

3.3 REFERENCE NO - 22/506000/FULL			
APPLICATION PROPOSAL			
Section 73 - Application for Removal of Condition (ii) agricultural occupancy condition pursuant to application SW/91/456 for - Minor Alterations to previously approved design of the house (SW/90/992).			
ADDRESS Callum Park House Callum Park Basser Hill Lower Halstow Kent ME9 7TY			
RECOMMENDATION that planning permission is Refused			
SUMMARY OF REASONS FOR REFUSAL			
The application fails to demonstrate that the agricultural occupancy condition no longer serves a useful purpose and fails to provide sufficient information and evidence to demonstrate that there is no reasonable prospect that the property could be occupied by a person(s) in compliance with the condition.			
REASON FOR REFERRAL TO COMMITTEE			
Cllr Roger Clark has referred the application to the Planning Committee.			
WARD Bobbing, Iwade And Lower Halstow	PARISH/TOWN COUNCIL Lower Halstow	APPLICANT Mr and Mrs John McGee AGENT	
DECISION DUE DATE 28/02/2023	PUBLICITY EXPIRY DATE 09/02/2023	CASE OFFICER Rebecca Corrigan	
RELEVANT PLANNING HISTORY			
Application Ref:	Description	Decision	Decision Date
22/502148/FULL	Proposed new stone wall and electric gates to entrance. New field access gates.	Granted, subject to conditions	10.08.2023
20/501002/OUT	Outline application (all matters reserved except for access) for the demolition of a large equestrian centre and centre and construction of a smaller facility enabled by 9no. custom-build homes with associated landscape enhancements	Grant, subject to Section 106 and appropriate conditions	07.08.2020
17/503274/FULL	The demolition of existing buildings (totalling 2,637 sqm); the removal of 14,600 sqm of impermeable surfaces including 3 x riding arenas and car parking (overall 37% reduction of impermeable surfacing); and the erection of nine detached custom build eco houses and garages with home offices/studios (totalling 1,995sqm) (overall 24% reduction in built footprint) and associated SUDS ponds, cycle/walking paths, landscaping and wildlife planting and ecological	Refused	13.10.2017

	enhancement; along with a sand school and estate/equestrian building for personal use and estate management, and associated access road.		
SW/91/0456	Minor alterations to previously approved design of house (SW/90/0992)	Grant of conditional PP	08.07.1991
SW/90/0992	Erection of a farmhouse	Grant of conditional PP	17.10.1990
SW/87/0192	Renewal of SW/83/597 being the approval of Reserved Matters for the erection of a farmhouse	Approved pre 1990	08.04.1987
SW/83/0597	Approval of Reserved Matters 81/1023 for a farmhouse	Approved pre 1990	24.08.1983
SW/81/1023	Outline application for erection of a farmhouse	Approved pre 1990	15.07.1983
SW/79/0322	Revised location of a farmhouse approved under reference SW/76/1093	Approved pre 1990	18.09.1976
SW/76/1093	Farmhouse Bungalow	Approved pre 1990	23.08.1977

1. DESCRIPTION OF SITE

- 1.1 The application site relates to a detached residential dwelling which forms part of the larger estate of Callum Park, also operating as an equestrian and riding centre.
- 1.2 Access to the site is from Basser Hill to the north. The wide access road divides soon after it enters the site with a narrower driveway giving access to the dwelling house to the east of the riding centre currently under construction for housing development set out below.
- 1.3 Outline planning permission was recently obtained under application ref: 20/501002/OUT for the demolition of the majority of the equestrian centre to facilitate the erection of a development of nine self build / custom residential dwellings to the south west of the application site and a further application was granted for a proposed stone wall and electric entrance gates which will serve as the entrance to the Site.
- 1.4 The surrounding area is set within the open countryside and within an Area of High Landscape Value. The complex of buildings at Little Barksore Farm, including a Grade II listed farmhouse, are sited to the north west of the site, with orchards to the west. The surrounding area is strongly of rural character and appearance.

2. PROPOSAL

- 2.1 This application is made pursuant to Section 73 of the Town and Country Planning Act 1990, and seeks the removal of condition 2 pursuant to planning permission reference SW/91/0456. The condition states:

“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 (i) of the Town and Country Planning act 1971 or in forestry and any dependent of such a person residing with him (but including a widow or widower of such a person).”

Reason: 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.

3. PLANNING CONSTRAINTS

- 3.1 Potential Archaeological Importance
- 3.2 Within the countryside
- 3.3 Within an Area of High landscape Value
- 3.4 Basser Hill is a designated rural lane

4. POLICY AND CONSIDERATIONS

Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017

Policy ST3	The Swale settlement strategy
Policy DM3	The rural economy
Policy DM12	Dwellings for rural workers
Policy DM14	General development criteria
Policy DM24	Conserving and enhancing valued landscapes
Policy DM26	Rural Lane

Supplementary Planning Guidance (SPG):

- 4.1 Swale Borough Council Parking Standards 2020
- 4.2 Swale Landscape Character and Biodiversity Appraisal 2011

5. LOCAL REPRESENTATIONS

- 5.1 Lower Halstow Parish Council – Support the application although no planning reasons are given

6. CONSULTATIONS

- 6.1 No statutory consultations

7. BACKGROUND PAPERS AND PLANS

- 7.1 Planning Support Statement dated 23 December 2023
- 7.2 Planning Supporting Statement dated 25th May 2023

8. APPRAISAL

Principle of development

- 8.1 This application seeks to remove an agricultural occupancy condition (2) which restricts occupation of the dwelling to persons employed (or last employed) in agriculture. The property is located within the countryside and forms part of a high quality landscape where strong rural constraints normally apply. The only reason that planning permission was granted for the dwelling was due to a demonstrable need for agricultural workers accommodation in the area, otherwise the erection of a dwelling would have been unacceptable in this rural location. The planning condition requires that only persons employed or last employed in agriculture can occupy the dwelling. Removal of the condition would create an unrestricted dwelling that will be available on the open market.
- 8.2 National advice on the use of planning conditions is clear that such conditions should only be used where they are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects. At the time that planning permission was granted for the development, it is clear that the condition restricting occupancy would have met such tests, the case being that the dwelling was only permitted on the grounds of an essential need for an agricultural dwelling, in an area where residential development would not normally be permitted.
- 8.3 Policy DM12 of the Local Plan sets out the Council's position on proposals for rural dwellings. Understandably, this sets a high bar for applicants to demonstrate an essential need for a dwelling and a financial test to demonstrate that an enterprise is financially viable to support a dwelling – in locations where such residential development would not normally be permitted. The supporting text to the policy states that the council will control by conditions the occupancy of a dwelling permitted under DM12 to ensure they are retained for use by persons solely or last employed in agriculture.
- 8.4 The policy does not set out any criteria to be met in circumstances when the removal of an agricultural occupancy condition is proposed. Nor is there any current detailed national planning policy advice on this. However, given the high bar required to demonstrate the need for the erection of an agricultural dwelling in areas where residential development is not normally permitted, it is important that any applications to remove an occupancy condition are robustly tested. The key here is whether any need exists for the dwelling in question with the agricultural occupancy condition. It is common practice with such applications that a property is marketed for an appropriate period of time (normally for a minimum of 6 months) and at an appropriate discounted price (to reflect the restricted occupancy) to establish whether there is interest from the wider agricultural community in the property, which in turn helps demonstrate whether a need remains for the property. In this instance, the applicant has not undertaken any marketing of the property. As such, officers have raised significant concern that the application fails to evidence a lack of demand for the property with the restrictive occupancy condition. The applicant has instead presented a number of reasons why, in their opinion, the condition should be removed without the need for marketing.

The Applicants Case

i) *That the applicant has been in breach of the Agricultural Occupancy Condition (AOC) for a period in excess of ten years;*

8.5 It is the applicant's case that Callum Park House has been occupied in consistent breach of its AOC for the last 26 years and rather than submit a Certificate of Lawfulness, they have included evidence to confirm the breach of the condition for a period in excess of the last 10 years.

8.6 In this regard, even if the Council did form the view that the dwelling subject of the AOC has been occupied for a period of more than 10 years (which would normally be established through an application for a lawful development certificate and not a planning application) and that the current occupants were therefore immune from enforcement action, the planning condition is linked to the land, not the occupants, and if the occupants vacate the property, then the condition "springs back" and becomes enforceable again. As such, the condition is still held to serve a useful purpose given the property could subsequently be occupied in the future by a person who does meet the condition and thus would maintain a stock of agricultural workers living accommodation. An appeal decision elsewhere in the Borough at Lodge Farm, Hartlip and attached as Appendix A considered the very same issue. Paragraph 5 is of particular relevance and states -

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.

8.7 This clearly sets out that even if it is demonstrated that the breach of condition 2 has occurred over a sufficient period to become lawful, the condition would come back into effect should the applicant ever cease to be in breach. As such, the current breach of the condition does not demonstrate that the condition no longer serves a useful purpose.

ii) *Lack of Agricultural Activity, Viability & Income Diversification*

8.8 The applicant's supporting statement sets out that the applicants have never received income from agriculture or forestry since 1996 and that for a period in excess of 10 years the land has been wholly used in conjunction with the equestrian business and that that there is no agricultural use or production at Callum Park that generates a functional need for a farm worker or owner to reside on the property. However, the condition does not tie occupancy of the dwelling to farming activity at Callum Park only, it allows a person employed or last employed locally in agriculture (or forestry) to occupy the property in accordance with the condition.

iii) The Affordability of the Dwelling

- 8.9 The applicant argues that the presence of an AOC will significantly reduce the value of the property, however this serves its purpose as it makes it more affordable for workers within the agricultural industry. The property was granted permission and erected as an agricultural dwelling, and restricted as such. The applicant should have been under no assumptions that they would be able to sell the property for market value.
- 8.10 The applicant estimates that the property would be valued in the region of £1.2 million with the agricultural occupancy condition. However, no formal valuation has been provided with the application and on this basis little weight is given to the applicant's estimation. It is accepted that the dwelling, as extended, is larger than a typical agricultural dwelling and would be likely to command a high value. However it does not automatically follow that the property must now fall outside the financial reach of a qualifying occupant without any relevant valuation and marketing to test this. The property which was the subject of the appeal attached as Appendix A was similarly a high value property – but the Inspector considered the lack of marketing to be so critical as to dismiss the appeal. Whilst the property may fall beyond the reach of an average farm worker it could, as an example, appeal to a farm owner who does not benefit from an on-site dwelling, or a retired farm owner. The point being that this cannot be discounted unless the market is tested.
- 8.11 Officers did suggest that they would be willing to consider the submission of a formal valuation and would seek views from the Council's agricultural consultant on whether this was of such a high price that marketing of the property would be a futile exercise. However, the applicant has declined to provide a valuation - partly because they maintain that any valuation must include the surrounding estate at Callum Park, even though this is not in agricultural use, and is not bound by any planning restriction that ties it to the dwelling.
- 8.12 The applicant's agent has provided details of appeal decisions elsewhere in Kent where marketing was not required in relation to the removal of an occupancy condition. However, it appears that at the very least, a valuation was provided as part of the evidence submitted with these, some reports / decisions refer to marketing information that was submitted, and others refer to other factors, such as the site location and specific wording of the condition in question. Officers do not consider that these examples provide directly comparable or overwhelming evidence to take a different approach – and the appeal decision within the Borough referred to in this report is considered to be of more direct relevance. To conclude on the above, the application contains no formal marketing or valuation of the dwelling, and no testing of the market has taken place to determine whether there would be interest and evidence of need from the agricultural community. Whilst officers acknowledge that the property is large and likely to command a higher value, without appropriate evidence it cannot be discounted that the condition still serves a useful purpose.

Other matters

- 8.13 The applicant has referred to a recent refusal for a farm dwelling at Woodland Farm. They state that as this was refused over concerns that the dwelling would not be affordable to the wider agricultural community and is considerably smaller than his property, that the Council would now be inconsistent if it refused his application. However, the two applications are different, one relating to the erection of a new agricultural dwelling, the other relating to the removal of an occupancy condition on an existing dwelling. Each application should be judged on its own merits, and as specified above the application fails to test the market to establish whether there would be interest in the dwelling from the wider agricultural community. Recent applications at Lodge Farm (18/502834 and referred to earlier in the report)), and at Kemsdale Stud Farm, Hernhill (20/504495), for removal of an occupancy condition were dismissed on appeal in part due to the lack of any marketing. As such, officers are applying consistency in raising the lack of marketing with the applicant.

9. CONCLUSION

- 9.1 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. The condition supports the farm industry by maintaining a supply of agricultural worker's dwellings and avoids the piecemeal erosion of the countryside in areas of the borough where residential development would not normally be permitted. Without appropriate testing of the market, the condition continues to serve a useful purpose. Removal of the condition has not been justified and would be contrary to Policies ST3, DM12 and DM14 of the Local Plan.

10. RECOMMENDATION

That the application be Refused for the following reason.

- 1) In the absence of any marketing or formal valuation, the application fails to demonstrate that condition 2 of planning permission SW/91/0456, which places an agricultural occupancy restriction on the dwelling, no longer serves a useful purpose. It is considered appropriate and necessary to retain condition 2 to maintain a supply of agricultural dwellings in the locality, and to avoid piecemeal erosion of the countryside through future applications for agricultural worker's dwellings. The proposal is therefore contrary to the aims of policies ST3, DM12 and DM14 of the adopted Swale Borough Local Plan 2017; and paragraph 80 of the National Planning Policy Framework.

The Council's approach to the application

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2018 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

