

5p E/12/0137/B – The residential occupation of a dwellinghouse in breach of an agricultural occupancy condition, at Brookfield Farm, West End Road, Wormley West End, EN10 7QN

Parish: BRICKENDON LIBERTY

Ward: HERTFORD HEATH

RECOMMENDATION:

That Members note the service of an enforcement notice under Section 172 of the Town and Country Planning Act 1990; agree with that action, and authorise any such further steps as may be required to secure the cessation of the residential use of the property by persons not complying with the agricultural occupancy condition.

Period for compliance: 6 months.

Reason why it was expedient to issue an enforcement notice:

1. There is insufficient justification to demonstrate that there is no agricultural, forestry or other rural-based occupational need for the dwelling having regard to need in the area as a whole, not just of the particular holding and the residential use of the property by persons in breach of the occupancy condition is thereby contrary to Policy GBC6 of the East Herts Local Plan Second Review April 2007 and national guidance contained in the National Planning Policy Framework.

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1.0 Background:

- 1.1 The site is shown on the attached OS extract. It lies on the southern side of the road, about 450 metres west of Holy Cross Hill. It is a relatively remote part of the district, close to the boundary with Broxbourne.
- 1.2 The bungalow which is the subject of this report was built under planning permission granted under application numbers 3/82/1179 (outline permission) and 3/83/0622 (reserved matters).
- 1.3 Condition 5 of the outline permission requires that “The occupation of the dwelling hereby permitted 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 dependants of such a person residing with him) or a widow or widower of such a person”.

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- 1.4 There is also a Section 52 agreement attached to that permission which effectively ties the bungalow to the wider agricultural unit.
- 1.5 On 19th April 2012 the site owner submitted an application for a certificate of lawful use, under application number 3/12/0679/CL, claiming that “there has been a sustained breach of Condition 5 for a period exceeding 10 years and where the local planning authority has not served an Enforcement Notice.”
- 1.6 Officers and the Council’s Solicitor have examined the detail of that application and consider that there are breaks in the required ten year period that are more than *de minimis* in planning terms. There are four breaks in the unauthorised occupancy that vary between one and three months in length. Accordingly, in accordance with legislation and case law, the bungalow has only been continuously occupied for a period of three years and two months in breach of the planning condition prior to the application date. The application for a certificate of lawfulness (3/12/0679/CL) was therefore refused recently and Members are asked to note that, in consultation with the Chairman of the committee and the Council’s Legal Manager, Officers also issued an enforcement notice on 25th May 2012 requiring the cessation of the occupancy of the property in breach of the condition.
- 1.7 Members will note the lengthy planning history of this site and may recall that there have been enforcement issues at the site on previous occasions. There is one relevant planning application, to remove the agricultural occupancy as onerous, under application number 3/91/0900. This was refused by the Council and a subsequent appeal against that decision was dismissed by The Planning Inspectorate.
- 1.8 The applicant has contended for a number of years that the agricultural unit upon which the bungalow is sited is not viable, although the condition does not restrict occupation of that bungalow to that unit but to the wider locality. This was one of the owner’s grounds of appeal against the Council’s decision to refuse planning permission for the application to remove the agricultural occupancy condition.
- 1.9 In his decision letter on that matter the Inspector addressed that contention in the following terms; “While I accept that the profitability of many small units is now highly questionable, you did not dispute the existence of other more successful enterprises on similar sized sites. The fact that many of these may cater for specialised markets would not itself preclude such an initiative at Brookfield; much could depend on the enterprise of the individual farmer.”

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- 1.10 Officers' consider that there is still a demand for agricultural dwellings in the locality of the site, evidenced by the granting of planning permission for an agricultural dwelling on the neighbouring site of Brookfield Nursery, by a Planning Inspector, on 18th May 2010.
- 1.11 From the evidence submitted to the Council by the site owner it would appear that the bungalow has been rented out to a number of individuals who have no history of agricultural employment over the past eight years, at a market rent. The owner also occupied the property for part of the period although these periods were not continuous.
- 1.12 Members will note from the planning history that there is no shortage of unrestricted residential accommodation for the owner at Brookfield Farm as since 1997 certificates of lawful use have been granted, under the four year time limit rule, for the conversion of a total of three former barns to dwelling houses.

2.0 Planning History:

- 2.1 The most relevant planning history for the site can be summarised as follows:

3/78/0896	Temporary overnight accommodation and office in barn	Refused
3/78/1289	Extended barn for temporary overnight accommodation	Granted with conditions
3/79/1271	Agricultural building	Refused
3/79/1607	Agricultural building	Granted with conditions
3/81/0192	Extension to calf shed	Granted with conditions
3/81/0196	Agricultural workers dwelling	Refused
3/81/1044	Calf house	Granted with conditions
3/81/1387	Retention of temporary accommodation	Granted

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		with conditions until 31.12.83
3/82/1179	Agricultural workers dwelling (outline)	Granted with conditions subject to a S52 agreement
3/83/0232	Bungalow	Withdrawn incomplete
3/83/0622	Agricultural workers bungalow (reserved matters)	Approved
3/86/0108	Dormer in bungalow roof	Granted with conditions
3/87/1175	Garage and playroom	Granted with conditions
3/89/0812	Removal of agricultural occupancy condition on dwelling	Withdrawn
3/91/0900	Removal of agricultural occupancy condition on dwelling	Refused – appeal dismissed
3/97/0223/CL	Residential use of part of the barn (2) as a dwelling unit for a period in excess of 14 years	Granted
3/04/0770/FP	Demolition of the existing residential unit/ Barn (2) approved under 3/97/0223/CL with other outbuildings/workshops in proximity and the erection of a replacement dwelling	Withdrawn by applicant
3/05/0087/FP	Conversion of single dwelling house	Refused

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(Barn 2) to four flats – retrospective

3/05/1915/FP	Construction of two storey extension to dwelling together with garden room – retrospective	Granted
3/05/1916/CL	Two separate residential units with associated garden, garaging and parking	Granted
3/07/2168/OP	Demolition of existing dwelling (barn 2) and further mixed use buildings and construction of a single detached dwelling	Refused
3/09/1190/SV	Application to modify the S52 agreement to reduce the extent of agricultural tie land	Withdrawn by EHDC
3/12/0679/CL	Residential occupation of the site by persons who are not employed in agriculture, for a continuous period in excess of ten years, in breach of Condition 5 of planning application number 3/82/1179.	Refused
3/12/0699/SV	Application to discharge the S52 agreement on application number 3/82/1179	Withdrawn

3.0 Policy:

3.1 The relevant ‘saved’ policy of the adopted Local Plan in this matter is:-

GBC6 - Occupancy Conditions.

3.2 The National Planning Policy Framework (NPPF) is also of relevance in this case.

4.0 Considerations:

4.1 Officers’ consider that the residential occupation of the site has not become lawful by the passage of time and the application for a certificate of lawfulness (3/12/0679/CL) was refused accordingly.

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- 4.2 The site lies within the Metropolitan Green Belt where there is a presumption against development other than for those meeting specified criteria. This property was originally granted planning permission, subject to the agricultural occupancy condition, to meet the (then) identified needs of the agricultural unit.
- 4.3 Policy GBC6 of the Local Plan, with regard to the removal of an occupancy condition, states that such a course of action will only be granted in exceptional circumstances and then only when evidence has been submitted to the Council to show that there is no need for such a property in the area and that the property could not make a contribution to affordable housing needs in the area.
- 4.4 In this case, although Officers consider that the isolated location of the site may well render it unsuitable for affordable housing, they are of the view that there is evidence of a demand for agricultural dwellings in the area (see 1.10 above) and it is therefore considered that the occupancy condition continues to serve a useful planning purpose in the area. Accordingly officers' consider that the unauthorised use of the property in breach of the condition is contrary to (saved) policy GBC6 of the East Herts Local Plan Second Review April 2007. Neither is the unauthorised use supported by the National Planning Policy Framework (NPPF) which also seeks to restrict new housing in the Green Belt and countryside except where, inter alia, it is required for an essential agricultural or other rural-based occupational need.
- 4.5 As the certificate of lawfulness application was refused recently, Officers also issued an enforcement notice on 25th May 2012 (in consultation with the Chairman of the committee and the Council's Legal Manager) requiring the cessation of this unauthorised use. This will enable any appeals against either the refusal of the certificate or the service of the enforcement notice to be considered together in an efficient manner for all parties concerned.

5.0 Recommendation:

- 5.1 It is therefore recommended that Members' note the service of the Enforcement Notice requiring the cessation of the unauthorised residential use of the property by persons in breach of the agricultural occupancy condition; agree with that action; and also authorise any further action as may be necessary to remedy the breach of planning control in this case.