

Officer Report on Planning Application: 15/00162/S73A

Proposal :	Application to remove Condition 2 (Agricultural Occupancy) of approved planning permission 791810 dated 30th August 1979 (GR: 370424/129048)
Site Address:	Lavender Green Verrington Lane Charlton Musgrove
Parish:	Wincanton
WINCANTON Ward (SSDC Member)	Cllr N Colbert Cllr C Winder
Recommending Case Officer:	Lee Walton Tel: (01935) 462324 Email: lee.walton@southsomerset.gov.uk
Target date :	12th March 2015
Applicant :	Mrs M Foreman
Agent:	Mr Edward Dyke Symonds And Sampson, Agriculture House Market Place, Sturminster Newton, DT10 1DU
Application Type :	Minor Dwellings 1-9 site less than 1ha

REASON FOR REFERRAL

This application is referred to the committee at the request of the Ward Members with the agreement of the Area Chairman to enable the comments of the Town Council to be fully debated.

SITE DESCRIPTION AND PROPOSAL





The application site is in the countryside, north of Wincanton.

The proposal seeks removal of the agricultural occupancy condition (2) attached to planning permission 791810 dated 30 August 1979 for the erection of a bungalow. The application follows the issuing of a Certificate of Lawfulness ref: 14/02116/COL dated 8 December 2014 that permitted continued occupancy without compliance with the occupancy condition.

Condition 2 states:

"The occupation of the dwelling shall be limited to persons employed or last employed full-time locally in agriculture as defined by section 290 of the Town and Country Planning Act, 1971, or in forestry and the dependents of such persons".

RELEVANT BACKGROUND

14/02116/COL - Application for a certificate of lawfulness for the continued occupation of the dwelling without compliance with condition 2 (agricultural tie) of planning permission 791810 dated 30 August 1979, permitted.

791810 - Erection of an agricultural bungalow on land at Verrington Lodge Farm - conditional approval.

POLICY

Section 38(6) of the Planning and Compulsory Purchase Act (2004), and Paragraphs 2, 11, 12, and 14 of the NPPF states that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise.

For the purposes of determining current applications the local planning authority considers

that the adopted development plan comprises the policies of the South Somerset Local Plan 2006 2028 (adopted March 2015).

Policies of the South Somerset Local Plan (2006-2028)

EQ2 - General Development

TA6 - Parking standards

HG10 – Removal of Agricultural or other occupancy conditions

National Planning Policy Framework (March 2012):

Chapter 4 - Promoting sustainable transport

Chapter 7 - Requiring Good Design

National Planning Practice Guidance

CONSULTATIONS

Wincanton Town Council recommend refusal. Condition 2 (Agricultural Tie) should remain. The residents have been committing an offence for several years.

County Highways - standing advice applies, to consider parking standards.

REPRESENTATIONS

None

APPLICANT'S CASE:

We believe the condition should be removed for the following reasons:

1. The current occupants have no intention of entering into agricultural employment. As such the dwelling will never be available for agricultural occupation again.
2. The effect of securing the CLUOD has been to increase the market value of Lavender Green by as much as 30% which is the average discount created by the presence of an Agricultural Occupancy Conditions (AOC). The property will never be sold to an agricultural worker as the AOC would become complied with leading to a 30% loss in capital value.
3. The AOC will never be complied with and is thus redundant, removing the AOC will regularise the planning situation.
4. Due to the existence of the CLUOD condition 2 of the planning permission 791810 is now unenforceable and fails to meet the requirements and tests set out within para.206 of the NPPF. The removal of the condition would therefore accord with the requirements of the NPPF.

CONSIDERATIONS

Principle of Development:

This application follows the establishment of a certificate of lawfulness that favours continued occupancy without compliance to condition 2 attached to planning permission ref: 791810. The proposal seeks now to regularise the situation by having the condition removed.

Notwithstanding the policy requirement (HG10 of the local plan) for the removal of agricultural occupancy conditions, the applicant has the fall-back position established by the certificate of lawfulness. Although the certificate represents a 'snap shot' in time with the potential for a subsequent breach to resume the reality is that with the increase in the capital value of the property there is limited likelihood that the occupancy condition would ever be brought back into play. It is considered that policy HG10 is of little help in considering the current application simply because the applicant enjoys full market value and as such the sales price would reflect

this rather than the normal anticipated two thirds of the property value that is reflected by the presence of an enforceable occupancy condition. The exercise is considered to be unreasonable and we have therefore to consider the applicant's case, as copied above.

The applicant offers 4 reasons why it is only reasonable to anticipate acceptance that condition 2 should be removed. We have therefore to consider the 'reasonableness' of withholding permission. Of course, the wider site extends to the former agricultural buildings although the extent of the land can be argued is too small to support continuing farming on site alone. It can be argued also that the structures can be sold or through change of use a non-agricultural use might be made of the site, such as equestrian use. It is considered because of the inflated capital value that has been established by the certificate of lawfulness that the interests of most, if not all, future occupants would be to avoid a return to the agricultural tie. While there must always be the possibility that a future occupancy meets the requirement of the condition, realistically with a full market value there is no reasonable likelihood of the dwelling fulfilling any need for an agricultural workers' dwelling. The condition has, in effect, become a 'dead letter' and outlived its usefulness.

Town Council's Comments:

These are noted. There was never an offence, although there was a breach and the certificate of lawfulness established a lawful right to continue in occupancy in breach of the planning condition. It means that a future purchaser is able to occupy the property without the need to conform to the condition. As stated above, the considerations will be the 'reasonableness' or not, of withholding permission. Any future purchaser is less likely to be involved in farming, for the evident reason that the capital value of the property is that much more. Therefore on the balance of probabilities this supports a continuing unenforceable breach of occupancy so that it would be unreasonable to seek retention of condition 2. As stated above the condition has, in effect, become a 'dead letter', and outlives its usefulness.

Other Matters:

Removal of the occupancy condition would not have any negative impact on character and appearance, highway safety and neighbour amenity.

RECOMMENDATION

Allow the removal of condition 2 of planning consent 791810