a copy as a matter of urgency. It is essential for proper determination of the application that no certificate of lawfulness be granted until this information has been provided and its veracity assessed. Failure to do so will render the application liable to judicial review given that my client has not been able to comment on the arguments actually presented.

There is, however, an indication of the basis of the application contained in section 7 of the application form. This states that pre-application advice was received from Mr James Gould in November last year, and that the following advice was received:

"discussion held on site visit relating to the need for a certificate, based on the planning history of the site (Certificate for existing use, which did not include reference to the agricultural structures)"

We infer from this that the application seeks to claim that some or all of the structures which are the subject of the retrospective application pre-date the current unlawful use of

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the site and were lawful structures erected for agriculture or had been on site for more than 4 years prior to the unlawful care farming activity commencing.

To the extent that this is the applicant's case, his application is fundamentally flawed and **cannot** be lawfully granted. This is crystal clear from the legislation, and in particular section 191(2)(b) which specifically makes clear that uses and operations cannot be lawful if they constitute a contravention of any of the requirements of an enforcement notice then in force.

There is an enforcement notice in force which requires the removal of all of the structures on site. That enforcement notice was **not** appealed against and the time limit for doing so has lapsed. If the applicant considers that those structures were in fact lawful at the time the enforcement notice was served, their remedy was to appeal against that enforcement notice; no such appeal was made. Failure to do so means that the enforcement notice has fallen due and it is **not possible** for the applicant to somehow resurrect any lawfulness which may have previously existed by means of a certificate.

Put bluntly, this application is a waste of the time and resources for both the council and those who live nearby, who must again find themselves writing to your authority to prevent the applicant continuing his unlawful development which, it is already clearly established, must be removed by 4 May 2019 or suffer criminal consequences. We refer you back to our letter of 4 March 2019 in which we asked that you decline to determine the retrospective planning application before you on the basis that it is an attempt to wear down opposition to an unlawful development. This hopeless application for a certificate of lawfulness is another element of that campaign by the applicant and is further evidence that your authority should exercise its discretion under 70C to decline to determine that application, and should also forthwith refuse this application and uphold the enforcement notice.

Just in case your authority needs more than our assertions of the position of the law, we enclose a copy of an appeal decision at Wokingham where the inspector was faced with an appeal against the refusal of a certificate of lawfulness in very similar circumstances. Not only did the inspector dismiss the certificate out of hand and refuse even to hear evidence as to the longstanding nature of the (in that case) use, but he also awarded costs against the appellant on the basis that the appeal was clearly doomed from the start.

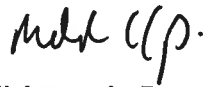
That refusal to give a certificate of lawfulness was challenged by the appellant but that case was not given permission by the High Court, and indeed marked as wholly without merit meaning that the court refused to even hear oral argument on the point. It is clear from this precedent that your authority has no choice other than to refuse the certificate. To do otherwise is simply outside your council's powers, and it is difficult to see how a judicial review of the grant of such a certificate could possibly fail.

As noted in the first paragraphs of this letter, we have had to surmise the basis on which the applicant is making this application; however, we are doubtful that there is any other case that could possibly be made, and which could have any prospect of success either. Assuming that our surmise is correct, you should proceed to refuse this application forthwith, and please notify us that you have done so. If the application is on a different basis, then please release the covering letter as a matter of urgency and do not take a decision until we have

had an opportunity to consider it. In the unlikely event that factual matters become relevant, my client reserves the right to provide evidence as to the date of erection of any structures and the nature of any uses alleged.

Please acknowledge receipt of this letter and we look forward to hearing from you **by return**.

Yours faithfully



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