

Recommendation Report for Planning Permission**REF NO:** FG/101/12/**LOCATION:** Millwood House
Littlehampton Road
Ferring**PROPOSAL:** Application for removal of condition 2 following a grant of planning permission FG/80/00 for the occupation of the dwelling**SITE AND SURROUNDINGS**

DESCRIPTION OF APPLICATION	As above.
SITE AREA	Approximately 1 acre.
RESIDENTIAL DEVELOPMENT DEN	N/A
TOPOGRAPHY	Predominantly flat.
TREES	None of any significance affected by the proposed development.
BOUNDARY TREATMENT	Timber acoustic fencing to southern boundary, to a height of 2 metres and supplemented by mature trees and hedging. 3-4 metre high hedging to eastern boundary. 1.8 metre high fencing to northern boundary.
SITE CHARACTERISTICS	Detached 2 storey property, render and red brick elevations. Hip to gable red tiled roof. Detached double garage. Track leading to open area of land to the north, enclosed by a mature screen of Poplar trees.
CHARACTER OF LOCALITY	Rural, sited to the north of the A259. Converted nurseries and offices to north of the site. Vineyard to the west. Recreational ground to east.

RELEVANT SITE HISTORY

FG/80/00/	Proposed agricultural chalet bungalow & garage (Departure from development plan)	Refused 05-12-2000 Appeal: Allowed 04 04 2001
FG/129/00/	Demolish existing offices and provide replacement offices for McIntyres Nursery.	Refused 03-04-2001 Appeal: Allowed 13 09 2001

FG/98/06/	Continuance of use without compliance with condition no 2 imposed on planning permission FG/80/00 relating to occupation restriction - agricultural	Refused 12-09-2006
FG/142/07/	Provision of 3m high double timber acoustic fence situated a minimum of 14.5m from the highway (A259)	Inc Docs Ret'nd 05-10-2007
FG/173/07/	Provision of 3m high double timber acoustic fence situated a minimum of 14.5m from the highway (A259).	Refused 12-12-2007

REPRESENTATIONS**Representations received:**

Ferring Parish Council

Objection; the withdrawal of the agricultural tenure would create an unwanted precedent. This was a condition of the building and should remain.

Comments on Representations received:

Noted and agreed as the condition is considered to remain useful.

CONSULTATIONS**Consultations responses received:****AGRICULTURAL CONSULTANT RESPONSE:**

Reading Agricultural Consultants Ltd (RAC) have undertaken a desk-based assessment of the above planning application in the context of the current planning policy advice for dwellings in the countryside. Comments included within the conclusions below.

Comments on Consultation responses:

Comments are noted.

POLICY CONTEXT

Designation applicable to site:
Outside the Built-up area boundary
Agricultural Occupancy Condition
Class A Road

DEVELOPMENT PLAN POLICIES

Arun District Local Plan:	GEN2	Built-up Area Boundary
	GEN7	The Form of New Development
	GEN3	Protection of the Countryside

PLANNING POLICY GUIDANCE

NPPF

National Planning Policy Framework

POLICY COMMENTARY**PLANNING**

The above policies combine to describe the criteria against which the application will be assessed particularly with regard to visual and residential amenity.

The Development Plan consists of the Arun District Local Plan 2003 and the South East Plan adopted in 2009.

It should be noted that the Arun District Local Plan was adopted in 2003 and the South East Plan in 2009.

In accordance with paragraphs 214 of the NPPF, the South East Plan is afforded full weight as part of the development plan. Footnote 41 (page 49) states the Governments clear policy intention to revoke regional strategies.

Paragraph 214 of the NPPF ensures that specific policies in Arun District Local Plan 2003 can carry weight but, because it predates 2004, a reduced weight. The weight afforded to the policies with Local Plan policies can be assessed according to their level of consistency of the various policies with the National Planning Policy Framework. It should be noted that the NPPF states that weight is given to individual policies and not to the plan as a whole.

The emerging local plan has recently been approved by the Council and is therefore a material consideration in the determination of this planning application. Whilst it has not been formally adopted due weight has been given to its policies in terms of the decision making process at this stage.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

PLANNING

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:-

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

The proposal is considered to conflict with relevant Development Plan policies as it would result in the loss of a residential dwellinghouse which was constructed for an identified essential need; with no acceptable justification being made for its removal.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background.

CONCLUSIONS

POLICY CONSIDERATIONS

Paragraph 105 of Circular 11/95 (Use of Conditions in Planning Permissions) notes:

"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. This assessment will be necessary in all cases, including those where the condition was originally inappropriately imposed (Sevenoaks DC v Secretary of State for the Environment and Mr and Mrs Geer (1995) 69 P. & C.R. 87). However, the fact that planning permission for a dwelling would in all probability be granted today without an agricultural occupancy condition is a material consideration (Hambleton DC v Secretary of State for the Environment and others [1994] EGCS 202)."

A recent appeal decision (APP/H1840/A/12/2176564) also noted that following the publication of the National Planning Policy Framework (NPPF) planning applications for the removal of agricultural occupancy conditions still require close scrutiny to ensure that there is not a proliferation of new dwellings in the countryside.

"The appeal relates to a fairly large detached house in the countryside, outside the defined boundary of Crossway Green and therefore on a site where, in accordance with longstanding planning policies, permission for residential development would only be granted in exceptional circumstances. The occupancy condition refers to the locality and not to a particular holding or enterprise. This is in line with well established advice including that in Circular 11/95 (The Use of Planning Conditions) which states that the model occupancy condition will ensure that the dwelling is kept available to meet the needs of other farm or forestry businesses in the locality if it is no longer needed by the original business, thus avoiding a proliferation of dwellings in the open countryside. This latter objective is included in the National Planning Policy Framework (2012) which states that isolated homes in the countryside should be avoided unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work."

EMERGING POLICY

In addition, Arun District has recently published a draft Local Plan (19th July 2012) for consultation and Policy DM13 accords with the above advice stating:

"Any planning permission granted will be subject to an occupancy condition, limiting occupation to a person solely or mainly employed in the locality in agriculture or forestry. Such conditions will only be removed if it can be demonstrated that the dwelling is no longer required for agricultural or forestry purposes or for any person solely or mainly employed in agriculture or forestry and that reasonable attempts have been made to market the dwelling for that use."

BACKGROUND

The details submitted with the agricultural supporting statement state variously that:

1. Millwood House was granted permission (at appeal, APP/C3810/A/00/1055789) in April 2001 and subject to an agricultural occupancy condition that required:

"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".

2. It was permitted to support an existing horticultural enterprise known as McIntyres Nursery.

3. From the appeal decision it would appear that the Council accepted that the functional and financial tests for a dwelling were met, but that permission was refused due to the size of the proposed property (145m²) and its impact on the countryside.

4. The dwelling has never been occupied by a worker employed at McIntyres Nursery as the nursery site was (apparently) developed for commercial, non-horticultural uses before the house was actually built.

5. A planning application to remove the agricultural occupancy condition was made by a previous

owner in 2006 following an extensive marketing campaign, but the application was refused, and not appealed. The reason for refusal is provided in the statement and states:

"The propert (sic) which has only recently been completed, has not been occupied. The LPA are therefore not satisfied that this proposal meets the criteria in PPS7, Annex A and further that the asking price does not reflect a reasonable reduction in market price which is normal for agricultural dwellings."

6. The applicants purchased the property in March 2007 "fully intending to establish an apple orchard and make cider on site". The LPA was consulted on this proposed use (letter submitted with this application) and it agreed that the proposed use would be compliant with the agricultural occupancy condition.

7. In August 2011 the Council wrote to the occupiers suggesting that the number of trees grown (60) and the cider production was "predominantly domestic in nature and the cider production proposal would appear to be more of a hobby than a sustainable agricultural enterprise".

8. The property comprises the dwelling and an orchard area detached from the dwelling of approximately one acre (0.4ha) planted with some 60 trees.

9. No marketing of the property has been undertaken.

10. The planning application was submitted at the request of the Council.

ASSESSMENT

In this appraisal it is considered pertinent to address the following issues:

- 1) whether the current occupiers are occupying the dwelling in compliance with the condition;
- 2) whether the condition has outlived its usefulness on this property; and,
- 3) whether the condition has outlived its usefulness in the locality.

On the first point, it is clear that the condition only requires that "an" occupier is working in the locality in agriculture (or forestry) and the Council has previously agreed that growing trees and making cider would be a compliant use of the dwelling, a position which is supported by the Agricultural Consultant. However, there is no requirement in the condition that the use has to be profitable or sustainable; simply that the occupation has to be undertaken. In this case, provided that one of the occupiers is solely or mainly employed in apple growing and cider making then they are occupying the dwelling in accordance with the condition.

This issue has been examined on numerous occasions and specifically in a Ministerial Planning Decision (reported in the JPEL February 1998) reference APP/x/96/G1115/2520. This decision, noted that:

"there is nothing in the wording...requiring the occupier to be engaged in agricultural work of a physical nature. If there was, that might well be discriminatory... there is nothing in the wording ...that the employment must be profitable or viable. The sole requirement is that it must be the occupier's sole or main employment...

...and concluded

"at least is both solely and mainly employed in agriculture. Cumulatively, the total time he spends engaged in agriculture is small, but, as a matter of fact and degree, it is considered that it is not so minimal, as you claim, that it should be regarded as de minimis and ignored for planning purposes"

Provided one of the occupiers of the house is solely or mainly engaged in tree and cider production they are compliant with the condition; however no detail has been provided stating that the current occupants are solely or mainly engaged in tree and cider production.

(For completeness, however I am aware of the alternative position being reported in a Welsh decision (APP/Z6950/X/09/2109455):

"I do not consider that Mr Harris is or was a dependant of a person last employed in agriculture, as the Council claims. As set out in Welsh Office Circular 35/95 on the use of conditions in planning permission, it was held in *Fawcett Properties Ltd v. Buckingham County Council* [1961] A.C. 636 (page 671) that the term dependants means persons living in a family with the person defined (the agricultural occupant), and dependent on him (or her) in whole or in part for their subsistence and support. In this instance, it seems to me that their roles were reversed, in that Mrs Harris was financially dependent on Mr Harris' earnings as an airline pilot. Clearly, neither Mr Harris nor their children were dependent on Mrs Harris' earnings from agriculture from 1995 until 2001.

Although Mrs Harris had no other paid employment during this period, she clearly had a full-time job looking after her family and home. I conclude that someone looking after up to 32 sheep for 10-15 hours per week for a relatively short period of 2-3 years is not solely employed in agriculture, and therefore this modest sheep enterprise did not meet the requirements of the condition..."

The second point deals with whether the condition has outlived its usefulness on the property, and given that I consider a compliant use could already be undertaken (apple trees and cider) then it has not outlived its usefulness; though clearly this depends on the facts of the case and whether one of the occupiers is solely or mainly so engaged. Alternatively, there are other small-scale agricultural operations that could be undertaken on the 1 acre paddock which could provide a compliant use.

In the alternative, a new compliant occupier might find the property of interest if it were to be marketed; either as a retired farm worker, or farm owner or tenant. The condition is used to ensure that there are affordable properties available for former farm workers and until and unless the property is marketed there is no way of determining whether a compliant occupier exists.

Although the agricultural statement submitted with the application belittles marketing exercises, they can identify a need. Many appeal decisions have explored this point, such as APP/H1840/A/11/2156079 where the Inspector explored the issue at length and in dismissing an appeal for the removal of a condition concluded:

"Marketing of the property provides a widely acknowledged mechanism for assessing demand for the specific holding or accommodation in question. Such an approach would also encompass those not able to pursue such accommodation through the planning process, or that may seek to lease such property or those who may be looking a property with such a specific functional

purpose. The robustness of such a process is underpinned by the clear and emphatic advice set out by the Council in the text supporting development plan policy, and by the Planning Inspectorate's Case Law and Practice Guide referred to above."

The third point looks at whether the condition has outlived itself in the locality and this is in part dealt with above with the complete lack of any marketing exercise or contact with local landowners and farmers. There can be no certainty that others, who could purchase and occupy the dwelling entirely legitimately whilst working elsewhere, do not exist.

A marketing strategy with an appropriately priced property (with a sensible discount to reflect the encumbrance) and for a sufficient length of time is needed to test demand.

Finally, there is the issue of continuing demand for agricultural workers dwellings in the locality. The Authority has received many applications over the past three years to assess applications for new agricultural dwellings in the countryside. However we have only received a removal of an occupancy condition on this site and one other within the Angmering. Thus it is clear, albeit at a simplistic level, there is a greater demand for new dwellings in the countryside in the District than for the removal of occupancy conditions. Although this simple approach covers the whole District, which may be considered larger than the 'locality'; it does suggest that there is a continuing need for such dwellings to be maintained for use by agricultural workers.

It is therefore considered that clear justification has not been provided to allow the removal of the condition, it is therefore considered to remain useful and reasonable as a condition. Accordingly it is recommended that the application be refused.

HUMAN RIGHTS ACT

Human Rights Act:

The Council in making a decision, should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as Arun District Council to act in a manner, which is incompatible with the European Convention on Human Rights.

Consideration has been specifically given to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for refusal of permission in this case interferes with applicant's right to respect for their private and family life and their home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of neighbours). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for refusal is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

DUTY UNDER THE EQUALITIES ACT 2010

Duty under the Equalities Act 2010

In assessing this proposal a neutral impact has been identified upon those people with the following protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

RECOMMENDATION

REFUSE

- 1 The dwelling lies outside the built up area boundary as defined in the Local Plan, where development is not permitted unless it is necessary for the needs of agriculture. This dwelling was granted subject to the agricultural workers dwelling condition. This Authority is not satisfied that the removal of the condition is acceptable as it has not been justified that the condition has outlived its usefulness. The application is therefore contrary to Arun Districts Local Plan policy GEN3 and the National Planning Policy Framework.