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## Appeal Decision

Site visit made on 13 June 2017

**by Debbie Moore BSc (HONS) MCD MRTPI PGDip**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 4 July 2017**

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**Appeal Ref: APP/E2001/W/17/3170529**

**Conifer Lodge, Hull Road, Skirlaugh, Hull HU11 5AE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr Vanston Cook against the decision of East Riding of Yorkshire Council.
  - The application Ref DC/16/03893/VAR, dated 17 November 2016, was refused by notice dated 7 February 2017.
  - The application sought planning permission for the erection of a private dwelling and installation of a septic tank without complying with a condition attached to planning permission Ref N.10870H, dated 11 May 1992.
  - The condition in dispute is No 4 which states that: "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".
  - The reason given for the condition is: "As the site is located in the open countryside where, in accordance with policy S7 of the Humberside Structure Plan, new residential development is permitted only where it is essential in the interests of agriculture or forestry".
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of a private dwelling and installation of a septic tank at Conifer Lodge, Hull Road, Skirlaugh, Hull HU11 5AE in accordance with the application Ref DC/16/03893/VAR made on the 17 November 2016 without compliance with the conditions previously imposed on the planning permission Ref N.10870H granted on 11 May 1992 by the Council.

### Application for costs

2. An application for costs was made by Mr Vanston Cook against East Riding of Yorkshire Council. This application is the subject of a separate Decision.

### Background and Main Issue

3. Planning permission was granted in 1992 for a new dwelling, which has been built and is known as Conifer Lodge. The original planning permission was subject to a condition, which restricted the occupancy of the dwelling. The appeal seeks to remove the condition, thereby lifting the occupancy restriction from the house.

4. The Council granted a Certificate of Lawfulness<sup>1</sup> for the occupation of the dwelling in breach of the disputed condition (No 4). The Council was satisfied that, on the balance of probabilities, the applicant had occupied the dwelling for over ten years and had not been employed in agriculture during this time. The Council states that, as a result, the development is immune from enforcement action in relation to the breach of condition 4. This represents a fallback position to which I attach significant weight.
5. Despite approving the Certificate of Lawfulness, the Council refused the application on the basis that the condition may still serve a useful planning purpose in the future, given the location of the dwelling in the open countryside.
6. Therefore, the main issue is whether the condition is necessary and reasonable, having regard to the countryside location of the dwelling and the need to provide suitable accommodation for rural workers.

### **Reasons**

7. Conifer Lodge is a detached dwelling situated in relatively extensive grounds and surrounded by tall hedgerows. Although the site adjoins a garden centre, it is located in the countryside for development plan purposes.
8. Policy S4 of the Local Plan<sup>2</sup> relates to development in the countryside. Agricultural, forestry or other rural-based occupational dwellings are supported subject to demonstrating an essential need, and the policy requires such dwellings to be subject to an agricultural occupancy condition. The supporting text to the policy states that occupancy conditions will only be removed where it can be demonstrated that the property is no longer required for the purposes of accommodating an agricultural/forestry worker. This requires applicants to market the property for at least 12 months at a price reflecting the occupancy restriction. There is no evidence that this exercise has been carried out and, therefore, the proposal would be in conflict with the policy.
9. The Council also cites paragraph 55 of the National Planning Policy Framework (the Framework) which states that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances, none of which would apply in this case.
10. The statutory position is that applications for planning permission, or appeals, must be determined in accordance with the development plan, unless material considerations indicate otherwise. As explained above, the proposal would be in conflict with Policy S4 of the Local Plan, and would not meet the aims of the Framework insofar as it seeks to promote sustainable development in rural areas. However, the Certificate of Lawfulness that has been granted means that the dwelling can be lawfully occupied without compliance with the occupancy restriction. Therefore, the disputed condition serves no purpose.
11. I appreciate the views of the Parish Council, that the condition should be retained to ensure the property remains available for a rural worker in the event that circumstances change. However, given the size of the dwelling, I consider it unlikely that it would be suitable for a rural worker in the future.

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<sup>1</sup> Ref 16/02621/CLE, dated 19 October 2016

<sup>2</sup> East Riding Local Plan Strategy Document – adopted April 2016

Moreover, in view of the fallback position as set out above, the condition is no longer necessary and it would be unreasonable to retain its imposition.

### **Conditions**

12. The guidance in the Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. The Council has indicated that several of the other conditions have been discharged or would not meet the tests of paragraph 206 of the Framework. However, the Council considers that the conditions relating to any above ground oil or liquid chemical storage tanks are still relevant and necessary. The appellant argues that the imposition of the Council's suggested condition to prevent contamination of the local watercourses is not necessary or reasonable. There is limited evidence that there is likely to be contamination and I note the Council accepts that there is no oil or chemical storage at present. Consequently, I find that it has not been demonstrated that the condition is necessary.

### **Conclusion**

13. For the reasons given above, I conclude that the retained imposition of the disputed condition would not be necessary or reasonable as the dwelling can be lawfully occupied without compliance with the occupancy restriction. Although the proposal would be contrary to Policy S4 of the Local Plan, removing the condition would not lead to harm as the dwelling is no longer available for use by a rural worker employed in the locality, as a consequence of the Certificate of Lawfulness.
14. Therefore, the appeal is allowed.

*Debbie Moore*

Inspector