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STATEMENT IN SUPPORT OF SECTION 73 APPLICATION FOR THE REMOVAL OF AN AGRICULTURAL OCCUPANCY CONDITION NO 4 ON APPROVAL NO B/90/0376/HR (APPROVED BY APPEAL T/APP/R4408/A/90/168119/P8) AND AS REPEATED ON CONDITION NO 2 OF RESERVED MATTERS APPROVAL B/90/0376/HR CONSTRUCTION OF AGRICULTURAL WORKER'S DWELLING

ENGINE LANE FARM, ENGINE LANE, SHAFTON, BARNSLEY

MR ARCHER

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1.0 INTRODUCTION

The proposal which forms the subject of this submission to Barnsley Metropolitan District Council relates to a property known as Engine Lane Farm, Shafton, and seeks permission for the removal of an agricultural occupancy condition.

This statement, together with the appended agricultural agents' report provides full information to aid the Council in its discharge of its development control function. It is considered that the information submitted to the Council in support of the application clearly demonstrates that this proposal for the removal of the condition relating to the occupation of the subject property accords with planning policy as set out both within the Council's development plan and relevant central government policy advice (contained in the NPPF).

Reference is also made in this submission to previous adopted advice in PPS7 in the context of the general absence of government policy in relation to such issues. It is noted that many authorities are continuing to apply the tests set out in PPS7.

When judged against policy and all other material considerations, it is considered that permission for the removal of the condition should be forthcoming. It is considered that the text of this statement, together with the agricultural agent's report, clearly demonstrates that the property no longer has a purpose to fulfil as an agricultural dwelling and that the condition should be removed accordingly. The

supporting marketing report demonstrates that notwithstanding an extensive marketing campaign both in the general and specialist agricultural market, no purchaser has come forward who can comply with the subject condition. It is clear that the condition is precluding the sale of this property.

This statement proceeds to outline the background and history of the site and the changed circumstances in relation to the applicant which has resulted in the ceasing of the agricultural business. Following which, planning policy in terms of central government policy advice and local planning policy is examined. It will be demonstrated that the proposal accords with the development plan and Central Government Policy Advice.

It is considered that there are clear, unambiguous and demonstrable grounds for the removal of the subject condition and, as such, it is anticipated that permission for removal of the condition should be forthcoming. Nevertheless, the applicant remains willing to discuss all aspects of the proposal with the council, and furnish the authority with any further evidence/information it may require.

2.0 THE PROPERTY AND THE BACKGROUND

The subject property known as Engine Lane Farm forms a dwelling house which is subject to an agricultural occupancy condition. Engine Lane farm extends to some 2 acres of land or thereabouts. The applicant is no longer involved in agriculture and for reasons that are set out below now seeks to move from the property which is not suitable for his requirements.

The background to the subject property is as follows:

(i) Outline planning permission was granted for the construction of an agricultural workers' dwelling on the 13 February 1991. That application was approved on appeal (the reference numbers are planning application no B/90/0376/HR and appeal ref T/APP/R4408/A/90/168119/P8). That approval was subject to a number of conditions, including the subject condition no 4, which states:

"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 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."

Subsequently, Reserved Matters approval was granted by the Council on the 10 September 1992 (application no.

B/90/0376/HR). The description on the approval is ***"Erection of agricultural workers' dwelling (reserved matters) – Engine Lane Farm, Engine Lane, Shafton, Barnsley."***

It is noted that a condition was also imposed on the Reserved Matters relating to agricultural occupancy. It is considered that as an aside, there was no requirement to include this condition at that stage. However, as it was included, this application also seeks to remove that condition. Condition 2 attached to the Reserved Matters approval states:

"The occupation of the dwelling shall be limited to a person solely or mainly or last working in the locality in agriculture or in forestry or a widow or widower of such a person, and to any resident dependents."

It is fully acknowledged that the justification for the grant of planning permission was its agricultural use and the conditions appear to have been fairly and reasonably imposed and fully justified at the time of the grant of planning permission.

Following the grant of permission, the applicant proceeded to construct the dwelling and established their livestock farm business (calf rearing). The farm business operated until 1997 when the applicant reached retirement age and ceased the farming business.

The site owner has remained in occupation of the property

since that time and has fully complied with the occupancy condition – being last employed in agriculture. However, the applicant is now widowed and is 80 years of age. The house is too large for his requirements. Furthermore, he needs to move closer to his family who can provide care and support.

As a consequence, the applicant sought advice on the disposal of the property from specialist agricultural consultants, Wilbys Chartered Surveyors. Subsequently, the applicant instructed Wilbys to proceed with the marketing of the dwelling. Full details of the marketing campaign and results are set out in the accompanying statement by Wilbys Chartered Surveyors.

The site has been extensively marketed for in excess of 17 months as an agricultural dwelling and through that process it has been demonstrated that the property is not saleable with the agricultural tie. Any interested parties who have enquired about the property or have put forward offers have not been able to provide evidence that they could comply with the condition.

It is clear from the extensive marketing period that there is little prospect of obtaining a purchaser who can comply with the condition. As a consequence, this application is submitted to remove the agricultural tie attached to both permissions.

From the marketing process by the agricultural consultants, it is considered that the removal of the occupancy condition on the property will make it marketable and will allow for disposal on the open market. The applicant can then move to a property suitable for his occupation close to his family.

3.0 MARKETING

Submitted with this planning statement is a marketing report outlining the marketing process undertaken by Wilby's Chartered Surveyors, agricultural specialists. Whilst it is not the intention to repeat all of the information incorporated in the report, it is considered appropriate to highlight a number of pertinent points, as follows:-

(i) The marketing has been undertaken by specialist agricultural agents who have marketed the property both within the specialist agricultural market and the general housing market (including locally, regionally and nationally) for a period in excess of 17 months.

(ii) It has been recognised that owing to the occupancy condition, the value of the property would need to be discounted to take account of this. The property has therefore been marketed on the basis of both being "offers in the region of" and "offers invited".

(iii) The full detailed report provided by the agent sets out the details of the marketing campaign. It is clearly demonstrated in the report that it has not been possible to find a suitable purchaser (who can comply with the condition), and that the agricultural occupancy condition is the barrier to the disposal of the property. It will be noted that whilst a number of parties did proceed to make offers to purchase, none of the parties

could provide evidence when requested either of how they complied with the agricultural occupancy tie or that they were in a financial position to purchase and were, therefore, not realistic offers.

It is considered that the marketing campaign has clearly demonstrated that there is no demand for the property in the agricultural market. The marketing agents are of the opinion that owing to general demand in agricultural, there is little prospect of a purchaser who can comply with the condition coming forward in the foreseeable future. In the circumstances, the only conclusion that can be reached is to dispose of the property the condition must be removed.

4.0 PLANNING POLICY

By virtue of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the planning authority must determine the application in accordance with the statutory development plan (insofar as it is material to the application), unless material considerations indicate otherwise. The importance of the statutory development plan in the decision making process necessitates an examination of the relationship of the policies of the plan to one another and to Government guidance available. The following government guidance is considered relevant:-

4.1 Central Government Policy Advice

The NPPF was published in July 2018. It is noted, however, that the document is essentially 'silent' on the issue of agricultural occupancy conditions.

The advice, however, sets out a presumption in favour of sustainable development. The subject property and removal of the condition constitute sustainable development.

4.1.1 Planning Policy Statement 7

In the absence of detailed guidance, it is noted that, notwithstanding that it no longer constitutes relevant advice, many authorities continue to make reference in their decision making process to the advice set out in PPS7 against which to consider such proposals.

Annex A of the advice relates to agricultural and other occupied dwellings. At paragraph 16 it states:-

"Where the need to provide accommodation to enable farm, forestry or other workers to live at or near their place of work has been accepted as providing the special justification required for new, isolated residential development in the countryside, it will be necessary to ensure that dwellings are kept available for meeting this need for as long as it exists. For this purposes planning permission should be made subject to appropriate occupancy conditions. DoE Circular 11/95 gives further advice and provides model occupancy conditions for agricultural dwellings and for other staff accommodation."

Clearly, such a condition was imposed on this permission which restricted the future use of the dwelling.

The advice at paragraph 17, however, proceeds to state:-

"Changes in the scale and character of farming and forestry may effect the longer term requirement for dwellings for which permission has been granted subject to an agricultural or forestry occupancy condition. Such dwellings, and others in the countryside with an occupancy condition attached, should not be kept vacant, nor should their present occupants be unnecessarily obliged to remain in occupation simply by virtue of the planning conditions restricting occupancy which have

***outlived their usefulness**. Local planning authorities should set out in their local development plans their policy approach to the retention or removal of agricultural and where relevant forestry and other forms of occupancy conditions. These policies should be based on an up to date assessment of the demand for farm (or other occupational) dwellings in the area, bearing in mind that it is the need for a dwelling for someone solely, mainly or last working in agriculture or forestry in an area as a whole, and not just on the particular holding that is relevant to the case of farm or forestry worker's dwellings."* (TPC underlining)

It is clear from the above that PPS7 recognised that circumstances do change and did provide guidance to planning authorities and decision makers regarding what should be done when such changes occur. It is clear from this advice that the existence of occupancy conditions should not result in existing occupants being unnecessarily obliged to remain in occupation when those conditions are no longer relevant. It is contended that this is without doubt such a case a change in the applicant's age has meant that the agricultural business ceased. The marketing campaign has demonstrated that there is no market in agriculture for the dwelling and the land retained.

In the absence of government policy, it is considered that it is appropriate to consider the proposal against the parameters of PPS7.

4.2 Local Planning Policy

The current statutory development plan is made up of the "Saved Policies" of the Council's Unitary Development Plan, together with the adopted Local Development Framework Core Strategy.

4.2.1 The Unitary Development Plan

Adopted in December 2000, the document contains a policy relating specifically to the removal of agricultural occupancy conditions. Policy GS8C states:

"WHERE AN AGRICULTURAL OCCUPANCY CONDITION HAS BEEN IMPOSED IT WILL NOT NORMALLY BE REMOVED UPON SUBSEQUENT APPLICATION UNLESS IT IS SHOWN THAT THE LONG TERM NEEDS FOR AGRICULTURAL WORKERS BOTH ON THE PARTICULAR FARM AND IN THE LOCALITY NO LONGER WARRANT ITS RESERVATION FOR THAT PURPOSE."

In the supporting text at Para 347 it states:

"It is therefore clear that agricultural occupancy conditions should only be removed where the long term needs for such a dwelling can be explicitly proven to no longer exist."

It is considered that the marketing campaign has provided the evidence to prove that the need for such a dwelling no longer exists.

4.2.2 The Local Development Framework Core Strategy

The Barnsley MBC Local Development Framework was adopted September 2011. It will be noted that there are no specific policies or guidance on the removal of agricultural occupancy conditions.

5.0 CONCLUSION

As it has been set out in this statement, circumstances have fundamentally changed from the initial grant of planning permission. The occupant retired from the agricultural business in 1997 and is now a widower. As outlined, prior to the submission of this application the site owner has undertaken all reasonable steps to dispose of the property, as demonstrated in the attached marketing report. It is quite clear from the marketing campaign that a suitable purchaser for the property cannot be found in the agricultural sector nor can a general purchaser be found whilst the condition applies to the property. One of the main constraints on the site is that the land extends to 2 acres only and could not support an agricultural enterprise.

It has been highlighted that there is a lack of policy or guidance in relation to such matters in current central government guidelines in the NPPF. As a consequence, advice in PPS7 seems to be a starting point for the consideration of this submission.

Planning Policy Statement 7 states:-

"Changes in the scale and character of farming and forestry may affect the longer term requirement for dwellings for which permission has been granted subject to an agricultural or forestry occupancy condition. Such dwellings and others in the countryside with an occupancy condition attached should not be kept vacant…. nor should their present occupants be

unnecessarily obliged to remain in occupation simply by virtue of the planning conditions restricting occupancy which have outlived their usefulness"

In terms of local planning policy, the relevant policy GS8C sets out that occupancy conditions will not "normally" be removed. However, inclusion of the word "normally" means that the policy does not preclude removal subject to ***"the long term needs for such a dwelling can be explicitly proven to no longer exist."*** It is considered that the marketing campaign has indeed demonstrated this.

It is considered that the condition should be removed and that the application as put forward wholly conforms to the advice contained in PPS7 and Local Plan policies. The Council are, therefore, invited to remove the agricultural occupancy condition from the subject property which will allow for the disposal of the property.

The applicant remains willing to discuss all aspects of this proposal with the planning authority and provide any further information on the applicant's health and the reasons for ceasing the agricultural enterprise.