

Recommendation Report for Planning Permission

REF NO: LY/9/18/PL

LOCATION: Arundel Vineyard
Church Lane
Lyminster
BN17 7QJ

PROPOSAL: Application for Continuance of use without compliance with condition 2-occupation imposed under LY/16/02/, condition 3-occupation imposed under LY/3/04/ & condition 3-occupation imposed under LY/25/04/ (resubmission following LY/20/17/PL).

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION As above

RELEVANT SITE HISTORY

LY/20/17/PL	Application for Continuance of use without compliance with condition 2-occupation imposed under LY/16/02/, condition 3-occupation imposed under LY/3/04/ & condition 3-occupation imposed under LY/25/04/. This application is a Departure from the Development Plan.	Withdrawn 24-11-17
LY/12/10/	New conservatory extension	ApproveConditionally 09-09-10
LY/25/04/	Alterations to roof of proposed dwelling - amendment to planning permission LY/3/04/	ApproveConditionally 21-01-05
LY/3/04/	Modifications to house type previously approved under planning permission LY/16/02	ApproveConditionally 13-04-04
LY/33/03/	Modifications to house type previously approved under planning permission LY/16/02	Withdrawn 01-12-03
LY/16/02/	Replacement of existing agricultural dwelling.	ApproveConditionally 12-02-03

The applicants are alleging that they have never complied with any of the occupancy conditions, although they have been prepared to implement the various permissions in apparent full knowledge of the occupancy restrictions.

REPRESENTATIONS

REPRESENTATIONS RECEIVED:

Lyminster & Crossbush Parish Council

4 representations stating matters including:

All previous applications for this site have had the condition for Agricultural Occupancy, therefore the current owners were aware of the obligation to comply.

This should remain agricultural land, the original small bungalow was an agricultural dwelling, and the large house that replaced it was also built as an agricultural dwelling. Site in a strategic gap and next to a Biodiversity Opportunity Area.

The value of the new building at time of construction was in excess of one affordable by agricultural workers.

The land is outside the village limits and Conservation Area. The land is adjacent to a Listed Building therefore its change of use will affect this building.

Making the land residential will imply it is available for development, again affecting the Listed Building.

The economic argument presented with regard to this application does not constitute grounds for the Planning Authority to grant permission to the application.

Contrary to Local Plan

Marketing exercise insufficient

The application site area is incorrect

COMMENTS ON REPRESENTATIONS RECEIVED:

The Council has to consider what circumstances will have changed since the original granting of permission including the consideration of the proposal against current guidance including the Arun Local Plan 2018 and the updated National Planning Policy Framework 2018. Any decision to approve the removal of the condition would not set a precedent for further development in the locality since the main issue is whether it is reasonable on planning grounds to retain the occupancy condition .

Other relevant points are addressed in the conclusion section.

As the application is recommended for refusal the issue regarding the application site boundary has not been raised with the applicants representative. This issue would be raised if the application was recommended for approval.

CONSULTATION RESPONSES RECEIVED:

Parish Council

As Chair of Lyminster and Crossbush Parish Council and on behalf of the council, I wish to lodge an objection to both of these planning applications for reasons that apply to both. I believe that there are significant strategic reasons why the applications ought to be rejected and I have received representations from several residents of the Parish to this end.

At the last Parish Council meeting a vote was made of 5 against the applications with 2 abstentions (for reasons of conflicting interest as adjacent property owners).

The house and land covered by these applications sits within a Strategic Gap between Settlements, adjacent to the Lyminster Conservation area, and adjacent to a Biodiversity Opportunity Area. Its designation as agricultural land is, in all likelihood, the reason why it was not included within the Conservation Area when it was designated in 1998.

The Parish Council believes that it is vital to protect the designation of the Strategic Gap between settlements that makes up a large part of the Parish, and we would be extremely concerned if the District Council were to endanger the character of the Parish and the long and distant views to Arundel Castle by allowing seemingly small transgressions at the edges of the designated areas.

The house replaced an existing residential property which was designated for agricultural use and consequently the Council imposed conditions upon the demolition and rebuilding of the property when consent was granted in 2002.

This condition, requiring that the house only be occupied by a resident solely or mainly employed in agriculture, was imposed because "the site lies in a rural area and Strategic Gap where development not needed for the essential needs of agriculture or forestry would not be permitted." There has been no subsequent change to the relevant planning policies or to the nature and character of the land which alters this reasoning. We note that the Local Plan submitted and awaiting approval retains the area pertaining to the planning applications as Agricultural Use.

It is also understood from a previous owner that Covenants are in existence on the land which specify that it must remain agricultural, though I have not had sight of these Covenants.

The applicant's submission that they have not adhered to planning designations and conditions, imposed when they developed the land, must not be considered to have altered the character or legal designation of the land. That the District Council has not chosen to enforce its conditions laid out in consent LY/16/02 also cannot be used to negate the reasoning behind the condition which was rightly imposed.

It is noted that the applications present an economic argument that use of the land and building are untenable. It is not the role of the planning authority to address the economic misfortune or miscalculation of the applicant through granting either permission which would be contrary to the Local Plan.

COMMENTS ON CONSULTATION RESPONSES:

Comments noted. The response would be similar to that given for the representations. The Council has not sought any specialist advice on either matters of marketing or valuation as the Council doesn't have all the information required to make such a consultation meaningful.

POLICY CONTEXT

Designation applicable to site:
Strategic Gap between Arundel & Littlehampton

DEVELOPMENT PLAN POLICES

HDM3	H DM3Agricultural forestry and horticultural Rural dwellings
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PLANNING POLICY GUIDANCE:

NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

POLICY COMMENTARY

The Development Plan consists of the Arun District Local Plan 2018, West Sussex County Council's Waste and Minerals Plans and Made Neighbourhood Development Plans.

There is no Neighbourhood development Plan for the parish of Lyminster.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

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."

CONCLUSIONS

The application seeks the removal of an agricultural occupancy condition attached to a substantial detached dwelling known as 'Arundel Vineyard'.

In the information submitted with the application the agent alleges on behalf of the applicants that they were not employed in agriculture at the time the site was purchased in 2000 and were not so employed at the time the replacement dwelling was approved in 2002. Furthermore, they have not been so employed since that time. It is stated that their intention was to grow vines commercially but this never materialised. Whether the applicant is able to benefit from a Certificate of Lawful Use in respect of the non-compliance with the occupancy conditions is a matter beyond the remit of this application.

Information is provided on agricultural wages and reference is made to an appeal decision in a neighbouring district. That decision focused mainly around issues related to the marketing of the property. The decision helped inform the questions put to the applicants (via the agent) which are set out below.

The agent was asked to provide the following;

1-Confirmation from the selling estate agent whether the asking price reflects the agricultural occupancy clause (reference to it is noted in the particulars). If it is reflected could details be provided of what level of reduction was applied.

2-When was it first advertised and at what price.

3-Where has it been advertised.

4-How many particulars have been sent out/issued.

5-How many viewings have taken place.

6-Have any offers been made/accepted and at what price.

In addition to the above, details were sought of the applicants occupation (main source of income) for the period between the purchase of the land in 2000 and planning permission being granted for the replacement dwelling. Furthermore, what was the occupation of the applicants before they bought the property and what it was after the new dwelling was occupied if it wasn't related to the vineyard.

Whilst, a 2 week period was given for the provision of the information, a 4 week period was in fact allowed, but no information has been forthcoming. The application is therefore determined on the basis of the information currently available.

Criterion (g) of Policy H DM3 provides guidance on considering applications which seek to remove occupancy conditions in rural areas. The policy states that such conditions will only be removed if it can be demonstrated that the rural workers dwelling is no longer required and that reasonable attempts have been made to market the dwelling with the restriction.

In the absence of information to confirm that the property has been marketed in a way which reflects the occupancy restriction, the Council is unable to determine whether it would be reasonable to remove the condition or seek to broaden it to refer to rural workers.

The site is not in a defined built up area as defined by the Local Plan and therefore notwithstanding the more permissive policy context of the NPPF 2018, the granting of permission to remove the occupancy conditions would currently be contrary to the aims and intentions of policy H DM3 (g) and there are no material considerations which the Council believes that would indicate that a decision should be made other than in accordance with the Local Plan.

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 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 no impacts have 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 applicant has failed to provide relevant information to demonstrate that the property has been marketed for a reasonable period of time and at a price which reflects the occupancy condition and that any enquiries on interest from potential purchasers have been considered with an open mind. Consequently, in the absence of this information the Council is unable to satisfy itself that the dwelling is not required to be retained to house a rural worker in accordance with the aims and intentions of policy H DM3 (g) of the Arun Local Plan 2018
- 2 **INFORMATIVE:** Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure)(England) Order 2015. The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. Unfortunately, it has not been possible to resolve those matters within the timescale allocated for the determination of this planning application. However, the Local Planning Authority has clearly set out, within its report, the steps necessary to remedy the harm identified within the reasons for refusal - which may lead to the submission of a more acceptable proposal in the future. The Local Planning Authority is willing to provide pre-application advice in respect of any future application for a revised development.