

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	LBS	23/7/18
Planning Development Manager authorisation:	AN	24/7/18
Admin checks / despatch completed	AP	25/7/18

*AK*

**Application:** 18/01005/LUEX

**Town / Parish:** St Osyth Parish Council

**Applicant:** Mr David Stock

**Address:** Bushwood Rectory Road Weeley Heath

**Development:** Use of dwelling as a domestic residence by persons not working in agriculture.

### 1. Town / Parish Council

No objections

### 2. Consultation Responses

Nil

### 3. Planning History

01/00429/FUL	Conversion of former agricultural building into 2 holiday units		07.08.2001
15/30277/PREAPP	Proposed detached outbuilding to form an annexe		09.10.2015
16/01514/FUL	Proposed conversion of former poultry unit to holiday lets (including new vehicular access).	Approved	21.12.2016
18/01005/LUEX	Use of dwelling as a domestic residence by persons not working in agriculture.	Current	

### 4. Relevant Policies / Government Guidance

National Planning Practice Guidance

NPPF National Planning Policy Framework

## **Status of the Local Plan**

As this is an application for a Certificate of Existing Lawful Use only matters of fact and law are applicable and as such national and local planning policies are not applicable. National policy gives advice on the issue of these certificates and that is mentioned elsewhere in this report

### **5. Officer Appraisal (including Site Description and Proposal)**

Bushwood is a domestic property on Rectory Road, Weeley Heath, St. Osyth with a site area of 15629 square metres. As only a technical issue arises as to its use re this application no site visit is necessary.

The application seeks to prove that "agricultural tie" conditions has been breached continuously for more than 10 years and that accordingly the conditions are no longer relevant. The conditions concerned are

Condition 3 to Planning Permission TEN/926/75 in outline for a proposed house. This reads as follows:

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

*Reason: The site lies outside any area which would be considered for normal residential development but in view of the agricultural significance attaching to the proposal the planning authority have decided to grant consent on condition that the dwelling is kept for occupation by an agricultural worker."*

And also Condition 2 to Planning Permission TEN/386/76 approving details for a detached house. This reads as follows:

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

*Reason: The site lies outside any area which would be considered for normal residential development but in view of the agricultural significance attaching to the proposal the planning authority have decided to grant consent on condition that the dwelling is kept for occupation by an agricultural worker."*

In this instance it is necessary to prove that these conditions have both been breached continuously for a period of ten (10) years expiring on the date this application became valid,(28 June 2018).Therefore the breaches of condition should have been in existence at least on 28 June 2008 and should have continued thereafter.

In this instance the evidence submitted is a letter from the applicant dated 28 June 2018 plus copies of utilities bills and a council tax bill. Council Tax records for the applicant confirm he has been billed for Council Tax purposes since 1 March 2000 a period well over ten years ago.

The applicant states that he moved to the premises on 29 February 2000 and he remains in occupation. Since that time he has not been employed in agriculture or any other paid employment.

The applicant was however employed in agriculture at Parsonage Brook Farm, High Easter, Chelmsford, Essex CM1 4QZ up until 29 February 2000. That is around 43-47 miles away from the application site.

In terms of this application and these conditions it should be noted that in order to comply with the conditions a person has to be employed or mainly or last employed in agriculture **locally**. The significant word here is locally. Employment in agriculture at Parsonage Brook Farm is not employment locally. It is generally accepted from planning applications elsewhere that up to 30 miles distant of the property would count as local but above that distance of 30 miles employment in agriculture would not be local. Case law has not however given an overall definition of phrases such as "in the locality". It is a matter to be decided on the facts of individual cases.

Here the distance concerned is outside that which would be normal for the marketing of agricultural tied properties.

Therefore since the 29 February 2000 (a period well over 10 years) the applicant has not been last employed locally in agriculture. Agriculture is now defined in the Town and Country Planning Act 1990 rather than the Town and Country Planning Act 1971 but this has not changed the wording of the condition.

Although planning permission has been previously refused for the removal of condition 3 to the outline planning permission TEN/926/75 by an application TEN/238/87 that would be for policy reasons. Here only matters of fact and law apply.

The government indicates in its advice on the issue of these certificates that the onus of proving a case on the balance of probabilities is firmly with the applicant and if this test is not met the application is liable to be refused. By contrast if the test is met and the Council has no compelling of its evidence of its own to contradict what was said the application should succeed.

In this case the evidence relates solely to whether or not the condition has been breached continuously since the applicant arrived on the site in 2000 and here this relates to the consideration of the word locally. The premises will still be used residentially as a dwelling whether or not the conditions remain applicable so only the conditions need consideration.

On this occasion it is considered that applying a 30 mile radius test is applicable and that therefore being last employed in agriculture over 30 miles away breaches the two conditions. The breach has been carried out continuously for over 10 years since 2000. On this occasion the Council has no evidence of its own to disprove these facts and therefore on the balance of probabilities the application succeeds

It is recommended that the application be granted.

## **6. Recommendation**

Lawful Use Certificate Granted

## **7. Conditions / Reasons for Refusal**

On the balance of probabilities the property described in the Schedule hereto has been used without compliance with condition 3 to Planning Permission TEN/926/75 and condition 2 of Planning Permission TEN386/76 for a period of ten (10) years continuously prior to 28 June 2018 and therefore the use of the dwelling as a domestic residence by persons not working in agriculture would be lawful.

## **8. Informatives**

None