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## Appeal Decision

Hearing held on 26 April 2022

Site visit made on 26 April 2022

by **Nicola Davies BA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 May 2022

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**Appeal Ref: APP/V2255/W/21/3268113**

**Kemsdale Stud Farm, Kemsdale Road, Hernhill, Faversham, ME13 9JL**

- 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 without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mrs Vanessa Leak against the decision of Swale Borough Council.
  - The application Ref 20/504495/FULL, dated 25 September 2020, was refused by notice dated 24 November 2020.
  - The application sought planning permission for a dwelling without complying with a condition attached to planning permission Ref SW/00/1180, dated 18 June 2002.
  - The condition in dispute is No 6 which states that: Occupation of the dwelling hereby permitted shall be restricted to persons involved in the management of the stud farm at the site, and to dependants of such persons.
  - The reason given for the condition is: As the site lies outside any area where new residential accommodation would normally be permitted, and because it is only permitted in recognition of the functional need arising from the welfare of horses kept at the site, and in pursuance of Policies ENV1 and RS5 of the Kent Structure Plan and E11 of the Swale Borough Local Plan.
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. A revised version of the National Planning Policy Framework (the Framework) has been published since the planning application was determined by the Council. With relation to the Council's decision notice an updated Framework paragraph number was agreed at the hearing. I have had regard to the revised Framework in reaching my decision.

### Main Issue

3. The main issue is whether or not it is appropriate to remove condition 6 that restricts occupancy of the dwelling to the stud farm use of the site.

### Reasons

4. The dwelling at Kemsdale Stud Farm is located within the countryside. It sits within a site of approximately 6 acres. The site hosts a dwelling, domestic garage, stable, barn, other outbuildings, manege, paddocks and grass land.
5. Planning permission was granted in 1997 for stables and living accommodation to form a stud farm. The area is not one where new housing would normally

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- be permitted. However, the Council recognised the need to live on site to support a business that demanded a rural location.
6. A permanent dwelling was granted in 2002 to replace the earlier temporary dwelling at the site under planning reference SW/00/1180. That permission was subject to condition 6 that restricted those occupying the dwelling to be individuals involved in management of the stud farm and to the dependants of such persons. The condition was imposed in recognition of the special circumstances that existed, as set out in the reason given for the condition at the last bullet point within the banner heading above. That permission was accompanied by an associated Section 106 Legal Agreement (LA) that tied ownership of the house to the ownership of the land comprising the stud farm.
  7. Since the end of 2006 there has been no stud farm activity at the site and the dwelling has been occupied in breach of condition 6. In 2020 a Lawful Development Certificate (LDC) was granted as the Council accepted that Mr and Mrs Leak had occupied the dwelling in breach of condition 6 for a period of 10 years. The appellant is seeking to remove condition 6 on the basis that the LDC has established that it is no longer necessary, reasonable or enforceable.
  8. The appellant has submitted that the occupancy condition significantly reduces the appeal property's value. Equus are specialist equestrian agents and over a 2-year period they have been unable to find a buyer. The feedback from Equus suggests that the LA restriction is impacting upon the sale. With the LDC in place this would increase the value of the property. Nonetheless, the sale and occupation would result in a breach of the LDC as the condition would be reactivated and this would immediately reduce the value of the dwelling. Given all of this, it is contended that it is extremely unlikely that someone would purchase the property as the value of the property and the limited land available is highly unlikely to attract a purchaser who will comply with the precise terms of the condition.
  9. It is also suggested that interest in the site is further reduced due to the limited size of the associated stud farm and the fact that there is no operational stud farm business taking place. Although the appellants no longer run a stud farm from what I saw at my visit there does not appear to be an inherent unsuitability of the site to run as a stud farm. The planning permission, along with the stables, paddocks and grass land at the site still exist.
  10. The appellant advised at the hearing that the stud farm ran at a loss and that was when 38 acres of other land nearby was rented and being utilised in association with the stud farm. That rented land is no longer available. The 6 acres of grazing paddock at the site is not enough to run a viable stud farm as it would not be possible to rotate any grazing. It is not good for horses to be stabled for long periods of time, particularly those with foals that need exercise and to be socialise for their wellbeing and future development. Without these facilities feed costs and additional labour would have an economic impact. There is no longer access to a rented site that provided access to stabling for livery when breeding. These factors would be the same for anyone taking on the stud farm.
  11. The applicant stopped running the stud farm due to ill health, not for any financial or practical reasons. From my visit I saw that the surrounding land hosted either polytunnels for fruit farming or equestrian activity. However, the appellant set up the stud farm and the reasons it stopped running is not one

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that clearly indicates that it would prevent it from resuming or that other equestrian land within the area would not be available for rent associated to the stud farm use. There is no detailed marketing evidence to illustrate how the property has been marketed or evidence that the advertised value of the property was realistic. Consequently, I cannot be certain that the dwelling could not be attractive or affordable to those on an equestrian income.

12. The stud farm use is in abeyance due to the personal circumstances of the appellant. The land relating to the stud farm remains associated with the dwelling. Mrs Leak indicated that she has no intention of moving, therefore the value of the property would make no difference to the appellant's current situation.
13. The dwelling was granted planning permission only on the basis of need associated with the stud farm. The stud farm business is redundant. As such, it is contended that the condition no longer serves any practical planning purposes as the stud farm no longer exists. However, the condition was imposed to make the development acceptable in planning terms. The Council's rural restraint policies at that time are still relevant presently. The removal of the occupancy condition could leave the Council in the position of having to approve further dwellings in the countryside, rather than make use of the existing dwelling that supports the use of the land. The location is such that a dwelling with unrestricted occupation would be unacceptable and be contrary to development plan policy. Therefore, the condition remains necessary.
14. The appellant is currently immune from enforcement action due to the LDC. If she were to resume stud farm activities at the site, then condition 6 would once again be enforceable. Furthermore, if the appellant no longer occupied the dwelling, its original use that was subject of condition 6 and the LA would still apply, and any breach of the occupancy condition would be enforceable.
15. The effect of removing the condition would be to permit an unrestricted open market dwelling in the countryside that would be unacceptable as it would be contrary to development plan policies. The stud farm planning permission has not been abandoned. The LA ties the dwelling with the land. The house was required for the supervision and success of the business at the site. The functional need for the condition has not disappeared. I am not persuaded that there is no potential for the use to resume. The current lawful breach does not mean that the condition does not fulfil a meaningful purpose in planning terms or justifies its removal. It is suggested that the dwelling would be more likely to be occupied by a stud farm worker if the restriction were removed as the LA serves to tie the dwelling with the land holding. However, I see no substantive reason why this would be so.
16. The existing wording of condition 6 has also been criticised for being unduly restrictive and not reasonable as it would prevent occupation by retired workers or occupation by workers at other stud farms or those employed in agriculture. Whilst the condition could be varied to make it less restrictive, the proposal before me seeks the removal of condition 6 rather than its rewording.
17. I conclude that in the absence of any substantive evidence to demonstrate the level of demand for the dwelling tied with the stud farm, it would not be appropriate to remove condition 6 that places a restriction on the occupancy. The dwelling supports the stud farm use of the rural land. An unrestricted open market dwelling would create a harmful piecemeal erosion of the

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countryside. The proposal would, therefore, be contrary to Policies ST3, DM12, DM14 and DM24 of the Swale Borough Local Plan 2017 and paragraph 80 of the Framework which collectively seek to avoid the development of isolated homes in the countryside and that seek to conserve and enhance valued landscapes and the vitality of rural communities.

**Other Matters**

18. I have had regard to the evidence submitted relating to other planning applications where agricultural occupancy conditions have been removed pertaining to different administrative areas. The proposal before me differs in that it relates to an equestrian occupancy. It can and should be considered on its own merits.

**Conclusion**

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

*Nicola Davies*

INSPECTOR

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**APPEARANCES**

FOR THE APPELLANT:

Jonathan Lee, Hobbs Parker

Vanessa Leak, appellant

Sean Leak

FOR THE LOCAL PLANNING AUTHORITY:

Graham Thomas, Swale Borough Council

Claire Attaway, Swale Borough Council