SUPPORTING STATEMENT TO ACCOMPANY A LAWFUL DEVELOPMENT CERTIFICATE

IN RESPECT OF AN EXISTING USE IN BREACH OF CONDITIONS

"THE NON-COMPLIANCE WITH CONDITION

1 & 2 OF H18-0691-03

AND/OR

CONDITION 1 OF H18-1219-98"

POPPY FIELDS CARAVAN PARK FIELDS FARM SOUTH SUTTON BRIDGE SPALDING PE12 9XT

30th November 2023

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1. An application is made for a lawful development certificate under s191(1c) of the Act in respect of the non-compliance with conditions attached to a planning permission.
2. Accompanying this application is this planning supporting statement, the 1998 planning permission, the 2003 permission, the 2021 Appeal Decisions and a number of statutory declarations and correspondence as referred to in the statement.

Introduction

3. This LDC application concerns the non-compliance with planning conditions attached to previous planning permissions. It is necessary as part of the case to consider whether the planning permissions concerned valid and enforceable conditions prior to considering whether a condition has been breached and what would amount to a breach of the condition.

Planning History Summary

4. 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*.'

   Condition 1 - "*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*."

5. In 2004 an appeal was granted in respect of application H18-0691-03 which was made under s73A to continue the use without complying with condition 1 of permission Ref H18-1219-98 subject to:

   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."*

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

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"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."

7. In August 2021 three appeal decisions in respect of existing lawful uses were granted, described as:

   The permanent residential occupation of caravan [A4] [B2] [C1], being a caravan sited in the location edged red on the plan attached to this certificate, by a person other than an agricultural worker employed in farming by the owners or occupiers of the land in breach of conditions 1 and 2 of the planning permission granted under Ref H18-0691-03 and condition 2 of the planning permission granted under Ref H18-0224-18.

8. In November 2022 an LDC application was made for the site described as: *Continued use of land as a site for static caravans in residential use in breach of Condition 1 & 2 of H18-0691-03 and Condition 2 of H18-0224-18* and refused in April 2023 as:

   "National Planning Practice Guidance states that: "...if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."

   The applicant has submitted more evidence to that which was submitted in support of application ref's H18-0918-20, H18-0919-20 and H18-0920-20. However, during the course of this application, the Local Planning Authority has been in receipt of seven sworn statements that cast sufficient doubt over

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whether the caravans in question have been occupied for the requisite 10 year period on a continuous basis.

Consequently, it is considered that it would not be appropriate to issue a certificate of lawfulness in this instance."

9. The applicant considers that a certificate should be granted for the following reasons:

    a) The 2019 permission was not necessary and would not have been implemented.
    b) The 2021 confirms acceptance that the caravans on the site have been occupied without compliance with the occupancy conditions through year round occupation by persons non engaged in agriculture or the SAWS.
    c) The 2003 permission conditioned conditions which were invalid and as a consequence were unenforceable.
    d) The 2003 conditions have, in the alternative to the above, been breached for in excess of ten years.
    e) The condition of the 1999 permission has been breached for in excess of ten years.

10. The applicant has considered the reason for refusal in respect of the 2022 application and is of the view that the LPA have misapplied the consideration of the relevant evidence and the weight which should be attached to third party representations. Furthermore, neither the 2021 appeal or the 2022 application have considered the validity of the conditions in detail and given the importance of this matter, rather than appeal the 2022 refusal, this application has been resubmitted.

11. The application is presented in the following order of considerations:

    I. Whether the 2003 permission contained valid conditions.

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II. The consideration of evidence in the 2022 application.
III. Whether if the 2003 permission contained valid conditions, these conditions were breached for a period in excess of ten years.
IV. Whether the condition of the 1999 permission has been breached for in excess of ten years.
V. Whether the 2019 permission was necessary and implemented.

The validity of the 2003 conditions

12. It is considered to be logical to consider as the first issue whether the conditions of the 2003 permission where valid conditions. The 1999 permission was implemented, this appears to be undisputed and contained condition which 1 provided:

Condition 1 - "*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*."

In 1999 it was lawful for any person engaged in 'farming operations' as a seasonal worker of any nationality to reside in the caravans. The condition only required employment, not sole or main employment.

13. What amounted to a seasonal worker was not defined and it is not clear whether an occupant who resided from 6th April to the 30th November would be a seasonal worker. However, with this one point aside, the workers could:

- Undertake any farming operations
- Be of any nationality
- Undertake work for any duration on the site and reside for 8 months of the year
- Second jobs or employment are not prohibited.

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14. In 2004 following an application for an amendment to the condition application a new permission was issued:

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

The seasonal limitation was removed but in exchange:

- The occupants could only work on land in the same ownership or occupation – second or alternative work would have been excluded.
- Could only reside on the site for six months of each year.
- Must meet the SAWS requirement which means –
  - Specific nationality of residents
  - A maximum six month stay
  - Part of a national quota of SAWS work cards

15. The specific standards of the SAWS scheme varied over the years but it was intended for low skilled work, other visa schemes existed for skilled workers. In 2004 the relevant guidance in the content of conditions existed through circular 11/95. This guidance existed until the Planning Practice Guidance in 2014 and although this was more concise the broad criteria remained the same.

    The 2004 application did not simply extend the season of the occupation, it resulted in significantly different occupational controls.

16. 2004 also coincided with the enlargement of the European Union. Prior to 2004 workers from the A8 group of countries would have required eligibility under

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the SAWS or similar scheme to reside and work in the UK but from 2004, with the introduction of free movement, workers from the expanded EU would no longer require the SAWS scheme to live and work on the site.

In practical terms by way of an example, a worker from Hungary on the site in 2003 could only have been on site if they complied with the SAWS (or other) scheme. In the context of town planning control, under the provisions of the 1999 permission, this Hungarian worker could have worked alongside an English worker and lived together in a caravan for the summer, separate legislation would have controlled the employment terms. However, under the terms of the 2004 permission neither the English Worker or the Hungarian Worker could have resided in the caravans. Strictly speaking those workers from the EU could work on the site but could not reside in the caravans. Given that the nature of vegetable picking is such that it is normal practice for workers to reside on the site this exclusion would be likely to prohibit migrant workers from the EU working on the site but without accommodation[1].

17. The consequence of the 2004 condition is that the compliance with the condition is not concerned solely with the nature of the occupant or the reason for the occupant being on site but is concerned with and subject to:
    - The nationality of an applicant
    - The available quota levels issued by the Central Government.

18. In 2004 the expansion of the EU meant that residents of those countries were not eligible for the SAWS scheme because no visa was required at all. However, the 2004 permission sought to preclude the occupation of those residents. In planning terms it is impossible to imagine that there would be any difference to the land use characteristics as to whether the occupant of a caravan was from Lithuania (not eligible) or Romanian (eligible). The Inspector in 2004 noted what would be expected that *'most, if not all workers, are young*

[1] The 2004 Inspector's decision at p.11 dismissed the suggestion of off-site accommodation as unrealistic.

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people from eastern European Countries'[2] there is no consideration within the appeal decision to indicate that there would have been a justification of considering a distinction between nationalities.

19. The Inspector was aware of and noted the shortage of the local labour force, para 7 of the 2004 and of the importance of the winter period for the production, para 6. In this context the prospect that it would be logical, reasonable or justified to restrict the potential labour force for the site cannot be sustained.

20. Under the 2004 provisions, the site which required year round staff could only accommodate workers who were under the SAWS which allowed only up to 6 months stay of nationals from outside the EU. These controls would have been impractical in that it would have had the effect of precluding workers who had previously worked on the site but would as a consequence of the expansion of the EU and the consequential exclusion from SAWS. It was identified[3] that return of workers to the same growing in subsequent years was a common feature of the SAWS scheme.

21. The guidance in circular 11/95 which was relevant when the 2004 permission was granted. Although the appeal decision notes that the guidance in circular 11/95 had been followed, upon assessment it is self evident that the conditions imposed in 2004 were at odds with the guidance.

Circular 11/95 identifies:

Six tests for conditions

14. On a number of occasions the courts have laid down the general criteria for the validity of planning conditions. In addition to satisfying the court's criteria for validity, the Secretaries of State take the view that conditions should not be imposed unless they are both necessary

[2] See para 14 2004 decision
[3] Migration Advisory Committee report: season migrant workers May 2013

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and effective, and do not place unjustifiable burdens on applicants. As a matter of policy, conditions should only be imposed where they satisfy all of the tests described in paragraphs 14-42. In brief, these explain that conditions should be

i. necessary;
ii. relevant to planning;
iii. relevant to the development to be permitted; iv. enforceable;
v. precise; and
vi. reasonable in all other respects.

These tests are comparable to 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

22. The guidance at the time of the grant in 2004 and the current guidance are not substantially different. Circular 11/95 identified:

17. Conditions should be tailored to tackle specific problems, rather than impose unjustified controls. In so far as a condition is wider in its scope than is necessary to achieve the desired objective, it will fail the test of need. Where an extension to a dwellinghouse in a particular direction would be unacceptable, for example, a condition on the permission for its erection should specify that, and not simply remove all rights to extend the building. Permissions should not be overloaded with conditions, however: it might be appropriate for example, to impose on a permission in a conservation or other sensitive area a requirement that all external details and materials

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should be in complete accordance with the approved plans and specifications, rather than recite a long list of architectural details one by one.

Emphasis added

A condition which controls that the occupants of the caravans would only be engaged in agriculture, or solely or mainly engaged in agricultural would reflect the land use considerations of the site. However, the 2004 permission went wider or further than necessary as illustrated in para 17 above.

There was no planning justification for controlling not only the engagement of the occupants in agriculture but also for controlling the employment scheme and as a consequence the nationality of the occupants. By way of a an example a planning condition that required that workers in an office were engaged by a particular employment agency rather than directly employed by the occupier of the office would require such special justification that it is difficult to imagine, however, this is precisely the level of control sought by the 2003 permission.

23. As well as imposing unreasonable and unjustified controls, the 2003 permission imposed conditions which were not relevant to planning, circular 11/95 identified:

Relevance to Planning

20. A condition which has no relevance to planning is *ultra vires*. A condition that the first occupants of dwellings must be drawn from the local authority's housing waiting list, for example, would be improper because it was meant to meet the ends of the local authority as housing authority and was not imposed for planning reasons (but see paragraph 97 below). Although a condition can quite properly require the provision of open space to serve the permitted development (as part of a housing estate for example) it would be *ultra vires* if it required the open space to be dedicated to the public; other conditions affecting land ownership (requiring, for example, that the land shall not be disposed of except as a whole) would similarly be *ultra vires*.

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It is not relevant to land use planning whether an occupant is from a country in the EU or a country not in the EU. The terms of the 2003 permission would exclude against and discriminate against residents of the EU, such an approach would need very special justification (if it ever could be) which is completely absent from the decision letter.

24. As well as relating to controls which are irrelevant to planning, the 2003 permission could not reasonably have been imposed because if it were considered properly, it would be unreasonable as circular 11/95 went on:

> Avoidance of onerous requirements
>
> **36.** Even where a condition would not be so unreasonably restrictive as to be *ultra vires*, it may still be so onerous that as a matter of policy it should be avoided. Any condition which would put a severe limitation on the freedom of owners to dispose of their property, or which would obviously make it difficult to finance the erection of the permitted building by borrowing on mortgage, should be avoided on these grounds. An unduly restrictive condition can never be made acceptable by offering the prospect of informal relaxation of its effect (see paragraph 32 above).

The exclusion of EU residents from occupation of the site – note even the owner of the enterprise would be excluded from occupation of the caravans is unduly onerous. The condition would prohibit the operation of the agricultural operation by severely limiting the range of workers which can be employed on the site. The option of informal relaxation of the condition, simply to require that the workers on the caravans are engaged in agriculture but not employed under the SAWS would be the approach disapproved of in para 36 above.

25. The level of control upon which a state imposes on the movement of labour and wider immigration is a matter for government but there are today, as there were in 2003 other forms of legislation, policy and control for these matters and there is no clear justification as to why planning conditions should duplicate or seek to replicate such matters, again in this respect the 2003 permission is at odds with the guidance of circular 11/95:

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Occupancy: general considerations

92. Since planning controls are concerned with the use of land rather than the identity of the user, the question of who is to occupy premises for which permission is to be granted will normally be irrelevant. Conditions restricting occupancy to a particular occupier or class of occupier should only be used when special planning grounds can be demonstrated, and where the alternative would normally be refusal of permission.

……

103. It should not be necessary to tie occupation of the dwelling to workers engaged in one specific farm or forestry business even though the needs of that business justified the provision of the dwelling. The model occupancy condition will ensure that the dwelling is kept available to meet the needs of other farm or forestry businesses in the locality if it is no longer needed by the original business, thus avoiding a proliferation of dwellings in the open countryside (see Annex E of PPG7: The Countryside and the Rural Economy for further details about agricultural and forestry dwellings).

The terms of the condition in 2004 prohibits the residents undertaking any work on a neighbouring farm. This is unduly restrictive both to the occupants and to the site owner. If a neighbouring farm has an excess crop, a workforce struck down by illness, or a specific weather window it would not be unusual for those workers to go to the neighbouring farm to undertake this work. The community of neighbouring farms would have such an arrangement as being mutually beneficial. Such occurrences are entirely predictable and normal but the 2003 permission would preclude such activities. The nature of seasonal work is that there is generally a desire to maximise income during the operation,[4] a condition which prohibits the opportunity is unreasonable on all parties and would also have the effect of effecting the welfare of residents of the caravans.

26. The SAWS was subject to a quota system, it was the practice of the government to reduce the number of spaces available under the quota,

[4] Pg 57 para 3.30 Migration Advisory Committee report: season migrant workers May 2013

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following the enlargement of the EU the quota was reduced in size reflecting the reduced need given the larger EU workforce[5].

Crucially in the context of a planning condition the owner or operator of the site would have no control over the Government's allocation of the quota. If all of the quota had been used up by other farming enterprises this site would create an impossible position, unable to employ workers under the SAWS and unable to employ an EU workforce because they could not offer such staff on-site accommodation (and on site accommodation was, as already discussed an essential element of employment for seasonal workers whether inside or outside of the SAWS).

A planning condition which places the site owner in a position where they cannot control whether they operate the site in accordance with the condition is not reasonable. It is unreasonable to place a site operator in a position of either breaching the condition and employing staff outside of the SAWS or not having staff and losing their crop. Furthermore, the condition in such circumstances is unenforceable, no local authority could justify enforcement action in such circumstances and the condition requires discretion on the part of the LPA to function.

27. The condition distinguishes between the nationalities of occupants of the caravans rather than the land use characteristics of the occupation. The condition drew a distinction in 2004 between residents of the EU and residents outside the EU, such a condition is inherently wrong and unreasonable.

The SAWS programmes continued through the 2000's with a general reduction in the size of the quota. In 2008 reflecting the further enlargement of the EU the SAWS eligibility was considered again. When Bulgaria and Romania joined the EU there were transitional arrangements regarding the free movement of

[5] Seasonal Worker visas and UK agriculture Research Briefing 26 June 2023 House of Commons Library pg13

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residents of those countries. In reflection of this the SAWS from 2008-14 was restricted to being only available for residents of Bulgaria and Romania. By 2014 the transitional arrangements ended and the SAWS scheme was no longer required or necessary and the scheme was discontinued.

28. The Inspector in 2004 had clearly envisaged that the SAWS as a government scheme outside the applicant's control could be altered and identified in the condition or any successor scheme. The Inspector did not identify what should happen in the circumstances where the scheme was cancelled.

    Examining the history of the SAWS, the condition in the 2004 permission required from 2008 that the only occupants of the caravans were of Bulgarian or Romanian nationality and from 2014 that there were no occupants of the caravans. In these terms the condition was clearly unreasonable.

    In 2019 a pilot scheme for a new version of SAWS was introduced in preparation for the cessation of free movement of labour.

29. Any debate as to the reasonableness of the condition imposed in 2004 can be seen in the changes to the SAWS from 2008-2014 and from 2014 onwards. The condition was unreasonable and should never have been imposed, no reasonable public body could seek to enforce the condition.

The consideration of evidence in the 2022 application

30. This application represents a re-submission in part from a previous refusal, there are additional considerations set out within this case but it is also appropriate to examine the evidence which was previously taken into account by the LPA in reaching the decision to refuse the application. In determining a lawful development certificate the onus falls upon the applicant to demonstrate their case. This in itself is uncontroversial however, whilst the

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onus may rest upon the applicant that does not mean that the assessment of evidence does not require cooperation and disclosure.

31. The recent reason for refusal provides as follows:

National Planning Practice Guidance states that: "...if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."

The applicant has submitted more evidence to that which was submitted in support of application ref's H18-0918-20, H18-0919-20 and H18-0920-20. However, during the course of this application, the Local Planning Authority has been in receipt of seven sworn statements that cast sufficient doubt over whether the caravans in question have been occupied for the requisite 10 year period on a continuous basis.

Consequently, it is considered that it would not be appropriate to issue a certificate of lawfulness in this instance.

The LPA correctly identifies the planning practice guidance in respect of the fact that an applicant's own evidence does not need independent verification. The previous paragraph to that cited by the LPA in the reason for refusal says:

The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

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32. The evidence upon which the LPA have sought to rely is described as seven sworn statements. Following the receipt of the refusal, confirmation of this evidence has been sought, and is appended to this statement[6]. The evidence provided by third parties is redacted, whilst some redaction may be appropriate in the interests of protecting individual evidence, not knowing from whom the letters have been received significantly reduces the weight which may be attached to this correspondence. The evidence relies upon the accounts provided of the individual's knowledge and experience of the site. Absent the address from where they reside neither the appellant or an Inspector in an appeal could know whether the correspondence has been received from a close neighbour to the site or from an individual who does not live in close proximity to the site. Furthermore, without knowing the identity of the person who has made the claim it is not possible to know whether that is a resident who has been on site themselves continuously or frequently throughout the relevant period. The weight which can be afforded to redacted correspondence is significantly lower than the weight which should be afforded to the applicant's own evidence in this case.

33. There remains an apparent tension between what has been provided by the LPA and how that evidence has been treated. The reason for refusal describes seven sworn statements, the covering letter marked as received on the 13th of January 2023 refers to six sworn statements.

34. The first correspondence does not appear to be a sworn statement rather it appears to be a letter, this correspondence claims for a redacted period of time to have always walked dogs along the roadway past the caravan site, there is then a reference to a period during COVID restrictions which is also redacted but then goes on to say "*and so I walked this roadway every day and often varied it by walking around the caravans*." The caravan site is a flat area

[6] Bundle of letters dated 13th January 2023

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of ground which is not particularly large, nor would it make for a particularly interesting walk, the letter also goes on to refer to some of the caravans being vandalised in this period, and caravans falling into disrepair. This letter is suggesting that on the one hand the caravans had fallen into disrepair and had been vandalised which does not create the sense of any pleasant or interesting dog walk yet despite this the author of the letter expects that we are to believe that they still chose to walk amongst the vandalised caravans. The author does not describe the extent of vandalism but it does not seem unreasonable to expect that there could be broken glass or other sharp objects which one would not normally expect to be an environment where a dog would be walked. The vandalism that is described presumably took place at times when the dog walker was not on the site, therefore it remains equally possible that a resident was using the site but was not outside their unit during the dog walks.

35. The first representation provides no reasonable assistance in the determination of the application, notwithstanding the question of what the appropriate 10 year period should be, the evidence in the form of a letter, does not withstand basic scrutiny and should be afforded scant if any weight in the assessment of the evidence within the application.

36. The second item of correspondence describes that the author is writing and therefore again does not appear to be a sworn statement, again as a consequence of the redactions, it is not entirely clear the perspective of the author, although they do claim that the site was empty between April and October in each year. As is discussed later in this statement, such an assertion is at odds with the direct evidence of the planning history, whereby the site owner had made steps to enable year-round occupation to cater for their workforce needs. It is also possible to see that the crop demands of the site would be consistent with a requirement for a labour force in the winter months. In light of this the assertion that the site was always empty in the winter months is difficult to accept and we know that in a recent planning appeal the inspector

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was satisfied with the evidence on oath that is contradictory to this letter's claim. There is also the near comical claim that an unidentified employee for an unidentified reason would let a redacted person know when the site would be occupied and when the site would be vacant. There would have been no obligation upon such an employee to undertake such a role and there is no basis as to what incentive was offered. The offer goes on to suggest that the site was subject to victim of vandalism and or thefts which is a very non-specific claim and appears to be more of a possibility than a recollection of a specific event. The claim that an employee would have notified this person when the site would be vacant is not logical and if it were undertaken on the basis that this person would then look out for the site and call the police in the event of any incidents. This was clearly an arrangement that the author of the letter failed to honour as they have not provided any details of when they did contact the police regarding the events, that they cannot recall in any detail, that they were supposedly tasked with monitoring. The letter provides almost as much representation to the planning application that did not exist as it supposedly provides evidence.

The threshold for reliability of third-party evidence and the weight which should be afforded to such correspondence is no greater than the than that which should be afforded to the applicant's own evidence. The second letter presented by the LPA as a sworn statement is nothing more than a letter of representation and should not be afforded any weight in the determination of a certificate.

37. The third letter in the bundle provided by the local authority includes the sentence:

"I have been informed by my neighbour that our objections to the above application are not being considered as they have not been sworn on oath. I was unaware that planning objections had to be."

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The letter then goes on:

"Myself and my neighbours will now take the opportunity to get our objections sworn and notarised. We obviously need some time to do this."

38. This correspondence therefore confirms that the letters are letters and they are not sworn statements, therefore either the LPA have determined the certificate on the basis of letters that they have afforded the weight of a sworn statement or the LPA have not disclosed the evidence that they have received to the applicant. Neither answer would lead to the conclusion that the decision reached by the LPA was well founded or followed the planning practice guidance.

Whether if the 2003 permission contained valid conditions, these conditions were breached for a period in excess of ten years

39. In the event that there is, contrary to the above, any consideration that the 2004 conditions were reasonable and could be enforced, the secondary question falls to be considered as to whether the condition was breached.

40. Condition 1 of the 2004 permission is breached not only by occupants of the caravan being engaged in non-agricultural employment but by any occupants of the site not being part of the SAWS.

41. There have been comments provided by third parties, the weight which can be attributed to these comments must be viewed in context. It would not be possible for any individual to know whether a resident of a caravan is under the SAWS or not without seeing their paperwork. As illustrated in the discussion above, a resident of the site could have been eligible and attending under the SAWS in one year but not in the next. The third parties could not

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possibly have known whether the residents of the site were under any particular employment terms or otherwise.

42. Condition 2 which is tied to condition 1 can be considered in the same terms, it would be impossible for any third party to know whether the residents on the site had stayed for six months or seven months on the site.

43. We know that there is evidence that the 2004 conditions have been considered to have been breached. This evidence was tested on oath in the previous Inquiry albeit that the case was presented in the context that the conditions were valid. This higher threshold was examining, the occupation of the caravans not simply whether the occupants were not part of the SAWS scheme.

44. It is common ground that the site was occupied until the demise of Hargreaves Plants until 2019. We also know that the SAWS scheme was ceased in 2014. Therefore, any occupation between 2014 and 2019 was in breach of the condition, it was impossible to comply with a condition limiting occupants to a scheme which did not exist.

45. A breach of planning control is immune after a period of ten years. Following the approach set out in *Ocado*[7] it is not necessary that the ten-year period that is assessed is the previous ten years from a given date on a rolling basis. Without prejudice to any other time period, it is logical to consider a time period of 2009 to 2019, of this ten-year period 2014 – 2019 is by definition proven and does not fall to be assessed further.

46. In order for there to have been a breach between 2009-2014 all that would have been necessary to amount to a breach of the condition would have been

[7] R (Ocado Retail Limited) v London Borough of Islington [2021] EWHC 1509 (Admin)

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that the occupants of the caravans were not part of the SAWS, the SAWS during this period was only eligible to residents of Romania and Bulgaria. In the 2021 appeals the Inspector accepted the evidence of occupation during this period by residents who were not part of the SAWS, there is no purpose in revisiting this evidence again. Furthermore, the context in which this evidence falls to be considered would be on the rather prosperous proposition that the occupation of the caravans and therefore employment of the site would have been exclusive to two nationalities.

47. The 2004 condition included a condition regarding the length of stay in each caravan. This condition was a complimentary condition to reflect the SAWS requirements of the visa, we know that this condition was breached through the residents of the site. Third party representations also introduce the concept of a resident site manager.

48. The breach of control related to the occupation of the caravans. Had there been enforcement action taken against the site, the action would have been taken against the whole of the site not against individual caravans. The immunity of the breach falls to be considered in the context of enforcement and the area in which enforcement would be taken. The established breach applies to the whole of the site which operates as a single planning unit. The previous applications may have created confusion in this regard as a consequence of the way in which the applications were submitted, however, that does not alter the assessment of this application.

49. The condition was breached from 2009 to 2014 through occupation by person's not part of the SAWS. This evidence has previously and recently been tested at the Inquiry and the supporting statutory declarations describe the site in detail these declarations are reliable, unambiguous and consistent in their description of the use of the site. In contrast, the letters made as representations to the 2022 application are letters of representation which are

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objection letters barely disguised as providing evidence. That evidence which is included is not reliable, specific and in some parts strains the basis of plausibility. If the 2003 permission were to contain valid conditions these conditions were no longer enforceable from at least 2019 following a breach of the condition from 2009-14 and the breach occurring by definition of the removal of the SAWS from 2014 to 2019.

Whether the condition of the 1999 permission has been breached for in excess of ten years.

50. On the basis of the 2004 condition being invalid, the 1999 permission would fall to be considered. This was a seasonal occupancy condition. The condition would be breached whether or not the occupants were engaged in agriculture on the site simply if the occupation were to take place all year round. The identity of the occupants would not be critical in this situation, only whether the occupants were on the site.

51. When the available evidence is considered in respect of whether there was a breach of the 1999 condition the context is that there was an accepted need for year-round staff accommodation on the site.[8] Hargreaves Plants which operated the site were described as *'a leading producer of rhubarb, asparagus, soft fruit plants and ornamental plants*[9].' The calendar of crop harvest[10] identifies that ornamental nursery flowers were typically harvested between January and May, Rhubarb between January and June and Asparagus between April and June.

[8] See 2004 appeal decision para 9
[9] Hargreaves Plants Eastern Agri-Tech Grown initiative
[10] Table 3.5 pg 56 Migration Advisory Committee report: season migrant workers May 2013

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52. It is therefore reasonable to conclude that the site operator at the time was engaged in a type of farming where winter harvests were likely and this reflects their case advanced in the 2004 appeal. Given that the from 2004 the site operator would have believed that it was lawful for the occupants of the caravans to be on site in the winter (and a cursory assessment of the planning history by the LPA in an enforcement context would have confirmed this) it is more likely than not that the caravans would have been occupied through the winter months. It is in this context that the available statutory declarations must be viewed and the comments of the third parties that the site was empty in each winter must be treated with a great deal of caution.

53. The evidence in the form of statutory declarations which are appended to this statement that are consistent with the evidence that the Inspector accepted in the 2021 Inquiry that was presented in the context of the breach of the 2003 permission's conditions are equally applicable to the consideration of the breach of the 1999 permission's condition. The threshold of a breach of the 1999 permission is of course different because it is only necessary that the caravans were occupied during the winter months regardless of the activity of the occupants in this period.

54. The 1999 condition would have been breached during any occupation within the precluded season. In the circumstances where a permission had been granted under the 2003 permission, all parties would have understood the year round use of the caravans to benefit from permission, the site operator wanted to provide year round accommodation and an Inspector had accepted that there was a need for such accommodation. The type of crops produced by the site owner at the time is consistent with the expectation of the year-round occupation of caravans.

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Whether the 2019 permission was necessary and implemented

55. In 2019 the occupancy condition was once again 'varied'. In light of the above it is unlikely that there was a valid condition which could be varied under s73. This condition only falls to be discussed briefly because the occupation of the caravans was already lawful by this time and the judgment of *Newbury*[11] which considered that the submission of a planning application was made without prejudice to a future consideration as to the need for the application would be relevant.

56. The 2019 permission condition a new condition as follows:

"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."

57. The 2019 permission included a personal condition 'Hargreaves Plants' it is not entirely clear if this would be enforceable against the company or the owner of the operations. There is no obvious justification as to why a permission should be effectively personal but the difficulties with personal conditions or conditions which are specific to particular company are well known and do not, in the context of this site where the use was already lawful, warrant significant consideration in this case.

58. It is worthwhile to consider the timeline of events in 2019, the site was being operated by Hargreaves Plants Ltd. The planning permission was granted in May 2019, in August 2019 the company entered administration. The company did not, between May 2019 and August 2019 operate the site in any different manner, the occupation of the caravans which, for the reasons set out above, was lawful by May 2019 would have continued to have been lawful thereafter without relying on the permission granted. As permissions are permissive and

[11] *Newbury District Council v Secretary of State for the Environment* [1981] AC 578

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there is not an obligation for the permission to be 'taken up' the 2019 permission was not implemented because in the Newbury context the permission was not necessary.

Conclusions

59. The lawful use of the site has, to an extent previously been accepted on this site. The reasons for this lawfulness fall to be considered in more detail and as a consequence the extent of the lawfulness can be shown to be greater than was previously assumed. The use of the site could not be subject to successful enforcement action because there is not an enforceable condition on the site. The certificate as sought should therefore be granted.

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