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PLANNING STATEMENT FOR THE REMOVAL OF
CONDITION c OF PLANNING CONSENT T. 6542/D
(Agricultural Occupancy Condition)

[REDACTED]

Address: Keans Croft, Bamfurlong Lane, Staverton, Cheltenham, Gloucestershire
GL51 6SL

January 2022

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1.0 Introduction and Background

- 1.1 This report has been written to support the removal of the Agricultural Occupancy Condition (AOC) (Condition c) attached to Keans Croft, Bamfurlong Lane, Staverton, Cheltenham, GL51 6SL.
- 1.2 The Property lies approximately 3.5 miles west of Cheltenham town centre and 4.5 miles north east of Gloucester city centre.
- 1.3 Planning consent was granted by Gloucestershire County Council under reference T 6542/D on 20th September 1979. This consent was granted subject to an Agricultural Occupancy Condition (Condition c), the wording of which is as follows:

‘The occupation of the dwelling shall be limited to persons employed or last employed, locally in agriculture, as defined in Section 290 (1) of the Town and Country Planning Act, 1971, or a dependants of such a person residing with him (but including a widow or widower of such a person.’
- 1.4 The reason for this condition being put in place was because:

‘The site lies in an area within which the County Planning Authority would not normally grant permission for residential development. This permission is therefore granted only because of special agricultural need and the premises should accordingly be occupied by persons connected with agriculture.’
- 1.5 A copy of the original planning consent is included at Appendix 1.
- 1.6 In August 2020 the applicant applied for a Certificate of Lawful Development (CLEUD) to regularise the fact that they had been occupying Keans Croft in breach of the Agricultural Occupancy Condition for a period in excess of 10 years.
- 1.7 On the 20th September 2021 Tewkesbury Borough Council granted the CLEUD under application reference 21/00278/CLE therefore regularising the breach of the Agricultural Occupancy Condition. See Appendix 2 for the decision notice.
- 1.8 The effect of the CLEUD means that the Council are now unable to enforce the Agricultural Occupancy Condition on the applicant.
- 1.9 In light of the CLEUD being granted, the applicant is now applying to permanently remove the Agricultural Occupancy Condition.
- 1.10 The property has no other planning history

2.0 Planning Policy

The policies contained within the National Planning Policy Framework (NPPF), The Cheltenham Gloucester and Tewkesbury JCS, and emerging Tewkesbury Borough Plan have been considered in relation to the proposal.

2.1 National Planning Policy Framework

2.1.1 The National Planning Policy Framework (2019) and its associated Planning Practice Guidance provide the overarching principles for all development.

2.1.2 Paragraph 10 provides that at the heart of the Framework is a presumption in favour of sustainable development.

2.1.3 Paragraph 11 provides that for decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

(i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed, or

(ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

2.1.4 Paragraph 55 provides that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

2.1.5 Paragraph 79 provides that planning policies and decisions should avoid the development of isolated homes in the countryside unless one of the special circumstances applies. One of these special circumstances include where there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside.

2.2 Planning Practice Guidance

2.2.1 The Planning Practice Guidance relating to the Use of Planning Conditions has been considered.

2.2.2 There are six tests contained within the National Planning Policy Framework relating to the use of conditions. Planning conditions should only be imposed where they are able to meet these tests:

1. necessary;
2. relevant to planning and;
3. to the development to be permitted;
4. enforceable
5. precise and;
6. reasonable in all other respects.

2.3 Tewkesbury Borough Council Local Plan

2.3.1 The Local Plan has recently completed the main modification process and is therefore nearing the end of the consultation process ahead of formal adoption. Due to the progress through the process the plan is afforded some weight but as it is not yet adopted cannot offer full weight on planning decisions.

2.3.2 The new policies relevant to this application are:
Policy RES3 New Housing Outside Settlement Boundaries
Policy RES7 - Re-use of rural buildings for residential use
Policy AGR3 – Agricultural and other rural workers dwellings
Policy AGR4 – Removal of occupancy conditions
Policy GRB3 - Bamfurlong Operational Policing site
GRB4 – Cheltenham – Gloucester Green Belt

2.3.3 Policy AGR4 is the main policy in this respect but policy RES3 encourages the re-use of existing building for ‘new’ housing as does policy RES7.

2.3.4 The property sits immediately adjacent the Bamfurlong Operational Policing site and the applicant has been approached by the Police to use his land to extend this site. This means there is obviously pressures on the existing site, however given the small scale of the site land cannot be given to this purposes whilst the AOC remains on the dwelling.

2.3.5 The property is located within the Cheltenham – Gloucester Green Belt and again this policy allows the re-use of buildings of a permanent or substantial construction.

2.3.6 Policy AGR4 specifically deals with this type of development. This policy states: ‘The removal of occupancy conditions on rural workers dwellings will only be permitted where: 1. The occupational dwelling no longer serves a need in connection with the agricultural holding, forestry or rural enterprise site to which it relates and there is no agricultural, forestry or essential rural business

need elsewhere that it could reasonably serve, nor is it likely that any such needs will arise in the foreseeable future. 2.Satisfactory evidence has been provided that the dwelling has been marketed for sale or rent with its occupancy restriction, at a realistic price for a reasonable period of time (for at least 18 months or an appropriate period as agreed with the Local Planning Authority), and no interest has been shown in its purchase or rent.

- 2.3.7 This policy is silent on the treatment of sites that have the benefit of a Certificate of Lawful Use and those where the condition has become obsolete due to surrounding development. This may be something addressed under the consultation.
- 2.3.8 The saved Policy from the previous Local Plan – Policy AGR 3 REMOVAL OF AGRICULTURAL WORKERS’ OCCUPANCY CONDITIONS confirms ‘Policy AGR3 applications for the removal of agricultural workers’ occupancy conditions will only be permitted where it is demonstrated that the dwelling is no longer required to serve the existing or future needs of the agricultural community.’
- 2.3.9 This policy specifically requested decision makers to take into account the changes in the local community, therefore the extension of the police site and surrounding residential development would be significant.
- 2.3.10 As it is uncertain if the current proposed policy will be formally adopted the current planning policy must be relied upon.

3.0 Principle of Development

- 3.1 National planning policy does not support the development of isolated homes in the countryside unless one of the special circumstances apply; one of which is for when the isolated home is to meet an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside.
- 3.2 Keans Croft is located outside of any defined settlement boundary and is therefore located within the countryside.
- 3.3 The principle of this development proposal is therefore not fully supported by national planning policy.
- 3.4 However, in this case there is an overriding material condition, in that the existence of the CLEUD on the Property makes the Agricultural Occupancy Condition unenforceable

and therefore its retention would be against Paragraph 55 of the NPPF and its associated Planning Practice Guidance Use of Planning Conditions.

- 3.5 The development of the Police site adjacent the property has affected the surface water drainage of the land making it impossible to farm tender plants as was initially proposed within the Keans Croft Business Plan. As a result of this it would be impossible for any future occupier to generate an agricultural income from the land given its small scale and waterlogging.

4.0 Use of Planning Conditions

- 4.1 Paragraph 38 of the Planning and Compulsory Purchase Act 2004 provides that ‘if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise’.
- 4.2 The effect of the CLEUD is a material consideration in this case. It makes the Agricultural Occupancy Condition unenforceable which gives the fall-back position that the dwelling can be occupied by someone who does not comply with that condition.
- 4.3 The condition is therefore no longer meeting all of the six criteria for planning conditions contained within Paragraph 55 of the NPPF (2018) and the Use of Planning Conditions Planning Practice Guidance (PPG) which is an overriding material consideration.
- 4.4 The only way that the Agricultural Occupancy Condition can be reactivated and thus be enforceable again is if the Property at some point in the future becomes vacant or is occupied by someone who complies with the Agricultural Occupancy Condition.
- 4.5 All planning conditions must be enforceable (in accordance with the NPPF and PPG). The Agricultural Occupancy Condition at Keans Croft is now unenforceable. It therefore makes it unreasonable for the condition to be retained.

5.0 Relevant Appeal Decisions

- 5.1 There have been a number of appeals where a property has benefitted from a CLEUD to regularise its occupation in breach of the Agricultural Occupancy Condition and the Council have subsequently refused to remove that Condition.
- 5.2 Each of these appeals have been allowed and the Agricultural Occupancy Condition removed. This is as a result of the fallback position that the CLEUD provides being an overriding material consideration in each case.
- 5.3 Comments from the Planning Inspectors in each appeal are provided below with a copy of each of the appeal decisions being submitted alongside this application.

APP/H1840/W/18/3196410 – The Old Orchard, Charlton. Appeal dated 31st May 2018. The property benefitted from a CLEUD.

‘Based on the evidence before me, the removal of Condition No 6 would result in an open market dwelling in the open countryside. As such, the proposal would be in conflict with Policy SWDP 2 of the South Worcestershire Development Plan’.

‘Notwithstanding this, the appellants have submitted a lawful development certificate (CLEUD) granted on appeal in relation to the Old Orchard for the occupation of the dwelling without complying with Condition No 6. This follows a continuous breach of the occupancy restrictions by the appellants over a period of at least 10 years. The certificate is unfettered and the benefits it provides would be transferable to subsequent occupiers. The appeal property could consequently be occupied in breach of condition No 6 by any non-qualifying person in perpetuity. As such, the fall-back position advocated by the appellant is viable.’

‘I have carefully considered the Council’s representations and I accept that the potential future occupation of the Old Orchard by a qualifying person would have the effect of breaking the continuity of the breach, thereby reinstating the occupancy restrictions. However, based on the evidence before me I consider this to be highly unlikely and in reality no more than a theoretical possibility. Therefore, whilst Condition No 6 was necessary to achieve the purpose for which it was originally intended, the CLEUD has the effect of making it unenforceable for all practical purposes.’

‘Therefore, I afford significant weight to the CLEUD (fall-back position) and regard the ability to occupy the Old Orchard in breach of condition No 6 as a material consideration which would, in this specific circumstance clearly outweigh the harm I have identified. Consequently, it is no longer necessary or reasonable to continue to require the property to be occupied by qualifying persons.’

APP/T3535/W/17/3173889 – Park Farm House, Suffolk. Appeal dated 18th August 2017. The Property benefitted from a CLEUD.

‘The condition is not enforceable and therefore to re-impose it would be unreasonable. As such the condition fails the tests in the PPG and, as a consequence, I conclude that it is unnecessary and unreasonable to impose a condition on any grant of planning permission that requires the appeal property to be occupied by an agricultural or forestry worker, their resident dependant or someone last employed in these sectors.’

‘Nevertheless, in light of my findings above, that the condition is unenforceable and thus unreasonable, it would be superfluous to require marketing as a means of justifying the removal of the condition.’

‘In this instance, a remote dwelling in the countryside without an agricultural occupancy condition would be contrary to the aims of local and national planning policy. However, in this instance a material consideration, the unenforceability of such a condition, indicates that planning permission should be forthcoming in spite of this.’

APP/Y9507/W/16/3147251 – Copper Beeches, South Harting. Appeal dated 7th September 2016. The Property benefitted from a CLEUD.

‘I acknowledge that the occupation of the dwelling by a qualifying person would have the effect of breaking the continuity of the breach, thereby reinstating the occupancy restrictions. A period of no occupancy, depending on the circumstances, might have the same effect as well. I find this to be a theoretical concept, however.’

‘While the condition was originally necessary to achieve the purpose for which it was originally intended, the existence of the CLEUD has the effect of making it unenforceable for all practical purposes. Moreover, taking account the significant change of circumstances since 1969, the condition has now outlived any useful planning purpose thus also meaning that it is no longer necessary or reasonable to continue to require to be occupied by qualifying persons.’

‘Despite the conflict I have identified with Policy RE19 (marketing requirement) of the Local Plan I find the existence of the CLEUD to be an overriding consideration. Therefore, condition No 1 no longer accords with the six tests identified at paragraph 206 of the Framework and I conclude that it should be removed.’

APP/B6855/A/12/2185609 – Foxgloves, Swansea. Appeal dated 17th June 2013. Welsh Appeal, the Property benefitted from a Certificate of Lawfulness for Planning Purposes (CLPP).

‘The LPA recognises this (the CLPP) but maintains that the conditions for the removal for the disputed condition have not been met and that the property should remain available for agricultural occupation at some future point in time.’

‘In this case the CLPP effectively grants immunity for the enforcement of this condition and in practice makes it impossible for the LPA to enforce.’

‘I consider that in light of the CLPP the condition would no longer serve this purpose and that the notion that at some time in the future that the breach would cease and that the condition would reclaim a degree of enforceability and satisfy its original purpose is a spurious one.’

‘I conclude that in this case the presence of the CLPP effectively renders the condition unenforceable and in effect redundant. The CLPP goes with the land and this immunity would also be effectively passed on to future occupiers of the property. Being unenforceable the continued attachment of the condition to the permission cannot sensibly be regarded as necessary and indeed the condition serves no planning purpose.’

‘I therefore conclude that the disputed condition is unnecessary and unnecessarily restrictive in its present form, having regard to the enforceability of the said condition.’

APP/M3645/A/12/2168175 – Chelsham, Surrey. Appeal dated 29th June 2012. The Property benefitted from a CLEUD.

‘Highly material to this case is the fact that a CLEUD has been issued which provides a fall-back position that the appeal dwelling can be lawfully occupied without compliance with Condition No 2 of the original planning permission.’

'In line with the position taken by my colleague Inspector in considering what appears to be a similar case (Ref. APP/E2001/A/02/1104141), this factor leads me to the conclusion that Condition No 2 is no longer necessary. It therefore fails to meet at least one of the tests of Circular 11/95: The Use of Conditions in Planning Permissions'.

'The Council does, however, refer to *Nicholson v S.o.S. & Maldon DC 1997* and asserts that the condition would become enforceable again if the dwelling was to be occupied by a person who met the requirements of Condition No. 2. Whilst this may be so, in view of the above, such a prospect does not seem plausible to me. I therefore give little weight to this argument in reaching my decision.'

'I conclude that although the proposal conflicts with national and local policy relating to agricultural workers dwellings, the existence of the CLEUD is a fall-back position which amounts to an overriding material consideration.'

APP/E2001/A/02/1104141 – Flatfield Lodge, Howden. Appeal dated 23rd April 2003. The Property benefitted from a CLEUD.

'The appellants have provided no evidence that there is no further need for the condition because the original reason for the dwelling is no longer appropriate. Neither is evidence provided that there is no longer a need for tied dwellings in the locality. The appellants have also not demonstrated that attempts have been made to dispose of the property whilst subject to the agricultural tying condition. I therefore conclude that the proposal conflicts with Local Plan policy EN15.'

'Section 54A of the Act advises that the determination of applications shall be made in accordance with the development plan unless material considerations indicate otherwise. The existence of the Certificate of Lawfulness of Existing Development provides a fall-back position that the dwelling may be lawfully occupied without compliance with the terms of condition 4. This is a material planning consideration which I have to take into account.'

'In view of the fall-back position, I consider that the condition which is the subject of this appeal is unenforceable. The Certificate confirms that the Council have accepted that the breach took place continuously over this time period. I also consider that the condition is now unnecessary and it would be unreasonable to retain its imposition.'

'I therefore conclude on the main issue that although the proposal conflicts with development plan policy for agriculturally tied dwellings, the fall-back position because of the existence of the Certificate of Lawfulness of Existing Development is an overriding material consideration.'

5.4 As outlined above, there have been a number of successful appeals made against Local Authorities who refuse to grant planning permission to remove an Agricultural Occupancy Condition where the property benefits from a CLEUD.

5.5 In each appeal case, the presence of the CLEUD which creates a fall-back position has been found to be an overriding material consideration allowing for the Agricultural Occupancy Condition to be removed despite the requirements (i.e. marketing) of local planning policy not being met.

5.6 The facts of the appeal properties and Keans Croft are almost identical in that:
The properties are subject to a CLEUD making the AOC unenforceable
The removal of the Agricultural Occupancy Condition would not be fully supported by national or local planning policy.

5.7 In response to any concerns that the CLEUD does not result in it being impossible for the Agricultural Occupancy Condition to come back into force and therefore that it should remain in place to safeguard the Property for use in the future by the agricultural workforce, attention is drawn to the following comments from the above appeals:

APP/H1840/W/18/3196410 – ‘I accept that the potential future occupation of the Old Orchard by a qualifying person would have the effect of breaking the continuity of the breach, thereby reinstating the occupancy restrictions. However, based on the evidence before me I consider this to be highly unlikely and in reality no more than a theoretical possibility.’

APP/Y9507/W/16/3147251 – ‘I acknowledge that the occupation of the dwelling by a qualifying person would have the effect of breaking the continuity of the breach, thereby reinstating the occupancy restrictions. A period of no occupancy, depending on the circumstances, might have the same effect as well. I find this to be a theoretical concept, however.’

APP/B6855/A/12/2185609 – ‘However I consider that in light of the CLPP the condition would no longer serve this purpose and that the notion that at some time in the future that the breach would cease and that the condition would reclaim a degree of enforceability and satisfy its original purpose is a spurious one.’

APP/M3645/A/12/2168175 – ‘The Council does, however, refer to *Nicholson v S.o.S & Maldon DC 1997* and asserts that the condition would become unenforceable again if the dwelling was to be occupied by a person who met the requirements of Condition No 2. Whilst this may be so, in view of the above, such a prospect does not seem plausible to me. I therefore give little weight to this argument in reaching my decision.’

5.8 This therefore highlights the point that the theory that the Agricultural Occupancy Condition may be enforceable in the future and therefore should be retained for this purpose is given very little to no weight at appeal.

6.0 Conclusion

6.1 Keans Croft benefits from a CLEUD granted from Tewkesbury Borough Council to regularise the fact that it has been occupied in breach of the Agricultural Occupancy Condition for a continuous period in excess of 10 years.

6.2 The subsequent effect of the CLEUD is to make the Agricultural Occupancy Condition unenforceable. This results in the condition failing to meet the six tests for planning conditions as outlined in Planning Practice Guidance and the National Planning Policy

Framework. It is therefore unreasonable for the Council to insist on its retention when they are unable to enforce the condition.

- 6.3 It is accepted that the proposal is not fully supported by national and emerging local planning policy in relation to new dwellings in the open countryside. However, the existence of the CLEUD and its subsequent unenforceability provides a fall-back position that the dwelling can be occupied by someone who does not comply with the Agricultural Occupancy Condition. This is an overriding material consideration.
- 6.4 There is a precedent that when applications such as this are refused and then taken to appeal, that confirms that the presence of the CLEUD and its fall-back position are an overriding material consideration. Each of these appeals were allowed and the AOC removed entirely.
- 6.5 In light of the evidence provided it is respectfully requested that this application for the removal of the Agricultural Occupancy Condition is approved without delay.