

DELEGATED DECISION REPORT

SMD/2024/0467
Valid 16/10/2024

**THE CROFT CHEADLE
ROAD
DRAYCOTT IN THE MOORS**

**APPLICATION FOR REMOVAL
CONDITION 3
(AGRICULTURAL
OCCUPANCY) IN RELATION
TO APPLICATION 7328**

(FULL - MINOR)

MAIN ISSUES

Whether it is reasonable and necessary to continue to impose the disputed condition, having regard to evidence relating to the need for an agricultural worker's dwelling on the holding and in the local area and to national and local policies relating to development in an 'other rural area' of countryside .

DESCRIPTION OF SITE

Large detached bungalow, located within the Green Belt to the southwest of Cheadle 3km from the edge of the settlement. Accessed via a long driveway with a compacted unmade surface that connects to Cheadle Road. The bungalow has been built on and is to the south of the Hollow Farm holding.

PROPOSAL

The application is made under s73 of the Act, seeking a new planning permission for the development already carried out without complying with conditions subject to which the previous planning permission was granted. Specifically, the application seeks a new permission for the dwelling that is not subject to the agricultural occupancy condition that was attached to the outline planning permission granted on the 22nd April 1968.

SM.7328, condition 3:

The occupation of the house shall be limited to a person employed or last employed locally in agriculture as defined in Section 221 (1) of the Town and Country Planning Act, 1962, and the dependents of such a person (but including a widow or widower of such a person).

The application follows the grant of a certificate of lawfulness on the 8th October 2024 (SMD/2024/0372) that confirms the current occupation, in breach of the occupancy condition, is lawful because the authority is out of time to take action.

With this application the applicant argues that the condition is past its usefulness and reasonableness because it is unenforceable and does not pass the 6 tests referred to in the NPPF and Planning Practice Guidance.

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

Local Plan Development Plan Document (Adopted 2020)

S01 Spatial Objectives

SS1 Development Principles

SS10 Other Rural Area

National Planning Policy Framework

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

7328 Building of a bungalow (Cheadle Rural District) APPROVED 22/04/1968

SMD/2024/0372 Application for a Lawful Development Certificate for Existing occupation of the dwelling in breach of the agricultural occupancy condition. APPROVED.

CONSULTATIONS

Publicity

Site Notice expiry date: 11th Dec 2024

Neighbour consultation period ends: 11th Dec 2024

Press Advert: N/A

Public Comments

None

Town / Parish Comments

Draycott in the Moors PC: Draycott in the Moors Parish Council do not have any objection to this application in principle, but if the applicant has not followed planning rules the Parish Council fully support the District Council upholding their Planning Decisions. Due to the time lapse since the original application could the matter be considered as a new application.

Staffordshire County Council Highways

No effect on highway

OFFICER COMMENTS

It is clear that the Council would be out of time to take action against the current occupation of the dwelling and breach of planning condition, it is therefore lawful and a certificate of lawfulness has already been granted.

The Council is aware of the case of Ocado Retail Ltd, R (on behalf of) v London Borough of Islington [2021], that is relevant to the considerations of this application. In that case the High Court concluded:

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 judgment:-

- (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 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 becomes "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...

As per the grant of the CLEUD, the current occupation of the bungalow and breach of Condition 3 is confirmed as being lawful and cannot be enforced against. Moreover, in light of the above judgement and the principles that have emerged, it is now clear that the status of lawfulness should also apply to any future occupation and breach of the condition. In those circumstances, the condition no longer fulfils a planning purpose, is no longer necessary and is now not relevant to planning and the development. 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. Planning permission should therefore be granted with the occupancy condition omitted.

CONCLUSION / PLANNING BALANCE

Condition 3 of the Original Permission is clearly no longer enforceable as per the grant of the CLEUD. Condition 3 also now no longer fulfils a planning purpose, is no longer necessary and is now not relevant to planning and the development. In such circumstances, the varied permission, omitting the occupancy restriction, should be granted.

OFFICER RECOMMENDATION : APPROVE

Case Officer: Ben Hurst

Recommendation Date: 04/12/2024

X 

Signed by: Jane Colley Signature

On behalf of Staffordshire Moorlands District Council