



**REPORT of
DIRECTOR OF STRATEGY, PERFORMANCE AND GOVERNANCE**

to
**NORTH WESTERN AREA PLANNING COMMITTEE
4 MARCH 2019**

Application Number	LDE/MAL/18/01443
Location	Brick Kiln Lodge 32 Rookery Lane Great Totham
Proposal	Claim for a Lawful Development Certificate for the continued occupation of a dwellinghouse in breach of the agricultural occupancy condition.
Applicant	Executors Of Mr P Keyes
Agent	Mrs Leanne Frost - Acorus Rural Property Services Ltd
Target Decision Date	29.01.2019
Case Officer	Hannah Bowles
Parish	GREAT TOTHAM
Reason for Referral to the Committee / Council	The applicants are related to an elected member.

1. **RECOMMENDATION**

GRANT CERTIFICATE OF LAWFULNESS for the reason detailed in section 10 of this report

2. **SITE MAP**

Please see overleaf.

Brick Kiln Lodge 32 Rookery Lane Great Totham
18/01443/LDE



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	Organisation:	Maldon District Council
	Department:	Planning Services
	Comments:	
	Date:	12/02/2019
www.maldon.gov.uk	MSA Number:	100018588

3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

- 3.1.1 The application site is located on the southeast side of Rookery Lane, just within the settlement boundary of Great Totham. The site is occupied by a bungalow which is the subject of this application.
- 3.1.2 It is relevant to note that Brick Kiln Farm is located some 80m east of the bungalow that is the subject of this application.
- 3.1.3 This application is for a Certificate of Lawfulness of Existing Use under section 191 of the Town and Country Planning Act 1990 (as amended) for the use of the dwelling known as Brick Kiln Lodge, 32 Rookery Lane, Great Totham in breach of the agricultural occupancy condition implemented on planning permission MAR/235/72. It is contended that the use is lawful under section 171B of the 1990 Act, namely because the use has been continuous for at least ten years prior to the submission of the application. The subject condition (4) states:

'The occupation of the dwelling hereby permitted shall be limited to persons wholly or mainly employed or last employed, locally in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971, or in forestry, and a dependant of such a person residing with him (but including a widow or widower of such a person)'.

3.2 Conclusion

- 3.2.1 The burden of proof for claims of this nature lies with the Applicants as it is for them to demonstrate that the specific use of the land has been in place for a continuous period of ten years as required by the 1990 Act.
- 3.2.2 Whilst it is noted that there has been verbal evidence to contradict the claim this has not been substantiated. In the absence of evidence to substantiate the information provided, material weight could not be given to this information. The evidence submitted within the Statements of Truth is corroborated by official documentation and information that the Council holds. Therefore, material weight has been given to the submitted statements of truth in particular Guy Keyes' evidence and evidence sourced by the Local Planning Authority (LPA); it is considered that on the balance of probabilities that 32 Rookery Lane has been used in breach of Condition 4 of MAR/235/72 for a period in excess of 10 years.

4. MAIN CONSIDERATIONS

- 4.1 This application is a Claim for a Certificate of Lawfulness which requires sufficient information to support the claim to be submitted. The application must be determined on the facts of the case, the evidence submitted and relevant planning law. Planning merits are not relevant at any stage in this particular application. Any assessment is therefore based upon the evidence submitted rather than an assessment through planning policy. Section 191 of the Town and Country Planning Act 1990 (as amended) (the Act 1990) states that the burden of proof in applications of this nature

lies firmly with the applicant. The relevant test of this evidence or standard of proof is the “balance of probability”.

- 4.2 Subsection (4) of Section 191 of the Act 1990 states that if the LPA is 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, or that description as modified by the LPA or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
- 4.3 The application is for a Certificate of Lawfulness for the continued occupation of a dwellinghouse in breach of an agricultural occupancy condition. The relevant legislation is section 171 B of the Town and Country Planning Act 1990 which states whether the four or ten year rule applies. In this instance, it is considered that as the matter relates to a breach of condition subsection (3) is applicable, stating the following: *‘In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.’* The evidence provided will be assessed in turn below.

5. Evidence Submitted

- 5.1 To accompany the application the following evidence has been submitted:
- Application form
 - Location plan
 - Statement of truth – Mr Brett Keyes
 - Statement of truth – Mr Guy Keyes
 - Statement of truth – Mr Matthew Wallis
 - Financial statements
- 5.2 The application form contends that the land has been used in breach of the agricultural occupancy condition 4 of MAR/235/75 since 19/11/1987 and therefore the use began more than 10 years before the date of this application.
- 5.3 The evidence of Mr Guy Keyes submitted to support the claim, appears to be the most relevant. The statement of truth is a sworn statement and therefore carries the most weight and status when considering claims for lawfulness. The statement will be summarised below.
- 5.4 The declaration sets out that planning permission was approved to erect the subject bungalow in 1972 by Guy Keyes’ father – Mr Peter Keyes. The bungalow was erected and condition 4 implemented to ensure the dwelling was used to support the arable and fruit farm that was present at ‘Brick Kiln Farm’; which is located around 80m east of the subject bungalow.
- 5.5 The bungalow was occupied by Peter Keyes from the time of construction until his death on 29 April 2018. It is confirmed within the statement that Guy Keyes’ mother moved out of the property some 22 years ago and whilst a partner moved into the dwelling for a period, the 10 years prior to his death he lived alone. Since Peter Keyes passing, for a period between 29 April 2018 and the summer (no specified

month), the dwelling was used by family members including Guy Keyes to sort through Peter Keyes' affairs. In the summer Mr Brett Keyes, son of Peter Keyes and his partner Mr Matthew Wallis moved into the premises.

- 5.6 In 1987 Mr Peter Keyes and his brother formed Keyes Transport Ltd which is a haulage company specialising in transporting pallets. The business was formed and based at the farm yard at Brick Kiln Farm, it continues to run from the farm yard with an additional base in Cressing. The rest of the Brick Kiln Farm is and has been managed by contract farmers for 33 years - the name and address of the current contract farmer was supplied. It is relevant to note that Guy Keyes is currently a part owner of Keyes Transport Ltd.
- 5.7 It is confirmed within the statement of truth that Mr Peter Keyes was the Managing Director of Keyes Transport Ltd and worked there on a full-time basis. It is confirmed that Peter Keyes' sole residence was 32 Rookery Lane and his employment was non-agricultural for at least the last 30 years.
- 5.8 To corroborate the information supplied within Guy Keyes' statement of truth the applicant has supplied copies of financial records dating from 2008 – 2017. These documents confirm that Keyes Transport Ltd has been in operation since at least 2008 and that Peter Keyes was the managing director of that company since at least 2008.
- 5.9 The statements of truth from Mr Brett Keyes and Mr Matthew Wallis, who now reside at the property, confirm that they are not employed within the agricultural or forestry industries and a signed letter from their respective employers confirms this.

6. Councils Evidence

- 6.1 In order to corroborate this evidence, a check of the Council's Council tax records and electoral roll has been undertaken.
- 6.2 The Council's electoral roll corroborates the above account showing Peter Keyes residing at the residence between 2008 – 2018 and Brett Keyes and Matthew Wallis 2018 – present.
- 6.3 The Council's council tax records show:
Peter G R Keyes (deceased) 01.04.1995 – 29.04.2018.
Marjorie Keyes 29.04.2018 – 01.09.2018.
Brett Keyes and Matthew Wallis 01.09.2018 to present
- 6.4 With the exception of the dates relating to Marjorie Keyes, the Council tax records corroborate the evidence supplied. This is discussed further below.
- 6.5 Further information in relation to Marjorie Keyes; who appears on the council tax records between 29.04.2018 – 01.09.2018 was requested by the LPA to ensure that she did not reside in the property whilst in employment in local agricultural or forestry industries. It has been confirmed that Marjorie Keyes is the ex-wife of Peter Keyes and as she was still part owner of Brick Kiln Lodge, 32 Rookery Lane the council tax was put into her name and it was confirmed that she did not reside in the property during this time.

- 6.6 Furthermore, the planning history of Brick Kiln Farm confirms planning permission was granted in 1989 under reference MAL/493/89 for haulage works subject to a section 52 agreement.
- 6.7 The Council does not hold any evidence to disprove the information provided within the statements of truth or the evidence submitted.

7. **OTHER MATTERS**

- 7.1 During the course of the application information that Mr Peter Keyes was more involved in the farm business at Brick Kiln Farm than the Council had been led to believe was verbally submitted. The Council holds no official documents to substantiate this and in the absence of a signed statement or evidence to support the claim it is not reasonable to refuse the application; which must be determined on the facts of the case, the evidence submitted and relevant planning law.

8. **ANY RELEVANT SITE HISTORY**

- 8.1 The relevant planning history is set out in the table below:

Application Number	Description	Decision
MAR/235/72	Erection of detached bungalow and garage for agricultural use.	Approved

- 8.2 The above application was approved subject to condition 4: *'The occupation of the dwelling hereby permitted shall be limited to persons wholly or mainly employed or last employed, locally in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971, or in forestry, and a dependant of such a person residing with him (but including a widow or widower of such a person).'*

9. **CONSULTATIONS AND REPRESENTATIONS RECEIVED**

- 9.1 **Representations received from Parish / Town Councils**

Name of Parish / Town Council	Comment	Officer Response
Great Totham	The Council can confirm that the existing use has for a number of years been as a dwelling house.	Noted however the application is to determine if it has been occupied in breach of the above occupancy condition.

10. **GRANT LAWFUL DEVELOPMENT CERTIFICATE** for the following reason:

- 1 The Local Planning Authority is satisfied that there is sufficient evidence to substantiate the claim that on balance of probability Condition 4 of application MAR/235/72 has been continuously breached for a period in excess of ten.

years and therefore the continued use of the building contrary to the stated condition would be lawful.