



DMH Stallard

Planning Statement

Millwood House, Littlehampton Road,
Ferring, Worthing,
West Sussex BN12 6PG

**Application for removal of condition no 2 on planning
permission reference FG/80/00**

at

**Millwood House, Littlehampton Road, Ferring, Worthing,
West Sussex BN12 6PG**

Planning Supporting Statement

on Behalf of

Christopher and Rafia Self

July 2012

**DMH Stallard LLP
Gainsborough House
Pegler Way
Crawley
West Sussex
RH11 7FZ**

DMH Stallard LLP Ref: 233891-1

Checked by

Prepared by: **Alison Wright**

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Date: **July 2012**

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 - B. Correspondence from Council to Applicants
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1. Introduction

- 1.1 This statement is made in support of an application by Mr Christopher Self and Mrs Rafia Self ("the Applicants") pursuant to S 73 of the Town and Country Planning Act 1990 for the removal of condition 2 of planning permission reference FG/80/00 ("the Condition") relating to Millwood House Littlehampton Road, Ferring, Worthing, West Sussex BN12 6PG ("the Property").
- 1.2 This application is submitted at the request of the Council but without prejudice to the Applicants' view that there is no breach of planning control.

2. History of the Site and Surroundings

- 2.1 The Property is a substantial detached dwelling situated in Ferring on the north side of the A259 Littlehampton to Worthing Road.
- 2.2 The Property stands in gardens of approximately 1 acre with two reception rooms, a kitchen/breakfast room and cloakroom on the ground floor; 2 large bedrooms with dressing rooms (one en suite) and a bathroom on the first floor, together with 2 bedrooms on the ground floor. There is a detached double garage with an office above. The residence has its own gated entrance off the A259 and private gravel drive to access the house.
- 2.3 The Property is on part of a site that was formerly owned by A P McIntyre and Sons Ltd ("the Site"). A P McIntyre & Sons ran a Nursery from the Site (interchangeably known as McIntyres or Highdown Nursery).
- 2.4 A P McIntyre and Sons obtained planning permission on appeal in 2001 for an agricultural chalet bungalow (reference FG/80/00) and the demolition of existing offices and provision of replacement offices (reference FG/129/00).
- 2.5 The Nursery went out of business in 2001 and since then the Site has been subdivided into a number of different parcels of land now in various ownerships for which various changes of use have been granted.
- 2.6 In 2006 planning permission was granted for the change of use of redundant horticultural pack house to B1/B8 (business/storage/distribution) use under planning application FG/160/05. The Planning Application Report for that application records the Site at that stage as being a former nursery which is currently empty with disused office and greenhousing. It states that the former McIntyres Nursery is a large site, which is currently being sold off into small parcels of land following the demise of the company. The Council found that the conversion of the former storage barn on the disused nursery site to a business use conformed to planning policy current at the time of the application and granted planning permission for the change of use. It is understood that this building is currently used by PHS in connection with its clinical waste business.
- 2.7 In 2006, building regulation approval was given for the offices granted under reference FG/129/00 to Premier Loft Conversions. Premier Loft Conversions built the office building and occupied it for about two years - it is known as Premier House. It is understood that this building is currently occupied by a company which supplies traffic signals for road works and undertakes safety training for drivers of road working vehicles.
- 2.8 In 2010 planning permission was granted for land at the north end of the Site for the change of use from former agricultural nursery to B8 storage and wholesale supply of fencing and associated materials under planning

application FG/59/10. This is currently occupied by Bell Davis Fencing Supplies Ltd. In the Planning Application Report for this application it is acknowledged that *"the adjacent site of Millwood House has been significantly reduced in size and in order for their cider pressing to develop, it is considered that the land could be utilised to increase their growing capacity and or the Vinery site close by. Therefore the proposed use is not considered to be complimentary to this use."* Members of the Planning Committee nevertheless voted to approve the application and granted planning permission for this use.

- 2.9 There is a current planning application awaiting determination, dated 28 March 2012, under FG/160/05 for the continuation of use of polytunnels for storage which is a resubmission of FG/76/09. Evidence submitted in support of this application states that the applicant has tried for some 8 years to let the polytunnels for horticultural purposes but there is no demand for that use. Instead the polytunnels are let to a number of individuals who rent space for general storage purposes. The applicant in this case also uses part of the polytunnels for the storage of cars.
- 2.10 The Site is now utilised for a variety of uses, predominantly authorised B8 and B1 uses. It is occupied by a variety of businesses none of which are engaged in agriculture or horticulture. There is no remaining agricultural or horticultural use on the Site. The Nursery which justified the grant of planning permission in 2001 for a Nursery worker ceased to trade shortly after that planning permission was granted, and there has been no agricultural or horticultural use of the Site since.

3. History of the Property

- 3.1 A P McIntyre and Sons obtained planning permission for the Property on appeal in April 2001 (reference FG/80/00) (Appeal reference APP/C3810/A/00/1055789).
- 3.2 In determining the appeal, the Inspector concurred with the Council's acceptance that the proposed dwelling satisfied both the functional and financial tests set out in Annex 1 of PPG7 for an agricultural dwelling and went on to consider the live issues; the size and siting of the dwelling and the effect on the character and appearance of the area. He found that the proposed dwelling did not conflict with policy and granted planning permission subject to the Condition, stating at paragraph 18 of his Decision letter that *"there is a clearly accepted need for a dwelling on the nursery now.....any permission would be subject to an agricultural occupancy condition and, **for so long as an agricultural need remains**, the Council would be entitled to resist any attempt to remove this so as to allow the dwelling to be used for general occupation"* (our emphasis).
- 3.3 He further identified, at paragraph 19, that *"the proposed dwelling is acceptable only because it is required by a nursery worker and a condition restricting its occupation is therefore necessary."*
- 3.4 The Inspector therefore granted planning permission subject (inter alia) to condition 2 which reads:
- "The occupation of the dwelling shall be limited to a person solely or mainly working or last working in the locality in agriculture or forestry, or a widow or widower of such a person and to any resident dependents."*
- 3.5 Shortly after planning permission was granted A P McIntyre and Sons ceased to trade and sub divided and sold the Nursery in parts. The Property was purchased by John Lower/Premier By Design Ltd who built the Property in 2005/6.
- 3.6 Following an unsuccessful marketing campaign an application was submitted by Premier By Design in July 2006 to remove the Condition under planning application FG/98/06.
- 3.7 The application was refused on 12 September 2006 for the following reasons *"the property which has only recently been completed, has not been occupied. The Local Planning Authority are not therefore satisfied that this proposal meets the criteria in PPS 7 Annex A and further that the asking price does not reflect a reasonable reduction in market price which is normal for agricultural dwellings. Therefore the application is contrary to West Sussex Structure Plan policy LOC2 and Arun District Local Plan policies GEN3 and DEV7."*
-

- 3.8 The Applicants purchased the Property in March 2007, having first taken the advice of the Council to ensure that their proposed use of the Property for growing apples and cider production would comply with the agricultural condition. See letter dated 27 February 2007 (Appendix A).
- 3.9 The Applicants have planted 60 apple trees, the varieties being a mixture of ancient cider apples, eating apples and cookers, which are supposed to provide different flavours for blending for producing an organic brew.
- 3.10 The apple trees are a mix of ages, some having been planted in 2007 and some later in 2008, but cropping has not been good and cider yield has been poor. The Applicants have been advised that it may be another 5-6 years before any reasonable cropping will be available and even then the orchard is not of a sufficient size to produce the volume needed to make a profit from the business and be “solely or mainly employed” in it.
- 3.11 This view is endorsed by David Campion in the independent Agricultural Supporting Statement which accompanies this application.
- 3.12 It would also appear to be endorsed by the Council in correspondence dated 23 June 2010, 10 September 2010, 5 August 2011 and 17 August 2011 stating that in the Council’s view there is a breach of the Condition (Appendix B), despite the best efforts of the Applicants.
- 3.13 The Applicants submit this application seeking the removal of the Condition in response to a request from the Council, without prejudice to their view that there is, in any event, no breach of the Condition.

4. Planning Policy Context

National Policy

- 4.1 The National Planning Policy Framework (“NPPF”) published on 27 March 2012 has revoked PPS 7. The NPPF covers the topic of new isolated houses in the countryside briefly at paragraph 55 stating:

“Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:

- *the essential need for a rural worker to live permanently at or near their place of work in the countryside;”*

There is no mention in the NPPF of the need or justification for occupancy conditions in such circumstances. There is, therefore, no national planning policy against which to assess this application.

- 4.2 Circular 11/95 (The Use of Conditions in Planning Permission) , however, still provides guidance on agricultural occupancy conditions (Paragraphs 102-105).

- 4.3 Paragraph 105 of Circular 11/95 provides guidance on the removal of agricultural occupancy conditions and states:

“Where an agricultural occupancy condition has been imposed it will not be appropriate to remove it on a subsequent application unless it is shown that the existing need for dwellings for agricultural workers in the locality no longer warrants reserving the house for that purpose.”

- 4.4 Circular 11/95 identifies six tests for the validity of planning conditions. Conditions should not be imposed unless they are both necessary and effective and do not place unjustifiable burdens on applicants.

- 4.5 Under the six tests conditions must be:-

- i. necessary;
- ii. relevant to planning;
- iii. relevant to the development to be permitted;
- iv. enforceable;
- v. precise; and
- vi. reasonable in all other aspects

Local Policy

- 4.6 The Council has no policy in relation to agricultural workers dwellings as policy DEV 7 of the 2003 Local Plan was not saved and is therefore irrelevant for the purposes of this application.
- 4.7 The Council published for consultation the first draft of the Arun District Council Draft Local Plan 2012 ("the Draft Plan") on 19 July 2012 which includes draft Policy DM 13 : Agricultural, Forestry and Horticultural Worker's Dwellings.
- 4.8 The NPPF, Annex 1 paragraph 216, states that *"from the date of publication, decision-takers may also give weight to relevant policies in emerging plans according to the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given)".* Conversely, the less advanced the preparation, the less weight that may be given.
- 4.9 It is therefore submitted that draft Policy DM 13 has very limited weight in the determination of this application it being at the very first stages of consultation.

Summary

- 4.10 This application therefore falls to be determined under the guidance offered by Circular 11/95. As set out by David Campion in the Agricultural Supporting Statement, this requires evidence that the existing need for dwellings for agricultural workers in the locality no longer warrants reserving the Property for this purpose.

5. Assessment

5.1 The Applicants commissioned David Campion to provide an independent Agricultural Supporting Statement for this application. This Statement reaches the following conclusions which need to be assessed against the guidance in Circular 11/95:-

5.1.1 The horticultural unit for which the Property was approved ceased to trade as a horticultural enterprise before the Property was even built and the Site now contains a mix of non horticultural uses (paragraph 3.02)

5.1.2 The size of the orchard established by the Applicants is not of sufficient size to introduce a sustainable agricultural enterprise that would satisfy the requirement of the Condition (paragraphs 3.03 – 3.06) This point appears to be accepted by the Council in correspondence (Appendix B).

5.1.3 The size, location, characteristics and value of the Property puts it out of the reach of current or retired farm workers in the current economic climate and a mortgage for the Property would be difficult to obtain (paragraphs 3.11 – 3.15).

5.1.4 Employment figures show a decline in the number of full time agricultural workers in West Sussex. Part time workers would not satisfy the Condition (paragraph 3.13).

5.1.5 An enforced vacancy of the Property to avoid non compliance with the Condition will add to the wasted resource of empty homes in the District (paragraph 3.15).

5.2 For the above reasons it is considered that there is no existing need for dwellings for agricultural workers in the locality and there is no longer any justification for reserving the house for that purpose. There is no barrier therefore to the removal of the Condition based on the guidance in Circular 11/95.

5.3 Furthermore, the Condition does not satisfy the tests for the validity of conditions set out in Circular 11/95, for the following reasons:

5.4 **Necessity** – The Condition is no longer necessary. The Property cannot sustain an agricultural business, the Site in relation to which the Property was originally permitted has ceased to be in horticultural use, the nature and characteristics of the Property means that it is not realistically available for purchase by a current or retired farm worker in the locality, in any event the number of permanent farm workers in West Sussex is decreasing. The

condition has out lived its usefulness. The Property is not suitable for and no longer required for agricultural purposes.

- 5.5 **Relevance** - the Condition is no longer supported by any policy. PPS7 and policy DEV7 of the Arun Local Plan 2003 no longer have any effect. The relevance of the Condition needs to be judged against the NPPF, which contains no mention of agricultural occupancy conditions. Emerging draft policy DM13, although of very little weight, acknowledges the difficulties of such conditions in relation to properties such as this and now seeks to limit the provision of new permanent dwellings to support existing agricultural activities on **well established** (our emphasis) agricultural units and guards against permission for dwellings that are unusually large in relation to the agricultural needs of the unit. Further, where this policy refers to occupancy conditions, it refers to limiting occupation to a person “solely or mainly employed”, not “last employed”. In short, were the application for the dwelling before the Council today, it is unlikely it would be granted subject to the Condition.
- 5.6 It is clear from the supporting commentary to emerging draft policy DM13 and the evidence base for this draft policy (Open for Business – Economic Strategy 2009 – 2026) that there has been a steady decline in horticultural employment within the District, that there is a need to encourage seasonal migrant workers who work in the sector to stay within the District and provide permanent homes for them and that the sector is changing and rationalisation and larger intensive units can be expected to emerge with smaller horticultural holdings becoming uneconomic and available for alternative uses. This evidence base supports the reality of what has happened with the Property. The occupancy condition no longer has any relevance to the Property, nor to the wider planning aims of the Council, as set out in emerging policy.
- 5.7 **Enforceability** – As set out in the Agricultural Report (paragraph 3.15) the practical consequence of enforcement of the Condition is likely to result in an empty property, this is contrary to the wider aims of the Council’s Housing Strategy.
- 5.8 **Precision** – The precision of the Condition as worded is not at issue.
- 5.9 **Reasonableness** - For the reasons set out above and in the Agricultural Supporting Statement, the condition is not considered to be reasonable. It places an unjustifiable burden on the Applicants, who have, in good faith, sought to establish their orchard and apple juice/cider making business, based on advice initially provided by the Council.

- 5.10 The condition therefore fails the tests set out in Circular 11/95, and there is no justification for its retention.

6. Summary

- 6.1 Agricultural occupancy conditions are intended to reflect the needs for accommodation in a locality for agricultural workers.
- 6.2 The Condition was imposed in 2001 on the basis that the Property was required for a nursery worker in conjunction with McIntyre's/Highdown Nursery.
- 6.3 The Nursery ceased to trade a considerable time before the Property was built and was sub divided and sold off in separate plots.
- 6.4 There is no continuing horticultural use on the former Nursery site.
- 6.5 The Applicants took advice from the Council in relation to the Condition before purchasing the Property, and, acting on that advice, they have tried to establish an orchard for the commercial production of juice and cider.
- 6.6 The juice/cider enterprise is ongoing, but the Council has indicated that it does not consider it sufficient to comply with the Condition.
- 6.7 The Applicants have taken the advice of a specialist Agricultural Consultant, David Campion, who has advised that the Property cannot sustain an agricultural or horticultural business sufficient to satisfy the condition.
- 6.8 David Campion has also carried out an assessment of the need for agricultural workers dwellings in the locality and concluded that none exists.
- 6.9 In the absence of any National or adopted Local Planning Policy, there is no policy justification to support the retention of the Condition.
- 6.10 There is no conflict with the guidance in Circular 11/95 should the Condition be removed.
- 6.11 The Condition fails the majority of the tests for the validity of planning conditions.
- 6.12 For all the above reasons, it is considered that there is no continuing need for the Condition, it has outlived its usefulness and places an unjustified and unreasonable burden on the Applicants.
- 6.13 The Condition should therefore be removed and it is respectfully requested that planning permission be granted for this purpose.

Appendix A

**Mr Christopher and Mrs Rafia Self
Millwood House
Littlehampton Road
Ferring
BN12 6PG**

17 August 2011

Your Ref :
Our Ref : **ENF/290/10/**

**Please ask for :
Mr T Nicholson**



Dear Sir / Madam

Town and Country Planning Act 1990

**Alleged unauthorised non- compliance with agricultural occupancy condition (FG/80/00/)
Millwood House, Littlehampton Road, Ferring.**

I refer to my site visit and our discussion on 10 August 2011.

As you are aware the dwelling at the above address was granted on appeal (PP/C3810/A/00/0055789) following the refusal of planning application FG/80/00. Attached to the Decision Notice was condition 2 which reads, "The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or forestry, or a widow or widower of such a person and to any resident dependants".

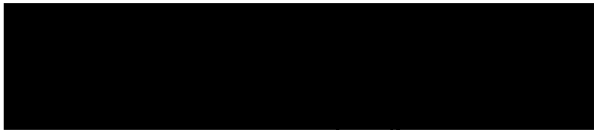
I am of the view that given my observations made at the site that the above condition is not being complied with. The apple orchard and the proposed production of cider appear to be an attempt to justify the occupation of the dwelling as opposed to a legitimate use by an agricultural worker. The current use of the garden and dwelling is predominantly domestic in nature and the cider production proposal would appear to be more of a hobby than a sustainable agricultural enterprise.

I am also of the view that, given the reasons set out in the Inspectors decision, the Council will not be minded to vary this condition should such an application be received.

The Council is also now considering its options in terms of taking Formal Enforcement action should the unauthorised use of the dwelling persist.

In light of the above I must ask you to indicate to me how you intend to proceed in this matter at your earliest convenience but no later than 21 days of the date of this letter.

Yours faithfully



Senior Planning Officer-Compliance

Appendix B

**Mr Christopher and Mrs Rafia Self
Millwood House
Littlehampton Road
Ferring
BN12 6PG**

17 August 2011

Your Ref :
Our Ref : **ENF/290/10/**

**Please ask for :
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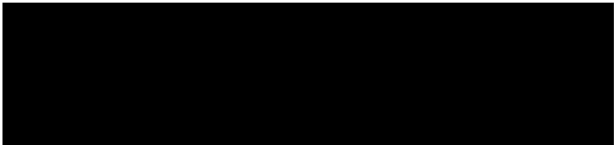
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Yours faithfully



Senior Planning Officer-Compliance

Mr Christopher and Mrs Rafia Self
Millwood House
Littlehampton Road
Ferring
BN12 6PG

05 August 2011

Please ask for :
Mr T Nicholson

Your Ref :
Our Ref : **ENF/290/10/**

Dear Mr Self

Town and Country Planning Act 1990

Alleged unauthorised non- compliance with agricultural occupancy condition (FG/80/00/)
Millwood House, Littlehampton Road, Ferring.

I refer to your letter of 1 July 2010 and our letter of 10 September 2010. I apologise it has taken to follow up on this matter but this has been the result of staffing issues. I am now the Officer dealing with the case.

The Council is of the view that the land is not being used for an agricultural purpose and as such it would appear that the occupation of the dwellinghouse would be in breach of the agricultural condition imposed by PP/C3810/A/00/0055789.

I would be grateful if you would contact me at your earliest convenience to discuss the above. I also intend to inspect the land in the near future and if we are able to agree a mutually acceptable time you may wish to be present during this inspection..

Yours sincerely


Senior Planning Officer-Compliance



Arun District Council
Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex, BN17 5LF

Mr. & Mrs. C. & R. Self
Millwood House
Littlehampton Road
Ferring
West Sussex
BN12 6PG

10th September 2010

Your Ref:

Our Ref: FG/19.58102

FG 12900

Please ask for:
Planning Services
Mrs. S. Leeson

Dear Mr. & Mrs Self

Highdown Farmhouse, Littlehampton Road, Ferring

Thank you for your letter which was received on 7th July 2010, I apologise for the delay in responding, which is due to work pressures and priorities.

Millwood House is an agricultural worker's dwelling, therefore size and accommodation is dependent on the requirements of the agricultural unit and not individual requirements. Therefore the summerhouse and accommodation for your daughter may be desirable, but they are not necessary or related to agriculture.

On my site visit I was not satisfied that an agricultural use is taking place on the site. My previous comments are relevant and I feel that I cannot add anything further.

I understand that the Enforcement Officer has visited the site and is of the same opinion as me; however, he is currently unavailable.

With respect to the fencing, provided that the fence is erected behind the trees and not adjacent to the highway, this would be permitted development only to a height of 2m.

The office for agricultural purposes has been previously discussed.

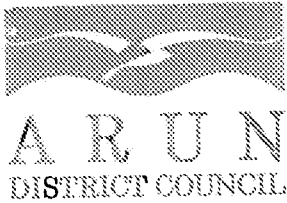
I have nothing further to add to my previous comments. The matter is being dealt with by the Council's Compliance Officer.

Yours sincerely

Susan Leeson
Principal Planner

Ian Sumnall Chief Executive, Strategy Director • Colin Rogers Services Director • Nigel Crood Resources Director





Arun District Council
Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex, BN17 5LF

Mr Christopher & Mrs Rafia Self
Millwood House
Littlehampton Road
FERRING
West Sussex BN12 6PG

23rd June 2010

Your Ref:

Our Ref: FG/80/00 -

Please ask for:
Planning Services
Mrs S Leeson

Dear Mr & Mrs Self

Former agricultural dwelling at McIntyres Nursery

Thank you for your letter of 28th May 2010 which has been passed to me to respond to.

1. Summer House

This will require the submission of a planning application and as it is located in the "orchard" area which you maintain is your agricultural area, this would be unlikely to be recommended for approval.

2. Studio Above Garage

The area above the garage is for storage and therefore a residential use would not be appropriate, this is particularly pertinent as you are also requesting an apple store.

3. Apple Store

I recently visited the site and had the opportunity to see the planted saplings. I am of the opinion that as stated above, the storage area above the garage could be used to store any fruit which may be harvested from the saplings. Therefore there would not be a justification for a agricultural store.

4. Acoustic Fence

A 3m high timber acoustic fence in this location may be overly high and likely to be recommended for refusal should any planning application be submitted. However should you make an application for planning permission for the fencing, I would strongly suggest that your application makes it very clear what planting (species and height) is to be planted between the fencing and the highway together with the depth of the planting.

Cont'd

Ian Sumnall Chief Executive, Strategy Director • Colin Rogers Services Director • Nigel Cross Resources Director

Cont'd

It should be appreciated that the above comments are my opinion only and cannot in any way prejudice the ultimate decision reached on any application submitted, which will of course be considered on its own merits, and any representations received from interested persons would be taken into consideration.

From the site visit, I am not satisfied that an agricultural use is taking place at this site. This is therefore in breach of the planning approval for an agricultural workers dwelling. I have therefore informed the Council's Compliance Section who will be writing to you in due course.

Yours sincerely



Susan Leeson
Principal Planner