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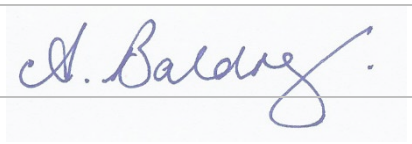
Planning Consultants

Title:	Planning Statement
Application:	s.73 for the Removal of the Agricultural Occupancy Condition applied as Condition (2) of Planning Permission H23/1926/88
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Administration Page

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1 EXECUTIVE SUMMARY

This section 73 application (s.73) seeks to remove the Agricultural Occupancy Condition (AOC), applied to Cranesgate Farm, Cranesgate North, Whaplode, Spalding, Lincs PE12 6TY ("the *Property*"), as condition (2) of Planning Permission H23/1926/88, granted on 12th January 1989.

The Agricultural Occupancy Condition (AOC) restricts occupation of the Property 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 dependant of such a person residing with him, or a widow or widower of such a person."*

A Certificate of Lawful Existing Use (CLEUD) was granted on 13th December 2021 which confirms that the agricultural Occupancy Condition has been breached for a continuous period in excess of 10 years (Ref: H23/1085/21).

The applicant has no intention of ever complying with the Agricultural Occupancy Condition again and does not wish to sell the Property, however, should the Property ever be sold the Certificate will pass to subsequent owners.

In light of the Certificate of Lawful Existing Use, it is considered that the AOC is no longer enforceable, necessary or relevant. The applicant is therefore seeking removal of Condition (2) of Planning Permission H23/1926/88.

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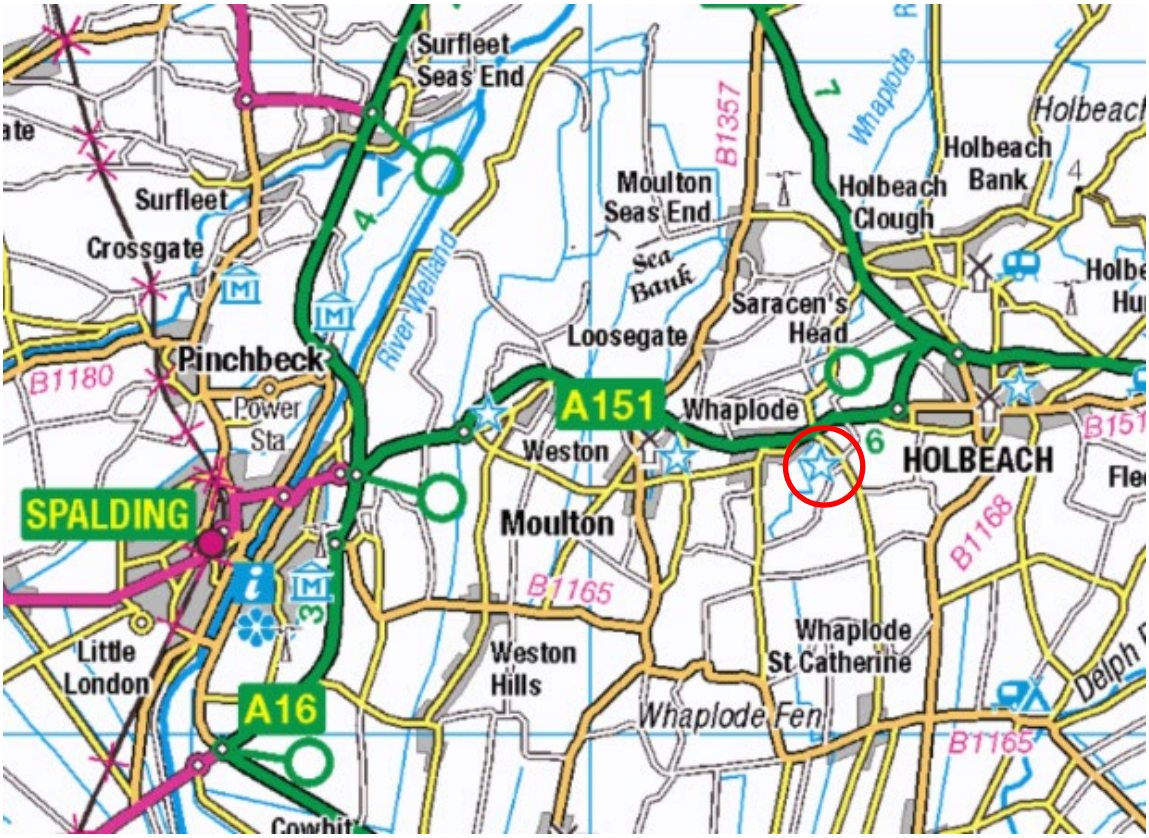
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2 SITE DESCRIPTION

2.1 Location

Cranesgate Farm is situated approximately 1.0km (0.62 miles) southeast of Whaplode, 2.4km (1.5 miles) southwest of Holbeach and 9.1km (5.7 miles) east of Spalding.



2.2 Situation

Cranesgate Farm is a substantial detached dwelling, built of brick elevations set under a pitched tiled roof. The property is set within gardens of approximately (1.48 ha) 3.66 acres and is bordered by agricultural land to the south and the adopted highway to the east and west.

Vehicular/pedestrian access is via a driveway leading directly off the adopted highway.

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3 PLANNING HISTORY

On 19th December 1988 an application was submitted by Mr & Mrs Pocklington for a "*Proposed dwelling with access and garage*" on land at Cranesgate, Whaplode, Spalding (Ref: H23/1926/88). The application was granted on 12th January 1989, subject to the following conditions (copy attached at Annex A):

01. *The development must be begun not later than the expiration of five years beginning with the date of this permission.*
02. *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 dependant of such a person residing with him, or a widow or widower of such a person.*
03. *Before the dwelling is occupied, a scheme of landscaping and tree planting for the site, including details of positions, heights on planting, and species of trees and shrubs, shall be submitted to and approved by the Local Planning Authority.*
04. *The approved scheme of landscaping and / or screening shall be carried out in its entirety within a period of two years beginning with the date on which development of the land is commenced, or within such longer period as may be agreed in writing with the Local Planning Authority. The trees, shrubs or bushes shall be adequately maintained by the owner(s) of the land on which they are situated for a period of 10 years beginning with the date of completion of the scheme, and all losses shall be made good during that period.*

Following the grant of Planning Permission, construction commenced on the dwelling and was substantially complete by the early 1990s. The dwelling was assessed by the valuation office and was included on the valuation list for council tax purposes with an effective date of 16th April 1993 (see Annex K).

The applicant purchased the property from Mr & Mrs Pocklington and has occupied it continuously ever since as her private residence.

On 13th December 2021, a Certificate of Lawful Existing Use (CLEUD) was granted under reference H23/1085/21. This followed a breach of the Agricultural Occupancy Condition (AOC) for a continuous period in excess of 10 years. The Certificate confirms that occupation of the property, in breach of the AOC, is now lawful and immune from enforcement action.

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4 POLICY BACKGROUND AND MATERIAL ISSUES

4.1 The Local Development Plan

The South East Lincolnshire Local Plan ("SELLP") was formally adopted in on 8 March 2019. The Local Plan, created in conjunction with Boston Borough Council and Lincolnshire County Council covers the period up to 2036.

The SELLP is silent on the matter of removal of conditions and specifically Agricultural Occupancy Conditions, however South Holland District Council does have a Supplementary Planning Policy, titled "Agricultural Dwellings and Occupancy Conditions", dated September 2006.

Within this document it refers back to Policy HS15 of the former South Holland Local Plan:

> *"Policy HS15 – Agricultural Occupancy Conditions*
> *Where planning permission has been granted subject to an agricultural occupancy condition, restricting occupation to certain persons, removal of the condition will only be permitted if it can be demonstrated that there is no longer a need for the dwelling on the holding/business or in the locality.*
>
> *3.5 ..... The District Council will only consider the removal of an agricultural occupancy condition after a reasonable period of time has elapsed from the date of the imposition of the initial condition and when every attempt has been made to explore the need in the locality through the advertising of the dwelling in the local press at regular intervals over a minimum period of twelve months at a price which adequately reflects the existence of the agricultural occupancy condition. The property should be advertised for sale and/or rent.*
>
> *3.6 Currently, departmental advice requires the marketing of the tied dwelling at a realistic price for a period of some 6 months. If no need is demonstrated, and the price is deemed to be realistic, then the condition may be removed.*

4.2 Fallback Position as a material consideration

The SELLP is silent on the removal of Agricultural Occupancy Conditions, however Supplementary Planning Guidance refers back to Policy HS15 of the former South Holland Local Plan, which pertains to the removal of agricultural and other occupancy conditions. It states that planning permission for the removal of an occupancy condition will only be given when several criteria are met. This includes evidence that there is no longer a continued need for the property on the holding, there is no long term need for a dwelling in the locality and that the property has been marketed for an appropriate period of time.

However, a Certificate of Lawfulness has recently been approved in relation to the Property (H23/1085/21) for the occupation of the dwelling without complying with Condition (2) of Planning Permission H23/1926/88. This follows a continuous breach of the occupancy restriction by the applicant over a period of at least 10 years. This Certificate and the benefits against enforcement action it provides will be transferable to any subsequent occupiers.

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Consequently, the property can be occupied in breach of the occupancy condition, by any non-qualifying persons in perpetuity.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be made in accordance with the Development Plan **unless material considerations indicate otherwise** (our emphasis).

The Certificate of Lawful Use (H23/1085/21) and the benefits it provides are transferable to subsequent owners and occupiers, therefore the property can be occupied in breach of condition (2) in perpetuity. This carries significant weight as a fall-back position and is a material consideration in this application which will override the Development Plan Policy. This principal has been established and clarified at Appeal many times and in Appeal Decisions APP/Y9507/W/16/314251, APP/H1840/W/18/3196410, APP/R3325/W/20/3155645, the Inspectors state as follows. All Appeal decisions are reproduced in full at Annex D-J, along with additional successful Appeals considering the same circumstances.

Appeal Decision - APP/Y9507/W/16/314251

> *12. Despite the conflict I have identified with Policy RE19 of the Local Plan I find the existence of the CLEUD to be an overriding consideration. Therefore, condition No 1 no longer accords with the six tests identified at paragraph 206 of the Framework and I conclude that it should be removed.*

Appeal Decision – APP/H1840/W/18/3196410

> *10. Therefore, I afford significant weight to the CLEUD (fallback position) and regard the ability to occupy the Old Orchard in breach of condition No 6 as a material consideration which would, in this specific circumstance clearly outweigh the harm I have identified. Consequently, it is no longer necessary or reasonable to continue to require the property to be occupied by qualifying persons.*

Appeal Decision APP/R3325/W/20/3155645

> *5. I have been presented with no evidence that this marketing has taken place, and thus the proposal conflicts with policy HG10 of the LP. Removal of this condition would result in an unrestricted dwelling in the countryside. As such, I consider that the condition is both necessary and reasonable.*
>
> *6. However, a certificate of lawfulness has recently been approved in relation to the appeal site for the occupation of the dwelling without complying with Condition No 2. This follows a continuous breach of the occupancy restrictions by the appellants over a period of at least 10 years. This certificate and the benefits against enforcement action it provides would be transferable to any subsequent occupiers.*
>
> *7. Consequently, the appeal property could be occupied in breach of this condition by any non-qualifying persons in perpetuity. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. In this instance the presence of the certificate of lawfulness is a material consideration which I give significant weight to.*

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Aside from the fact that the Certificate represents a significant material consideration in this application, any requirement to market the property, when the applicant has no intention of selling, would be dishonest, and in breach of the Consumer Protection from Unfair Trading Regulations 2008. It would also open the applicant and the selling agent up to prosecution for false and misleading advertising of a property.

Theoretically if the property were to be marketed, the presence of the Certificate of Lawful Existing Use means that there is no longer an enforceable agricultural occupancy condition present on the property and therefore no discount from full market value should be made. Should an agricultural purchaser buy and then occupy the property they would immediately retrigger the Ag Tie, which would reduce the value of the property by 30%. It is therefore totally inconceivable that any agricultural buyer would choose to purchase a property and then voluntarily reduce the value by 30%. This point was clearly made in Appeal Decision 3147251, where the Inspector concluded:

> *9. Reverting back without the benefits provided by the CLEUD would, based on the evidence, have the effect of significantly reducing the current open market value of the property of £650,000 by about 30%. Given the risk of such a substantial loss that would confront the sellers and a qualifying person means this is a scenario that is very unlikely to arise at least for the foreseeable future*

Whilst condition (2) was considered necessary for the original granting of the planning permission in 1991, the granted Certificate now supersedes this and forms a significant fall-back position for the applicant. This material consideration carries substantial weight when undertaking the planning balance.

4.3 National Planning Policy

The National Planning Policy Framework (NPPF) came into effect on 27th March 2012 and was revised on 20th July 2021. It was introduced with the aim of reducing and simplifying the amount of Central Government guidance applicable to development proposals.

The National Planning Practice Guidance (NPPG) sits alongside the NPPF and provides additional guidance.

Paragraph 56 of the NPPF sets out that:

> *"Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification".*

The NPPG reiterates this advice and states at Paragraph 003:

> *"planning conditions should be kept to a minimum, and only used where they satisfy the following tests:*
>
> - *necessary;*
> - *relevant to planning;*

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- *relevant to the development to be permitted;*
- *enforceable;*
- *precise; and*
- *reasonable in all other respects.*

These are referred to in this guidance as the 6 tests, and each of them needs to be satisfied for each condition which an authority intends to apply.
(Reference ID: 21a-003-20190723)

In line with guidance contained within the NPPF and NPPG, planning conditions should only be imposed where there is a definite need for them. The same principle applies when considering an application to vary or remove them. Any planning condition that fails just one of the above six tests, cannot be justified.

On 13th December 2021, a Certificate of Lawful Existing Use (CLEUD) was granted under Ref. H23/1085/21. The Certificate has confirmed that there has been a continuous breach of the Agricultural Occupancy Condition for more than 10 years. Since the Certificate has been granted the Property has not been occupied by a current or retired agricultural worker, or a dependant or widow of such a person, therefore the Certificate remains in force and the Ag Tie remains immune from enforcement action.

The applicant has indicated that the Property will continue to be occupied in breach of the Agricultural Occupancy Condition and that she has no intention of selling the property.

Given that reoccupation of the property by a qualifying person (agricultural worker) would reactivate the occupancy condition and significantly reduce the value and saleability of the property, it seems inconceivable that the property will ever be occupied by a qualifying person again. Condition (2) will therefore remain unenforceable and is therefore unnecessary and unreasonable. Thus, 3 of the 6 tests laid down in the NPPG are not met and the condition should be removed.

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5 LOCAL AUTHORITY DECISIONS

The issue of the removal of an Ag Tie following the granting of a Certificate of Lawful Existing Use has been considered numerous times at Local Authority Level and at Appeal. The following s.73 application have all been decided by Local Authority level and all considered identical circumstances to that occurring here, where a CLEUD had initially been granted and a section 73 application was then made for the removal of the Ag Tie. In all cases the Local Planning Authorities found that the Certificate of Lawful Existing Use to be a material consideration, which overrode the Development Plan Policy. In all cases there was no requirement to market the property for sale and in all cases the section. 73 application was granted.

Ryedale District Council	21/01594/s73A	s.73 granted following the approval of a CLEUD (10 year breach of condition)	Granted 4th February 2022
Horsham District Council	DC/21/0520	s.73 granted following the approval of a CLEUD (10 year breach of condition)	Granted 4th May 2021
Horsham District Council	DC/20/2322	s.73 granted following the approval of a CLEUD (10 year breach of condition)	Granted 22nd February 2021
Three Rivers District Council	21/0400/FUL	s.73 granted following the approval of a CLEUD (10 year breach of condition)	Granted 16th April 2021
South Somerset District Council	21/00275/s73	s.73 granted following the approval of a CLEUD (10 year breach of condition)	Granted 19th March 2021
Chelmsford City Council	67/668/s73	s.73 granted following the approval of a CLEUD (10 year breach of condition)	Granted 23rd February 2021
Bromsgrove District Council	20/00868/s73	s.73 granted following the approval of a CLEUD (10 year breach of condition)	Granted 10th September 2020
South Somerset District Council	19/00582/s73	s.73 granted following the approval of a CLEUD (10 year breach of condition)	Granted 17th May 2019
South Somerset District Council	21/00275/s73	s.73 granted following the approval of a CLEUD (10 year breach of condition)	Granted 17th May 2019
Cotswold District Council	17/02258/FUL	s.73 granted following the approval of a CLEUD (10 year breach of condition)	Granted 11 July 2017
Three Rivers District Council	20/00582/s73	s.73 granted following the approval of a CLEUD (10 year breach of condition)	Granted 19th February 2021
Gloucester City Council	17/00639/OUT	s.73 granted following the approval of a CLEUD (10 year breach of condition)	Granted 15th August 2017
East Lindsey District Council	S/023/00904/21	s.73 granted following the approval of a CLEUD (10 year breach of condition)	Granted 17th June 2021
Maidstone Borough Council	21/504572/FUL	s.73 granted following the approval of a CLEUD (10 year breach of condition)	Granted 1st November 2021
Forest Of Dean District Council	P1522/20/FUL DF5846	s.73 granted following the approval of a CLEUD (10 year breach of condition)	Granted 2nd November 2020

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In application 21/01594/s73A, granted on 4th February 2022, Ryedale District Council concluded that:

> *Policy SP21(g) requires, that for an agricultural occupancy condition to be lifted, the submission of up to date documentary evidence showing that there is no demand for the accommodation in its current status. There is no evidence of this exercise being completed, and, therefore, it has not been demonstrated that the proposal satisfies the requirements of Policy SP21(g)(ii). However, it is acknowledged that the supporting statement notes the "applicant has indicated that the Property will continue to be occupied in breach of the Agricultural Occupancy Condition and given that reoccupation of the Property by a qualifying person would reactivate the occupancy condition and significantly reduce the value and saleability of the Property, it seems inconceivable that the Property will ever be occupied by a qualifying person again."*
>
> *The existence of the CLEUD is a relevant material consideration and represents the 'fallback' position that the dwelling can be lawfully occupied without compliance with the terms of Condition 3. The Agent has also provided details of various similar applications and in all of these cases, the Inspectors allowed the appeals and granted the Section 73 applications, having found the presence of the CLEUD certificates to be a material consideration which overrides any conflict with the development plan.*
> *Following review, it is therefore considered that in this case, the conflict with Policy SP21 is outweighed by the fallback position to which significant weight is attached. The condition is no longer necessary and in light of the NPPF position, it is concluded it would be unreasonable to retain its imposition. In light of this permission is granted to delete the relevant agricultural occupancy conditions.*
> *It is also noted that no responses have been received from the occupiers of any neighbouring properties.*

In application, DC/20/2322, granted by Horsham District Council in February 2021, Para 6.9 of the Officers Report concluded that:

> *Irrespective of the planning merits of the proposed removal of condition, and its performance against development plan policy, it is considered that the lawful occupation of the existing dwelling in breach of condition as confirmed by the preceding grant of a certificate of lawfulness represents an overriding material consideration. It is not considered that the Authority possesses sufficient grounds to reasonably resist the proposal to remove condition 4 in relation to ref: SR/78/86, which would no longer be deemed to satisfy requirements set out at paragraph 55 of the NPPF. It is, therefore, recommended that this application to remove condition 4 in relation to ref: SR/78/86 is approved.*

Application S/023/00904/21, decided by East Lindsey District Council in June 2021 also considered an application to remove and Agricultural Occupancy Condition that had been breached for more than 10 years. The Authority agreed that the CLEUD was a material consideration, and a section 73 application was approved on 17th June 2021 for the removal of the Agricultural Occupancy Conditions.

Officers Reports for all three decisions are attached at Annex C

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6 APPEAL DECISIONS

The matter has also been considered at Appeal and the following Appeals all consider the removal of an Agricultural Occupancy Condition (AOC) following the granting of a Certificate of Lawful Existing Use. In all cases the Inspectors allowed the Appeals and granted the s.73, having found the presence of a Certificate of Lawful Existing Use to be a material consideration, which overrides any conflict with the Development Plan.

7.1 App/R3325/W/20/3255645 – South Somerset District Council (Annex D)

An Appeal was submitted after the refusal of a section 73 application by South Somerset District Council. The main issue under consideration was whether the condition restricting the occupation of the dwelling to agricultural, forestry and the keeping of horses for livery was still necessary, reasonable and enforceable.

Prior to the submission of the section 73 application, a Certificate of Lawful Existing Use was granted following a 10-year breach of the occupancy condition. The Inspector identified that the property could therefore be occupied in breach of the occupancy condition by non-qualifying persons in perpetuity.

The Council's reason for refusal were as follows:

> *"The application fails to demonstrate that the dwelling is no longer required within the local agricultural, forestry, or equestrian community and no marketing has been undertaken for the requisite time period. It has not been demonstrated that the occupancy condition serves no useful purpose. Therefore, the proposal is considered to be contrary to policy HG10 of the South Somerset Local Plan (2006 - 2028) and the Planning Practice Guidance - Planning obligations.*

However, the Inspector disagreed and stated that Section 38(6) of the Planning and Compulsory Purchase Act required decisions to be made in accordance with the development plan unless material considerations indicated otherwise. In this instance he found that the presence of the Certificate of Lawful Existing Use was a material consideration to which he gave significant weight.

He also considered the contention made by the Council that it would be able to take enforcement action following a break in occupation or subsequent occupation by a qualifying person, however he stated that given the immediate impact on capital value such action would cause, it was highly unlikely to occur.

In conclusion the Inspector allowed the Appeal and granted the removal of the Agricultural Occupancy Condition.

7.2 App/M9496/W/19/3233160 – Peak District National Park Authority (Annex E)

An Appeal was submitted by Mr Simpson after the refusal of a section 73 application by Peak District National Park Authority. The section 73 application followed the granting of a Certificate of Lawful Existing Use, however the Council failed to take this into consideration and refused the application as they considered the site to be in an isolated location and as such not acceptable for residential development without an agricultural need.

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The Inspector identified the main issue to be whether the condition continued to meet the 6 tests for planning conditions contained in the National Planning Policy Framework.

The Inspector stated that "*whilst it may be possible that the appeal dwelling could be occupied in the future by a person who complied with Condition 5, or that the appeal dwelling could be left vacant for a significant period of time, thereby extinguishing the CLUD, these situations are both hypothetical. They may not take place for a considerable period of time and may not take place at all.*
At present, the appeal condition has no function with regard to the existing lawful use of the dwelling and is currently immune from enforcement action."

He therefore concluded that the Agricultural Occupancy Condition was "*not necessary, enforceable or reasonable and so does not meet three of the six tests for planning conditions contained in the Framework. As such its removal would be acceptable".*

7.3 App/H1840/W/18/3196410 – Wychavon District Council (Annex F)

In another Appeal that considered virtually identical circumstances, the Inspector overturned the decision of Wychavon District Council, who had refused to remove an Agricultural Occupancy Condition following the granting of a Certificate of Lawful Existing Use.

The Inspector identified that removing the condition, would result in an open market dwelling in the open countryside, which would conflict with Policy SWDP 2 of the South Worcestershire Development Plan, however the presence of a Certificate of Lawful Existing Use, rendered the Ag Tie unenforceable in all practical purposes and was a material consideration, which would outweigh any conflict with the Development Plan.

He concluded it was no longer necessary or reasonable to retain the Agricultural Occupancy Condition and allowed the Appeal.

7.4 App/Y9507/W/16/3147251 - South Downs National Park Authority (Annex G)

An Appeal was submitted after a s.73 application for the removal of an Agricultural Occupancy Condition was refused by South Downs National Park Authority. The LPA maintained that the Agricultural Occupancy Condition could only be removed where it had been demonstrated that there was no longer a demand for such dwellings in the area (Saved Policy RE19 of the Local Plan).

The Inspector agreed that the appellants had not demonstrated a lack of demand for the dwelling, as they had not undertaken any formal marketing. However, he identified that the appellants had obtained a Certificate of Lawful Existing Use, which allowed the property to be occupied in breach of the Agricultural Occupancy Condition. He stated that while the Agricultural Occupancy Condition (AOC) was originally necessary, the existence of the Certificate of Lawful Existing Use had the effect of making the AOC *"unenforceable for all practical purposes".* He considered this background to be a significant material consideration that weighed in favour of the removal of the condition. He noted that an Inspector adopted a similar approach in an Appeal against the East Riding of Yorkshire (see section 7.1) and whilst that Appeal was a number of years ago, the tests to be applied when imposing conditions had not materially changed over time and were still included within National Planning Policy. He found that despite the conflict with Local Plan, the presence of the Certificate of Lawful Existing Use was an overriding

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consideration. He concluded the occupancy condition no longer accorded with the 6 tests and instructed it to be removed.

7.5 App/B6855/A/12/2185609 - City and County of Swansea Council (Annex H)

An Appeal was submitted after a s.73 application for the removal of an Agricultural Occupancy Condition was refused by the City and County of Swansea Council (LPA). The LPA maintained that the Agricultural Occupancy Condition could only be removed where it had been proven that there was no longer an agricultural need, in line with Policy EV20 of the Development Plan. However, the Inspector identified that a Certificate of Lawful Existing Use had been granted which allowed continued occupation of the property in breach of the disputed Agricultural Occupancy Condition. The Occupancy Condition that the s.73 application applied to remove, was therefore immune from enforcement action. The Inspector referred to Circular 35/95 "The Use of Planning Conditions" which stated that conditions should satisfy a number of tests, including that they were enforceable. In this case the Inspector stated that the Certificate made it impossible for the Council to enforce against a breach of the condition. He found that the condition was unenforceable and effectively redundant, as the immunity could be passed on to future occupiers of the property.

He concluded that the disputed condition was unnecessary and unnecessarily restrictive and instructed that the Appeal be allowed and the condition removed.

7.6 APP/M3645/A/12/2168175 – Tandridge District Council (Annex I)

An Appeal was submitted under section 78 of the Town and Country Planning Act 1990, after a s.73 application was refused by Tandridge District Council.

The main issue under consideration was whether the proposal complied with national and local policies relating to agricultural workers dwellings and if not, whether there was any overriding material planning considerations.

The LPA maintained that the Agricultural Occupancy Condition could only be removed where it had been proven that there was no longer an agricultural need, in line with Policy RE25 of the Development Plan. However, the Inspector identified that a Certificate of Lawful Existing Use had been granted which allowed continued occupation of the property in breach of the disputed Agricultural Occupancy Condition and this was "Highly material" to the case and this led him to the conclusion that the condition was no longer necessary and failed for meet at least one of the tests of Circular 11/95: The Use of Conditions in Planning Permissions. Accordingly, he allowed the appeal and removed the occupancy condition.

In the corresponding Costs Decision, the Inspector stated that the Council had not provided a respectable basis for its stance and considered that their unreasonable behaviour had caused the appellant to incur unnecessary expense. The Inspector awarded a full award of costs.

7.7 App/E2001/A/02/1104141 - East Riding of Yorkshire Council (Annex J)

An Appeal was submitted after a s.73 application was refused by East Riding of Yorkshire Council. Prior to the submission of the s.73 application, a Certificate of Lawful Existing Use had been granted by the Council which confirmed that the occupation of the dwelling by a person not wholly or mainly employed in agriculture, was lawful.

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The Certificate was issued as the Council accepted that the breach had been occurring continuously for a period in excess of 10 years.

The Inspector was asked to consider whether the refusal by the Council to remove the occupancy condition, given the existence of the Certificate, was justified.

The Inspector found that although the proposal would conflict with the Development Plan, the fall-back position created by the Certificate of Lawful Existing Use was an overriding material consideration. He allowed the Appeal and removed the Agricultural Occupancy Condition.

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6 CONCLUSIONS

The NPPF and NPPG state that there needs to be a definite planning reason for the imposition of a condition on a planning permission, and conversely, where there is no longer a reason for the condition, a s.73 application can be made for its removal.

Cranesgate Farm has been occupied for over 10 years continuously in breach of condition (2) of Planning Permission (Ref: H23/1926/88). This has been proven by the Certificate of Lawful Existing Use, issued under Ref. H23/1085/21 and since the granting of the Certificate, the breach has continued to occur.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be made in accordance with the Development Plan unless material considerations indicate otherwise. The Certificate of Lawful Existing Use constitutes a material consideration.

Since the condition attached to Cranesgate Farm is no longer enforceable, it is also considered to be unnecessary and unreasonable. An application under section 73 of the Town and Country Planning Act 1990 is therefore sought for the removal of Condition (2) on the basis that it fails to meet the relevant tests laid down in the National Planning Policy Framework and National Planning Policy Guidance.

For the last 10 years, the occupier of Cranesgate Farm has not been employed or last employed in agriculture and there is no prospect of the Occupancy Condition ever being complied with in the future.

In light of the above material considerations, it is requested that condition (2) of permission H23/1926/88, be removed.

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ANNEX A – PLANNING PERMISSION (REF: H23/1926/88)

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TOWN AND COUNTRY PLANNING ACT 1971

PLANNING PERMISSION

REFERENCE : H23/1926/88

DATE RECEIVED : 19 12 88

APPLICANT : Mr & Mrs Pocklington
27 Spalding Road
Holbeach
SPALDING
Lincs

AGENT : Broadgate Builders
Broadgate
Weston Hills
SPALDING
Lincs

TYPE : Full GRID REF : 533620 323880

DESCRIPTION : Proposed dwelling with access and garage

LOCATION : Cranesgate, Whaplode, Spalding

The South Holland District Council hereby gives notice that permission has been granted for the carrying out of the development in accordance with the application and plans submitted, subject to the following condition(s):

1. The development must be begun not later than the expiration of five years beginning with the date of this permission.

   Reason: As required by Section 41 of the Town and Country Planning Act 1971

2. 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.

   Reason: The site is in a rural area where it is the policy of the Local Planning Authority not to permit residential development except in the interests of agriculture or where related to the use of the land. The circumstances of this case relate to an agricultural need, and permission is therefore confined to it.

3. Before the dwelling is occupied, a scheme of landscaping and tree planting for the site, including details of positions, heights on planting, and species of trees and shrubs, shall be submitted to and approved by the Local Planning Authority.

   Reason: In the interests of visual amenity.

Cont/....

IMPORTANT NOTE
This permission refers only to that required by the Town and Country Planning Acts.
If approval is required under the Building Regulations or any other enactment, this must be obtained separately.

SOUTH HOLLAND DISTRICT COUNCIL

B. SMITH M.R.T.P.I., DISTRICT PLANNING OFFICER
CHATTERTON TOWER, WINFREY AVENUE, SPALDING, LINCOLNSHIRE TELEPHONE: SPALDING 61161

4. The approved scheme of landscaping and/or screening shall be carried out in its entirety within a period of two years beginning with the date on which development of the land is commenced, or within such longer period as may be agreed in writing with the Local Planning Authority. The trees, shrubs or bushes shall be adequately maintained by the owner(s) of the land on which they are situated for a period of ten years beginning with the date of completion of the scheme, and all losses shall be made good during that period.

   Reason: In the interests of visual amenity and to ensure that the approved scheme is implemented satisfactorily.

District Planning Officer
12th January 1989

ANNEX B – CERTIFICATE OF LAWFUL EXISTING USE (REF: H23/1085/21)

All rights reserved
Regulated by RICS

Mrs S Long
Cranesgate Farm
Cranesgate North
Whaplode St Catherine
Spalding
PE12 6TY

Council Offices
Priory Road
Spalding
Lincolnshire
PE11 2XE
Admin 01775 764725
DC Officers 01775 764703

planningadvice@sholland.gov.uk
www.sholland.gov.uk

TOWN AND COUNTRY PLANNING ACT 1990
LAWFUL USE CERTIFICATE

Reference:	H23-1085-21	**Date of Decision:**	13th December 2021
Applicant:	Mrs S Long Cranesgate Farm Cranesgate North Whaplode St Catherine Spalding PE12 6TY		
Location:	Cranesgate Farm Cranesgate North Whaplode St Catherine Spalding		
Description:	Occupation of dwelling by persons not employed in agriculture (H23-1926-88 - Condition 2)		

South Holland District Council hereby give notice that on the date of the application the use, operations or matter described below was LAWFUL within the meaning of Section 191 of The Town and Country Planning Act 1990 for the reasons set out below:

1 Schedule 1 - Description of Use or Operation:

Occupation of dwelling by persons not employed in agriculture.

Schedule 2 - Land Specified:

Cranesgate Farm, Cranesgate North, Whaplode St Catherine (as outlined in red on the attached plan).

Reason for determining the use, operations or other matters to be lawful:

There has been a continuous breach of the agricultural occupancy condition for at least the last ten years and the breach is still continuing.

2 Notes:

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 as amended. It certifies that the use, operations or matter specified in Schedule 1 taking place on the land described in Schedule 2 was or would have been lawful on the date of the application, and thus was not or would not have been liable to enforcement action under Section 172 of the 1990 Act on that date.

This Certificate applies only to the extent described in Schedule 1 and to the land specified in Schedule 2 and on the attached plan. Any use, operation, or other matter which is materially different from that described, or which relates to other land, may render the owner or occupier liable to enforcement action.

Notes:

The determined plans are:
1:1250 Location Plan dated 26 August 2021.



Phil Norman
Planning Manager
South Holland District Council

BUILDING REGULATIONS:
This decision refers only to planning permission as granted under the Town and Country Planning Act 1990. The works that you are proposing may also require Building Regulations and this planning permission does not give authority under Building Regulations to commence work. Please contact the Building Control section for further information on 01775 764557 or bcadmin@sholland.gov.uk

DC_FINAL_DECISION - ODB:14

RIGHTS OF APPEAL

Appeals to the Secretary of State

If you are aggrieved by the decision of your Local Planning Authority to refuse permission for the proposed development or grant consent subject to conditions, then you can appeal to the Secretary of State under Section 78 of the Town and Country Planning Act 1990 or Section 20 of the Planning (Listed Building and Conservation Areas) Act 1990.

Timescales for appealing

The deadlines for appeals are calculated from the **date of decision** and are as follows for the types of applications below:

12 Weeks	6 Months	8 Weeks
Householder Applications	Planning Permission	Consent to Display Adverts
Minor Commercial Development	Listed Building Consent	
Agricultural Determinations	Other Prior Approval Applications	
Householder Prior Approval Applications		

If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planning inspectorate.gov.uk) at least 10 days before submitting the appeal. Further details are on GOV.UK.

Enforcement Notices

If an enforcement notice was served prior to the planning application being determined then the deadline for appealing is 28 days from the date of the **planning refusal**.

If an enforcement notice is served after the planning application is determined then the deadline for appealing is 28 days from the date of the **enforcement notice** OR **the timescales stated above for each application type** from the date of the planning refusal - whichever is sooner.

Appeals can be made online at: https://www.gov.uk/planning-inspectorate. If you are unable to access the online appeal form, please contact the Planning Inspectorate to obtain a paper copy of the appeal form on tel: 0303 444 5000.

The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to the Secretary of State that the

Local Planning Authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under the order.

Purchase Notices

If either the Local Planning Authority or the Secretary of State refuses permission to develop land or grant it subject to conditions the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor can he render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of the Part VI of the Town and Country Planning Act 1990 or Section 32 of the Planning (Listed Building and Conservation Areas) Act 1990.

Compensation

In certain circumstances compensation may be claimed from the Local Planning Authority if permission is refused or granted subject to conditions by the Secretary of State on appeal or on reference of the application to him.

These circumstances are set out in Section 114 and related provisions of the Town and Country Planning Act 1990 and Section 27 of the Planning (Listed Building and Conservation Areas) Act 1990.

ANNEX C – LOCAL AUTHORITY OFFICER REPORTS

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[] Remove or Vary a condition

S/023/00904/21 **APPLICANT:** Mr. P. & Mrs. T. Rodgers,

VALID: 06/05/2021 **AGENT:** Gateway Planning Consultants,

PROPOSAL: Section 73 application in relation to condition no. 3 (agricultural occupancy) as imposed on planning permission reference no. S/023/1261/81 for erection of a bungalow and garage in connection with agriculture.

LOCATION: SOUTH VIEW, BILLGATE LANE, BURGH LE MARSH, SKEGNESS, PE24 5AF

1.0 REASONS FOR NONE COMMITTEE CONSIDERATION

1.1 The proposal falls within the Council's scheme of delegation.

2.0 THE SITE AND SURROUNDINGS

2.1 South View is situated approximately 1.0 km (0.62 miles) southeast of Burgh le Marsh and approximately 5.7 km (3.5 miles) west of Skegness. Vehicular and pedestrian access is via a driveway leading directly off Billgate Lane. It is outside the main body of the village and in the broader open countryside although there is a dwelling immediately next door and a commercial premises to the rear.

2.2 South view is a simple, modest looking bungalow with proportionate grounds around the dwelling.

3.0 DESCRIPTION OF THE PROPOSAL

3.1 This section 73 application (s.73) seeks to remove the Agricultural Occupancy Condition applied to South View, Billgate Lane, Burgh Le Marsh, as condition (3) of Outline Planning Permission E/23/1261/81, granted on 9th July 1981. Therefore, if the application is approved a new approval would be granted, without the said condition so that market housing could continue at the site without occupancy restriction.

4.0 CONSULTATION

4.1 Set out below are the consultation responses that have been received on this application. These responses may be summarised and full copies are available for inspection separately. Some of the comments made may not constitute material planning considerations.

Publicity

4.2 The application has been advertised by means of a site notice displayed on the neighbouring bridge and neighbours have been notified in writing.

Consultees

4.3 TOWN COUNCIL – No reply

4.4 LCC HIGHWAYS AND LEAD LOCAL FLOOD AUTHORITY - No objection

4.5 ENVIRONMENTAL SERVICES (Environmental Protection) - No reply

4.6 ENVIRONMENTAL SERVICES (Drainage) - No reply

4.7 ENVIRONMENTAL SERVICES (Contamination) - No reply

Neighbours

4.8 None received

4.9 The Ward Councillor is aware of the application via the Weekly List.

5.0 RELEVANT SITE HISTORY

5.1 1261/81 - Outline approval for erection of a bungalow and garage in connection with agriculture. Approved and condition 3 limits occupancy for an agricultural worker.

5.2 1622/81 – Reserved matters approved.

5.3 1320/84 - Full pp granted for the adjoining bungalow

5.4 789/21 - Proposal is an application for Certificate of Lawful Existing Use in respect of the occupation of South View, Billgate Lane, Burgh Le Marsh, for a continuous period in excess of 10 Years and in breach of the Agricultural Occupancy Condition applied as condition (3) of Planning Permission E/23/1261/81. Approved.

6.0 PLANNING POLICY

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise. The Development Plan comprises of the East Lindsey Local Plan (adopted 2018), including the Core Strategy and the Settlement Proposals Development Plan Document; and any made Neighbourhood Plans. The Government's National Planning Policy Framework (NPPF) is a material consideration.

East Lindsey Local Plan

SP1-SP4, SP8

National Planning Policy Framework

7.0 OFFICER ASSESSMENT OF THE PROPOSAL

Main Planning Issues

7.1 The main planning issues in this case are considered to be:

Preamble

7.2 This is an application made under section 73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission. Where an application under section 73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact and unamended. NPPG paragraph 031 says "in deciding an application under section 73, the Local Planning Authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application" and "It should be noted that the original planning permission will continue to exist whatever the outcome of the application under section 73. A decision notice describing the new permission should be issued, setting out all of the conditions related to it.

7.3 To assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. In granting permission under section 73 the Local Planning Authority may also impose new conditions – provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission.

7.4 The section makes it clear that in considering such an application a Local Planning Authority may only consider the "question of the conditions". However, in terms of decision making a sec.73 application should be treated just like any other application, and due regard paid to the development plan and other material considerations.

Considerations

7.5 The site is within Flood Zone 3 and the Coastal Flood area as defined by the Local Plan and therefore the Coastal Policies of the Local Plan apply. As such SP17 and SP18 are relevant and generally preclude housing in the coastal zone, but irrespective of this the rural location is not suitable for housing unless special circumstances apply.

7.6 SP8 provides further guidance on housing development in the open countryside and states that a number of exceptions will apply to the presumption against development, one of which is *"new houses for rural workers"*, which will be permitted provided there is a full time, functional need for the worker, the activity has been established for at least 3 years and the housing need cannot be met by an existing unit on the site.

7.7 SP8 goes on to state that "Applications for the loss of a dwelling with an agricultural tie should clearly demonstrate that it is has been actively marketed for 12 months in an appropriate place and at a price that reflects the occupancy restriction."

7.8 As South View is not identified as being within a settlement boundary, it falls within the open countryside. As such, open market housing would not be supported in this location. In the context of Policy SP18 and SP8 the removal of Condition (3) of Planning Permission E/23/1261/81 would result in an open market dwelling in the open countryside. Therefore, the proposal would conflict with the Development Plan as no marketing at a price that reflects the occupancy restriction has taken place.

7.9 However a fall-back position exists which is a material consideration.

7.10 In this case, the agricultural restriction (condition 3) has been breached for a continuous period in excess of 10 years and the breach is now outside the time limit for enforcement action. A Certificate of Lawful Use application has recently been approved to confirm this (Ref: S/023/00789/21). The benefits the Certificate provides are transferable to subsequent owners and occupiers, therefore the property can be occupied in breach of condition (3) in perpetuity. This carries significant weight as a fall-back position and is a material consideration in this application.

7.11 In line with guidance contained within the NPPF and NPPG, planning conditions should only be imposed where there is a definite need for them. The same principle applies when considering whether or not to approve an application to vary or remove them. Any planning condition that fails one of the above six tests outlined cannot be justified.

7.12 South View comprises a detached bungalow and garden. There is no agricultural land owned or associated with the Property and therefore it is highly unlikely that a qualifying person will occupy the property again. In addition to that fact, should a qualifying individual occupy the property, they would reactivate the occupancy restriction and immediately devalue the property by 30% of its market value. It must therefore be considered, that not only is the condition unenforceable, but it will also remain unenforceable and is therefore unnecessary and unreasonable. Thus, 3 of the 6 tests laid down in the NPPG are not met.

7.13 Whilst condition (3) was considered necessary for the original granting of

the planning permission in 1981, the breach of the condition and the ensuing Certificate supersedes this and forms a significant fall-back position for the Applicants. This material consideration carries substantial weight when undertaking the planning balance.

7.14 The applicant has provided details of various appeal decisions (some with costs) from around the country where a similar scenario occurs. In all cases, the Inspectors allowed the Appeals and granted the s.73s, having found the presence of a Certificate of Lawful Existing Use to be a material consideration, which overrode any conflict with the Development Plan. In some cases the LPA argued that the Council could take enforcement action following any break in occupation, or that reoccupation by a qualifying person would break the continuity of the breach. However, it should be noted that any subsequent compliance would significantly reduce the open market value of the property, and any qualifying person would be presented with an immediate impact on capital value. Given the potential risk to both the seller and a qualifying person such a scenario as proposed by the LPA is unlikely to happen.

7.15 Should this application be approved, consideration need to be given to whether any of the other conditions imposed on E/23/1261/81 should be re-imposed. Only 3 conditions were imposed. Conditions 1 and 2 are the model conditions relating to the submission of reserved matters and commencement of development. These need not be repeated as they have already been satisfied. In addition, the third condition is the one subject to this application. Therefore no conditions need to be re-imposed.

8.0 CONCLUSION

8.1 South View has been occupied for over 10 years continuously in breach of condition (3) of planning permission Ref. E/23/1261/81. A Certificate of Lawful Existing Use application has been approved under Ref. S/023/00789/21 to confirm this fact.

8.2 This section 73 application does not comply with subsection (3) of Local Plan policy SP8 which requires applications for the loss of a dwelling with an agricultutral tie to be marketed for 12 months at an appropriate place and at a price that reflects the occupancy restriction. This has not been undertaken.

8.3 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be made in accordance with the Development Plan unless material considerations indicate otherwise. In this case the continuous breach of the terms of condition (3) has rendered it unenforceable whilst the breach continues, and this this has been confirmed by the recently approved Certificate of Lawful Existing Use. This breach and the Certificate constitute a material consideration. Whilst in theory, the breach of condition could be broken and occupation in

accordance with the condition could resume, there is little prospect of this happening and is an extremely unlikely scenario. It's in neither the applicant or potential purchasers interest to do so.

8.4 In light of this, it's a material consideration that outweighs the requirements of SP8 (3) and therefore the occupancy restriction can be removed.

8.5 This conclusion has been arrived at having taken into account all other relevant material considerations, none of which outweigh the reasons for the officer recommendation made below.

9.0 OFFICER RECOMMENDATION: approval – no conditions.

RECOMMENDATION:

subject to the following conditions:

PLANNING APPLICATION REPORT: DELEGATED APPROVAL

Application No.	21/01595/73A
Parish:	Appleton-le-Street Parish Meeting
Applicant:	Janet and Dawn Scholefield
Location:	Highfield Main Street Appleton Le Street Malton YO17 6PG
Proposal:	Removal of Condition 04 of planning approval 97/00239/FUL dated 16.05.1997 and Condition 01 of planning approval 97/01017/FUL dated 10.03.1998 to allow the removal of the Agricultural Occupancy Conditions.

CONSULTATIONS:

Appleton-le-Sreet Parish Meeting
Representations:
Overall Expiry Date: 7 January 2022

POLICIES:

Local Plan Strategy -Policy SP1 General Location of Development and Settlement Hierarchy
Local Plan Strategy - Policy SP2 Delivery and Distribution of New Housing
Local Plan Strategy -Policy SP9 The Land-Based and Rural Economy
Local Plan Strategy - Policy SP13 Landscapes
Local Plan Strategy - Policy SP16 Design
Local Plan Strategy - Policy SP20 Generic Development Management Issues
Local Plan Strategy - Policy SP21 Occupancy Restrictions
National Planning Policy Framework
National Planning Practice Guidance

SITE:

The application site is a dwelling known as Highfield and is situated on the west side of Willow Bank off the B1257 and within the village of Appleton Le Street. It is located outside of the Village Development Limits and a number of farm buildings are under the same ownership, with open farmland to the south. The site falls within the Howardian Hills of Outstanding Natural Beauty.

PROPOSAL:

Removal of Condition 04 of planning approval 97/00239/FUL dated 16.05.1997 and Condition 01 of planning approval 97/01017/FUL dated 10.03.1998 to allow the removal of the Agricultural Occupancy Conditions.

The supporting statement notes "*A Certificate of Lawful Existing Use (CLEUD) was granted on 26th November 2021 (Ref: 21/00941) which confirms that the Agricultural Occupancy Condition has been breached for a continuous period in excess of 10 years.*

The applicant has no intention of ever complying with the Agricultural Occupancy Condition again and the Certificate will pass with the Property to subsequent owners, who are also unlikely to ever comply with the Agricultural Occupancy Condition.

In light of the Certificate of Lawful Existing Use, it is considered that the AOC is no longer enforceable, necessary or relevant. The applicant is therefore seeking removal of the Condition."

HISTORY:

The most relevant planning history is as following:

97/00239/FUL - Erection of a bungalow with roof storage area and attached double garage. Permission granted on 22nd May 1997.

Condition 4 of 97/00239/FUL notes:

"The occupation of the dwelling hereby permitted shall be limited to a person solely or mainly working or last working in the locality in agriculture (as defined in Section 336 of the Town & Country Planning Act, 1990) or in forestry, or a widow or widower of such a person or to any resident dependant(s)."

97/01017/FUL - Erection of a bungalow with roof storage area and attached double garage (amended siting and floor level to Approval 97/00239/FUL dated 16.05.97). Permission granted on 9th March 1998.

Condition 1 of 97/01017/FUL notes that:

"The occupation of the dwelling hereby permitted shall be limited to a person solely or mainly working or last working in the locality in agriculture (as defined in Section 336 of the Town & Country Planning Act, 1990) or in forestry, or a widow or widower of such a person or to any resident dependant(s).

Reason:- The development would be unacceptable unless justified by the local needs of agriculture or forestry."

99/00599/FUL - Erection of a pigeon loft. Permission granted on 12th August 1999.

21/00941/CLEUD: Certificate of Lawfulness in respect of the occupation of the dwelling known as Highfield in breach of the agricultural occupancy condition of approvals 97/00239/FUL dated 16.05.1997 and 97/01017/FUL dated 10.03.1998 for a period greater than 10 years before the date of this application. Certificate of Lawfulness issued on the 26th November 2021.

Reason 1 on this Decision Notice confirmed: "*On the balance of probabilities and having carefully considered all the available evidence in the assessment of this application, the Local Planning Authority is satisfied that there has been a breach of planning control in respect of the identified breach of condition and residential occupation of the dwelling known as Highfield for the identified period of more than 10 years. The supporting evidence is considered to be sufficiently precise and unambiguous to allow the granting of a certificate of lawful development."*

This Decision Notice therefore confirms that the Local Planning Authority accept that neither of the Applicants accorded with this condition within the identified 10 year period and the dwelling was therefore occupied in breach of the agricultural occupancy condition for this time period. This continues to be the case. The Applicants have consequently acquired immunity from potential enforcement action.

APPRAISAL:

The submitted supporting statement concludes "*The NPPF and NPPG state that there needs to be a definite planning reason for the imposition of a condition on a planning permission, and conversely, where there is no longer a reason for the condition, a s.73 application can be made for its removal.*

Highfield has been occupied for over 10 years continuously in breach of condition (04) of Planning Permission (Ref:97/00239/FUL), and condition (01) of Planning Permission (Ref: 97/01017/FUL). This has been proven by the Certificate of Lawful Existing Use, approved under Ref. 21/00941 and since the granting of the Certificate, the breach has continued to occur.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be made in accordance with the Development Plan unless material considerations indicate otherwise. The Certificate of Lawful Existing Use constitutes a material consideration.

Since the condition attached to Highfield is no longer enforceable, it is also considered to be unnecessary and unreasonable. An application under section 73 of the Town and Country Planning Act 1990 is therefore sought for the removal of condition (04) of Planning Permission (Ref: 97/00239/FUL), and condition (01) of Planning Permission (Ref: 97/01017/FUL) on the basis that they fail to meet the relevant tests laid down in the National Planning Policy Framework and National Planning Policy Guidance.

For the last 10 years, the occupiers of Highfield have not been employed or last employed in agriculture and there is no prospect of the Agricultural Occupancy Condition ever being complied with in the future.

In light of the above material considerations, it is requested that condition (04) of Planning Permission (Ref: 97/00239/FUL), and condition (01) of Planning Permission (Ref: 97/01017/FUL) be removed."

This statement also indicates the perceived 'fallback position' where they indicate that the Certificate of Existing Lawfulness (CLEUD) could be transferable to subsequent owners and occupiers in breach of the agricultural occupancy condition in perpetuity.

Paragraph 56 of the revised National Planning Policy Framework is relevant in the determination of this application and it states "*Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects."*

As per the National Planning Practice Guidance, this policy requirement is referred to as the '6 tests.' The supporting statement contends that *"The applicant has indicated that the Property will continue to be occupied in breach of the Agricultural Occupancy Condition and given that reoccupation of the Property by a qualifying person would reactivate the occupancy condition and significantly reduce the value and saleability of the Property, it seems inconceivable that the Property will ever be occupied by a qualifying person again. Condition (04) of Planning Permission (Ref: 97/00239/FUL), and condition (01) of Planning Permission (Ref: 97/01017/FUL) will therefore remain unenforceable, unnecessary, and unreasonable. Thus, 3 of the 6 tests laid down in the NPPG are not met"*

In assessing this application, consideration has also been given as to whether the proposal would comply with the policies of the Development Plan and, if not, whether there are any overriding material considerations.

Policy SP2 (Delivery and Distribution of New Housing) restricts dwellings in the open countryside to those necessary to support the land-based economy where an essential needs for residential development in that location can be justified.

Policy SP21 relates to occupancy restrictions and sets out the conditions used to ensure that developments are occupied for the purposes for which they are intended and justified. It states that for such dwellings associated with agricultural activity "*a condition will be applied requiring that the dwelling remains available in perpetuity for use by a person/s employed full-time in agriculture/forestry or other enterprise for which a dwelling in the particular location is considered essential".*

Policy SP21(g) requires, that for an agricultural occupancy condition to be lifted, the submission of up to date documentary evidence showing that there is no demand for the accommodation in its current status. There is no evidence of this exercise being completed, and, therefore, it has not been demonstrated that the proposal satisfies the requirements of Policy SP21(g)(ii). However, it is acknowledged that the supporting statement notes the "*applicant has indicated that the Property will continue to be occupied in breach of the Agricultural Occupancy Condition and given that reoccupation of the Property by a qualifying person would reactivate the occupancy condition and significantly reduce the value and saleability of the Property, it seems inconceivable that the Property will ever be occupied by a qualifying person again."*

The existence of the CLEUD is a relevant material consideration and represents the 'fallback' position that the dwelling can be lawfully occupied without compliance with the terms of Condition 3. The Agent has also provided details of various similar applications and in all of these cases, the Inspectors allowed the appeals and granted the Section 73 applications, having found the presence of the CLEUD certificates to be a material consideration which overrides any conflict with the development plan.

Following review, it is therefore considered that in this case, the conflict with Policy SP21 is outweighed by the fallback position to which significant weight is attached. The condition is no longer necessary and in light of the NPPF position, it is concluded it would be unreasonable to retain its imposition. In light of this permission is granted to delete the relevant agricultural occupancy conditions.

It is also noted that no responses have been received from the occupiers of any neighbouring properties.

A review has been undertaken of the relevant conditions imposed on the permissions 97/00239/FUL and Ref: 97/01017/FUL to ascertain which, if any may need to be reapplied on this new decision notice. It is considered that the removal of permitted development rights should be reapplied and whilst the categories have slightly changed since this original condition was imposed, the same elements will be controlled for consistency. Additionally the condition originally recommended to secure the retention of the existing eastern hedgerow boundary will be reapplied as this is considered important in landscaping the site from public view, as will a condition to prevent additional installation of windows, without the submission of an appropriate application to the Local Planning Authority. This is considered important to protect neighbouring amenity.

RECOMMENDATION: **Approval**

1 Notwithstanding the provisions of Schedule 2, Part 1 of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or amending that Order) development of the following classes shall not be undertaken other than as may be approved in writing by the Local Planning Authority following a specific application in that respect:

Class A: Enlargement, improvement or alteration of a dwellinghouse
Class B: Roof alteration to enlarge a dwellinghouse
Class C: Any other alteration to the roof of a dwellinghouse
Class D: Erection or construction of a domestic external porch
Class E: Provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of a dwellinghouse or the maintenance, improvement or other alteration of such a building or enclosure; or a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.
Class H: Microwave antenna on a dwellinghouse

Reason: To ensure that the appearance of the areas is not prejudiced by the introduction of unacceptable materials and/or structure(s).

2 The existing hedgerow on the eastern boundary of the site shall not be removed without the prior written consent of the Local Planning Authority.

Reason: in the interest of visual amenity in accordance with Policies SP13, SP16 and SP20 of the Ryedale Plan, Local Plan Strategy.

3 Notwithstanding the provisions of Schedule 2, Part 1 of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or amending that Order) no new windows shall be formed in the walls or roof of the dwelling hereby permitted

without the prior written consent of the Local Planning Authority following a specific application in that respect.

Reason: To safeguard amenity and privacy of neighbouring residents in accordance with Policy SP20 of the Ryedale Plan, Local Plan Strategy.

SIGNED:

PP. 

Jill Thompson
Service Manager Planning and Development **Date: 04.02.2022**

Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:
DC/21/0520
Baystone House, Mill Lane, Itchingfield, Horsham, West Sussex, RH13 0NP

DESCRIPTION:
Removal of condition 4 of permission I/20/84 (Erection of Dwelling) to permit occupation unrelated to agriculture or forestry.

RELEVANT PLANNING HISTORY:

I/20/84	Erection of dwelling. (From old Planning History)	Application Permitted on 23.01.1985
I/32/95	Removal of agricultural occupancy condition from i/20/84 Site: Baystone House Itchingfield	Application Refused on 17.01.1996
I/46/01	Certificate of lawful use as to whether there is a breach of the agricultural occupancy restriction Site: Baystone House Itchingfield	Application Permitted on 30.01.2001

SITE AND SURROUNDS
Baystone House is situated approximately 3.8 km (2.4 miles) west of Horsham and approximately 4.0 km (2.5 miles) north west of Southwater. It is located outside of the Built-Up-Area boundary and is considered to be located within the countryside. Baystone House is a detached two-storey dwelling set within approximately 0.09 ha of residential curtilage bordered by woodland and pastureland.

DETAILED DESCRIPTION
This application seeks to remove condition 4 of planning permission I/20/84 granted in 1985 for the erection of a new dwelling at Baystone House. The Agricultural Occupancy Condition (4) restricted occupancy to:

A person solely or mainly employed or, having ceased employment, last employed in the locality in agriculture as defined in section 290(1) of the Town and Country Planning Act 1971, or in forestry (including any dependants of such a person residing with him or her) or a widow or widower of such a person."

A Certificate of Lawful Development was granted in 2002 confirming that the Agricultural Occupancy Condition had been breached for a continuous period in excess of 10 years. Since then the Agricultural Occupancy Condition has continued to be breached and the applicants wish to remove the condition as it is longer necessary or relevant.

RELEVANT PLANNING POLICIES
The National Planning Policy Framework (NPPF)

Horsham District Planning Framework (2015):
Policy 1 - Strategic Policy: Sustainable Development

Policy 3 - Strategic Policy: Development Hierarchy
Policy 10 - Rural Economic Development
Policy 20 - Rural Workers Accommodation
Policy 26 - Strategic Policy: Countryside Protection
Policy 33 - Development Principles

Itchingfield Neighbourhood Plan:
The Itchingfield Neighbourhood Plan has been through the Regulation 16 Public Consultation and is in the process of being Examined by an Independent examiner. At present there is no Made plan.

REPRESENTATIONS AND CONSULTATIONS RESPONSES
Where consultation responses have been summarised, it should be noted that Officers have had consideration of the full comments received, which are available to view on the public file at www.horsham.gov.uk

Consultations:
Reading Agricultural Consultants: There is no longer explicit relevant national planning policy relating to the removal of agricultural occupancy conditions, but Paragraph 55 of the NPPF states that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

It is implicit that the absence of a continuing need for an occupancy condition should be tested before releasing a property into the open market. The Certificate of Lawfulness granted in 2002 confirmed that the occupancy condition had been breached for a continuous period in excess of 10 years. The property continues to be occupied by a person who is not employed in agriculture or forestry.

Baystone House no longer requires an imposed occupancy condition as part of I/20/84. The dwelling no longer forms part of an agricultural holding, nor is it required for occupation by a person employed in agriculture or forestry in the local area, and has not done so since at least 10 years prior to 2002. Overall it is considered that Condition 4 of I/20/84 is no longer appropriate to the dwelling at Baystone House. The applicant has continued to live in breach of the condition since the CLEUD was granted.

Itchingfield Parish Comments:
Itchingfield Parish Council is opposed to the removal of Condition 4 to permit occupation unrelated to agriculture or forestry as the surrounding attached curtilage is land that is agricultural land.

Representations:
None received

HUMAN RIGHTS
Article 8 (right to respect of a private and family life) and Article 1 of The First Protocol (protection of property) of the Human Rights Act 1998 are relevant to the application. Consideration of human rights is an integral part of the planning assessment set out below.

PLANNING ASSESSMENT
This application sees the removal of an agricultural condition (4) attached to planning permission I/20/84, this condition states:

The occupation of the dwelling shall be limited to a person solely or mainly employed or, having ceased employment, last employed in the locality in agriculture as defined in section 290(1) of the Town and Country Planning Act 1971, or in forestry (including any dependants of such a person residing with him or her) or a widow or widower of such a person.

While the national and local planning policy framework has changed significantly in the preceding years, the Horsham District Planning Framework continues through policy 26 to ensure that development is

appropriate to a countryside location, both in terms of the essential need for a countryside location and in terms of its association with rural enterprise, inclusive of the needs of agriculture and forestry. This policy is complemented by policies 10 and 20 of the HDPF, which promote appropriate forms of rural economic development and rural workers accommodation in order to sustain the productive use of land and development of the rural economy.

Policies 2, 3, 4 and 15 of the HDPF, set out the strategy of the development plan in relation to housing growth, seeking to promote market residential development within defined built-up areas and advocating a planned approach to settlement expansion in order to meet housing need. The HDPF does not contain any policies which seek to retain rural workers housing.

The existing policy basis would therefore presume against market residential development in this countryside location. Indeed, an application to remove the agricultural condition was refused in 1996 as it was considered that there continued to be a demand for such dwellings in the area and consequently it would be inappropriate to remove the agricultural occupancy condition.

In this particular instance, however, it is significant that the dwelling subject of this application benefits the grant of a certificate of lawfulness pursuant to ref I/46/01 in 2001. This certificate confirmed that the dwelling had been occupied in non-compliance with the above condition for a continuous period in excess of 10 years. The effect of this certificate is to establish that occupation of the dwelling by persons not solely employed or, retired and last employed in the locality, in agriculture is lawful. This existing certificate of lawfulness therefore confirms that no enforcement action can be taken in respect of condition 4 of the original permission for the dwelling. This certificate and the benefits against enforcement action it provides would be transferable to any subsequent occupiers not employed in agriculture. Consequently, the application site could be occupied in breach of this condition by any non-qualifying persons in perpetuity.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. In this instance the presence of the certificate of lawfulness is a material consideration which is given significant weight.

Paragraph 55 of the NPPF provides that planning conditions must be kept to a minimum and imposed only where *inter alia* necessary, enforceable and reasonable. In the context of a preceding grant of a certificate of lawfulness confirming lawful occupancy in breach of the agricultural occupancy condition, it is not considered that the Authority could reasonably consider that such criteria would remain satisfied in this instance. The Authority, for example, could not enforce the terms of the condition requiring occupancy to be limited to agricultural workers, nor would a condition requiring occupancy to be limited to agricultural workers prove necessary or reasonable where continued occupation in breach of such a condition could lawfully continue in any instance.

Irrespective of the planning merits of the proposed removal of condition, and its performance against development plan policy, it is considered that the lawful occupation of the existing dwelling in breach of condition as confirmed by the preceding grant of a certificate of lawfulness represents an overriding material consideration.

The continued occupation of the dwelling for purposes not related to employment in agricultural would have no material impact on the visual amenities of the site or wider surrounding area or neighbouring amenity. There would be no adverse impact on the setting of the neighbouring amenity or highways impacts.

Recommendation: Application Permitted

POSITIVE AND PROACTIVE STATEMENT

Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including

planning policies and any representations that may have been received, in order to be able to, where possible, grant permission.

Plans list for: DC/21/0520
(The approved plans will form Condition 1 on the Decision Notice of all Permitted applications)

Schedule of plans/documents **approved**:

Plan Type	Description	Drawing Number	Received Date
Supporting Statement		NONE	05.03.2021
Location plan		NONE	05.03.2021

DELEGATED

Case Officer sign/initial Kate Turner Date: 04.05.2021

Authorising Officer sign/initial Guy Everest Date: 04.05.2021

ANNEX D - APPEAL DECISION

APP/R3325/W/20/3255645

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The Planning Inspectorate

Appeal Decision

Site visit made on 19 November 2020

by S Shapland BSc (Hons) MSc CMILT MCIHT

an Inspector appointed by the Secretary of State

Decision date: 17 December 2020

Appeal Ref: APP/R3325/W/20/3255645
Riverside Stables, Lovington, Castle Cary BA7 7PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr and Mrs D and S Bennett against the decision of South Somerset District Council.
- The application Ref 20/01014/S73, dated 9 March 2020, was refused by notice dated 26 May 2020.
- The application sought planning permission for "the continued use of bungalow without compliance with condition 4 of Decision notice 82773 dated 13.5.69 (Agricultural Occupancy Condition) without complying with a condition attached to planning permission Ref 30/88/2203, dated 14 September 1988".
- The condition in dispute is No 2 which states that: *The occupation of the dwelling shall be limited to persons employed or last employed full time locally in agriculture as defined in Section 290 of the Town and Country Planning Act 1971 or in forestry or the keeping of horses for livery (including any dependants of such a person residing with him/her or a widow or widower of such a person).*
- The reason given for the condition is: *The site is within an area where general residential development is not normally permitted and the District Planning Authority wish to ensure that the dwelling remains associated to the needs of agriculture*.

Decision

1. The appeal is allowed and planning permission is granted for continued use of bungalow without compliance with condition 4 of Decision notice 82773 dated 13.5.69 (Agricultural Occupancy Condition) at Riverside Stables, Lovington, Castle Cary BA7 7PS, in accordance with the application Ref 20/01014/S73 dated 9 March 2020, without compliance with condition number 2 previously imposed on planning permission Ref 30/88/2203 dated 14 September 1988.

Main Issues

2. The main issue is whether the condition restricting the occupancy of the dwelling to agricultural, forestry of the keeping of horses for livery is necessary, reasonable and enforceable having regard to local and national planning policies which seek to restrict housing development in the countryside.

Reasons

3. The appeal site comprises a single storey detached dwelling, and includes a stable block with 6 stalls and large riding area. The appeal site is located approximately 1.1 miles north of the village of Lovington. The appeal site is a

rural location and outside of any settlement boundary, and thus is considered to be located within the open countryside.

4. Policy HG10 of the South Somerset Local Plan adopted March 2015 (LP) pertains to the removal of agricultural and other occupancy conditions. It states that planning permission for the removal of a restricted occupancy condition for an agricultural, forestry or other similar worker on a dwelling will only be given when several criterion are met. This includes evidence that there is no longer a continued need for the property on the holding or for the business, there is no long term need for a dwelling with restricted occupancy to serve local need in the locality and that the property has been marketed locally of an appropriate period (minimum 18 months) at an appropriate price and evidence of marketing is demonstrated.

5. I have been presented with no evidence that this marketing has taken place, and thus the proposal conflicts with policy HG10 of the LP. Removal of this condition would result in an unrestricted dwelling in the countryside. As such, I consider that the condition is both necessary and reasonable.

6. However, a certificate of lawfulness[1] has recently been approved in relation to the appeal site for the occupation of the dwelling without complying with Condition No 2. This follows a continuous breach of the occupancy restrictions by the appellants over a period of at least 10 years. This certificate and the benefits against enforcement action it provides would be transferable to any subsequent occupiers.

7. Consequently, the appeal property could be occupied in breach of this condition by any non-qualifying persons in perpetuity. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. In this instance the presence of the certificate of lawfulness is a material consideration which I give significant weight to.

8. I have carefully considered the contention made by the Council that they would be able to take enforcement action following any break in occupation, or that the occupation of the dwelling by a qualifying person would have the effect of breaking the continuity of the breach. The appellants have indicated that should the appeal site revert back to not having the benefit of the certificate of lawfulness, this would have the effect of significantly reducing the open market value of the property. Any qualifying person would be presented with an immediate impact on capital value. Given the potential risk to both the seller and a qualifying person means, in my view, that such a scenario is unlikely to happen.

9. The Council have drawn my attention to an appeal decision in Mid Devon[2] in which the inspector dismissed an appeal to remove an agricultural tie condition. In that instance there was a Certificate of lawful use, and whilst the inspector gave this weight, they did not conclude that the material considerations outweighed the harm to the development plan. I have not been presented with the full details of that case, nor the evidence which was in front of the inspector at the time the decision was made. In any event, that appeal site was in a different planning authority with different development plan

[1] LPA reference 19/03214/COL
[2] APP/Y1138/W/19/3229011

policies. I therefore consider that a direct parallel cannot be drawn between the two appeals. In any event, I have considered this appeal on its own merits.

Conclusions

10. For the reasons given above, I conclude the appeal should be allowed and Condition no.2 of the original planning permission is removed.

S Shapland

INSPECTOR

ANNEX E – APPEAL DECISION

APP/M9496/W/19/3233160

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The Planning Inspectorate

Appeal Decision

Hearing Held on 1 October 2019
Site visit made on 1 October 2019

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2019

Appeal Ref: APP/M9496/W/19/3233160
Back Tor, Mill Lane, Stoney Middleton S32 4TS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Jack Simpson against the decision of Peak District National Park Authority.
- The application Ref NP/DDD/0119/0047, dated 15 January 2019, was refused by notice dated 5 March 2019.
- The application sought planning permission to erect a dwelling without complying with a condition attached to planning permission Ref NP/BAR/673/40, dated 4 September 1973.
- The condition in dispute is No 5 which states that: *The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in Section 290 (1) of the Town and Country Planning Act, 1971, or in forestry (including any dependents of such a person residing with him), or a widow or widower of such a person*.
- The reason given for the condition is: *Because of the location of the site which is away from the established settlement of the area and from the services and facilities which they have to offer, the local planning authority do not consider that the site would be acceptable for residential development in the absence of an essential agricultural need*.

Decision

1. The appeal is allowed and planning permission is granted to erect a dwelling at Back Tor, Mill Lane, Stoney Middleton S32 4TS in accordance with the application Ref NP/DDD/0119/0047, dated 15 January 2019 without compliance with the conditions previously imposed on the planning permission Ref NP/BAR/673/40 granted on 4 September 1973 by Bakewell Rural District Council under powers delegated to them by the Peak Park Planning Board.

Background and Main Issue

2. Planning permission for the erection of a dwelling at the appeal site was granted in 1973, subject to a number of conditions. Condition 5 restricted the occupancy of the dwelling to a person solely, mainly or previously employed in agriculture.

3. The dwelling has been constructed and occupied. In 2014, a Certificate of Lawful Use or Development (CLUD) was granted by the Authority[1] for its use as a dwellinghouse without complying with Condition 5, on the grounds that the

[1] LPA Ref NP/DDD/1014/1066

dwelling had been occupied without complying with Condition 5 since 21 October 1994.

4. The dwelling and some associated land and agricultural buildings was then sold to the appellant in 2015, in the knowledge that the aforementioned CLUD had been granted; the dwelling has been occupied in continuing breach of Condition 5 since this time.

5. In 2019 the Authority refused planning permission for the removal of Condition 5 because they considered that this would create an unrestricted market house in an unsustainable location in open countryside. The Authority stated that insufficient justification had been provided that the need for an occupancy-restricted dwelling in the locality no longer existed, or that reasonable attempts had been made to allow the dwelling to be occupied by a person in compliance with Condition 5.

6. Since this refusal, the Authority adopted the Development Management Policies Document (DMPD) in May 2019[2]. The Authority considers that policies in this document replace policies listed on its decision notice from the Local Plan (LP), which was adopted in March 2001.

7. The main issue in these circumstances is whether Condition 5 meets the six tests for planning conditions[3] contained in the National Planning Policy Framework 2019 (the Framework).

Reasons

8. There is no dispute between the parties that at the time the original planning permission was granted in 1973, Condition 5 would have met the six tests contained in the Framework.

9. However, at the present time, the dwelling is occupied in accordance with the aforementioned CLUD. Consequently, whilst the condition remains relevant to planning and to the development originally permitted, and is also precise in terms of its intention, it is not disputed that it is currently immune from enforcement action.

10. At the time that planning permission was refused by the Authority, Policy LH3 (replacement of agricultural occupancy conditions) of the LP was extant and directly addressed the circumstances where the removal of a restrictive condition, such as Condition 5, would be considered acceptable.

11. However, Policy LH3 of the LP is no longer extant following the adoption of the DMPD in May 2019. The Authority states that Policy DMH11 (Section 106 agreements) of the DMPD, replaces Policy LH3 on the basis of its intended outcome / aspiration[4]. Reference is made to paragraphs 6.78 and 6.129 of the supporting text of the DMPD, which refer to both conditions and s106 legal agreements, to support this position.

12. The wording of part E of Policy DMH11 is similar to the wording of part a) of Policy LH3. However, whilst Policy LH3 a) refers to both a 'condition' and an

[2] A copy of the Adoption Statement for the DMPD was provided by the Authority following discussions at the Hearing.
[3] Necessary; Relevant to Planning; Relevant to the development permitted; Enforceable; Precise and Reasonable in all other respects.
[4] *Section 106 Agreements* relates to planning obligations under s106 of the Town and Country Planning Act 1990.

'obligation', there is no mention of a 'condition' or 'conditions' anywhere in Policy DMH11 E), which only deals with the removal of s106 agreements.

13. It may have been the intention of the Authority for Policy DMH11 E) to deal with occupancy restrictions from both conditions and s106 agreements / planning obligations, in a similar manner to Policy LH3 a). However, conditions and s106 agreements are distinct from each other, which is recognised by the Authority in the separate references in paragraphs 6.78 and 6.129 of the supporting text of the DMPD. Policy DMH11 E) manifestly does not address the removal of restrictive planning conditions. It is not, therefore, relevant to this appeal and the specified requirements of Policy DMH11 E)[5] do not apply in this case.

14. The Authority also refers to Policy DMH11 D), which concerns the temporary release of an occupancy restriction conferred by a legal agreement. No such legal agreement exists in this case and the requirements of Policy DMH11 D) are also self-evidently not relevant to this appeal.

15. The Authority has a legal duty to conserve and enhance the landscape character of the National Park. In this area, agriculture makes a significant contribution to the landscape character. Appropriate housing in the countryside that is essential for agricultural workers can, therefore, help to conserve and enhance the landscape of the National Park.

16. Paragraphs 6.78 and 6.129 of the DMPD support the provision and retention of housing for essential workers in ways that conserve and enhance the National Park and reduce pressure for new development, using conditions and s106 agreements. If a restricted occupancy condition (or s106 agreement) were to be lifted and a need for further essential worker accommodation were to re-appear, it would *place avoidable and unnecessary stress on National Park landscapes*[6].

17. However, in this case, the CLUD and the continuing breach of the condition at the appeal dwelling means that such stress could arise now or in the future, regardless of whether the condition is removed.

18. Paragraphs 6.78 and 6.129 of the DMPD do not, therefore, relate to the particular circumstances of this appeal, where a CLUD for an unrestricted house has been granted and the use remains lawful. Accordingly, they are not directly relevant to the determination of the appeal and I give them very limited weight.

19. The Authority maintains that the dwelling remains suitable for an agricultural worker and could be occupied in such a way in the future and I would agree. In these circumstances, or should the dwelling be left vacant for a significant period of time, the lawful use of the dwelling would revert back to what it was with the original grant of planning permission and the condition would again meet the six tests.

20. However, a planning condition which restricts the occupancy of a dwelling to an agricultural worker, as the appeal condition does, would normally result in a reduction in the market value of the dwelling by some 30-35%. When the appeal dwelling was purchased by the appellant in 2015, no such reduction was

[5] (i) reasonable attempts have been made to allow the dwelling to be used by a person who could occupy it in accordance with the restriction; and (ii) the long-term need for the dwelling in the locality has ceased and a temporary relaxation therefore serves no purpose.
[6] Paragraph 6.78, supporting text to Policy DMH4 of the DMPD.

made given the existence of the CLUD and the dwelling was purchased at market price.

21. Therefore, were the appellant to sell the property at such a discounted rate in order to potentially attract an occupier who would comply with Condition 5, notwithstanding any normal variations in property prices, they would incur a significant loss relative to the price that they paid. It is unlikely that the appellant would choose to sell the dwelling in this way in these circumstances.

22. In any event, whilst it may be possible that the appeal dwelling could be occupied in the future by a person who complied with Condition 5, or that the appeal dwelling could be left vacant for a significant period of time, thereby extinguishing the CLUD, these situations are both hypothetical. They may not take place for a considerable period of time and may not take place at all.

23. At present, the appeal condition has no function with regard to the existing lawful use of the dwelling and is currently immune from enforcement action.

24. In these circumstances, whilst a case could be made that Condition 5 may become necessary and enforceable at some point in the future, it is not currently so and may never be. Consequently, it is also not reasonable for the condition to be maintained.

25. For these reasons Condition 5 is not necessary, enforceable or reasonable and so does not meet three of the six tests for planning conditions contained in the Framework. As such its removal would be acceptable.

Other Matters

26. The Authority refers to Policies DS1 (development strategy), HC1 (new housing) and HC2 (housing for key workers in agriculture, forestry or other rural enterprises) of the Core Strategy Development Plan Document 2011 (CSDPD) and DMH4 (essential worker dwellings) contained in the DMPD, which concern new housing / development in the National Park. Paragraph 79 of the Framework also concerns new housing in the countryside and is referenced by the Authority. However, given that no new housing development would be provided as a result of the appeal proposal, these policies are not relevant to its determination.

Conditions and Conclusion

27. In the event that the appeal were to be allowed the Authority has not suggested any conditions be attached to a grant of planning permission. In light of Government guidance and given the dwelling has been constructed, conditions 1, 2, 3 and 4 attached to the original grant of planning permission would not be necessary or reasonable. No other conditions would be needed to make the development acceptable in Planning terms.

28. For the reasons given above, and taking into account all matters raised, I conclude that the appeal is allowed.

Andrew Parkin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Caroline McIntyre	Agent

FOR THE LOCAL PLANNING AUTHORITY:

Steven Wigglesworth MRTPI	Planning Officer, Peak District National Park Authority
Jane Newman	Head of Development Management, Peak District National Park Authority

DOCUMENTS SUBMITTED WHILE THE HEARING SAT

None.

DOCUMENTS SUBMITTED AFTER THE HEARING

Adoption Statement for the Development Management Policies Document (by the Authority). Due to the Authority making copies this was submitted shortly after the Hearing had closed but prior to the site visit.

ANNEX F – APPEAL DECISION APP/H1840/W/18/3196410

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The Planning Inspectorate

Appeal Decision

Site visit made on 8 May 2018

by Jameson Bridgwater PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st May 2018

Appeal Ref: APP/H1840/W/18/3196410
The Old Orchard, Haselor Lane, Charlton WR11 2QZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr and Mrs Nick Brennan against the decision of Wychavon District Council.
- The application Ref 17/02520/OUT, dated 20 December 2017, was refused by notice dated 15 February 2018.
- The application sought planning permission for a dwelling without complying with a condition attached to planning permission Ref W/83/1345/O, dated 19 January 1984.
- The condition in dispute is No 6 which states that: 'the occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed in the locality in agriculture as defined in Section 290 (1) of The Town and Country Planning Act 1971, or in forestry (including any dependents of such a person residing with him) or a widow or widower of such a person'.
- The reason given for the condition is: 'The Council would not be prepared to grant consent for the erection of a dwelling/siting of a caravan on this site, unconnected with the use of the adjoining land for agricultural or similar purposes'.

Decision

1. The appeal is allowed and planning permission is granted for a dwelling at the Old Orchard, Haselor Lane, Charlton WR11 2QZ in accordance with the application Ref 17/02520/OUT made on the 20 December 2017 without complying with condition No 6 set out in planning permission Ref W/83/1345/O granted on 19 January 1984, subject to the following condition:

    1) The development hereby permitted shall be carried out in accordance with the following approved plan: Promap 1:2500 scale Location Plan.

Application for costs

2. An application for costs was made by Mr and Mrs Nick Brennan against Wychavon District Council. This application is the subject of a separate decision.

Main Issue

3. The main issue in the appeal is whether the proposal complies with policies for agricultural workers dwellings and, if not, whether there are any overriding material considerations.

Reasons

4. The appeal site comprises the property known as The Old Orchard, Haselor Lane, Charlton and its associated land. The appeal seeks the removal of an agricultural occupancy condition imposed on the original outline planning consent for the dwelling.

5. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. The South Worcestershire Development Plan is the development plan for the appeal site and the surrounding area.

6. Policy SWDP 2 sets out the development strategy and settlement hierarchy for the District, it seeks to direct new development to the most sustainable locations and seeks to restrict development in the countryside. The policy sets out that in the open countryside, development will be strictly controlled and will be limited to dwellings for rural workers, employment development in rural areas, rural exception sites, buildings for agriculture and forestry, replacement dwellings, house extensions, replacement buildings and renewable energy projects.

7. Therefore, based on the evidence before me, the removal of Condition No 6 would result in an open market dwelling in the open countryside. As such, the proposal would be in conflict with Policy SWDP 2 of the South Worcestershire Development Plan.

8. Notwithstanding this, the appellants have submitted a lawful development certificate (CLEUD) granted on appeal[1] in relation to the Old Orchard for the occupation of the dwelling without complying with Condition No 6. This follows a continuous breach of the occupancy restrictions by the appellants over a period of at least 10 years. The certificate is unfettered and the benefits it provides would be transferable to subsequent occupiers. The appeal property could consequently be occupied in breach of condition No 6 by any non-qualifying person in perpetuity. As such, the fallback position advocated by the appellant is viable.

9. I have carefully considered the Council's representations and I accept that the potential future occupation of the Old Orchard by a qualifying person would have the effect of breaking the continuity of the breach, thereby reinstating the occupancy restrictions. However, based on the evidence before me I consider this to be highly unlikely and in reality no more than a theoretical possibility. Therefore, whilst Condition No 6 was necessary to achieve the purpose for which it was originally intended, the CLEUD has the effect of making it unenforceable for all practical purposes.

10. Therefore, I afford significant weight to the CLEUD (fallback position) and regard the ability to occupy the Old Orchard in breach of condition No 6 as a material consideration which would, in this specific circumstance clearly outweigh the harm I have identified. Consequently, it is no longer necessary or reasonable to continue to require the property to be occupied by qualifying persons.

[1] APP/H1840/X/17/3178558

Conditions and conclusion

11. The other 7 remaining conditions attached to the original permission related to the construction of the dwelling and have long since been carried out and therefore do not need to be reapplied. However, it is necessary for certainty, to define the location plan with which the scheme should accord.

12. For the reasons given above, and with regard to the development plan read as a whole, I conclude the appeal should be allowed.

Jameson Bridgwater
INSPECTOR

ANNEX G - APPEAL DECISION APP/Y9507/W/16/3147251

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The Planning Inspectorate

Appeal Decision

Site visit made on 2 August 2016

by David Walker MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7th September 2016

Appeal Ref: APP/Y9507/W/16/3147251
Copper Beeches, Torberry Farm, B2146 Ditcham Lane to Hurst Mill Lane, Hurst, South Harting GU31 5RG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr and Mrs Chew against the decision of South Downs National Park Authority.
- The application Ref SDNP/15/03829/CND, dated 30 July 2015, was refused by notice dated 11 February 2016.
- The application sought planning permission for conversion of barn to two semi-detached agricultural cottages without complying with a condition attached to planning permission Ref HT/2/69, dated 7 July 1969.
- The condition in dispute is No 1 which states that: *The occupation of the dwellinghouses shall be limited to persons employed, or last employed, locally in agriculture as defined in section 221(1) of the Town and Country Planning Act, 1962, or in forestry, and a dependant of such persons residing with them (but including a widow or widower of such person)*.
- The reason given for the condition is: *As the site lies in an area where permission for residential development unrelated to the essential needs of agriculture and/or forestry would not normally be permitted*.

Decision

1. The appeal is allowed and planning permission is granted for conversion of barn to two semi-detached agricultural cottages at Copper Beeches, Torberry Farm, B2146 Ditcham Lane to Hurst Mill Lane, Hurst, South Harting GU31 5RG in accordance with the application Ref SDNP/15/03829/CND made on the 30 July 2015 without complying with condition No 1 set out in planning permission No HT/2/69 granted on 7 July 1969 by the Midhurst Rural District Council, insofar as it relates to Copper Beeches only.

Preliminary Matter

2. The appeal being allowed, it is necessary to identify which of the two semi-detached cottages the permission relates to. I have therefore referred to the site as described within the Authority's decision notice in the interests of consistency and accuracy. I have also made it clear in my decision above that the condition is only lifted in respect of the appeal property.

Main Issue

3. The main issue in the appeal is whether the proposal complies with policies for agricultural workers dwellings and, if not, whether there are any overriding material considerations.

Reasons

4. Saved Policy RE19 of the Chichester District Local Plan First Review 1999 (the Local Plan) seeks to retain agricultural workers dwellings unless it can be demonstrated that there is no longer a demand for such a dwelling within the area. A similar approach is employed within Policy SD48 of the South Downs Local Plan: Preferred Options 2015, although this is an emerging plan that has yet to be found sound and attracts limited weight accordingly.

5. Beyond the submission of a market appraisal drawing from the experiences of local estate agents, no formal marketing of the property has been undertaken to establish demand with the occupancy restrictions imposed by condition No 1 in place. It has not been demonstrated that the proposal satisfies the requirements of saved Policy RE19 of the Local Plan. Conversely, the Authority has brought my attention to 4 other examples of applications for rural workers dwellings within the National Park, thereby indicating some latent demand for suitable properties.

6. On the limited evidence available to me, therefore, I am satisfied that the condition remains necessary for the dwelling to comply with the requirements of the Local Plan.

7. However, the appellants have obtained a certificate of lawfulness[1] (CLEUD) for the occupation of the dwelling without complying with the condition. This follows a continuous breach of the occupancy restrictions by the appellants over a period of at least 10 years. The certificate is unfettered and the benefits it provides would be transferable to subsequent occupiers. Copper Beeches could accordingly be occupied in breach of condition No 1 by any non-qualifying person in perpetuity.

8. I acknowledge that the occupation of the dwelling by a qualifying person would have the effect of breaking the continuity of the breach, thereby reinstating the occupancy restrictions. A period of no occupancy, depending on the circumstances, might have the same effect as well. I find this to be a theoretical concept, however.

9. Reverting back without the benefits provided by the CLEUD would, based on the evidence, have the effect of significantly reducing the current open market value of the property of £650,000 by about 30%. Given the risk of such a substantial loss that would confront the sellers and a qualifying person means this is a scenario that is very unlikely to arise at least for the foreseeable future. Moreover, the property and its value are highly likely to be based on it being sold as an existing B&B business and not as an agriculture or forestry workers property now without any associated agricultural land or buildings.

10. While the condition was originally necessary to achieve the purpose for which it was originally intended, the existence of the CLEUD has the effect of making it unenforceable for all practical purposes. Moreover, taking account of the

[1] Application Ref SDNP/14/000639/LDE

significant change of circumstances since 1969, the condition has now outlived any useful planning purpose thus also meaning that it is no longer necessary or reasonable to continue to require the property to be occupied by qualifying persons.

11. This background is a significant material consideration that weighs in favour of the proposal. I note that an Inspector adopted a similar approach regarding a CLEUD in the appeal decision[2] provided by the appellants. While that decision is from 13 years ago, the tests to be applied when imposing conditions have not materially changed over that time despite the more recent policy and guidance in the National Planning Policy Framework (the Framework) and Planning Practice Guidance.

12. Despite the conflict I have identified with Policy RE19 of the Local Plan I find the existence of the CLEUD to be an overriding consideration. Therefore, condition No 1 no longer accords with the six tests identified at paragraph 206 of the Framework and I conclude that it should be removed.

13. In reaching my conclusion I have had regard to the support offered by the occupants of the neighbouring property and to the objections of the Harting Parish Council. These raise matters surrounding the merits of the proposal, but as I find the condition to be technically unenforceable they do not weigh heavily either for or against it.

14. With regard to the statutory purposes of the National Park's designation, I am satisfied that the proposal would conserve the natural beauty, wildlife and cultural heritage of the area, and have a neutral effect on opportunities to promote the understanding and enjoyment of the special qualities of the National Park by the public.

15. I have also given regard to the need for any additional conditions. None have been provided by the parties. The only remaining condition attached to the original permission related to the submission of details of the works in conversion that have long since been carried out. I do not therefore find the need for any additional conditions to be necessary.

Conclusion

16. For the reasons given above, and with regard to the development plan read as a whole, I conclude the appeal should be allowed.

David Walker

INSPECTOR

[2] Appeal Ref APP/E2001/A/02/1104141

ANNEX H – APP/B6855/A/12/2185609

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The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Penderfyniad ar yr Apêl

Gwrandawiad a gynhaliwyd ar 05/02/13
Ymweliad â safle a wnaed ar 05/02/13

gan Gareth A. Rennie BSc(Hons) DipTP
Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 17/06/13

Appeal Decision

Hearing held on 05/02/13
Site visit made on 05/02/13

by Gareth A. Rennie BSc(Hons) DipTP
an Inspector appointed by the Welsh Ministers
Date: 17/06/13

Appeal Ref: APP/B6855/A/12/2185609
Site address: Foxgloves, Pitton Cross, Rhossili, Swansea, SA3 1PH

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Roger Button against the decision of City and County of Swansea Council.
- The application Ref 2012/0608, dated 18 April 2012, was refused by notice dated 19 September 2012.
- The application sought planning permission for the erection of a bungalow without complying with a condition attached to planning permission Ref 2/1/78/1372/01, dated 22 February 1979.
- The condition in dispute is No (g) which states that:' the occupation of the dwelling shall be limited to persons employed or last employed in agriculture as defined by Section 290 of the Town and Country Planning Act 1971 or a dependant of such a person residing with him but including a widow or widower of that person'.
- The reason given for the condition is: 'The site is not one for which permission for residential development would be granted except in the interest of local agriculture'.

Decision

1. The appeal is allowed and planning permission is granted for the erection of a bungalow at Foxgloves, Pitton Cross, Rhossili, Swansea, SA3 1PH in accordance with the application Ref 2012/0608 dated 18 April 2012, without compliance with condition number (g) previously imposed on planning permission Ref 2/1/78/1372/01 dated 22 February 1979 (repeated as condition number (03) on reserved matters approval Ref 2/1/80/0888/02 dated 31 July 1980) but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect..

Procedural Matters

2. The Council determined application 2012/0608 as one for "removal of agricultural occupancy condition (g) of planning permission 78/1372 granted on 22nd February 1979". Whilst this is what the application effectively seeks to achieve, the wording of my decision reflects the provisions of section 73A subsections (1) and (2) (c) concerning the grant of planning permission for development carried out before the date of the application without complying with some condition subject which planning permission was previously granted.

3. The Council now questions the permission to which the appeal should relate. Outline planning permission was granted subject to the disputed condition in February 1979 and a subsequent approval of reserved matters granted in July 1980. The latter related to the erection of a dwellinghouse (as actually built, and not a bungalow as originally sought). It repeated the occupancy condition. However, an approval of reserved matters is not a planning permission. The original planning permission reference cited by the appellant is therefore correct. In any event, the issues raised are the same regardless of which earlier document is referred to. For the avoidance of any doubt I have considered the merits of the condition as imposed on both occasions.

Application for costs

4. At the Hearing an application for costs was made by Mr Roger Button against the City and County of Swansea Council. This application is the subject of a separate Decision.

Main Issue

5. The main issue in this case is whether the disputed condition still serves an effective planning purpose in relation to policies designed to control the provision of housing and protect the countryside

Reasons

6. In this case the condition in dispute restricts the occupancy of the appeal dwelling to persons employed or last employed in agriculture and their dependants.

7. Policy EV20 of the City and County of Swansea Unitary Development Plan (UDP) says that in the countryside new dwellings will only be permitted subject to certain criteria, including that the dwelling is required to accommodate a fulltime agricultural worker.

8. It also says in supporting paragraphs that the removal of a condition restricting occupancy in such cases will only be permitted where the agricultural need advanced at the time no longer applies and there is no need for the dwelling to meet the long term needs of the agricultural community. In such cases the UDP requires evidence that the property has been offered for sale and for rent with the occupancy condition at a realistic 'affordable price' to the agricultural community and associated agricultural services over an acceptable period of appropriately targeted marketing.

9. The Local Planning Authority (LPA) maintains that no such evidence has been submitted and that therefore the requirements of ENV20 have not been met. I would concur with this view, and accept that the reference the LPA has made to a Land Tribunal Decision[1] makes similar points in respect of the scope of marketing.

10. Nevertheless, the appeal property is currently occupied in conjunction with the adjacent caravan site and no longer has a connection with agriculture and the appellant is not occupied in agriculture or forestry. Consequently a Certificate of Lawfulness for Planning Purposes (CLPP) was granted in March 2012 for the appeal property allowing the continued occupation of the property in breach of the disputed condition. It was granted in recognition of the fact that the condition in dispute had been breached for a period in excess of ten years. The CLPP therefore grants immunity from enforcement action against the continued breach.

[1] Upper Tribunal (Lands Chamber) case number LP/40/2010 application under section 84 of the Law of Property Act 1925 by Peter Rasbridge and Eleanor Rasbridge. June 2012

11. The LPA recognises this but maintains that the conditions for the removal for the disputed condition have not been met and that the property should remain available for agricultural occupation at some future point in time.

12. Circular 35/95 *The Use of Conditions in Planning Permissions* says that conditions should satisfy a number of tests including that conditions are enforceable. In this case the CLPP effectively grants immunity for the enforcement of this condition and in practice makes it impossible for the LPA to enforce.

13. Moreover, the scope of occupancy conditions for dwellings associated with rural enterprises has broadened in recent years, particularly in the context of the guidance contained within Technical Advice Note 6 (TAN 6). This seeks to make sure that such conditions are extended to persons who would be eligible for consideration for affordable housing. I acknowledge that the criteria within both the UDP and TAN 6 - *Practice Guidelines for Rural Enterprise Dwellings* have not been met. However I consider that in light of the CLPP the condition would no longer serve this purpose and that the notion that at some time in the future that the breach would cease and that the condition would reclaim a degree of enforceability and satisfy its original purpose is a spurious one.

14. I conclude that in this case the presence of the CLPP effectively renders the condition unenforceable and in effect redundant. The CLPP goes with the land and this immunity would also be effectively passed on to future occupiers of the property. Being unenforceable the continued attachment of the condition to the permission cannot sensibly be regarded as necessary and indeed the condition serves no planning purpose.

15. I therefore conclude that the disputed condition is unnecessary and unnecessarily restrictive in its present form, having regard to the enforceability of the said condition. Therefore, for the reasons given above and having regard to all other matters raised, I conclude that the appeal should succeed.

16. I have considered whether an alternative restrictive occupancy condition ought to be imposed, reflecting the tenor of current national planning policy guidance contained in TAN 6 *Planning for Sustainable Rural Communities*. However, the existing CLPP clearly establishes a lawful entitlement for the dwelling to be occupied as such with no restriction. It would be inequitable and unreasonably onerous to impose a different form of restrictive occupancy condition in these circumstances.

Gareth A. Rennie

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Graham Carlisle	Appellant's Agent
Mr Roger Button	Appellant
Mr Ian Button	Foxgloves, Rhossili, SA3 1PH

FOR THE LOCAL PLANNING AUTHORITY:

Lynne Davies	Planning Officer
Zenya Richards	Administrative support

DOCUMENTS

1 Copy of statutory declaration 6/2/12

PLANS

A Application plans

ANNEX I- APPEAL DECISION AND COSTS DECISION APP/M3645/A/12/2168175

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The Planning Inspectorate

Appeal Decision

Site visit made on 17 May 2012

by David Fitzsimon MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29 June 2012

Appeal Ref: APP/M3645/A/12/2168175
Chelsham Heights, Beech Farm Road, Warlingham, Surrey CR6 9QG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Knightwood Trust Farms Ltd against the decision of Tandridge District Council.
- The application Ref TA/2011/1371, dated 11 October 2011, was refused by notice dated 7 December 2011.
- The application sought planning permission for the erection of dwelling house and garage for agricultural foreman without complying with a condition attached to planning permission Ref 74/773/1183, dated 10 January 1975.
- The condition in dispute is No 2 which states that: 'The occupation of the dwelling shall be limited to a person employed, or last employed, locally in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971 or forestry or a dependent of such person residing with him (but including a widow or widower of such a person)'.
- The reason given for the condition is: 'The site lies within an area to which the Green Belt policy applies and where development is not normally permitted, except where required in connection with agriculture or forestry'.

Application for Costs

1. An application for costs was made by the Appellant Company against the Council. This application is the subject of a separate Decision.

Procedural Matter

2. The original application (Ref 74/773/1183) related to Chelsham Court Farm. The approved dwelling which was built, and which is the subject of this Appeal, is now known as Chelsham Heights.

Decision

3. I allow the appeal and grant planning permission for the erection of dwelling house and garage for agricultural foreman at Chelsham Court Farm (now Chelsham Heights), Beech Farm Road, Warlingham, Surrey in accordance with the application Ref TA/2011/1371 dated 11 October 2011, without compliance with condition number 2 previously imposed on planning permission Ref 74/773/1183 dated 10 January 1975 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect.

Main Issue

4. The main issue in this case is whether the proposal complies with national and local policies relating to agricultural workers dwellings and if not, whether there are any overriding material planning considerations.

Reasons

5. Planning Policy Guidance 2: *Green Belts* and Planning Policy Statement 7: *Sustainable Development in Rural Areas* have been replaced by the National Planning Policy Framework. Whilst this document is less prescriptive, it explains that residential development within the open countryside and Green Belt should be strictly controlled but agricultural and forestry workers dwellings *may* be justified. This guidance is currently supported by saved policy RE25 of the adopted Tandridge District Local Plan (LP) which states that the removal of agricultural occupancy conditions will not be permitted where the Council is satisfied that there is a continuing need for such accommodation in the locality.

6. The Appellant Company has provided no evidence to demonstrate a lack of continuing need. In contrast, the Council has highlighted a number of applications for agricultural workers dwellings which have been determined within the District within the last 10 years or so along with several positive Certificates of Lawful Use or Development (CLEUDs) which have been issued where it has been demonstrated that a breach of an agricultural condition has taken place. Whilst this may suggest a continuing demand for agricultural workers dwellings within the District, the Council has not contested the Appellant Company's assertion that most, if not all, of the examples are more than a 15 to 20 minute car journey from the appeal site, which the explanation to policy RE25 of the LP defines as the 'locality'. In any event, the absence of evidence to demonstrate a lack of continuing need means that the proposal is in conflict with saved policy RE25 of the LP.

7. Section 38(6) of the Planning and Compensation Act 2004 states that '*if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise*'. Highly material to this case is the fact that a CLEUD has been issued which provides a fallback position that the appeal dwelling can be lawfully occupied without compliance with Condition No 2 of the original planning permission. In line with the position taken by my colleague Inspector in considering what appears to be a similar case (Ref. APP/E2001/A/02/1104141), this factor leads me to the conclusion that Condition No 2 is no longer necessary. It therefore fails to meet at least one of the tests of Circular 11/95: *The Use of Conditions in Planning Permissions*.

8. The Council accepts that the CLEUD permits the unrestricted occupancy and sale of the appeal dwelling and it does not dispute the Appellant Company's assertion that it is much more valuable unencumbered. The Council does, however, refer to *Nicholson V S.o.S & Maldon DC 1997* and asserts that the condition would become enforceable again if the dwelling was to be occupied by a person who met the requirements of Condition No 2. Whilst this may be so, in view of the above, such a prospect does not seem plausible to me. I therefore give little weight to this argument in reaching my decision.

9. In light of the above, I conclude that although the proposal conflicts with national and local policy relating to agricultural workers' dwellings, the existence of the CLEUD is a fallback position which amounts to an overriding material consideration.

10. Accordingly, the appeal is allowed and Condition No 2 of the original planning permission is removed.

David Fitzsimon

INSPECTOR

The Planning Inspectorate

Costs Decision

Site visit made on 17 May 2012

by David Fitzsimon MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29 June 2012

Costs application in relation to Appeal Ref: APP/M3645/A/12/2168175 Chelsham Heights, Beech Farm Road, Warlingham, Surrey CR6 9QG

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Knightwood Trust Farms Ltd for a full award of costs against Tandridge District Council.
- The appeal was made against the refusal of planning permission for the erection of dwelling house and garage for agricultural foreman without complying with a condition attached to planning permission Ref 74/773/1183, dated 10 January 1975.

Decision

1. I allow the application for an award of costs in the terms set out below.

Reasons

2. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The Applicant Company refers to paragraph B29 of the Circular which highlights a range of circumstances which may lead to an award of costs against a planning authority. One of the examples is where a condition is imposed that is not necessary, precise, enforceable, relevant to planning, relevant to the development permitted or reasonable and thereby does not comply with the advice contained within Circular 11/95: *The Use of Conditions in Planning Permissions*.

4. The Council asserts that a comprehensive Appeal Statement supported its original Delegated Report with realistic and specific evidence regarding Certificates of Lawful Use or Development (CLEUD), the enforceability of the condition in question, the demand for agricultural workers dwellings in the District and the consequence of the removal of such conditions. The Council also argues that it was fully aware of the points made by the Applicant Company in favour of the proposal, principally the fallback position and the previous Inspector's Decision (Ref. APP/E2001/A/02/1104141). The Council asserts that it was not unreasonable to afforded different weight to these factors, as this was a matter of judgement.

5. The Council conceded within its Delegated Report that the CLEUD rendered the condition '*unenforceable*'. The Council's subsequent Appeal Statement argued that the condition would in fact become enforceable once again if the property was ever to be occupied by an agricultural/forestry worker. The Council accepted, however, that the dwelling could be sold without the occupancy condition being enforceable and the Applicant Company provided persuasive reasons why this scenario would be implausible. Furthermore, I am mindful that the planning application was supported by an Appeal Decision which clearly outlined the fact that an Inspector afforded significant weight to what appears to be a very similar set of circumstances.

6. I consider the Council's failure to afford appropriate weight to the factors advanced by the Applicant Company means that it has not provided a respectable basis for the stance taken. To this end, I find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated and that a full award of costs is justified.

Costs Order

7. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that Tandridge District Council shall pay to Knightwood Trust Farms the costs of the appeal proceedings, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an Appeal more particularly described in the heading of this decision.

8. The Applicant Company is now invited to submit to Tandridge District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

David Fitzsimon

INSPECTOR

ANNEX J - APPEAL DECISION APP/E2001/A/02/1104141

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Appeal Decision

Site visit made on 25 March 2003

by Martin H Seddon BSc DipTP MPhil MRTPI

an Inspector appointed by the First Secretary of State

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Date 23 APR 2003

Appeal Ref: APP/E2001/A/02/1104141
Flatfield Lodge, Hull Road, Howden

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Act for the development of land carried out without complying with a condition subject to which a previous outline planning permission was granted.
- The appeal is made by Mr and Mrs R Whitton against the decision of the East Riding of Yorkshire Council.
- The application (Ref: DC/02/04884/PLF/GOOLES), dated 18 July 2002, was refused by notice dated 11 November 2002.
- The application sought planning permission without complying with a condition attached to an outline planning permission (Ref: 2/452/82) dated 11 May 1983.
- The condition in dispute is no.4 which states that: *The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed in the locality in agriculture as defined in section 290(1) of the Town and Country Planning Act 1971, or in forestry (including any dependents of such a person residing with him), or a widow or widower of such a person.* The reason given for the condition is that: *The site lies in an area where permission for development unrelated to the essential needs of agriculture and/or forestry would not normally be granted.*

Summary of Decision: The appeal is allowed and planning permission granted subject to conditions set out in the Formal Decision below.

Preliminary Matters

1. In 2002 the Council issued a Certificate of Lawful Existing Development (Ref: DC/02/03228/CLE/GOOLES) which confirmed that the occupation of the dwelling by a person or persons not wholly or mainly employed in agriculture contrary to a condition attached to a planning permission was lawful. The Certificate was issued because the Council accepted that there had been a breach of condition 4 operating continuously for at least a 10 year period. In view of the breach of the condition which is the subject of this appeal, I shall determine the appeal in accordance with the provisions of Section 73A (2) (c) of the Act.

Main Issue

2. I consider that the main issue in this appeal is whether the proposal complies with development plan policy for agriculturally tied dwellings, and if not, whether there are any overriding material considerations.

Planning Policies

3. The development plan includes the Humberside Structure Plan and the Boothferry Borough Local Plan (East Riding of Yorkshire Area) 1999. The Council refer to policy

S7 of the Structure Plan in their appeal statement, but no details are provided.

4. Policy EN15 of the Local Plan advises that the Council will only remove an agricultural tying condition when satisfied that there is no further need for it, because the original reason for the dwelling is no longer appropriate, or there is no longer a need for tied dwellings in the locality. The Council would also need to be satisfied that attempts had been made to dispose of the property whilst subject to the condition. The Council's statement also refers to policies EN6 restricting development in the open countryside, and EN11 regarding the justified need for new dwellings associated with agriculture.

5. National planning policy guidance is set out in Planning Policy Guidance Note 7: *The Countryside-Environmental Quality and Economic and Social Development* (PPG7). Annex I advises on agricultural dwellings in the countryside.

Reasons

6. I have no reason to doubt that condition 4 was correctly imposed at the time of the initial determination of the proposed development. However, the appellants have provided no evidence that there is no further need for the condition because the original reason for the dwelling is no longer appropriate. Neither is evidence provided that there is no longer a need for tied dwellings in the locality. The appellants have also not demonstrated that attempts have been made to dispose of the property whilst subject to the agricultural tying condition. I therefore conclude that the proposal conflicts with Local Plan policy EN15.

7. Section 54A of the Act advises that the determination of applications shall be made in accordance with the development plan unless material considerations indicate otherwise. The existence of the Certificate of Lawfulness of Existing Development provides a fall-back position that the dwelling may be lawfully occupied without compliance with the terms of condition 4. This is a material planning consideration which I have to take into account.

8. The 6 tests for conditions are set out in Circular 11/95: *The Use of Conditions in Planning Permissions*. In view of the fall-back position, I consider that the condition which is the subject of this appeal is unenforceable. In this respect paragraph I20 of Annex I to PPG7 states that Councils may take enforcement action against breaches of occupancy conditions provided that the breach has not operated continuously for 10 years or more. The Certificate confirms that the Council have accepted that the breach took place continuously over this time period. I also consider that the condition is now unnecessary and it would be unreasonable to retain its imposition.

9. I therefore conclude on the main issue that although the proposal conflicts with development plan policy for agriculturally tied dwellings, the fall-back position because of the existence of the Certificate of Lawfulness of Existing Development is an overriding material consideration. I therefore propose to allow the appeal.

Conclusion

10. For the reasons given above and having regard to all matters raised, I conclude that the appeal should be allowed.

Formal Decision

11. In exercise of the powers transferred to me, I hereby allow this appeal and grant planning permission to erect a detached bungalow and garage to be used in connection with horticulture at Cocked Hat Close, Howden in accordance with the application no. DC/02/04884/PLF/GOOLES dated 18 July 2002 without compliance with condition no.4 previously imposed on planning permission no. 2/452/82 dated 11 May 1983 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect.

Information

12. A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court.

13. This decision does not convey any approval or consent that may be required under any enactment, by-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.



INSPECTOR