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Application by Mr Dean Goodeve for the removal of Condition 2 relating to agricultural occupancy on application BR/104/62, at Alvey House Farm, Fishtoft Road, Boston, PE21 0SH

1. This Section 73 application follows the recently approved certificate of lawfulness (reference B/24/0006 – appendix 1), where it was successfully proven that the dwelling referred to above has in fact been occupied without compliance with the planning condition limiting occupancy to a person employed or last employed, locally in agriculture for a period of more than 10 years.
2. The certificate provides immunity against the condition being enforced, providing the dwelling continues to be occupied in breach of condition 2.
3. Whilst the breach continues to this day, the condition (No.2) still remains on the dwelling granted in outline on the 4th April 1962 under reference BR104/62. A copy of the permission is within appendix 2. There have been a series of other permissions, however none of these replicate the occupancy condition:
 - BR213/62 – RESM – Bungalow, garage and vehicular access APPROVED.
 - B/04/0480 – FULL – Alter and extend dwelling – APPROVED.
 - B/09/0294 – FULL – Alteration to existing chalet bungalow to form a 2 storey house and new replacement garage/utility – APPROVED.

4. This application seeks to formally remove the condition via Section 73A. Appendix 4 details that s73A of the Town and Country Planning Act 1990 provides the appropriate procedure for such an amendment. This approach is consistent with the case of *Freddie Reid v SSLUHC1*, which established that the removal of a condition cannot result in a conflict with the description of development, because there is no condition remaining to conflict with the description.
5. The main issue is whether condition 2 of the Planning Permission remains necessary, enforceable and reasonable, having regard to the development plan, the need for rural worker dwellings in the local area and other material considerations.
6. We consider that the issuing of the certificate makes the original condition currently unenforceable and therefore no longer necessary.
7. The evidence contained with the lawful use certificate (B/24/0006) demonstrated that the occupant has lived in breach of the condition for more than 10 years therefore the usefulness and effectiveness of the original planning condition (No.2) is now no longer appropriate.
8. The Planning Act requires that when applications are considered, regard is to be had to the Development Plan and all other material considerations, and that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise.
9. In this case, one such material consideration is the immunity from enforcement action provided by the certificate. This is capable of carrying greater weight than the Development Plan and the need to market the dwelling.
10. Under normal circumstances, if my client was seeking to remove the occupancy condition, I would suggest they undertake a marketing exercise to

ascertain the demand for such a dwelling in locality, in accordance with the long-established mechanism for removing conditions. However, this case is different in that the granting of the lawful development certificate in effect nullifies the ability for the Local Planning Authority to currently enforce the condition, rendering it useless. This in our view overrides the need to market the dwelling.

11. Finally, the issuing of the certificate does not preclude future compliance by an agricultural worker, which would then mean the condition retakes affect and 'bites back'. The likelihood of this occurring is small due to the financial loss that would ensue to the sellers. An agricultural worker would expect to pay 30% less, therefore it's unlikely that the owner would sell to such a person and incur such a financial loss, especially given the certificate is unfettered and therefore can be transferred to non qualifying future owner and sell for full market value.
12. The ability granted by the certificate to sell at full market value means if there was any demand for the rural dwellings in the locality, a farm worker would expect to pay full price and indeed the farm worker would equally have all of the other non-restricted dwellings in the locality to choose from as they wouldn't be getting any discount by virtue of the certificate.
13. It follows that the applicant is unlikely to accept a substantially discounted price for the property, as it is unlikely to be in their financial interests to do so. Moreover, anyone satisfying the occupancy condition would be unlikely to pay full market value for the appeal property, as on acquisition and subsequent occupation of the dwelling, condition 2 would bite back, and the property would see a corresponding reduction in value. Once again, this would defy financial logic.
14. On this basis, whilst the condition could theoretically become enforceable in future, the likelihood of this happening is very remote. Indeed, it is much more likely that the occupiers of the property would seek to ensure the continued

breach of condition, given the impact on the value of the dwelling if the condition were ever to bite back.

15. This is explained in more detail within an appeal in Wales 'Bron-Heulwen' within appendix 3 and the 2023 Kerris Vale decision against Cornwall Council in appendix 4.
16. Also attached are three appeal decisions in Howden (East Riding of Yorkshire Council attached as appendix 1) an appeal in 2016 at South Harting (appendix 5) and an appeal in Skirlaugh in 2017 (appendix 7), where the inspector found that the effect of a certificate was that the condition served no useful purpose, serves as a useful guide for the way in which such applications should be dealt with.
17. Therefore, condition 2 of decision BR104/62 serves no useful purpose for 'Alvey House Farm' in that that occupancy of the dwelling by a person or persons who did not comply with the condition could, by virtue of the certificate, not be enforced against.
18. For the above reasons a new unconditional, permission should be issued freeing the tie from the property.

Appendix 1 – Copy of the Certificate of lawfulness

Appendix 2 – Original approval from 1962

Appendix 3 – APP/T6850/A/20/3252618 Bron Heulwen

Appendix 4 – APP/D0840/W/22/3304612 Kerris Vale

Appendix 5- Appeal Ref APP/E2001/A/02/1104141Howden

Appendix 6- APP/Y9507/W/16/3147251 Copper Beeches

Appendix 7- APP/E2001/W/17/3170529 Skirlaugh

