

APPLICATION NO	PA/2021/1775
APPLICANT	Mrs Doreen Ann Wilson
DEVELOPMENT	Planning permission to remove agricultural occupancy condition 9 of outline planning permission 7/40/1974 dated 30/05/1974
LOCATION	Kerroo Mooar, Scotter Road, Messingham, DN17 3QE
PARISH	Messingham
WARD	Ridge
CASE OFFICER	Kevin Robinson
SUMMARY RECOMMENDATION	Grant permission
REASONS FOR REFERENCE TO COMMITTEE	Objection by Messingham Parish Council

POLICIES

National Planning Policy Framework:

Paragraph 11: Plans and decisions should apply a presumption in favour of sustainable development.

For plan-making this means that:

- (a) plans should positively seek opportunities to meet the development needs of their area, and be sufficiently flexible to adapt to rapid change;
- (b) strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas, unless:
 - (i) the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area; or
 - (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

For decision-taking this means:

- (c) approving development proposals that accord with an up-to-date development plan without delay; or

- (d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
- (i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Paragraph 12: The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

Paragraph 47: Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing.

North Lincolnshire Local Plan: DS1, DS7, RD2, T2, T19, LC7

North Lincolnshire Core Strategy: CS1, CS2, CS3, CS5, CS17, CS18

CONSULTATIONS

Highways: No objections or comments.

Drainage (Lead Local Flood Authority): No objections or comments.

PARISH COUNCIL

Objects to the application as the property is in the open countryside, outside the development boundary. Removal of the agricultural restriction would set a precedent for future development outside the development boundary.

PUBLICITY

Advertised by site notice. No comments have been received.

ASSESSMENT

Planning history

7/40/74: Outline planning permission to erect loose boxes, barn and dwellinghouse in connection with Brood Mare Farm – approved 30/05/1974

7/339/74: Detailed particulars relating to the erection of loose boxes, barns and dwellinghouse granted outline planning permission 30/05/1974 – approved 20/09/1974

Paragraph 38 of the NPPG states, ‘In deciding an application under section 73, the local planning authority must only consider the disputed conditions that are the subject of the application – it is not a complete re-consideration of the application.’

Paragraph 35 of the NPPG explains that the original planning permission will continue to exist whatever the outcome of the application under section 73. 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.

In granting permission under section 73 the local planning authority may also impose new conditions – provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission.

Paragraph 56 of the NPPF gives guidance upon the imposition of conditions on planning approvals and provides the following:

Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification. Whilst the approval in question predates the NPPF by some considerable time, these principles are long held within planning and are the relevant ones for considering attaching conditions to a planning approval.

Permission is sought to remove agricultural occupancy condition 9 on outline planning permission 7/40/1974 dated 30/05/1974.

The condition attached to the 1974 approval restricts the occupancy of the property known as Kerroo Mooar with the following restriction:

‘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 290 of the Town and Country Planning Act 1971, or in forestry or a dependant of such a person residing with him (but including a widow or widower of such a person).’

The reasoned justification for the condition was given as:

‘The site is in a rural area where it is the policy of the district planning authority, in the interests of safeguarding the rural character and appearance of the area, not to permit development unless it is required to meet a local agricultural need. Permission has been granted only in light of local agricultural need.’

This submission seeks to remove this condition from the planning permission for the dwelling thereby allowing freedom of occupation as an unrestricted dwelling.

The property, as noted above, was granted permission in 1974 as part of a development titled as being ‘to erect loose boxes, barn and dwellinghouse in connection with Brood Mare

Farm, Scotter Road, Messingham'. Within the file is a consultation response from the Department of Agriculture, Fisheries and Food dated 7 May 1974 within which it confirms:

'The breeding of horses does not constitute an "agricultural activity" for the purposes of this Ministry in connection with the Town and Country Planning Acts.'

There is also a response letter from the planning officer acknowledging that the breeding of horses does not constitute agricultural activity.

Notwithstanding this, permission was granted, on the 10 April 1974, for the dwelling and was made subject to the agricultural occupancy condition (9).

This application is made by the original applicant's widow, Mrs Wilson. Mrs Wilson has indicated that they did keep horses at the property but, due to a long running land drainage issue with Severn Trent, the horse rearing enterprise did not materialise.

Mrs Wilson has also confirmed that Mr Wilson was in employment until his retirement as a civil engineer and that she was employed as a legal secretary until retirement.

The main consideration in the determination as to whether the condition can be removed is whether it was properly attached to the original permission. As noted above, the six tests relevant to attaching conditions to planning approvals are, are they:

- **necessary;**
- **relevant to planning;**
- **and to the development to be permitted;**
- **enforceable;**
- **precise; and**
- **reasonable in all other respects.**

All six tests must be passed in order for a condition to be imposed upon an approval.

Necessary and relevant to planning

The planning condition, in wider terms of supporting the aim of controlling the development of residential dwellinghouses in the open countryside, is considered to be a key planning aim and therefore the condition in that respect is necessary and relevant to planning.

Relevant to the development to be permitted

As noted above, the proposal does not meet the definition of agriculture and therefore a condition tying the occupation of the property to an agricultural worker was not relevant. Given this, the condition imposed fails the test for conditions to be imposed on planning approvals.

Enforceable

The details provided by the applicant indicate that neither of the occupants have ever been employed in an agricultural role. The relevant time frame for enforcement action in such instances is set out in section 171B of the Town and Country Planning Act 1990 and is 10 years as a breach of condition. As this has been breached from the first occupation of the property it is considered that the condition is not enforceable. Given this, the condition imposed fails the test for conditions to be imposed on planning approvals.

Precise

The wording of the condition is considered to be suitably precise in that it only allows occupation of the dwelling by a person solely or mainly employed, or last employed, in the locality in agriculture.

Reasonable in all other respects

In this regard the condition is not considered to be reasonable as the restriction does not relate to the development for which approval was sought. Given this, the condition imposed fails the test for conditions to be imposed on planning approvals.

The condition is considered to fail the tests for imposition on the approval granted and it is considered that it should not have been attached. Condition 9 is therefore recommended to be removed. As outlined above, under a section 73 application to vary or remove a condition, the local authority has the power to consider all other conditions attached to the extant permission and amend and remove those required to do so as necessary. In this regard the property is in situ and there are no conditions considered necessary to be brought forward from the original permission.

RECOMMENDATION Grant permission.

Informative

In determining this application, the council, as local planning authority, has taken account of the guidance in paragraph 38 of the National Planning Policy Framework in order to seek to secure sustainable development that improves the economic, social and environmental conditions of the area.



 Development Boundary

PA/2021/1775

**North
Lincolnshire
Council**