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SOUTH HOLLAND DISTRICT COUNCIL

Town and Country Planning Act 1990

Refusal of Planning Permission

Reference: H14/0904/93 Received:18-OCT-93 Type:S73A CONTINUATION

Name: Mr W H B & Mrs K J Booth
Northcote
Mill Green Road
Pinchbeck
Spalding Lincs

Agent: Messrs R Longstaff & Co
5 New Road
Spalding
Lincs

Description: Continuation of planning permission without complying with agricultural habitation clause
Location : Northcote Mill Green Road
Pinchbeck Spalding Lincs

South Holland District Council hereby give notice that PERMISSION HAS BEEN REFUSED for the retention of buildings/continuation of use of land for the reason(s) set out below:

1 The site is outside the confines of a settlement in an area of open countryside where it is the policy of the Local Planning Authority to permit new development only in exceptional cases where it is satisfied that there is a special need, particularly in connection with agriculture. In the opinion of the Local Planning Authority the circumstances of this case are not sufficient to justify permission, which would be contrary to Policy 7a of the Lincolnshire Structure Plan. This policy is in accordance with national planning policies as set out in Planning Policy Guidance Note No. 7, 1992 (The Countryside and the Rural Economy), and is aimed at the conservation of agricultural land, the preservation of the character of the countryside, and the economic provision of services. In the opinion of the Local Planning Authority the granting of permission for the development as proposed would be harmful to the purposes of this policy, because as well as its individual effect on these issues, it would encourage further similar proposals which would be difficult to resist.

Director of Planning and Building Control Services
24-NOV-93 H14/0904/93

This decision refers only to that required for the purposes of the Town and Country Planning Act and not for Building Regulations or any other legislation. See enclosed notes relating to rights of appeal.

BRIAN SMITH Dip TP MRTPI Director of Planning & Building Control Services

Planning & Building Control Department, Council Offices, Priory Road, Spalding, Lincolnshire. PE11 2XE (Tel: 0775 761161)

The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

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Houlton Street
Bristol BS2 9DJ

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GTN 1374-

S.H.D.C. PLANNING DEPT.
RECEIVED
23 AUG 1994
Attached DPO NRM BOPO BS JC AOP Action by ..... Discuss with ..... Copy to ..... DPBCS
File Nos.
Acknowledge YES/NO by date

R Longstaff & Co
5 New Road
SPALDING
Lincolnshire
PE11 1BS

Your Ref: JJA/RH
Our Ref: T/APP/A2525/A/94/238074/P5

Date: 22 AUG 1994

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6
APPEAL BY MR W H B & MRS K J BOOTH
APPLICATION NO: H14/0904/93

1. I have been appointed by the Secretary of State for the Environment to determine your clients' appeal against the decision of the South Holland District Council to refuse an application for the continuation of planning permission without compliance with an agricultural habitation clause on land at "Northcote", Mill Green Road, Pinchbeck. I conducted a hearing into the appeal on 4 August 1994.

2. The application forms refer to a planning permission (ref: SR 31/68) granted in 1968, but you and the Council agree that your clients' proposal relates to a planning permission (ref: SR 63/70) for a "house and garage with provision for vehicular access" at your clients' land, granted on 9 April 1970. The condition in dispute is no.2 namely:-

> "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 & Country Planning Act, 1962, or forestry, or a dependent of such a person residing with him (but including a widow or widower of such a person)."

The reason for the condition is stated as:-

> "This building is sited in an area in which buildings, other than those connected with an agricultural need, would not be permitted."

3. I have considered your clients' appeal under the provisions of section 73A(2)(c) of the Act of 1990 (as amended) as one to retain the house, garage and vehicular access permitted in 1970, without compliance with condition no.2.

100%
RECYCLED PAPER

4. From the discussion at the hearing, the written submissions and my inspection of the site and its surroundings, I consider that the main issue in this case is whether there remains an agricultural need for the dwelling in this locality and if so, whether there would be exceptional circumstances which would justify alternative residential use.

5. Relevant to your clients' proposal is policy 7A of the Lincolnshire County Structure Plan Alterations No.1, approved in 1991, which seeks normally only to permit new residential development in the open countryside where there is an essential need to house farm or forestry workers near to their place of work. In circumstances where such housing is permitted, paragraph 7A.1 of the explanatory memorandum indicates that an appropriate occupancy condition would be imposed, designed to ensure that any dwelling erected to serve such a defined need, continues to do so. This guidance also finds expression in the policy R3 of the Spalding and Pinchbeck Local Plan, adopted in 1985. Although current national guidance in Planning Policy Guidance 7 (PPG7) post-dates these approved policy documents, nevertheless the thrust of the guidance largely remains in accordance with national objectives and hence merits substantial weight.

6. Similar guidance is also found in policy R2 of the Spalding and Pinchbeck Local Plan Review Consultation Draft, now incorporated as policy RL9 of the South Holland District Local Plan Consultation Draft, a District-wide review of the adopted local plan. Also, policy WE9 seeks to prevent development which would pose an unacceptable risk to the quality of ground or surface water and policy AG7 sets out locational, design and use criteria relating to intensive livestock units. However, as this plan has reached only an early stage towards adoption, I have given its provisions little weight.

7. There is no dispute between you and the Council that your clients' house and the associated piggeries on 0.8ha of land are located in open countryside, beyond the defined boundaries of built-up areas of Pinchbeck and Spalding. Nor is there any dispute that the agricultural occupancy condition was properly imposed in the circumstances pertaining in 1970 concerning new houses in the countryside; from the evidence before me, I see no reason to disagree.

8. You explained that this is not an area where livestock enterprises are commonplace. It is clear to me that the extent of the use has declined substantially from that described at the time your clients built the present house and in subsequent years, to the point where your clients now accept that the present use is akin to that of a hobby supplementing their incomes from pensions. Whilst the continuing welfare of animals warrants some supervision, to my mind, the extent of the present use would be unlikely to need the presence of a person residing on or near the site.

9. I consider your evidence concerning the reduced number of local suppliers of feed, the problems of disposal of manure, the distance to remaining slaughterhouses, the impact of recent legislation relating to pollution controls and the proximity of adjacent watercourses is largely undisputed by the Council. Although there remains a possibility that the buildings could be adapted in connection with the keeping of horses as the Council suggests, given the modest size of the holding and the functional design of the buildings, some of which are of considerable age, in all of these circumstances, I believe it would be unlikely that a sustainable livestock enterprise would be re-established on this site in the foreseeable future.

10. From my understanding of the Council's case, I do not believe it seriously disputes this view, but it considers that an alternative use of the land, unconnected with livestock and related to horticulture, could generate a continued need for a house on this site. You believe the capital start-up costs of such an enterprise would be so great as to render such an alternate unlikely.

11. This is an area where, from what I have seen, read and heard, agricultural land is subject to intensive arable activity, no doubt closely related to its grade 1 soil. I believe the limited size of the holding, its triangular shape, the presence of roads on 2 of its sides and the watercourse on the opposite side to the south would render it less attractive or capable of being amalgamated into a larger unit. However, you accept that demand remains for agricultural land. The Council confirmed that it not only continues to receive inquiries for small areas of land for intensive horticultural uses, but that permissions for agricultural dwellings have been granted in recent months, albeit over a wide rural area.

12. For the reasons you explained, the house and land has not been offered for sale. I will return to this matter later. Whilst your experience of the difficulties encountered in disposing of restricted occupancy dwellings elsewhere locally is of value, nevertheless, in this case, the house would not remain vacant and nor would your clients be unnecessarily obliged to remain in occupation simply by virtue of the condition. Indeed, I believe that they would wish to remain there for as long as possible and the Council has confirmed that, in so doing, they would comply with the present condition.

13. It is my opinion that your evidence concerning the decline in the need for dwellings for agricultural workers also carries some force and would further reduce the chances of acquisition by an agricultural worker, but the condition is widely drawn to embrace those last employed locally in agriculture, thereby increasing the size of the potential market. In the absence of firm evidence concerning the attractiveness of this house and its land to another occupier, I consider there are insufficient reasons to believe, with any

realistic certainty, that the condition has outlived its usefulness.

14. Turning therefore to the question of exceptional circumstances in this case, I believe the Council's guidance contained in the latest version of its leaflet entitled *"Dwellings in the Open Countryside"* is helpful in establishing criteria against which applications such as this would be judged, but it cannot cover all eventualities and each application must be considered individually on its merits.

15. The Council say that Mr Booth's medical condition was not made known at the time of the application, but even if it had been aware of these circumstances, which may necessitate your clients having to acquire alternative accommodation at short notice, it would have sought evidence of attempts to sell.

16. However, to my mind, the distinguishing element in this case is the reluctance of your clients to sell until deteriorating health forces a move to a less isolated location. I understand that they would need to sell their present home in order to purchase another. I have therefore given greater weight to your view that attempts to sell at present, when your clients have no wish to move, would be a wasteful exercise and in my view would only serve to render the house and land less attractive to a potential purchaser.

17. Although the Council raises some doubts about Mr Booth's medical condition, to my mind, there will come a point where, for one reason or another, the house would need to be sold. On the evidence before me, it is probable that such an eventuality would be brought about by a further deterioration of Mr Booth's health.

18. Whilst there remains a possibility that a buyer could be found, the chances of so doing at short notice would be less likely than those occasions when a much longer period of advertisement could be offered. The alternative would be to compel your clients to remain in the house with increasing hardship whilst it is offered for sale, or if alternative accommodation was to be available, for the property to remain vacant with increased chances of vandalism and dereliction. To my mind, neither of these options would be desirable, both in terms of land use and the welfare of your clients.

19. I have considerable sympathy for the aims of the Council's policies in seeking to prevent losses from the stock of agricultural dwellings unless clearly there is no further need. However, I believe the combination of circumstances in this case are unusual and unlikely to be repeated to the extent that this case would be used as a precedent to justify further losses elsewhere. I conclude therefore that the exceptional circumstances of this case would justify overriding my belief that there is no realistic certainty of the condition having outlived its usefulness.

20. I have taken into account all other matters raised, including the removal of a similar condition on a dwelling just to the north of the appeal site, but these would not outweigh the reasons that have led to my conclusion.

21. For the above reasons and in exercise of powers transferred to me, I hereby allow your clients' appeal and grant planning permission for the retention of a house and garage with provision for vehicular access on land at . "Northcote", Mill Green Road, Pinchbeck, without compliance with condition no.2 set out in planning permission no.SR 63/70 granted on 9 April 1970 by the former Holland County Council, but otherwise subject to the conditions set out in that permission, in accordance with the terms of the application (no. H14/0904/93) dated 20 September 1993, as amended on 15 October 1993, and the plan submitted therewith.

22. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

Yours faithfully



G P BAILEY ARICS
Inspector

APPEARANCES

FOR THE APPELLANTS

Mr J J Allen FRICS FAAV	-	of R Longstaff & Co, Chartered Surveyors, Auctioneers, Valuers and Estate Agents, 5 New Road, Spalding;
Mrs A S Parkinson ARICS	-	of R Longstaff & Co, as above;
Mr W H B Booth	-	joint appellant;
Mrs K J Booth	-	joint appellant.

FOR THE LOCAL PLANNING AUTHORITY

Mr D J Roberts ARICS	-	Senior Planning Assistant, South Holland District Council.

DOCUMENTS

Document 1	-	list of persons present at the hearing;
Document 2	-	notification letter and circulation list;
Document 3	-	letter dated 14 April 1994 from The Coxon Clinic to Mr Booth, put in by Mr Allen;
Document 4	-	first appendices to Mr Allen's pre-hearing statement - schedule of piggeries at the appeal site;
Document 5	-	second appendices to Mr Allen's pre-hearing statement;
Document 6	-	appendices to Council's pre-hearing statement;
Document 7	-	bundle of documents accompanying Council's questionnaire;
Document 8	-	revised planning information leaflet "Dwellings in the Open Countryside", put in by Mr Roberts;
Document 9	-	list of planning applications permitted subject to agricultural occupancy conditions July 1993-June 1994, put in by Mr Roberts;
Document 10	-	list of planning applications to remove agricultural occupancy conditions, July 1993-June 1994, put in by Mr Roberts;

DOCUMENTS (continued)

Document 11 - extracts from Council policy documents, put in by Mr Roberts;

Document 12 - suggested condition, put in by Mr Roberts.

PLANS

Plan A - the submitted application plan;

plans put in by Mr Allen

Plan B - piggery layout and drainage, prepared by Mr & Mrs Booth;

Plan C - occupancy of dwellings in Mill Green Road, prepared by Mr & Mrs Booth;

Plan D - piggery layout - April 1994;

Plan E - layout of property - OS sheet (1904 ed.);

Plan F - 1:10560 scale location plan of appeal site;

plans put in by Mr Roberts

Plan G - development boundary for Pinchbeck;

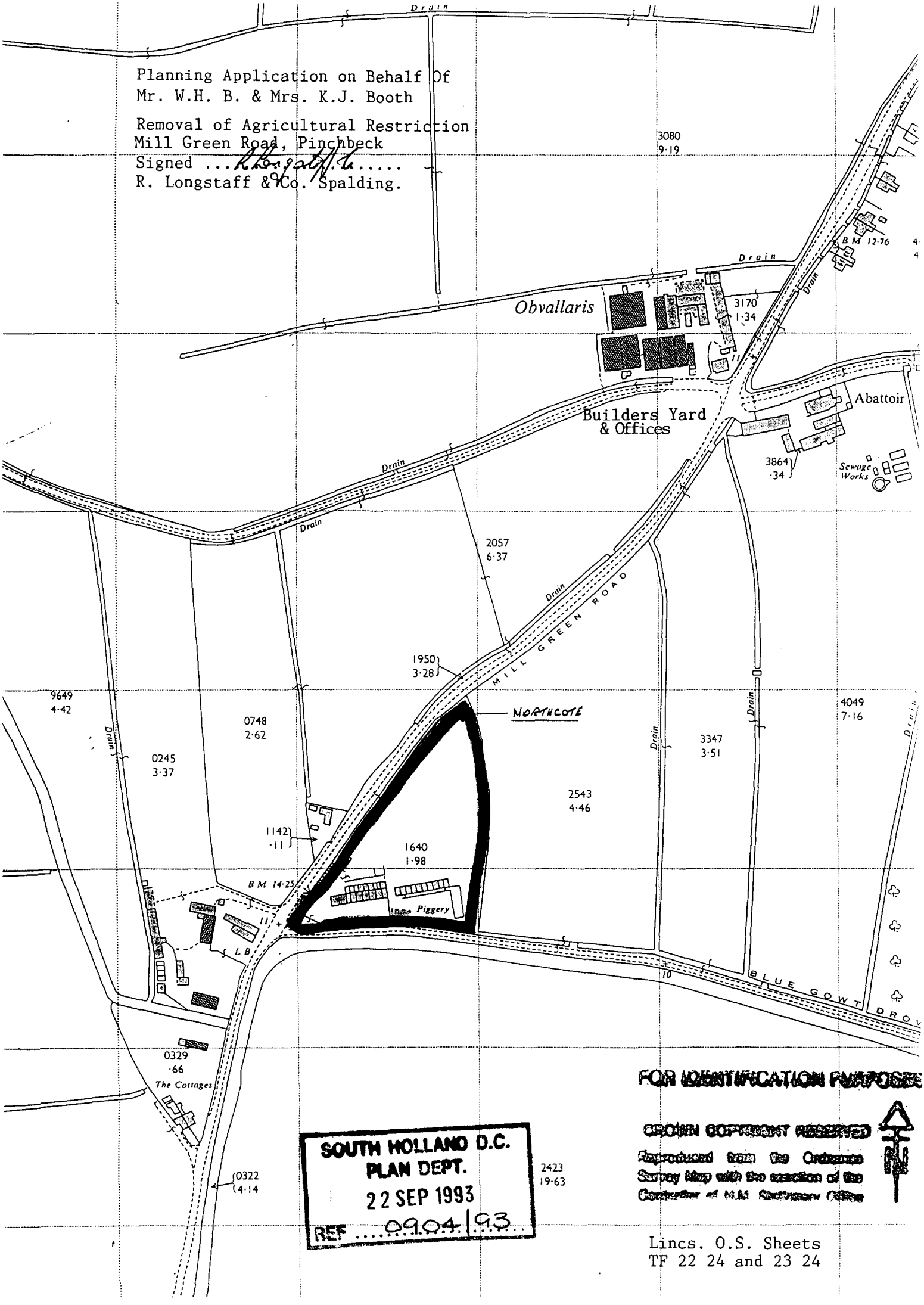
Plan H - 1:2500 scale location plan of appeal site.

PHOTOGRAPHS

Photographs 1-11 - the appeal site, put in by Mr Allen.

Planning Application on Behalf Of
Mr. W.H. B. & Mrs. K.J. Booth

Removal of Agricultural Restriction
Mill Green Road, Pinchbeck
Signed ...R Longstaff & Co.....
R. Longstaff & Co. Spalding.



SOUTH HOLLAND D.C.
PLAN DEPT.
22 SEP 1993
REF ....0904/93.....

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