



The Planning Inspectorate

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## Appeal Decision

Site visit made on 7 May 2019

by P Wookey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25<sup>th</sup> June 2019

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**Appeal Ref: APP/V2255/W/19/3221958**

**Lodge Farm, Old House Lane, Hartlip ME9 7SN**

- 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 Mr and Mrs H Love against the decision of Swale Borough Council.
  - The application Ref 18/502834/FULL, dated 24 May 2018, was refused by notice dated 13 August 2018.
  - The application sought planning permission for an agricultural dwelling without complying with a condition attached to planning permission Ref SW/98/796, dated 8 February 2001.
  - The condition in dispute is No 2 which states that: *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 336(i) of the Town and Country Planning Act 1990 or in forestry and any dependent of such person residing with him (but including a widow or widower of such a person).*
  - The reason given for the condition is: *As the site lies outside any area in which planning permission would normally be granted for a new dwelling and this permission is only granted because the dwelling is considered essential in the interests of forestry or agriculture.*
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is whether or not it is appropriate to remove the condition restricting occupancy of the dwelling to an agricultural worker.

### Reasons

3. Lodge Farm is a detached bungalow located in the open countryside between Gillingham and Sittingbourne. It is obscured from view by mature conifer trees along its boundary with the main road. It sits within a site of approximately 3.77 hectares of agricultural land used for fruit growing.
  4. The appellants state that the dwelling has been occupied by them since 1988 and that consent was granted in 2001, subject to the agricultural occupancy condition (AOC) and an associated Section 106 Agreement, which also restricted its use as an agricultural dwelling. In 2018 a Lawful Development Certificate (LDC) was granted as it was accepted by the Council that the appellants had occupied the dwelling in breach of the AOC for a period of 10 years.
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5. The appellants are now seeking the removal of the AOC on the basis that the LDC has established that it is no longer reasonable, necessary or enforceable. This is disputed by the council which states that whilst the appellants are currently immune from enforcement action due to the LDC, if they were to cease being in breach of the AOC, then it would once again be enforceable. Either way, I conclude that should the appellants no longer occupy the dwelling, its original use which was the subject of a planning condition and a Section 106 Agreement would still apply and any breach of the occupancy condition would be enforceable.
6. The appellant has submitted a valuation of the appeal site, which includes the associated agricultural land, and asserts that the effect of the AOC is to significantly reduce the appeal site's value. Further, even at its reduced value it would be beyond the means of an agricultural worker and with the AOC it's full market value could not be achieved.
7. Based on the evidence submitted, it is not certain whether the dwelling could be afforded by those on an agricultural income. Beyond the appellants valuation report, there is no substantive evidence to support any results of a prior marketing exercise to indicate the level of demand for this type of property with an AOC. In the absence of this, I am not persuaded there is sufficient justification to support the removal of the AOC.
8. Moreover, given that the dwelling was approved only on the basis of agricultural need, the removal of a dwelling with an AOC could leave the Council in the position of having to approve further dwellings in the countryside, rather than make use of the existing stock. The Council's rural restraint policies at that time which are still relevant now, would result in the principle of a dwelling with unrestricted occupancy being unacceptable.
9. I conclude that in the absence of any evidence to demonstrate the level of local demand for an agricultural worker's dwelling, it would not be appropriate to remove Condition 2 which places a restriction on the occupancy. This would support a supply of agricultural worker's dwellings and avoid the piecemeal erosion of the countryside. Therefore, its removal would be contrary to Policies DM12 and DM14 of the Swale Borough Local Plan Bearing Fruits (2017) and paragraph 79 of the National Planning Policy Framework (2019), which when read together seek to avoid the development of isolated homes in the countryside.

#### **Other Matters**

10. Whilst I have had regard to the evidence submitted by the appellant regards case law; to other applications where an AOC condition has been removed; these do not alter my decision and in any case each case must be judged on its own merits.
11. I note reference is made by the appellant to a Prior Notification Consent for the development of a barn, but as very limited information has been submitted, it does not alter my decision and I have not pursued the matter further.

#### **Conclusions**

12. For the reasons set out above the appeal is dismissed.

*Paul Wookey*

INSPECTOR