



SUPPORTING PLANNING STATEMENT

Hole Street Farm, Kingsdown, Sittingbourne

April 2023

SUPPORTING PLANNING STATEMENT

In support of a Section 192 application of The Town and Country Planning Act 1990 (as amended) for the

Unrestricted occupation of Oast Cottage as Condition (v) of planning permission SW/96/128 is not valid

at

Hole Street Farm, Kingsdown, Sittingbourne, Kent, ME9 0QX

On behalf of

Mr & Mrs. Anderson

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1. Introduction

- 1.1. The supporting statement has been prepared on behalf of the applicants Mr and Mrs. Anderson to support a Certificate of Lawfulness (proposed) for the use of Oast Cottage (previously referred to by the Council as Hole Street Farm Cottage) as a single dwelling which does not limit occupation to someone employed or last employed in agriculture or forestry as Condition (v) of planning permission SW/96/128 is not valid at Hole Street Farm, Kingsdown, Sittingbourne, ME9 0QX.
- 1.2. This application is being made under Section 192 of the Town and Country Planning Act 1990 (as amended) and seeks to establish that the proposed use of Oast Cottage (previously referred to by the Council as Hole Street Farm Cottage), as an unrestricted single dwelling, which does not limit occupation to someone employed or last employed in agriculture or forestry as Condition (v) of planning permission SW/96/128 is not valid, would be lawful.
- 1.3. Condition (v) of planning permission SW/96/128 states that

“The occupation of Hole Street Farm Cottage shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in Section 336 of the Town and Country Planning Act 1990, or in forestry, or a dependent of such a person residing with him or her or a widow or widower of such a person.”
- 1.4. The grounds for this condition were stated to be *“In approving this application the Planning Authority has accepted the contention that it is essential that two dwellings be available to meet the accommodation needs of the holding. In restricting occupancy of the existing farmhouse the Planning Authority is seeking to ensure that both dwellings remain available to meet agricultural needs in the future.”*
- 1.5. This Certificate seeks to demonstrate that the development, as defined in paragraph 1.2 of this statement, is lawful, because the condition that the restriction is placed upon is not valid. There being a lack of defined development area and because it does not meet the planning requirements of the six tests for planning conditions.

- 1.6. Hole Street Farm is situated within the hamlet of Kingsdown, close to the village of Lynsted. The application site forms part of a wider farm which includes a number of agricultural buildings, dwellinghouses and agricultural land that are situated within the Conservation Area of Kingsdown. The site appears to be part of a former farmstead which includes a listed oast house and farmhouse; Hole Street Oast and Hole Street Farmhouse.
- 1.7. This Certificate seeks to determine that Oast Cottage is a single dwelling which occupation is not limited to someone employed or last employed in agriculture or forestry.

2. Planning History

- 2.1. Hole Street Farm contains a range of planning history, relating to the use of buildings, conversion of buildings to dwellinghouses alongside the requirement for facilities to support the farming business.
- 2.2. In 1995 planning permission was granted for a two storey rear extension to 1 Hole Street Farm Cottages with reference SW/95/0224. In 1996 planning permission was granted with reference 96/0034 for a rear extension and car port to Hole Street Farm, with the Council noting within their delegated report that the two cottages were being converted to provide a single dwelling.
- 2.3. In 1996 outline planning permission was also submitted for a new farmhouse at Hole Street Farm with reference SW/96/128 alongside the extension to the cottages. The location plan for this development is shown in Figure 1.



Figure 1 Extract of site location plan SW/96/128

- 2.4. As can be seen from the site location plan, there is no red line showing the development area and there is no blue line indicating any other land within the applicant's ownership. The location plan identifies the proposed house, Farm Cottages and Farm Oast.
- 2.5. In accordance with article 7(1)(c)(ii) of the Town and Country Planning (Development Management Procedure (England) (Order) 2015 applicants need to submit a 'location plan' that shows the application site in relation to the surrounding area.

- 2.6. In accordance with National Planning Practice Guidance Paragraph: 024 Reference ID: 14-024-20140306 The application site should be edged clearly with a red line on the location plan.
- 2.7. Application SW/96/128 was granted with a number of conditions, the most pertinent being condition (v) which as considered above, restricts the occupation of another dwelling at Hole Street Farm, namely:
- “The occupation of Hole Street Farm Cottage shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in Section 336 of the Town and Country Planning Act 1990, or in forestry, or a dependent of such a person residing with him or her or a widow or widower of such a person.”*
- 2.8. Application SW/96/128 sought to provide an agricultural occupancy condition for both the newly approved dwellinghouse known as Hare Cottage as well as upon the existing dwellinghouse which at that time served the farm, Oast Cottage.
- 2.9. At the time of the application in 1996 the same Town and Country Planning Act (1990) was in force but The Town and Country Planning (Applications) Regulations 1988 Statutory Instrument was in place. Paragraph 3 of the The Town and Country Planning (Applications) Regulations 1988 states

“(1) Subject to the following provisions of this regulation, an application for planning permission shall—

(a) be made on a form provided by the local planning authority;

(b) include the particulars specified in the form and be accompanied by a plan which identifies the land to which it relates and any other plans and drawings and information necessary to describe the development which is the subject of the application; and

(c) except where the authority indicate that a lesser number is required, be accompanied by 3 copies of the form and the plans and drawings submitted with it.”

- 2.10. When considering the regulations at the time, it is quite clear that any applications for planning permission should be accompanied by a plan which identifies the land to which it relates and any other plans and drawings and information necessary to describe the development which is the subject of the application. This was not completed for application SW/96/128.
- 2.11. The location plan identifies the proposed site of the house and names some other features at the farm as well as the road for locational context. It does not provide details of the land ownership, site area or define a development boundary.

3. Analysis

- 3.1. Paragraph 56 of the NPPF states *“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. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.”*
- 3.2. It follows that all planning conditions need to meet these requirements. In the National Planning Practice Guidance (hereinafter referred to as NPPG) the reasoning behind condition imposition is explained, with specific reference being had to the fact that *“The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable. It is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls.”* (Paragraph: 001 Reference ID: 21a-001-20140306)
- 3.3. Paragraph: 003 Reference ID: 21a-003-20190723 sets out that there are requirements for the imposition of planning conditions, with conditions only being used where they are
 1. Necessary
 2. Relevant to planning
 3. Relevant to the development to be permitted

4. Precise
5. Reasonable
6. Enforceable

3.4. This guidance is referred to as the 6 tests and each of the requirements need to be satisfied for a condition to be applied.

3.5. An analysis of the compliance of condition (v) of permission SW/96/126 in reference to these tests is given below.

1. Necessary

3.6. Necessity is considered to centre around the fact that a condition should be necessary in order to make an otherwise unacceptable development acceptable or the fact that without the condition, the application may well be refused.

3.7. It is not considered that Condition (v) passes this test; the principle of the new house was considered to be suitable by a planning committee (reference was made to this within the Council's report for approval SW/96/0034), so it is therefore not understood why the creation of a new dwellinghouse would only be acceptable if another unrestricted existing dwellinghouse at the farm was tied by way of an agricultural occupancy condition.

3.8. An earlier permission with reference SW/87/0843 for the conversion of a redundant oast and attached agricultural buildings into a 4 bedroom house and garaging was allowed, without the requirement for any tied agricultural occupancy condition.

3.9. The reasoning given for the imposition of the condition states *"In approving this application the Planning Authority has accepted the contention that it is essential that two dwellings be available to meet the accommodation needs of the holding. In restricting occupancy of the existing farmhouse the Planning Authority is seeking to ensure that both dwellings remain available to meet agricultural needs in the future."*

- 3.10. It appears that the Planning Authority accepted that two dwellings are available and needed at the holding to meet the accommodation needs. It is important to note that is not an assessment of functional need, which is the current test when considering agricultural dwellings. If a functional agricultural need was assessed as being required that equated to two dwellings for rural workers, then it would have been identified that two dwellings were needed to meet the agricultural needs of the holding (rather than the accommodation needs of the holding). It is therefore not considered to be necessary for the Council to have imposed the condition.
- 3.11. A farm holding can employ and be run by a number of individuals and families, but this does not mean that it is necessary for planning policy to ensure that all of their accommodation needs are met. It is a requirement of planning policy to ensure that the functional agricultural or rural worker needs are met, for a person to reside at or close to their place of work.
- 3.12. In this case, Oast Cottage was, at the time of application SW/96/128 occupied by the applicant, who was employed in agriculture although the property was not limited in its occupation. The necessity test should have therefore been applied only to the additional dwelling being sought at the time and irrespective of whether the Council thought there was a need for one or two dwellings to support the farm business should not have warranted the implementation of a condition on an existing property. To have operated reasonably, it would have been appropriate to seek an AOC on the property being sought; on the basis that this property, Hare Cottage, was justified on agricultural grounds.
- 3.13. The wording of the agricultural occupancy condition also does not ensure that two dwellings remain available to meet the agricultural or accommodation needs of the holding in the future, but rather ensures that someone who was employed or last employed in the locality in agriculture or forestry can only reside there. This does not ensure that the persons who reside in the house would work at Hole Street Farm. The condition is therefore not considered to be necessary; the merits of a new dwellinghouse should have been dealt with on their own without the need to restrict existing housing stock.
- 3.14. The condition is therefore considered to fail the test of necessity; the development was considered to be acceptable by the planning committee, without the condition being in place.

2. Relevant to planning

- 3.15. The relevance to planning test is considered to centre around the question of whether the condition relates to planning objectives and is within the scope of the permission. The question is therefore is it relevant to restrict an existing unrelated open market dwellinghouse, outside of the red and blue line areas in order to allow a new dwellinghouse to be provided.
- 3.16. It is put forward that existing unrestricted open market dwellinghouses already situated at the holding are not relevant to the planning policies which restrict dwellings within the countryside. The new dwellinghouse should have been granted on its own planning merits and restricted to an agricultural occupancy accordingly if this was deemed appropriate by the Council. It is not relevant to planning to restrict existing housing stock, not least when it is outside the site area defined in the proposal.

3. Relevance to the development permitted

- 3.17. Relevance to the development permitted, as the test wording implies, links to whether a condition fairly and reasonably relates to the development that is to be permitted. It is put forward that it is not sufficient that a condition only relates to a planning objective, the condition must also be justified by the nature or impact of the development that is being permitted.
- 3.18. In this case, the existing dwellinghouse at Hole Street Farm would remain in use and outside of control of the applicant, regardless of whether a new dwellinghouse was allowed in outline form. Although a new dwellinghouse would increase the housing stock at this location, this needed to be considered on its own merits and not sought to be made more acceptable by restricting a house that was extant pre 1948. The condition imposed appears to be have been put in place in order to control a matter not created by the proposed development.

3.19. Planning applications control development boundaries through the use of red lines for the proposal or development site and blue line boundaries to show the extent of adjacent land that is in the applicants' ownership, whether in part or whole. The use of a planning condition to try to control development outside of this red line boundary; in the words of the condition cannot be said to be relevant to the development as they are beyond the remit of its scope.

4. Precise

3.20. The condition stipulates, as previously considered, land that is outside the red line development boundary for SW/96/128. The condition requires that a house outside of the red line and potential ownership of the applicant, is subject to a separate agricultural occupancy condition. At no point is a drawing referred to, to clarify where this house is situated, only a name is given. Although one could argue that common sense would dictate that Hole Street Farm Cottage is at Hole Street Farm, there is nothing to physically outline what building this house name refers to. Indeed there is no house or building at Hole Street Farm which is referred to as that name.

3.21. The only other house at Hole Street Farm is and was called Oast Cottages and is not the referred to Hole Street Farm Cottage.

3.22. Notwithstanding the various other points made in this submission, the wording of the condition does not make it implicitly clear which house and where this house is located, so it is therefore unclear as to where the condition must be applied to.

3.23. It is therefore considered that the condition fails the 'precision' test, as a clear and precise wording must be given by the local planning authority for the imposition of every condition in line with Paragraph: 023 Reference ID: 21a-023-20140306 of the NPPG. The condition does not give any information as to where the house is located and does not refer to its correct house name.

5. Reasonable

- 3.24. Condition (v) is not considered to be reasonable in that it is not necessary to ensure that the development approved was acceptable. As previously set out, the proposal was considered to be acceptable by the planning committee, but it is not reasonable to try to ensure that the applicant can control an existing dwellinghouses occupied outside of the red and blue line areas, in different occupation.
- 3.25. The condition is also not considered to be reasonable in that it is not sufficiently precise as to why the existing dwellinghouse should control accommodation needs at the holding, when in fact the additional house approved will be altering this.
- 3.26. It is also considered that the agricultural occupancy condition was placed upon a house outside the applicants and developments control. This places an unreasonably disproportionate burden and onus on the applicant to ascertain permission from another occupier. It is also not reasonable for that other occupier to give up their houses unrestricted occupation, simply because the Council want to ensure that the wider holding has enough accommodation to meet the holdings needs.
- 3.27. The NPPG considers that conditions requiring work on land that is not controlled by the applicant or that requires the consent or authorization of another person or body often fail the test of reasonableness and enforceability.
- 3.28. It is thus considered that the condition fails the test of reasonableness.

6. Enforceable

- 3.29. Due to the lack of compliance with the other five tests, it is strongly put forward that the development is unenforceable. Without clarity of why the condition is necessary, how it is relevant to planning or the planning development approved, which building Hole Street Cottage relates to in terms of its precise location and name and what the reasoning behind the requirement of the condition is. It is not therefore considered to be enforceable.

- 3.30. More specifically, as the condition does not relate to compliance with a specific plan detailing the location of Hole Street Cottage or indeed that a house of that name does and did not exist, the Council cannot ascertain which house needs to be restricted and comply with the agricultural occupancy stipulations. Without these details, the Council cannot establish whether it would be expedient to enforce against non compliance.
- 3.31. It is thus considered that the condition fails the test of being enforceable.
- 3.32. Paragraph: 005 Reference ID: 21a-005-20190723 sets out the circumstances where planning conditions should not be used. It states that *“Any proposed condition that fails to meet one of the 6 tests should not be used. This applies even if the applicant suggests or agrees to it, or it is suggested by the members of a planning committee or a third party.”* As set out above it is strongly put forward that condition (v) of SW/96/128 does not meet any of the six tests.

Statutory Instruments

- 3.33. At the time of the application in 1996 the same Town and Country Planning Act (1990) was in force but The Town and Country Planning (Applications) Regulations 1988 Statutory Instrument was in place. Paragraph 3 of the The Town and Country Planning (Applications) Regulations 1988 states

“(1) Subject to the following provisions of this regulation, an application for planning permission shall—

(a) be made on a form provided by the local planning authority;

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(c) except where the authority indicate that a lesser number is required, be accompanied by 3 copies of the form and the plans and drawings submitted with it.”

- 3.34. When considering the regulations at the time, it is quite clear that any applications for planning permission should be accompanied by a plan which identifies the land to which it relates and any other plans and drawings and information necessary to describe the development which is the subject of the application.
- 3.35. The location plan identifies the proposed site of the house and names some other features at the farm as well as the road for locational context. It does not provide details of the land ownership, site area or define a development boundary.
- 3.36. Within The Town and Country Planning Act 1990 as it existed at the time of the 1996 application, Section 72 states

“(1) Without prejudice to the generality of section 70(1), conditions may be imposed on the grant of planning permission under that section—

(a) for regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made) or requiring the carrying out of works on any such land, so far as appears to the local planning authority to be expedient for the purposes of or in connection with the development authorised by the permission;”

- 3.37. This makes it clear that land can be subject to conditions imposed by the local planning authority if it is expedient for the purposes of or in connection with the development. However, this statute combined with The Town and Country Planning (Applications) Regulations 1988 in place, seek to ensure that the development area is clearly shown on a plan. The location plan provided with application SW/96/128 does not identify a development area or establish ownership clearly enough for enforcement and precise conditions to be placed upon the application site.

4. Conclusion

- 4.1. It is concluded that the imposition of condition (v) on SW/96/128 does not meet the six test requirements in line with the NPPF and NPPG; the condition is not necessary to make the planning application acceptable, is not relevant to planning in that it seeks to impose a restriction upon an existing house, is not relevant to the development permitted, is not precise as no drawings identify the location of the house and is not enforceable as there is no way to check which house the condition restricts and therefore it is not at all reasonable.
- 4.2. Condition (v) also requires that occupation of an existing dwellinghouse is restricted, with the dwellinghouse not being within control of the applicant.
- 4.3. It is therefore put forward that the agricultural occupancy condition attached to SW/96/128 was unlawful and the occupation of Oast Cottage is unrestricted.