DELEGATED DECISION REPORT

SMD/2019/0244 **Valid 17/04/2019**	**THE ORCHARDS** **OVERTON ROAD** **BIDDULPH COMMON** **BIDDULPH**	**APPLICATION FOR REMOVAL OR VARIATION OF CONDITION 2 OF SM.1910 (30.12.75) AND CONDITION 1 SM.3460 (25.02.77)** **(FULL - MINOR)**

MAIN ISSUES

- Whether the planning condition, restricting occupancy of The Orchards to a person solely or mainly employed or last employed in agriculture or forestry or a dependant including a widow or widower, should remain.

- In particular whether the condition meets the six tests of the NPPF in respect of conditions as set out at NPPF paragraph 55.

DESCRIPTION OF SITE

The dwelling known as The Orchards is a detached bungalow located along the southerly side of the farm access to Rose Cottage Farm close to where the access leaves the public road. The bungalow is at the southerly end of the farm buildings group and the original farm house of Rose Cottage Farm stands at the foot of the access just north of The Orchards.

It appears that The Orchards was built under planning permission SM.3460 granted 25th February 1977 subject to condition that:

> "The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed locally in agriculture as defined in section 290(i) of eth Town and Country Planning Act (1971) or in forestry or a dependant of such a person residing with him (but including a widow or a widower of such a person.)"

An earlier Reserved Matters permission SM.1910 dated 30th December 1975 also had an occupancy condition as follows:

> The occupation of the dwelling shall be limited to a person solely or mainly employed or last employed locally in agriculture as defined in Section 290 (i) of the Town and Country Planning Act, 1971.

It is assumed that perhaps the 1977 permission became necessary because the 1975 consent became invalid for some reason, perhaps because development did not begin in time.

PROPOSAL

The application seeks planning permission for the retention of the dwelling without complying with either of the above referenced conditions.

Box 5 of the Planning Application Form asks the applicant to state why the request to remove or vary the conditions is submitted. The box has been completed referring to the reasons being those given in an attached supporting letter dated 17th April 2019. Paragraph 6 of the letter is as follows:

> "The application seeks the removal of the agricultural condition on the basis that the dwelling has not been occupied in connection with any form of agricultural use since 1987. The condition is, therefore, no longer relevant or necessary. The Certificate of Lawful Use confirms that the breach of the condition is immune from enforcement action and is not enforceable. Since the proposed development clearly complies with national guidance it is respectfully requested that the planning authority remove the planning conditions."

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

Core Strategy Development Plan Document (Adopted 2014)

S01 Spatial Objectives
SS1 Development Principles
SS1a Presumption in Favour of Sustainable Development
SS6c Other Rural Areas Area Strategy
DC1 Design Considerations
DC3 Landscape and Settlement Setting
R1 Rural Diversification
R2 Rural Housing
T1 Development and Sustainable Transport

Local Plan Submission Version (submitted February 2018)

SS1 Development Principles
SS1a Presumption in Favour of Sustainable Development
SS10 Other Rural Areas Area Strategy
DC1 Design Considerations
DC3 Landscape and Settlement Setting
E1 New Employment Development
H1 New Housing Development
T1 Development and Sustainable Transport

National Planning Policy Framework July 2018

Paragraph(s) 1 – 14;
Section(s) 4 – Decision making; 12 – Achieving well designed places; 13 – Protecting Green Belt Land; 15 – Conserving and enhancing the natural environment;

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS
SM.1910 (1975) – erection of dwelling reserved matters [following earlier outline?] – approved

SM.3460 (1977) – erection of dwelling – approved

83/12557/OLDDC – erection of double garage – approved

87/00148/OLD – application for removal of agricultural worker occupancy condition on permissions SM.1910 and SM.3460 – refused

SMD/2018/0465 – application for a lawful development certificate for existing use as C3 Dwelling house – approved

CONSULTATIONS

Publicity
Site Notice expiry date: 30th May 2019
Neighbour consultation period ends: N/A
Press Advert: N/A

Public Comments
None

Town / Parish Comments
Biddulph Town Council – none received

OFFICER COMMENTS

Principle of Development
The location is in the North Staffordshire Green Belt and as a new building post 1977 the development would have been considered inappropriate only gaining support on the grounds of very special circumstances occasioned by the need for the rural worker accommodation. The same scenario could be expected to apply under current policy.

The application now under consideration is submitted on the grounds that the occupancy condition attached to the consent is no longer relevant or necessary as it is not enforceable and therefore does not meet the NPPF paragraph 75 tests.

The background is that in 2018 (reference SMD/2018/0465) the applicants sought and obtained confirmation by way of a lawful development certificate that their occupancy of the dwelling was lawful (at the application date). This was not on the basis that their occupancy was in compliance with the condition as it was accepted by the applicants that they had not been and were not eligible under the terms of the condition. The certificate was granted on the basis that their breach of the condition

was immune from enforcement action on account of the passage of time – the breach had been effective for more than 10 years.

The applicants' planning agent contends that as the condition cannot be enforced against the applicants it is therefore un-enforceable and ergo not compliant with NPPF 55. However, these are two separate things. The applicants are in breach of the condition but immune from enforcement action. This is personal and specific to these individuals. It is not that there is any fault with the condition per se. Should new occupants come to be resident in the dwelling they would need to be compliant with the condition. Enforcement action could again be taken, if they were not eligible under the terms of the condition to occupy the dwelling, as this would be a new breach by these new occupants. The new occupants would not gain immunity from the effects of the condition until and unless they had been resident for a period of at least 10 years.

The submitted reason for requesting removal of the condition also refers to whether the condition is necessary and relevant. It is not wholly clear whether that is part and parcel of the claim that the condition is unenforceable though in telephone discussion with the agent this appeared to be the case. For the avoidance of doubt the LPA is bound to consider the condition relevant to planning, relevant to the development permitted and necessary. The LPA has no evidence to suggest that an agriculture / forestry worker dwelling is not or would not be needed should it become available and present day policy would not otherwise ordinarily support a new dwelling in the countryside and Green Belt. On this basis the condition remains relevant to planning and relevant to the development permitted, given as explained in the forgoing, should this property again become vacant the occupancy condition would remain 'live' and therefore effective and capable of being enforced. For similar reasoning the condition can and should be regarded as being necessary.

CONCLUSION / PLANNING BALANCE

Notwithstanding that the current occupants of The Orchards are in breach of the occupancy condition and notwithstanding that this breach has become immune from enforcement action this does not render the condition unnecessary or irrelevant to planning or the specific development permitted nor does it make the condition unenforceable. The development remains in the Green Belt and rural countryside and there is no evidence to suggest that a rural worker (agriculture / forestry) dwelling is no longer needed at this location. Indeed the bungalow remains closely adjacent to an apparently fully working dairy farm (with others nearby).

OFFICER RECOMMENDATION : Refuse to vary or remove the occupancy condition

Case Officer: Arne Swithenbank
Recommendation Date: 12th June 2019

X 

Signed by: Ben Haywood

On behalf of Staffordshire Moorlands District Council