Planning Supporting Statement
Poppy Fields Caravan Park, Fields Farm South, Sutton Bridge PE12 9XT
S73 Application
modification of condition 2 of planning permission H18-0224-18

This planning supporting statement accompanies an application for the modification of an existing condition attached to a planning permission. The main issues in the consideration of the application are the wording and enforceability of the condition assessed against the six tests, the site history and the alternative wording of the condition.

Planning History

The planning history begins in 1999, with planning permission Ref H18-1219-98 was granted and described as '*site for caravans for seasonal workers and its retention out of season for storage of caravans*.'

"*The caravans shall only be used for accommodation outside the period of 1st December to 5th April in the following year and that accommodation shall only be used for seasonal workers employed in farming operations on land in the same occupation*."

The 1999 permission sets out the description of the development and this application, which relates to the modification of the condition does not raise any issues of conflict between the condition and the description of the development. The issues of procedure in the *Finney*[1] judgment do not fall to be considered in this case.

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In 2004 the condition was modified following an allowed appeal with modified wording which, in summary meant that the site could now be occupied throughout the year with alternative controls as follows:

Condition 1 – *"The caravans shall only be used for accommodation for seasonal workers employed in farming under the Seasonal Agricultural Workers Scheme (SAWS), or any successor scheme, and such persons shall only work on land in the same ownership or occupation"*; and

Condition 2 – "*No person shall occupy any of the caravans for more than six months in any period of one year."*

A further 73A application Ref H18-0224-18 was granted in May 2019 subject to:

"The caravans shall only be used for accommodation for agricultural and/or horticultural workers employed in farming by Hargreaves Plants, and such persons shall only work on land in the same ownership or occupation."

Reason: In the interests of the character and residential amenity of the surrounding area.

This Condition is imposed in accordance with Policies 2 & 3 of the South East Lincolnshire Local Plan (2019), and Section 2 of the National Planning Policy Framework (2019).

This is the application which is subject to this application.

In 2024 an Enforcement Appeal was determined, this enforcement notice was served as an allegation of a material change of use. The outcome of the enforcement appeal was that seven of the caravans may be occupied without restriction (Condition 3 of the 1999 permission limits 21 caravans on the site).

The allegation of the enforcement appeal was modified by the Inspector in the decision notice to a breach of a condition. Whether such a modification was entirely reasonable and did not cause prejudice is potentially now a moot point although the weight which can be attached to the Inspector's decision is limited due to the approach of the Inspector to the issue of prejudice.

Condition 2 of the 2019 permission is a condition which, for the reasons set out in this statement fails all of the six tests. The condition also breaches the long standing need to avoid a condition which is personal to a company. The guidance that conditions should not be personal to companies should not be controversial and although circular 11/95 was cancelled the guidance remains good practice:

Personal permissions

93. *Unless the permission otherwise provides, planning permission runs with the land and it is seldom desirable to provide otherwise. There are occasions, however, where it is proposed exceptionally to grant permission for the use of a building or land for some purpose which would not normally be allowed at the site, simply because there are strong compassionate or other personal grounds for doing so. In such a case the permission should normally be made subject to a condition that it shall enure only for the benefit of a named person-usually the applicant (model condition 35): a permission personal to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company. This condition will scarcely ever be justified in the case of a permission for the erection of a permanent building.*

The Inspector in the 2024 appeal dealt with this issue in the most superficial manner:

45. As the 2019 permission was taken up, its condition 2 has replaced condition 1 of the 2004 permission. It is this condition that the notice alleges has been breached. The appellants contend that a condition limiting a permission to a specifically named business, in this instance Hargreaves Plants, is likely to be both unreasonable and unenforceable. No precedent is cited for that view and their planning witness, Ben Eiser, went no further in his oral evidence than to say that a decision maker should generally avoid such a condition.

This approach, that suggests the Inspector was not aware of the principle of the longstanding circular 11/95 guidance and the reasoning is at odds with the Planning Inspectorates own training manual, a document that one would reasonably expect an Inspector to be familiar with:

162. A condition limiting the benefit of a permission to a company is inappropriate because its shares could be transferred to other persons without affecting the legal personality of the company.

The brevity of the Inspector's assessment of the 2019 condition in the 2024 AD reduces the reliance that may be placed on the Inspector's comments.

Conditions

The guidance in the use of conditions is now set out in the NPPF and the Planning Practice Guidance:

Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

1. *necessary;*
2. *relevant to planning;*
3. *relevant to the development to be permitted;*
4. *enforceable;*
5. *precise; and*
6. *reasonable in all other respects.*

These are referred to in this guidance as the 6 tests, and each of them need to be satisfied for each condition which an authority intends to apply. See also guidance on the use of model conditions.

Paragraph: 003 Reference ID: 21a-003-20190723

Is it appropriate to use conditions to limit the benefits of the planning permission to a particular person or group of people?

Planning permission usually runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission. For example, conditions limiting benefits to a particular class of people, such as new residential accommodation in the open countryside for agricultural or forestry workers, may be justified on the grounds that an applicant has successfully demonstrated an exceptional need.

A condition limiting the benefit of the permission to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company.

Paragraph: 015 Reference ID: 21a-015-20140306

Revision date: 06 03 2014

The 2019 Condition

Returning to the condition which is the subject of this application:

The caravans shall only be used for accommodation for agricultural and/or horticultural workers employed in farming by Hargreaves Plants, and such persons shall only work on land in the same ownership or occupation

The 2019 condition is far from a standard occupancy or agricultural occupancy condition it is necessary and appropriate to seek to explore the full wording of the condition.

There are three elements of the condition, the first is the occupancy, the second is the employment and the third is the location clause:

The caravans shall only be used for accommodation for agricultural and/or horticultural workers

employed in farming by Hargreaves Plants,

and such persons shall only work on land in the same ownership or occupation

This condition has three elements that it seeks to control, the first element is the identity of the occupant, the agricultural and horticultural workers.

The second element is the identification of the employer and the third is the location of the work.

The first limb identifies that the workers must be employed in agriculture, it does not however, use the standard elements of occupancy clauses in planning conditions of referring to persons 'solely or mainly' the first limb of the condition merely requires the occupants to be agricultural workers. An agricultural worker who takes on other work would still be 'an agricultural worker', there is not a clause of exclusion of other employment.

The second limit of the employment is that the occupants are employed by Hargreaves Plants, it is a matter of interpretation whether the reference to Hargreaves Plants should be read as 'Hargreaves Plants Ltd,' the applicant of the permission or any entity that has the name of Hargreaves Plants. There is also nothing to say that the employment by Hargreaves Plants, in whatever form or entity that exists is to the exclusion of any other employment.

The final clause is the location of the employment clause, the condition says 'such persons' these can only sensibly be the persons in employed in agriculture by Hargreaves Plants because this clause is expressed as 'and' so it reasonably follows as an addition to the previous requirements. The clause continues to say 'shall only work on land in the same ownership or occupation.' The same ownership or occupation must be a reference to the agricultural work described in the previous part of the condition, otherwise it would raise the question as 'same ownership or occupation as who?' Each other? Or as Hargreaves Plants?

The condition read as a whole requires the accommodation to be used by agricultural workers employed by Hargreaves Plants and when employed by Hargreaves Plants as agricultural workers they only undertake work on land owned or occupied by Hargreaves Plants.

When examining the different elements of the condition it is clear that only the first clause, the identity of the accommodation for agricultural workers is related to land use planning. The identity of the employment appears to have at most a tenuous link to planning controls and there is no indication within the decision notice what justification exists in this case.

Taken literally, the reference requires 'employment by Hargreaves Plants' leaving to one side who are Hargreaves Plants, an agricultural worker who is employed by an agricultural workers agency and hired, through that agency by Hargreaves Plants, would not satisfy the 'direct employment' clause. Whilst it might be possible to identify reasons for or against the use of an employment agency it is difficult to conceive of a planning related reason why there needed to be a direct employment by Hargreaves Plants and it is difficult to imagine that any site owner would wish to be prohibited from the employment of agency staff.

Applying the six tests to a condition to this element:

1. *necessary;*

It is not clear why it would be necessary to identify the means of employment. Taken literally not only does the condition prohibit the hiring of agency staff, it also requires employment, it would prohibit any voluntary worker because they would not be 'employed' in a reasonable interpretation of the word.

2. *relevant to planning;*

There is no clear and identifiable relevance to town planning considerations as to the mechanism of employment. None has been suggested and none can be imagined.

3. *relevant to the development to be permitted;*

The development permitted was the development permitted in 1999 for the use of the land. It is notable that that permission did not contain such a clause at the time the permission was first granted. The mechanism of the employment cannot be directly related or essential to the development permitted.

4. *enforceable;*

The condition is enforceable if taken at the literal meaning, a planning officer could seek to observe the payslip of each occupant. If the payslip did not come from Hargreaves Plants there would not be a satisfaction of the condition.

Whether it would be reasonable or expedient to take enforcement action if the enterprise altered its name and so were not referred to as Hargreaves Plants but were otherwise undertaking the same activity from the same land is difficult to imagine.

5. *precise; and*

The requirement for employment by Hargreaves Plants is not precise, is it Hargreaves Plants Ltd or any related company. If Hargreaves Plants restructures their legal entity and creates different companies such as a holding company arrangement, is there a breach of the planning permission. In the same way as the hiring of agency staff who would be working for one person but employed by someone else.

6. *reasonable in all other respects.*

A condition that requires planning approval every time that the land is brought or sold or that there is a change to the identity of the land owner company is clearly unreasonable, it would create a burden on the land owner and the Local Authority. The fact that such a permission would almost certainly be granted without any scrutiny illustrates that it is not a reasonable matter for planning to control.

Many planning conditions can be contrasted between the actual and the intended consequence of the condition. It may well have been the case that the LPA in 2019 considered that they were imposing an additional layer of control and preventing the site operating as a ‘general agricultural workers site.’ Although it is not clear what purpose would be served by such a restriction the fact is that this condition does not achieve what the LPA may have believed they did achieve.

There is no restriction on who or what Hargreaves Plants are or where they undertake any agriculture. The permission is not specific to workers on a defined location only that it is employment by Hargreaves Plants. The permission is not specific to a particular way Hargreaves Plants was operating at the time of the grant, such a limitation cannot be read into the permission. For example, if Hargreaves Plants were

to operate as an employment agency (and there is nothing on the face of the permission to suggest that they did not) those workers could be employed to 'work on' any land that is either in ownership or occupation. The condition is explicit that the land need not be in the same ownership as Hargreaves Plants, if Hargreaves Plants are providing the workforce on land they would reasonably be in occupation of such land.

The reference to 'occupation' is likely to be hopelessly vague as it does not specify a particular type of occupation. Ownership is likely fairly easy to understand and identify through the land registry but occupation could take the form of a formal tenancy agreement, a shared farming arrangement or a service contract between employment agency and land owner or tenant farmer.

If there was some veiled intention of the condition that it might prohibit transport movements to and from the site of workers leaving the site of their accommodation to go to another site to undertake work but that they would only be working on immediately adjacent farmland, that objective is clearly not satisfied. There is nothing within the condition to require work to be undertaken on a specific holding, at most the condition relates to the identity of the company on the worker's payslip or at a simpler level, which bank account the occupant's salary comes from, a factor that has no bearing on the land use aspects of the site's occupation.

The identification of the 'employed in farming by Hargreaves Plants' is inappropriate, it fails the NPPF guidance and is an unnecessary feature of the condition. The shortcomings above are clearly identifiable and cannot be justified. The second limb of the condition should be removed and should not have been imposed.

The third limb of the condition relates to the location of the work undertaken. The land may either be in ownership or in occupation. We know from the condition itself that ownership is not central to the characteristic of the activity because the condition specifically provides for 'occupation.' We also know that occupation would cover a broad range of tenures or arrangements. An agricultural employment agency, contracted to provide farm labour on a site would, in that context be in occupation of

that land. It is not clear in what circumstances the occupants could be undertaking agricultural work and not be in occupation of that land. Conceivably, there could be a situation such as a neighbouring farmer facing an emergency and calling on the neighbour's workforce to assist in an informal arrangement in which case there would not be a mechanism to define the 'in occupation' requirement. However, it is a requirement of extreme hypothesis why the planning condition would seek to prohibit such activity or deem it to be a scenario warranting exclusion to the extent that it should represent a breach of a planning condition. The third limb of the condition appears to have no sensible basis or justification and should not have been imposed or retained.

The condition does not achieve an outcome that agricultural workers are limited, in a geographical context to a particular location. The actual controls achieved relate to the arrangements, at an administrative level to the relationship between employer and staff and contractor and land owner. There is also however a question of whether the condition actually prohibits any occupant of the site from work that is not agriculture.

In *Telford and Wrekin Council v Secretary of State for Communities and Local Government & Anor [2013] EWHC 79 (Admin) (29 January 2013)*. The Court considered an Inspector's assessment of a planning condition: *"prior to the garden centre hereby approved opening, details of the proposed types of products to be sold should be submitted to and agreed in writing by the local planning authority"*

which was found to identify what products could be sold but did not:

The condition itself did not contain a prohibition on selling goods other than those in the list submitted by Growing Enterprises. Its wording does not require it to be construed as including an implementation, an enforcement, or a prohibition clause

The condition in this case requires that the accommodation is occupied for agricultural and/or horticultural workers who are employed in farming by Hargreaves Plants, even if the reference to the identification of the employer is struck out, as it should be, this still leaves the condition as a positive requirement which, in the same manner as *Telford* did not expressly prohibit other employment.

A person who is solely employed in agriculture is exactly that, alternative employment even at a minor level is not 'solely employed.'

A person who is mainly employed in agricultural would, normally describe themselves as an agricultural worker but would potentially have other paid employment. This other employment could be occasional or informal or it could be regular but would not be their main employment.

The condition in this case does not identify either sole or main employment. Only that they are agricultural workers. A person who undertakes some employment for Hargreaves Plants and some employment elsewhere would be a person who meets the condition. There could be a position where the employment was so minimal so as to be negligible but there is no requirement that the employment by Hargreaves Plants is the main employment. The reference to 'such persons shall only work on land in the same ownership or occupation' is, as previously discussed a reference to their agricultural work through Hargreaves Plants. The third limb cannot be a catch all condition that an occupant of the site cannot undertake any other work, not least because such a condition would likely infringe their human rights but it would mean that additional words would need to be inserted into the condition:

'such persons shall only work on land in the same ownership or occupation *when using the occupation*'

The final words added would need to be added because otherwise, if the condition were to be that the accommodation could only be occupied by persons exclusively employed on the site the condition would prohibit a worker who occupied a caravan from Monday to Friday while working in agricultural at the site from Monday to Friday but then, for the sake of this example, went to work in a hotel from Saturday to Sunday and stayed in the Hotel's accommodation. This example illustrates that the condition cannot serve to exclude the workers from undertaking any other work, it is not the same as a condition that requires an occupant to be 'solely employed in a particular profession or location' words need to be added to the condition to achieve that effect.

Adding words, or deleting words would however, alter the meaning of the condition and is not a feature of interpretation. The additional words would have altered the meaning of the condition in *Telford* and related authorities, in fact almost every case in case law could have been averted if the addition of words into conditions and descriptions could be permitted as a feature of interpretation.

The 2019 condition fails the six tests, it is directly contrary to the advice within the PPG and should never have been imposed. In this context, there can be no question but that the condition should be amended.

The only remaining question is how any revised condition should be phrased.

Alternative wording of the condition

The 2024 appeal decision considered in the context of unrestricted residential caravans of all of the caravans on the site, the Inspector not appearing to considering any amendments to the condition which rather illustrates that the amendment to the allegation did result in prejudice. The factors that were considered, albeit that it is far from clear what the Inspector was considering and taking into account, included, flood risk, amenities of neighbouring residents, landscape character and the location of the development.

The Inspector's conclusions were made in respect of a comparison between agricultural occupancy of the caravans and unrestricted occupation. It is clear that in practice, the occupation of the caravans was not as restricted as was assumed. A condition which limited occupation to persons solely or mainly employed in agriculture would actually be more enforceable and restrictive in terms of the identity of the occupants, the main difference would be the identity of and the administrative arrangements of the employment and the employer.

The application should be approved.