

# PLANNING STATEMENT

## REMOVAL OF AGRICULTURAL OCCUPANCY CONDITION

PREPARED FOR

FOREST FARM  
BARNES LANE  
MILFORD ON SEA  
SO41 0RR

31<sup>st</sup> January 2024



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2024 Lawful Development Certificate 23/11201 – decision notice

## **1.0 INTRODUCTION**

1.1 This report has been prepared on behalf of Mrs S J Crawford (the Applicant) to outline the facts considered relevant for the removal of the occupancy condition relating to Planning Permission 29999, a copy of which is at Appendix 1.

1.2 The property that forms part of Forest Farm has been the subject of a recent Certificate of Lawfulness application (23/11201 and reference PL4/1/154) as detailed in Appendix 2.

## **2. THE PROPOSAL**

2.1 The property known as Forest Farm was purchased by the Applicant in 2008. Prior to said purchase, the holding extended to 65 acres and the previous owners occupied the dwelling and operated a horse and carriage driving centre from the site. Various parcels of land were subsequently sold off, to the extent now that the holding extends to approximately 22 acres.

2.2 In December 1985 under application 29999, planning permission was granted for the erection of an agricultural bungalow and garage on land at Forest Farm. The permission was subject to a number of conditions, and of particular relevance in this case is condition (3) which stated that:

“The occupation of the accommodation shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in Section 290(i) of the Town and Country Planning Act 1971, or in forestry (including any dependants of such persons residing with him) or a widow or widower of such a person.

2.3 On 17<sup>th</sup> November 2024, an application was submitted to the Council (23/11201) under section 191 of the TCPA 1990 (as amended) to ascertain whether a breach of condition 3 was lawful at the date of the application. The Council determined on 11<sup>th</sup> January 2024 that the condition had been breached for a period exceeding 10 years and as such the breach had become immune from enforcement action and therefore lawful.

2.4 It is understood that the Lawful Development Certificate (LDC) does not physically remove the AOC but, as stated previously, enables the occupiers to reside there without any risk of enforcement.

2.7 An application is now made under section 73 of the Town and Country Planning Act 1990 for the removal of the agricultural occupancy condition (condition 3) of application 29999 on the basis that it has outlived its usefulness, is no longer enforceable and no longer serves a planning purpose.

### 3. PLANNING BASIS

3.1 As stated on the Planning Practice Guidance website, when used properly, conditions can enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects of the development. Under Paragraph: 003 Reference ID: 21a-003-20190723 (dated 23<sup>rd</sup> July 2019) planning conditions should only be imposed where the following 6 tests are satisfied, noting that each of them needs to be satisfied for each condition which an authority intends to apply:

- necessary;
- relevant to planning;
- relevant to the development to be permitted;
- enforceable;
- precise; and
- reasonable in all other respects.

3.2 Paragraph: 005 Reference ID: 21a-005-20190723 of PPG states that 'any proposed condition that fails to meet one of the 6 tests should not be used.

3.3 Paragraph 56 of the National Planning Policy Framework (December 2023) echoes the guidance, stating the following:

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.

3.4 Having regard to the above, the existing occupancy condition fails to meet the relevant tests:

- the recent Lawful Development Certificate (LDC) confirms that the condition is no longer *enforceable*;
- the dwelling can be occupied by non-compliant parties, so is no longer *necessary*; and
- it fails to comply with the obligation that it is *reasonable in all other respects*.

3.5 Agricultural occupancy conditions limit the field of people who can live in a dwelling which has most likely been permitted solely on the basis that there is specific justification for an agricultural or forestry worker (or other specific rural worker) to live in the open countryside.

3.6 In this instance the reason for the condition imposed on the 1987 extension/conversion to the main dwelling at Rushmere Stud was stated to be:

*'The site is in an area where new dwellings are not normally permitted except where there is an overriding need in the interests of agriculture or forestry.'*

3.7 Whilst the exact justification for the dwelling at the time of construction is unknown, it can be stated that the current agricultural justification for a dwelling is limited, and if a case was trying to be justified today, it would unlikely meet the required test of essential need for someone to live on site.

3.8 In looking to remove conditions or occupancy conditions consideration should be given to national and local planning policy and any other relevant planning guidance.

3.9 With the exception of the aforementioned 6 tests, the NPPF is silent on the removal of occupancy conditions. Policy DM21 of the Local Plan states that an occupancy condition restricting the occupancy of a dwelling to a person employed or last employed in agriculture or forestry will not be removed unless the local planning authority is satisfied that the long-term need for the dwelling has ceased and there is no evidence of a continuing need for housing for persons employed or last employed in the locality in these categories.

3.10 As accepted in other authorities, the existence of the LDC and the associated lack of enforceability of the condition and its conflict with the six tests set out in the NPPG is a significant material consideration that outweighs a determination of the application in accordance with DM21. Therefore, and as determined previously, it is considered that the condition is no longer acceptable and the application for its removal should be supported.

#### **4. JUSTIFICATION/EVALUATION**

- 4.1 It is likely that the AOC met the 6 tests at the time it was imposed on the original planning permission. However, it is clear from the recent LDC and reviewing other cases that the tests in relation to whether the condition could practicably be enforced and whether it is now reasonable in all other respects, can no longer be satisfied.
- 4.2 In this instance, the consequence of the LDC is that the subject property granted under the 1985 permission can be occupied by anyone not just those employed solely or mainly in agriculture. As there is no ability to enforce, it fails the test of enforceability.
- 4.3 Therefore, in practice, it is not possible to detect a contravention, as the LDC prevents this state, and there would be no need to remedy any breach of the condition.
- 4.4 The agricultural occupancy condition therefore is deemed to be unnecessary, unenforceable and should be removed from the planning permission.

#### **5. CONCLUSION**

- 5.1 The removal of occupancy conditions should be allowed where there is clear evidence that they have outlived their usefulness and where they are no longer relevant. In this instance, the dwelling is subject to a recent LDC which has regularised the occupation of the dwelling within compliance with the agricultural occupancy condition and therefore the condition is unenforceable.
- 5.2 Whilst it is noted that whilst the local plan policy seeks assurance that the long-term need for the dwelling has ceased and there is no evidence of a continuing need for housing for persons employed or last employed in the locality in agriculture, this is not relevant given the circumstances of this case.
- 5.3 As such, the condition fails a key test of acceptable planning conditions and therefore should be removed.

**Appendix 1 - 1985 Planning Permission 29999**

**Decision Notice**



HAMPSHIRE  
NEW FOREST DISTRICT COUNCIL  
TOWN AND COUNTRY PLANNING ACT, 1971

088509

To:— Mr Gains J Moore  
c/o Mr A N Adams  
50 Pinewood Road  
Hordle  
LYMINGTON SO4 6DF

Reference No.:— 29909

In pursuance of their powers under the above-mentioned Act, the Council, as the local planning authority, hereby PERMIT

Erection of an agricultural bungalow and garage (existing mobile home to be removed)

Land of Forest Farm, Barnes Lane, Milford-on-Sea (20.25 ha or 64.87 acres)

in accordance with your application on <sup>15.08.85</sup> and the plans and particulars submitted ~~in~~ <sup>19/11/85 (Block Plan)</sup> in connection therewith and subject also to due compliance with the conditions specified hereunder:—

- 1. The development hereby permitted must be begun within a period of five years beginning with the date on which this permission is granted.

Reason: To comply with Section 41 of the Town and Country Planning Act 1971.

- 2. Samples/details of all external facing and roofing materials shall be submitted to, and approved by, the Local Planning Authority before development commences.

Reason: To ensure that the external appearance of the building(s) is satisfactory.

- 3. The occupation of the dwelling 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 person residing with him) or a widow or widower of such a person.

Reason: The site is in an area where new dwellings are not normally permitted except where there is an overriding need in the interests of agriculture or forestry.

continued/...

Appletree Court,  
Lyndhurst, SO4 7PA.  
Telephone: Lyndhurst 3121.

**[Redacted Signature]**  
Chief Planning Officer.

N.B.—See notes overleaf.

16 DEC 1985

Date .....

P.T.O.

c

184

**HAMPSHIRE**  
**NEW FOREST DISTRICT COUNCIL**  
**TOWN AND COUNTRY PLANNING ACT, 1971**

.../continues

Reference No.: .....

**SCHEDULE**

4. Notwithstanding the provisions of the Town and Country Planning General Development Order 1977 or 1978 or as subsequently amended no building or structure permitted by Class 1.1 of the First Schedule of the Order shall be erected without the prior written consent of the Local Planning Authority.

**Reason:** Any significant enlargement of the dwelling beyond that currently proposed would result in a dwelling with a market value which would be beyond the reach of agricultural workers and of a size which was unsuitable to meet the reasonable needs of agricultural workers.

5. The existing, mobile home and additional sleeping accommodation on the site shall cease to be used as habitable accommodation at or before the date on which the dwelling hereby permitted is first occupied, and within 6 months of that date shall be removed from the site.

**Reason:** To prevent the possible establishment of two separate units of living accommodation on the holding when only one is justified by agricultural need, and in the interests of visual amenity.

Appletree Court,  
 Lyndhurst, SO4 7PA.  
 Telephone: Lyndhurst 3121.

Chief Planning Officer

16 DEC 1985

**Appendix 2 - 2024 Lawful Development Certificate 23/11201**  
**Planning Statement**

# PLANNING STATEMENT

## NON-COMPLIANCE OF AGRICULTURAL OCCUPANCY CONDITION

PREPARED FOR

FOREST FARM  
BARNES LANE  
MILFORD ON SEA  
SO41 0RR

1<sup>st</sup> September 2023



**acorus**<sup>®</sup>

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Appendix 1 - 1985 Planning Permission 29999

## **1.0 INTRODUCTION**

1.1 This report has been prepared on behalf of Mrs S J Crawford (the Applicant) to support a planning application to obtain a Certificate of Lawfulness in relation to the non-compliance of an agricultural occupancy condition (AOC) on the property known as Forest Farm.

1.2 This application seeks to identify the history and use of the residential properties, and along with the attached sworn statements, confirm that there has been a non-compliance with the AOC and that breach has occurred for more than 10 years. Based on the information supplied and on the balance of probability and not beyond all reasonable doubt, a lawful development certificate should be granted.

## **2. PLANNING HISTORY**

2.1 In December 1985 under application 29999, planning permission was granted for the erection of an agricultural bungalow and garage on land at Forest Farm. The permission was subject to a number of conditions, and of particular relevance in this case is condition (3) which stated that:

“The occupation of the accommodation shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in Section 290(i) of the Town and Country Planning Act 1971, or in forestry (including any dependants of such persons residing with him) or a widow or widower of such a person.

2.2 The property was purchased by the Applicant in 2008. Prior to said purchase, the holding extended to 65 acres and the previous owners occupied the dwelling and operated a horse and carriage driving centre from the site. Various parcels of land were subsequently sold off, to the extent now that the holding extends to approximately 22 acres.

2.3 In reviewing the planning website, previous applications have been submitted to the LPA seeking removal of the AOC, all of which have been refused on the grounds of a lack and inconsistency of information/evidence to support the claim. The most recent of which is 09/94001 which was determined on 17<sup>th</sup> July 2009.

### 3. REQUIREMENTS OF THE PLANNING CONDITION

3.1 The specific wording of condition 3 of 29999 has been quoted previously. There are some key criteria within the wording which need to be considered when assessing compliance. These are considered below:

**'occupation'** of the property – the condition relates to who resides in the property rather than who owns the property.

**'solely or mainly employed, or last employed'** – this implies that the occupier is either employed or mainly employed (and that employment is the sole or primary employment which generates the majority of time) or last employed and now retired.

**'agriculture'** or in **'forestry'** - the sole or primary employment must be in agriculture or forestry with agriculture defined in Section 290(i) of the Town and Country Planning Act 1971, (and updated) to primarily relate to the growing of crops and the rearing of stock for the production of food.

**'including any dependants of such persons residing with him) or a widow or widower of such a person'** – compliance includes dependants and a widow/widower of the compliant occupier.

3.2 Agricultural occupancy conditions limit the field of people who can live in a dwelling which has most likely been permitted solely on the basis that there is specific justification for an agricultural or forestry worker (or other specific rural worker) to live in the open countryside.

### 4. EVIDENCE OF NON-COMPLIANCE

4.1 Of relevance in determining an LDC application is the occupational history of the subject residential property over the past 10 years from the date of this application i.e. 1<sup>st</sup> September 2013. Evidence from previous applications is therefore not relevant.

4.2 Affidavits for the owner (Applicant) of the tied property and, separately, the occupier of the tied property have been provided to support the application. These are written statements of facts that have been sworn by oath or affirmed to be true.



4.3 Noting the LDC is only concerned with compliance since September 2013 (i.e. the last 10 years), it is confirmed that from 2011 the property was occupied by Mr and Mrs Pettifer who were both retired at the time. Mr Pettifer was previously employed as an electronics engineer whilst Mrs Pettifer was a clerk with a firm of solicitors in New Milton.

4.4 Mr Pettifer sadly passed away 3 years ago, however Mrs Pettifer has continued to reside in the property to this date. It is evident that neither party have ever been employed solely or mainly in agriculture.

## **5. PLANNING BASIS**

5.1 This planning application is seeking confirmation from the LPA that, based on the evidence submitted, the 10 year period of non-compliance has been met and an LDC should be issued.

## **6. CONCLUSION**

6.1 This is a Lawful Development Certificate (LDC) application which should be determined based on the facts of the case and therefore it is not a matter of considering the planning merits of the scheme.

6.2 If the evidence submitted in support of the application establishes that (as in this case), the breach in the condition has occurred for more than 10 years and therefore beyond the scope of enforcement action, on the balance of probabilities rather than beyond reasonable doubt), the application should be granted.

6.3 It is concluded that this application clearly confirms that the occupiers of the subject property have resided there for more than 10 years and at no time have they complied with the occupancy condition.

6.4 An appropriate Certificate of Lawfulness should now be issued.

6.5 It should also be noted that the Applicant has not taken any steps to deliberately prevent the Authority from discovering this use and therefore there is no issue with concealment. In addition, it is deemed that intentional unauthorised development is not relevant to this case.

**Appendix 3 - 2024 Lawful Development Certificate 23/11201**

**Decision Notice**

**TOWN AND COUNTRY PLANNING ACT 1990 SECTION 191**

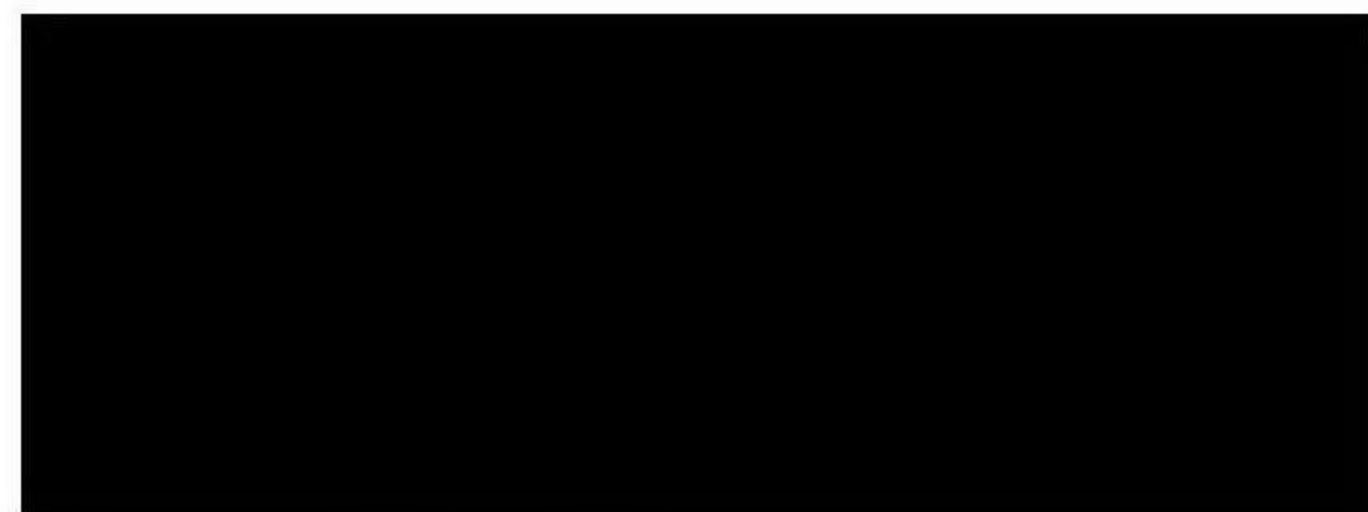
(as amended by section 10 of the Planning and Compensation Act 1991)

**TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT  
PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39****CERTIFICATE OF LAWFULNESS OF EXISTING USE OR DEVELOPMENT**

The New Forest District Council hereby certify that on the 14<sup>th</sup> November 2023 the use described in the First Schedule to this certificate in respect of the Land specified in the Second Schedule to this certificate and edged red on the plan attached to this certificate, was lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The Council is satisfied that the evidence presented in support of the application, when assessed on the balance of probabilities, shows that the use as described in the First Schedule has been continuous for a period of 10 years preceding the date of the application for the Certificate of Lawfulness.

Signed:



Tanya Coulter  
Legal Services Manager  
New Forest District Council  
Appletree Court, Beaulieu Road  
Lyndhurst  
Hampshire SO43 7PA

Dated: 11th day of January 2024

## **FIRST SCHEDULE**

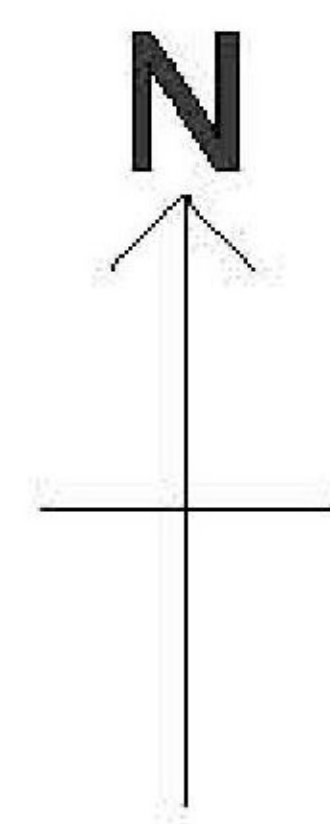
The use of the dwelling house (shown edged black on the attached plan) situate on the Land in breach of an agricultural occupancy condition namely condition 3 of planning permission 85/NFDC/29999 dated 16<sup>th</sup> December 1985

## **SECOND SCHEDULE**

That part of Forest Farm Barnes Lane Milford on Sea SO41 0RR in Hampshire shown edged red on the plan attached to this certificate

### **Notes**

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use specified in the First Schedule taking place on the land described in the Second Schedule was lawful, on the specified date and, therefore, was not liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan(s). Any use which is materially different from that described or which relate(s) to other land may render the owner or occupier liable to enforcement action.



NFDC

Forest Farm

Track



**New Forest**  
DISTRICT COUNCIL

www.newforest.gov.uk  
tel: 023 8028 5000

Date	10/01/24	23/11201
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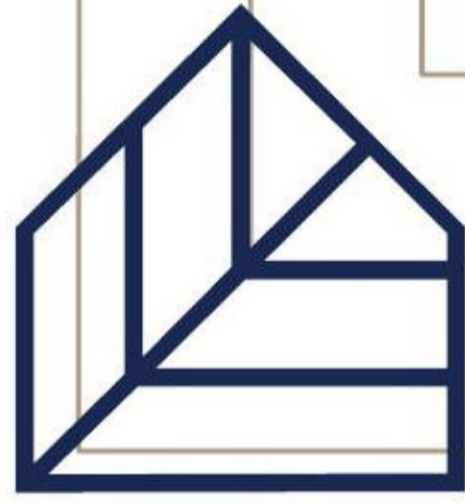
Title	Forest Fam Barnes Lane Milford on Sea
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Scale	1:598
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