

PLANNING STATEMENT

APPLICATION FOR THE REMOVAL OF AN AGRICULTURAL OCCUPANCY CONDITION (3) - SM.7709

AT WILLS CROFT, ABBEY GREEN ROAD, LEEK, ST13 8SA

ON BEHALF OF MR CHRISTOPHER IBBETT

August 2024



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1 Introduction

- 1.1 This statement is submitted in support of an application which seeks to remove an agricultural occupancy condition from application ref: SMD/1979/1273 (formerly SM.7709) at Wills Croft, Abbey Green Road, Leek, ST13 8SA.
- 1.2 This statement should be read in conjunction with other supporting information supplied as part of the planning application, including:
- Application Forms;
 - Location Plan; and
 - Certificate of Lawfulness (Ref: SMD/2011/1101).
- 1.3 This Planning Statement describes the site and its general locality, details the proposed development and gives an overview of the relevant planning policy and legislation. There follows a full assessment of the proposals against this policy and legislative context and all other relevant material considerations.
- 1.4 It is concluded that following the issuing of a Certificate of Lawful Existing Use or Development, by implication it is now lawful for the occupiers to live in non-compliance with the agricultural tie, and that the condition now fails a key test where the condition is no longer enforceable. The Ocado case is clear that there is no ability to “resurrect” the condition by subsequent future compliance with it, consequently the established lawfulness of the breach of Condition 3 is and continues to be lawful for the future, and therefore should be removed for clarity.

2 Site and Surrounding Area

- 2.1 The site is located within Staffordshire Moorlands District Council administrative boundary.
- 2.2 The site includes a three-bedroom detached bungalow and is located outside of any settlement boundaries within the Leek Neighbourhood Area – which is within a mile to the north-west of Leek. The site is bound by open land and fields. The site is located adjacent to Abbey Green Farm, and accessed directly from Abbey Green Road.
- 2.3 There are no listed buildings on or within close proximity to the site. The site is located wholly within Flood Zone 1, therefore at a very low risk of flooding. The site does not form part of the Stoke-on-Trent Green Belt. The site is outside of the Development Boundary set for Leek in Policy SS2.



Figure 1: Site Location (Source: Google Earth)

- 2.4 The following planning history is available for the site via the Council's online search function:
- SMD/1979/1273 (formerly SM.7709) – Site for Farm Workers Dwelling – Approved (02/04/1980);
 - SMD/1980/0501 – Details of Farm Workers Dwelling – Approved (25/09/1980);
 - SMD/2011/1101 – Use of Building without Compliance – Certificate of Lawfulness – Lawful (Approved) (23/01/2012);

3 Proposed Development

3.1 This application seeks permission for the removal of Condition 3 from permission SMD/1979/1273 (formerly SM.7709) for an agricultural worker's dwelling.

3.2 The original planning approval SMD/1979/1273 (formerly SM.7709) for the erection of a farm workers dwelling, was granted in 1980, where Condition 3 states:

"The occupancy 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, or in forestry (including any dependent of such a person residing with him), or a widow or widower of such a person'.

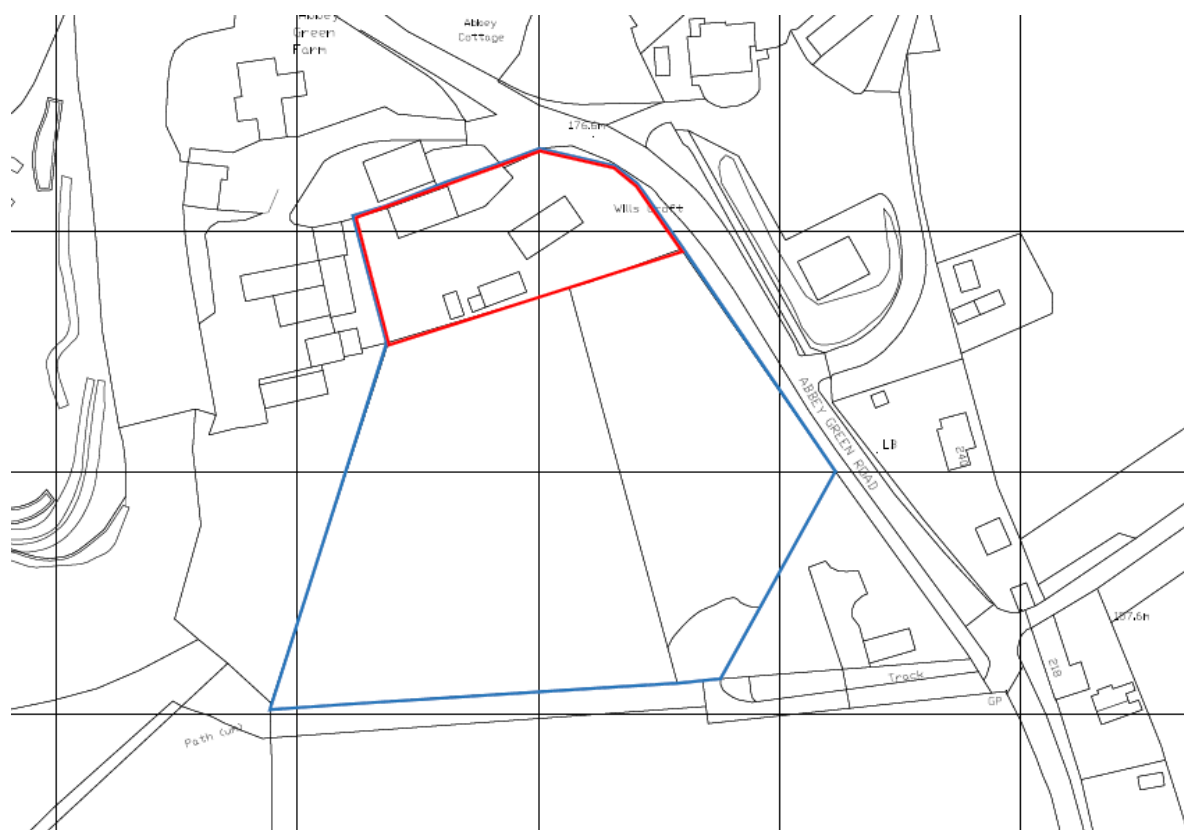


Figure 2: Location Plan

3.3 An application for a Certificate of Lawfulness for an Existing Use or Development (CLEUD) was approved in January 2012. The application outlined and evidenced that the applicants had been in breach of Condition 3 of Ref: SMD/1979/1273 (formerly SM.7709), for a period in excess of 10 years, thus meaning that the Council could no longer take enforcement action against them for the breach.

4 Planning Policy and Legislation

- 4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the Development Plan unless material considerations indicate otherwise. In addition, government policy, principally the National Planning Policy Framework published in 2023 (the Framework), is material to the determination of planning applications.

National Planning Policy Framework (2023) 'NPPF'

- 4.2 The National Planning Policy Framework (NPPF) was published in December 2023 and provides overarching guidelines for the planning system. The central theme of the framework is the promotion of sustainable development. The principle of sustainable development is at the core of the planning system. The NPPF promotes sustainable development through economic, social and environmental objectives.
- 4.3 Paragraph 56 concerns planning conditions and outlines that 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 aspects.
- 4.4 The National Planning Practice Guidance (NPPG) (Paragraph 003 Reference ID: 21a-003-20190723) states that Paragraph 56 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum and only used where they satisfy the following tests:
1. Necessary;
 2. Relevant to Planning;
 3. Relevant to the Development Permitted;
 4. Enforceable;
 5. Precise; and
 6. Reasonable in all other aspects.

These are referred to as the 6 tests, and each of them need to be satisfied for each condition which an authority intends to apply.

- 4.5 The NPPG also provides guidance on what a material consideration is – *“one which is relevant to making the planning decision in question (e.g. whether to grant or refuse an application for planning permission). The*

scope of that can constitute a material consideration is very wide and so the courts often do not indicate what cannot be a material consideration. However, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations.

Ocado Retail Ltd, R (on behalf of) v London Borough of Islington [2021] EWHC 1509 (admin)

4.6 In the case of *Ocado Retail Ltd, R (on behalf of) v London Borough of Islington* [2021] EWHC 1509 (admin), the High Court concluded:

4.7 *159. I have reached the clear and certain conclusion that, with great respect, I should not follow the decisions in Ellis and in Nicholson, that a breach of condition which has become lawful after continuing for 10 years does not remain lawful unless that breach continues thereafter. I do not consider that those decisions can be reconciled with the following key points, along with the earlier analysis in this judgement:-*

- i) *The requirement that a breach should continue during the immunity period is not contained in the legislation (Sullivan J in North Devon at [30]);*
- ii) *That requirement is based solely on the rationale for the time limits in s.171B, namely that throughout the relevant period the local planning authority had the opportunity to take enforcement action but failed to do so. The continuity requirement is only concerned with whether the time period for satisfying an immunity period is running. Time only runs while a breach of planning control, whether a change of use or a breach of condition, is liable to enforcement action. Time does not run when a use or a breach of condition has ceased;*
- iii) *Once an immunity period is satisfied, the legislation prohibits the taking of enforcement action thereafter (s.171B). It follows that from then on, any question about whether there is an ongoing breach of planning control against which a local planning authority would be able to take enforcement action would be completely irrelevant. The raison d'être for the continuity requirement disappears upon the expiration of an immunity period. There is no need to consider whether time is running for the purposes of s.171B;*
- iv) *Once an immunity period expires, what was formerly a breach of planning control become "lawful at any time", save only that that planning right does not accrue if it would contravene the requirements of an enforcement notice then in force;*

- v) *There is nothing in the legislation to indicate that the requirement for continuity to satisfy an immunity period also characterises the nature of the legal right which accrues upon the expiration of a time limit in s.171B, or conditions the basis upon which that right may continue to exist thereafter, or that a right which accrues under s.191(2) or (3) ceases to exist when it ceases to be exercised;*
- vi) *The legislation does not treat a use, operation or breach of condition differently in these respects.*

162. The correct legal position is that a lawful planning right which has accrued upon the expiry of a time limit in s.171B is not lost merely because subsequently that right is not exercised for a period of time. That conclusion applies just as much to a right legitimising a breach of condition which prohibited a use as to a use right derived from a material change of use. The law does not require that such a right be exercised on the date when an application for a CLEUD is made (or an enforcement notice is issued), or that it has been exercised throughout the intervening period from the time when it accrued. Instead, the law requires that the right remains in existence at the date when the lawfulness of what it authorises is in issue...

5 Assessment and Conclusion

- 5.1 This application seeks the removal of an agricultural occupancy condition at Wills Croft, Leek. The assessment below demonstrates that when considering the Certificate of Lawfulness issued, and the NPPF, the condition attached to the dwelling is no longer enforceable.
- 5.2 The Certificate of Lawfulness issued in January 2012, confirmed that the applicants had been in breach of the agricultural occupancy condition, for a period in excess of 10 years, and therefore the Council could no longer take enforcement action against them for the breach, making it lawful for them not to comply with the condition.
- 5.3 Paragraph 56 of the NPPF sets out that planning conditions should be kept to a minimum and only used where they satisfy the 6 tests. The condition now fails to meet the test of enforceable. The CLEUD confirmed that the Council can no longer bring enforcement action against the occupants.
- 5.4 It is clear that Condition 3 is no longer enforceable as a result of the CLEUD. In this regard, the Council would not be able to lawfully or reasonably issue an enforcement notice or breach of condition notice which required compliance with it. Therefore, Condition 3 now clearly fails the legal requirements identified, and fails the policy requirements of the NPPF.
- 5.5 It is also considered that Condition 3 can now no longer fulfil a planning purpose, be necessary or relevant to planning and the development, given that it is established by the CLEUD that the dwelling can be occupied lawfully without an agricultural occupancy restriction.
- 5.6 Condition 3 of the permission is clearly no longer enforceable, as per the grant of the CLEUD. It also now no longer fulfils a planning purpose, is no longer necessary and is now not relevant to planning and the development.
- 5.7 The Ocado case is clear that there is no ability to “resurrect” the condition by subsequent future compliance with it; once an immunity period expires, what was formerly a breach of planning control becomes “lawful at any time” thereafter. Therefore, the established lawfulness of the breach of Condition 3 is and continues to be lawful for the future.

Conclusion

- 5.8 This application seeks permission for the removal of an agricultural occupancy condition at Wills Croft, Leek. Having regard to the NPPF, the Ocado Case and the Certificate of Lawfulness issued, the proposed removal of Condition 3 is considered to be acceptable. It is therefore respectfully requested that permission is granted for the removal of the agricultural occupancy condition without delay.