

Supplementary Planning Statement

Removal of Condition 4 of planning permission H09-1023-81 (dated 22 December 1981) relating to agricultural occupancy of dwelling -

York Place, Dam Gate, Holbeach PE12 8QL

Background

Occupation of the subject dwelling by persons not employed in agriculture was deemed LAWFUL under application for certificate of lawfulness of existing development LPA ref: H09-0239-24, issued 21st May 2024.

The Applicant had occupied the property in breach of the occupancy condition for in excess of 10 years and provided compelling evidence to this effect.

This application now seeks the removal of the occupancy condition imposed on the 1981 permission in its entirety.

The Site and Location

The application site comprises a bungalow and associated curtilage situated on the western side of Dam Gate approximately 1.5km south of Holbeach. The site is located within a predominantly rural location and in development plan terms (South-East Lincolnshire Local Plan 2019), is deemed to be situated within the countryside for planning purposes.

Planning History (most relevant)

H09-0239-24 Lawful Development Certificate **GRANTED** – Occupation of dwelling without complying with agricultural occupancy condition (Condition 4: H09-1023-81)

H09-1023-81 Permission **GRANTED** – Residential development (1 plot) 22.12.1981

Policy Considerations

The application site is located within an area subject to countryside protection policies.

National Planning Policy

In making the application, due consideration has been given to the National Planning Policy Framework, Planning Practice Guidance and the development plan.

The **National Planning Policy Framework (NPPF)** provides the national planning policies for England and details how these are expected to be applied. Local development plans are required to incorporate policies for their areas which should generally conform to National planning policy advice.

Planning law requires applications for development to be determined in accordance with the relevant development plan, unless material considerations indicate otherwise.

Local Planning Policy

The South-East Lincolnshire Local Plan 2019 comprises the adopted development plan for the area. The following policies are considered relevant to this application:-

Policy 1 – Spatial Strategy – the application site is situated beyond any defined settlement boundary and is accordingly designated as countryside for planning purposes;

Policy 2 – Development Management – Proposals will be permitted if they accord with principles of sustainable development; and

Policy 19 – Rural Exception Sites

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– Policy Guidance Note, Sept 2006 *SPD - Agricultural Workers' Dwellings and Occupancy Conditions 2006*

## **Planning Considerations**

Outline planning permission was granted for residential development of 1 plot under application reference H09-1023-81 on the basis that the dwelling was required in connection with agricultural enterprise.

The permission had an occupancy restriction attached by condition (Condition 4) which reads: 'The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, locally in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971, or a dependent of such a person residing with him, or a widow or widower of such a person.' It is this condition which the Applicant seeks to remove.

## **Supporting Case**

The evidence provided as part of the Lawful Development submission (H09-0239-24) demonstrated beyond reasonable doubt that the Applicant has occupied the property in breach of the agricultural occupancy condition for in excess of ten years. The issuing of the Certificate confirms this to be the case.

The issuing of a lawful development certificate is a material planning consideration in respect of this current proposal.

Under other circumstances, and in accordance with the LPA's adopted SPD in respect of agricultural workers' dwellings and occupancy conditions, a thorough marketing exercise would be undertaken to properly gauge whether demand exists in the locality for the tied dwelling. Relevant policies would be applicable including Policy 19: Rural Exceptions Sites and Policy HS15 of the associated SPD.

However, in this particular case, the issuing of a Certificate of lawfulness effectively nullifies the ability of the LPA to enforce the relevant condition, rendering it useless.

Furthermore, the Certificate as issued is unfettered and the benefits it accrues would potentially be transferrable to subsequent occupiers.

In this case, the Certificate of Lawfulness for the occupation of the dwelling in breach of the occupancy condition is a material consideration in this matter and represents a fall-back position in that the dwelling may be lawfully occupied without compliance with the relevant condition.

While the condition imposed on the original permission (Condition 4 of H09-1023-81) was originally necessary to achieve its stated purpose, the issuing of the Certificate renders that condition unenforceable to all intents and purposes.

In accordance with Para.56 of the National Planning Policy Framework, the occupancy condition has now been proved to be unenforceable and its retention would also be considered unnecessary and unreasonable in this particular situation. Accordingly, the retention of said condition would fail to accord with National planning policy requirements and the relevant tests.

The above approach has been borne out on appeal, examples of which include Flatfield Lodge in Howden (Ref: APP/E2001/A/02/1104141) and Copper Beeches at South Harting (Ref: APP/Y9507/W/16/3147251), with both Inspectors expressing similar opinions.

**Concluding comments**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that applications for development must be determined in accordance with the development plan unless material considerations indicate otherwise.

In this case, the issuing of a Certificate proving lawful breach of the occupancy condition is a material consideration, and the retention of that condition in light of this situation would fail to accord with National policy guidelines in relation to appropriate conditions.

Accordingly, it is considered that the agricultural occupancy condition relating to York Place, Dam Gate, Holbeach, and imposed on planning permission ref: H09-1023081, dated 22<sup>nd</sup> December 1981, should be removed.

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