5. S73 APPLICATION - REMOVAL OF AGRICULTURAL OCCUPANCY CONDITION. WARREN FARM, BAR ROAD, CURBAR (NP/DDD/1008/0914. P.9881. 27.10.08. 2557 7466/KW)

APPLICANT: MR S HARDWICK

Warren Farm is a detached agricultural worker's bungalow situated at the eastern end of Curbar.

Proposal

Section 73 application for removal of the agricultural occupancy condition attached to planning permission NP/BAR/673/23 dated 4 September 1973.

Key Issues

1) Whether the original consent for the agricultural dwelling was justified on the basis of the essential agricultural need case advanced at the time.

2) Whether reasonable attempts have been made to allow the dwelling to be used by a person who could occupy the dwelling in accordance with the agricultural occupancy restriction.

3) Whether the dwelling has been occupied in accordance with the agricultural occupancy condition for the last 10 years.

History

September 1973 - outline consent granted for the agricultural dwelling. At that time the applicant was the head shepherd on the eastern moors (at that time owned and managed by the Water Board) where he was responsible for the sheep on about 2428 hectares. He lived at that time in Warren Lodge 250m north-east of the application site, in tied accommodation. The applicant also had a full agricultural tenancy on 32 hectares of land that was farmed independently of the Water Board land and owned 1.4 hectares of land on the eastern edge of Curbar. The applicant was 52 years old in 1973 and was considering retiring from the Water Board and consequently would have to vacate the tied accommodation at Warren Lodge. He still intended to farm his separate 33.4 hectare holding which at that time accommodated 200 sheep and 25 beef cattle. The applicant had a full agricultural tenancy on the 32 hectares of land at Curbar and Stoke Flat and on this basis it was considered that the holding constituted a viable one-man full-time agricultural unit and was sufficient to accept the principle for the erection of an agricultural worker's dwelling on the site.

September 1979 - Appeal dismissed for an alternative siting for the agricultural worker's bungalow at the eastern end of the field in which the bungalow is now built. At that time the applicant stated in his appeal statement that the agricultural circumstances had not changed since the original application in 1973 and thus the agricultural dwelling was still justified. The size of the holding was stated to be 81 hectares.

July 1980 - Detailed consent granted for the agricultural worker's bungalow. The approved plans were for a bungalow with an internal floor area of 106m², with no rooms in the roofspace.

August 1982 - Building works on the erection of the bungalow commenced.

December 1986 - Farm Notification application submitted for a general purpose shed at Warren Farm.

March 1987 - The bungalow was built and occupied.

July 1989 - Detailed application submitted for the erection of a large extension to the rear of the
agricultural bungalow effectively creating a separate dwelling for the applicant's son who at that
time traded in partnership with his father on the agricultural holding. The application was
subsequently withdrawn prior to determination as the farmer's son had found alternative
accommodation in Curbar village. The application was accompanied by a letter of support from
the National Farmer's Union stating that the applicant's farming situation in July 1989 comprised:

- 1.4 hectares of land surrounding the dwelling site.
- 12.1 hectares of land owned at Clodhall Lane, Curbar.
- 15.9 hectares of land rented on a full agricultural tenancy in the Curbar area.
- 18.2 hectares of land rented on a full tenancy at Stoke Flat.
- 80.94 hectares rented from the National Trust on a summer grazing situation, which the
  applicant had rented for the last 15 years.

The numbers of livestock at that time were stated as 350 breeding ewes, 80 suckler cows with 18
calves, and 20 yearling beef animals.

January 2008 - Refusal of consent for the erection of a garage, workshop and store at Warren
Farm. The garage building was refused on design and landscape grounds.

July 2008 - Detailed consent granted for the erection of a garage and store. Work has now
commenced on the erection of this building. The applicant has also rebuilt the drystone walls
along the roadside frontage.

Consultations

Highway Authority - No objections.

District Council - The issue seems to be that the case presented by the applicants is not an
accurate description of the history of the site or the efforts made by the applicant to rent or sell
the dwelling. The evidence presented should, therefore, be fully analysed and have regard to
letter from Curbar parish council and concerns raised by the Local Ward Councillor of the District
Council.

Parish Council - Object to the application for several reasons, the principle one relates to the
inability to demonstrate that reasonable attempts have been made to allow the dwelling to be
used by a person who could occupy it in accordance with the restriction. In respect of the first
issues, there are incomplete details. Emphasis has been placed on the question of the original
dwelling approval in 1973 being regarded as a 'retirement dwelling' for Mr K Adlington.
Mr Adlington was 52 at that time and continued his husbandry activities whilst he was living at
Warren Farm up to 1992, and then from his OAP bungalow in Chapel Walk until just before his
death in 2005, aged 84. With regard to the second issue, the agent's statement refers to the
property being advertised at a target rent of £750 per calendar month. It is no surprise that there
was only one offer of £350 - £400, well below the set target. The target rent does not reflect the
practical rent level appropriate for such an agricultural occupancy. The accompanying statement
states that the applicant has rented the dwelling to an employee; however the statement of the
employee says that his employer has allowed him to live rent free. The tenant's occupancy has
been spasmodic and there are several neighbours who dispute that he has lived in the farm as
his main dwelling. With regard to the third issue, K Adlington moved out of Warren Farm on 20th
June 1992 and A Adlington moved in during July 1992 and moved out in April 2002. This period
is less than the 10 years stated in the agent's submission. The property then became vacant
with at some later stage, the applicant's employee taking up spasmodic occupancy with
significant periods of unoccupancy. It is understood that when there is a significant period of
unoccupancy there is no contravention of the agricultural occupancy condition. This is a very
important legal issue.

Further comments were submitted by the Parish Council in response to the applicant's solicitors
response to their initial comments. The Parish council re-iterate their view that the initial approval in 1973 was given because it was accepted that the applicant was a working farmer and continued to be so for many years. The dates of occupancy quoted need to be precisely verified. Both A Adlington and the applicant's tenant should be able to retrieve their Council Tax records and voluntarily submit them as substantive evidence. Further evidence, such as, quarterly utility bills should also be submitted to substantiate the extent of the use and level of occupancy of the property. In respect of the rent level the applicant's solicitors letter describes an image of a desirable 4-bedroomed, 2 bathroom house set in a paddock and quotes figures 'for this type of property'. Warren farm bears no resemblance to this image. It is an unattractive, dilapidated 2-bedroom bungalow with an uninhabitable loft conversion. The figure quoted of £1200-£1500 per month is unrealistic. Actual rental levels for property in Curbar range from £1000 per month (three-bedroomed, fully refurbished and furnished house) to £650 per month (Two-bedroomed, fully furnished traditional cottage). These rents are in the private market, substantially lower than those quoted in the applicant's solicitors letter and are not subject to agricultural ties. These properties are immeasurably superior to the Warren Farm type of property, where £350–£400 per month would seem appropriate.

Friends of the Peak District (FPD) - Leaving aside the legal arguments regarding the legitimacy of the condition and the existence of lawful occupation, this application should comply with Local Plan policy LH3 (Replacement of Agricultural Conditions). FPD do not consider that the marketing of the site for £750 per month compliant with this policy, which states that reasonable attempts have to have been made to allow the dwelling to be used by persons who could occupy it in accordance with the restriction. FPD believe that it would almost be impossible for an agricultural worker to afford such rental values. This is evidenced by a prospective occupier, identified in the agent's accompanying planning statement, who offered £350–£400 per month. Clearly reasonable attempts have not been made and therefore it does not comply with this policy. If an occupier cannot be found who complies with the agricultural condition the owner must, in accordance with policy LH3, either offer the property at an affordable rent to those in need of housing locally, or use it as holiday accommodation.

Representations

Twelve individual letters of support have been received, which make the following points:

- With many changes to agricultural practices over the last few years and the consequent shedding of workers in the vicinity, there is no one around who could occupy such a dwelling. The purchase price would also be prohibitive to most agricultural workers. There are only a few acres of land attached with the property and therefore someone from agriculture, retired or otherwise could not make anything like a viable business from the site.
- Over the last few months, there has been a considerable improvement to this long neglected site. The lifting of the condition would halt the continued deterioration of the property, which is at the entrance to one of the most beautiful and sought after villages in the Peak District.
- In 2002 the property was offered for sale at a sum of £235,000 with 0.83 acres of land. After nearly 12 months, no offers were forthcoming from agricultural workers. This was due to the fact that without land to work the bungalow had arguably become a 'domestic dwelling'. No agricultural worker could either afford it or preferred to purchase it when there were other suitable houses in the village that were available at that time for £100,000–£150,000.
- Today, Warren Farm, when the current garage/workshop building is completed would probably be worth around £500,000. With the current agricultural restriction attached this would be worth around £360,000, far outside the wages of normal agricultural workers at a time when a comfortable, semi-detached house can be purchased for around £250,000 for houses in Curbar and the surrounding villages.
- During the last 3–4 months the site has been transformed. The standard of work and
materials used are quite exceptional and sympathetic to the site. It is now clearly time to put the past behind us, acknowledge the facts of the situation, particularly in respect of the proven breach by Mr A Adlington's employment history, and move on.

- The agricultural tenancy was simply the end result of the Parish Council's need to acknowledge K Adlington's contribution to both the Parish Council and Derbyshire Dales District Council, and the Authority's need to vacate Warren Lodge in order to instate one of its own employees.
- The removal of the agricultural restriction would be a positive contribution towards improving the wonderful view of the village when approached from Curbar Gap. To lose this opportunity and press to keep in some way this inherited eyesore would be negligent and certainly not in the best interests of the village or local people.

Seven individual letters of objection have been received, which raise similar objections to those raised by the Parish Council. Additional objections cover the following issues:

- The statement in the later letter submitted by the applicant's solicitors conflict with the agent's initial statement that accompanied the application.
- The term 'retirement bungalow' is misleading, the applicant was only 52 when the outline permission was granted and continued to farm beyond 1992 after he vacated Warren Farm.
- The original application in 1973 was valid given that K Adlington held secure tenancies on the land he rented.
- Warren Farm was used for agricultural occupancy and therefore the argument that the condition was inappropriately imposed, fails.
- The case quoted at Stoke Farm is very different to Warren Farm.
- When he bought Warren Farm in 2002, the applicant knew that it was subject to an agricultural occupancy condition. The argument that because the applicant knowingly broke the conditions for 6 years between 2002 and 2008 should now be rewarded by lifting the condition is perverse in the extreme.
- Query the extent of occupancy of the applicant's tenant and when he first occupied the property.
- Query whether Warren Farm with the loft conversion provides 160m² of accommodation.
- Query whether the loft conversion affords achievable headroom and whether it conforms to the Building Regulation definition of habitable space.

Main Policies

Relevant Structure Plan policies include: GS1, C2, C6

Relevant Local Plan policies include: LH3

Comment

A detailed supporting statement accompanies the application. This states that there are three key issues raised by the application, namely;

- Was the original approval for the dwelling justified on the basis of an essential need for a dwelling.
- Is there a current need for an agricultural worker's dwelling in the locality that would require the retention of the dwelling at Warren Farm for this purpose.
- Has the dwelling been occupied in accordance with the agricultural occupancy condition for the last 10 years and if not, has the breach of the condition now become lawful.
1) Was the original consent for the agricultural dwelling justified on the basis of the essential agricultural need case advanced at the time.

The agent states that in his view the agricultural case originally advanced for the dwelling was not sufficient to have granted approval in 1973. Consequently, it is argued that as the agricultural case was not sufficient, the agricultural occupancy condition was inappropriately imposed. In such situations, the report states that Government advice is that it should be removed. In these circumstances, it is also argued that, should the Authority concur with this view and lift the condition on this basis, it would not be possible to consider replacing that condition with a local occupancy restriction or holiday use until at such time as there is an agricultural need for the dwelling, as required by policy LH3 of the Local Plan.

In support of this view, the agent states that it is clear that the dwelling was essentially a retirement dwelling for Mr Adlington and that the case for an agricultural dwelling was relatively weak. Reference is made to the fact that whilst 32 hectares of the land was held on a full tenancy, Mr. Adlington owned only 1.41 hectares. Reference is also made to comments made at the time of an appeal by Mr Adlington in 1978 relating to an alternative site for the dwelling that make it clear that the dwelling was seen by Mr Adlington as a retirement dwelling. The agent also notes that Mr Adlington previously occupied Warren Lodge, which passed to the National Park Authority, allowing the Authority to place its own staff in the property.

The agent considers that from the evidence that is available on the Authority's files, it seems unlikely that the case advanced in support of the application would now be accepted as justifying a dwelling on the basis of an essential need that could not be satisfied by a dwelling in the settlement of Curbar. Due to the proximity of the site to Curbar village the agent finds it difficult to understand why the need for the dwelling could not have been met within the settlement, other than the fact that Mr. Adlington owned the application site and as this was not the base for his agricultural buildings. Reference is also made to two recent cases, where agricultural occupancy conditions have removed by the Authority, in circumstances that are similar to this present application. These two cases were approved without the need to consider the "default "option of holiday occupancy or local occupancy restrictions.

Officers comments

Notwithstanding the comments in the agent's supporting statement, your officers are satisfied that there was sufficient agricultural justification for the agricultural dwelling at the time it was being considered in 1973. Whilst the applicant, Mr K Adlington owned a relatively small area of land his land holding, together with the land he held on a full agricultural tenancy amounted to 33.4 hectares. Furthermore claims that it was clearly intended as a retirement dwelling are not supported by the evidence on the file. It is acknowledged that reference is made to a 'retirement bungalow' in a newspaper article dated 9.9.1977 and that Mr K Adlington was seeking to retire from his employment as Head Shepherd. However, details of the farm holding submitted in 1989 in support of a subsequently withdrawn application for an agricultural dwelling for his son (see planning history section) show that the land holding and stock numbers had increased significantly. This does not suggest that Mr K Adlington was actively seeking to retire from farming in the late1970's. Furthermore, the floor area of the bungalow as originally approved extended to around 106m², which is considered to be commensurate with the size of the agricultural enterprise at that time.

Furthermore, although there are some similarities with the cases quoted at Hull End Farm, Chinley and Stoke Farm, Grindleford, they are not directly comparable and it is considered that this present application should be considered on its own merits. In the case of Hull End Farm, this involved the conversion of a substantial traditional stone barn. Due to family circumstances at the time in 1988 the intended occupant was made homeless. The report acknowledged that the agricultural case was marginal as the holding only extended to 8.3 hectares. No functional or
financial appraisals were submitted. It was considered, however, that on balance, the justification together with the need to generate an alternative use for this prominent and substantial building, were considered to be sufficient to make an exception to settlement policy. The floor area of the converted barn also amounts to 188m$^2$, which clearly was not commensurate with the size of the holding. In this case, therefore, there were strong reasons why it could be argued that the agricultural occupancy condition had not been correctly imposed. It should also be noted that in support of the application to remove the agricultural occupancy, the property was advertised for 7 months throughout the High Peak area by agents and in the local press (Buxton Advertiser). The accompanying sales particulars clearly stated that there was an agricultural occupancy condition attached, although there was no selling price.

In the case of Stoke Farm, Grindleford, the initial application in 2002 seeking removal of the agricultural occupancy condition was refused on the grounds that the requirements of the Authority's policies had not been met, as the farmhouse had not been marketed at a value that properly reflected the imposition of the agricultural occupancy restriction. A subsequent application in 2005 for the removal of the agricultural occupancy condition was approved. As with the Hull End Farm example, the case for the removal of the condition rested on the fact that the condition was unreasonably imposed. It was considered that the functional appraisal showed that the existing stocking levels at that time were not sufficient to justify the dwelling and no financial appraisal accompanied the application. The size of the holding at that time extended to a total of 26 hectares. Furthermore, the size of the farmhouse, a five-bed roomed house with a floor area of 240m$^2$, was greatly in excess of what could be considered commensurate with the holding. Additionally, the dwelling was not tied to the holding via a legal agreement. In this case it was considered that as the condition was unreasonably imposed, there was no requirement to market the property with the condition attached. The attaching of a holiday/local occupancy restriction was also considered to be inappropriate in this case as the applicants were already residing in the property and it was not of an affordable size.

In conclusion, therefore, it is considered that there was sufficient agricultural justification for the agricultural bungalow when the application was considered in 1973. The removal of the condition should, therefore be assessed strictly in light of the Authority's Structure and Local Plan policies.

2) Is there a current need for an agricultural worker's dwelling in the locality that would require the retention of the dwelling at Warren Farm for this purpose.

The agent states that the original occupant of the agricultural bungalow, Mr K Adlington lived in the bungalow until 1992. Between 1992 and 2002 the house was occupied by K Adlington's son, Mr A Adlington. Mr A Adlington was employed as lorry driver and was not solely or mainly employed in agriculture as required by the 1973 permission. The agent states that whilst A Adlington assisted his father on the small agricultural unit, this was essentially a retirement activity for his father so it did not justify A Adlington's full time employment.

The agent argues that these circumstances demonstrate that the existing dwelling had not been used as an agricultural dwelling for at least 16 years, that is, since Mr K Adlington ceased to occupy the premises in 1992. Additionally, as far as the agent is aware, there have been no applications for agricultural workers dwellings in Curbar or adjoining parishes in recent years, and any cases that may arise are likely to be very location specific (i.e. agricultural dwellings in existing farmsteads, or adjacent to existing farm buildings). Given its location on the edge of the village, its separation from any agricultural unit and lack of any modern agricultural buildings on the site, the agent considers that it is unrealistic to expect the dwelling to be retained for agricultural use or for it to be attractive to an agricultural purchaser. When the property was originally offered for sale, it was on the market for nearly 9 months with no offers other than the present owner Mr Hardwick. Mr Hardwick subsequently had the property valued by Bagshaws, the local agricultural specialists, in November 2004 and they gave an estimated value of £285,000, excluding the paddock, which they valued at £10,000. The agent considers the
current value to be around 20% higher than the 2004 valuation, taking into account the recent fall in property prices i.e. around £342,000. The agent states that the property was advertised for rent in the Peak Advertiser for a period of 6 months. The Peak Advertiser is the largest free newspaper in the area, with a distribution of 30,000 every two weeks, providing, the agent states, by far the most comprehensive property listings in the area, including for agricultural property. Within this 6 month period, the applicant received one offer of £350-400 per month, well below the target rent that was set to reflect the agricultural restriction. The property has not been marketed for sale, however, given the poor response to the advertisement offering the property for rent, the agent considers that it is difficult to foresee any circumstances in which a genuine agricultural occupier would be found, other than a retired farmer from the locality and this would not strictly meet an agricultural need. In support of this, the agent has submitted additional information provide by the applicant listing 20 farms in Curbar and the adjoining parishes, which are no longer working farms and which suggests that there is less need for agricultural workers dwellings in the locality. Additional information submitted by the applicant's solicitors also states that property of this size set in two, two acre paddocks in Curbar, would normally rent for £1200 -£1500 per month. As with a sale, a property with an agricultural tenancy is two thirds to three-quarters the normal rent, which would amount to approximately £900 - £1100 per month. Consequently, they consider that £750 per month would be a very sensible low rent for this property. Bagshaws who valued the property stated that even with the agricultural tenancy, the applicant should achieve a rent of £800 - £900 per month and with the breach of condition additional rent would also be achievable.

Officers comments

The removal of the agricultural occupancy condition should be assessed strictly in light of the Authority Local Plan policy LH3. This states that the removal of a condition or obligation which restricts the occupancy of a dwelling to a person employed or last employed in agriculture or forestry will not be permitted unless it can be demonstrated that:

(i) reasonable attempts have been made to allow the dwelling to be used by a person who could occupy it in accordance with the restriction;

(ii) the long term need for the dwelling in the locality has ceased and removing the restriction would be more appropriate than a temporary relaxation. Where, exceptionally, permission is granted for the release of an agricultural occupancy restriction, the occupancy of the dwelling will be limited, by an obligation, to local persons as described in policy LH2. Where a local person cannot be found to occupy the dwelling, permission will be given, on a personal basis, to let the dwelling for holiday use, until such times as an agricultural or local need arises again.

In this case, Warren Farm has only been advertised for rent and was not prominently featured in the property section of the newspaper. Your officers consider that this was not sufficient and that it is normally expected that the property would be advertised with a local farming agent and farming specific publications such as the Farmer's Guardian.

The agent also considers that the purchase price or rental, even with the impositions of the agricultural restriction beyond the scope of an agricultural worker. Although no rental figure was included in the advertisement, the agent states that only one offer of £350-400 per month was received within the 6-month period the property was advertised and fell well short of the expected rental income, even with the agricultural restriction attached. This expected rental income was based on a reduction of 25% - £30% that is normally the benchmark when assessing valuations for affordable local needs dwellings. Your officers consider that a greater reduction in the value of the dwelling may be more applicable given the condition of this property and in general when marketing agricultural dwellings, given the smaller number of available occupants and the generally lower than average incomes of farm workers.
In the absence of such comprehensive and appropriate marketing, it is not considered that reasonable attempts have been made to allow the dwelling to be used by a person who could occupy it in accordance with the agricultural restriction. The proposed removal of the agricultural occupancy condition would, therefore, be premature and, contrary to policy LH3.

Furthermore, should subsequent appropriate and comprehensive marketing of the property as an agricultural dwelling not find a qualifying occupant and justify, on an exceptional basis, the removal of the agricultural occupancy condition, then policy LH3 of the Local Plan states that the occupancy of the dwelling will be limited, by obligation, to local persons. This would then ensure that the dwelling remains available to the National Park residents in need of affordable housing.

The agent considers that the substitution of the agricultural condition with a local occupancy restriction would not be appropriate in this case as the floor area of the dwelling amounts to 175m² (including the bedrooms in the loft space), which is double the maximum allowed floorspace for a 5-person affordable dwelling (87m²). The agent also states that the purchase price, even with the 25%-30% reduction with the local occupancy obligation attached, would not be affordable. He also refers to the cases at Hull End Farm and Stoke Farm where these factors were acknowledged by officers when concluding in their recommendation that the agricultural occupancy condition could be lifted on these two properties.

Policy LH3, however, does not stipulate size guidelines, but solely refers to the fact that occupancy will be limited to local person described in policy LH2 (definition of people with a local qualification). Your officers also consider that this case is different to the examples quoted by the agent at Hull End Farm and Stoke Farm for the following reasons;

- It was accepted that the agricultural occupancy conditions at Hull End Farm and Stoke Farm were unreasonably imposed and therefore, the requirements of policy LH3 to substitute this with a legal obligation to local persons could not be imposed.
- The dwelling at Warren Farm was justified on agricultural grounds and, consequently, the attaching of a legal obligation is justified on policy grounds.
- The dwelling at Warren Farm, even with the loft conversion is of a 'more affordable' size and type.
- The dwelling position is on the edge of the village, where the principle of the provision of local needs dwellings falls within the scope of the Authority's Structure and Local Plan policies.

Your officers, therefore, consider that the applicant has not demonstrated conclusively that the dwelling is not needed by the agricultural industry and therefore it would be wholly inappropriate to lift this condition now. In the event that the applicant can demonstrate that the agricultural dwelling is no longer required, the agricultural occupancy condition should be substituted with a legal obligation restricting its occupancy to local persons, in accordance with adopted policy.

3) Whether the dwelling has been occupied in accordance with the agricultural occupancy condition for the last 10 years.

The agent contends that if the dwelling has been occupied for a period in excess of 10 years in breach of the agricultural occupancy condition, then this breach would now become lawful. This would normally be assessed through the submission of an application for a Certificate of Lawful or Established Use or Development (CLEUD). Your officers consider that this application should be determined solely on its planning merits and that should this application be refused on
planning grounds, the applicant still has the option to apply for a determination of the legal status of the dwelling.

The agent and applicant have submitted information and details that they claim demonstrate that the dwelling has been occupied in breach of the agricultural occupancy conditions for a continuous period of 16 years. They have submitted some evidence (rating records and statements from employers, previous and current occupiers and local residents) that support their case. The basic tenet of their case is that the original occupant who complied with the agricultural occupancy condition (Mr K Adlington) moved out of the property in 1992 after selling it to his son (Mr A Adlington). Although A Adlington helped his father on the farm holding at Stoke Flat, he had a full-time job as a lorry driver. As he was the sole occupier of Warren Farm bungalow, he did not comply with the terms of the agricultural occupancy condition. A Adlington subsequently sold the bungalow to the present applicant in 2002. At this time, the applicant states that he immediately rented the bungalow to an employee, who is employed as a supervisor in the building fabrication and erection trade. The agent confirms that although the tenant's work sometimes takes him away from home for a number of days at a time, he has lived at Warren Farm as his main dwelling since Spring 2002. The agent also states that the tenant has paid Council Tax on the property without any breaks. His occupancy of the dwelling is quite low key as he is a single person and he occupies rooms on the top floor. The agent considers that the submitted evidence is sufficient to support the case that the occupation of the bungalow at Warren Farm has been in breach of the planning consent granted in 1973 for a period in excess of 10 years (a total of 16 years). He considers, therefore, that the breach is now immune from enforcement action. Whilst it is acknowledged that this is not an application for a Certificate of Lawful Use, he considers the facts to be a material consideration in determining this application.

Officers comments

As previously stated your officers consider that the determination of the lawful use of the bungalow is a separate matter and that it would need to be the subject of a formal CLUED application and that this planning application should be considered on the planning merits of the case as discussed under headings 1) & 2) above.

Should the period of non-compliance with the agricultural restriction for a continuous period of 16 years be proved, then the applicant would have strong case for arguing that the breach was now immune from enforcement action. A significant element of the legal assessment concerns whether there has been a continuous breach in occupation of the bungalow since 1992, and whether there was a significant gap in occupation between when A Adlington moved out of the bungalow in 2002 and when the current occupier moved into the premises, together with the nature and frequency of his occupation. The evidence of continuous occupancy is disputed by the Parish Council and some residents, however, two residents have confirmed in writing that the property has been occupied by one of the applicant's employees for the last six or seven years. Rating records have been supplied by the applicant dating from April 2004; however, it is considered that as these are incomplete, further information needs to be submitted to make a proper assessment. It should also be noted that it is understood that the present occupant only occupies the loft conversion and not the ground floor of the bungalow, so it may be the case that there may not have been a continuous breach in the agricultural occupancy of the whole dwelling. Your officers therefore consider that there remains sufficient doubt in respect of the details submitted thus far to not compromise the conclusions following the planning considerations of issues 1) and 2) of the case.

Human Rights

Any human rights issues have been considered and addressed in the preparation of this report.
RECOMMENDATION:

That the application be REFUSED for the following reasons:

1. Contrary to policy LH3, no justification for the removal of the condition as the property as reasonable attempts have not been made to allow the dwelling to be used by a person who could occupy it in accordance with the agricultural restriction.

2. In the event that no Lawful Use application is submitted and granted that Enforcement Action be pursued to cease the unauthorised occupation of the dwelling.

List of Background Papers (not previously published)

Nil