

April - 2026

Application by Mrs P Szadowski for the removal of Condition 2 relating to agricultural occupancy on application 50/62 at Ostland, Dunt Avenue, Hurst, Wokingham, RG10 0SY

1. This Section 73 application follows the recently approved certificate of lawfulness (reference 260175 – 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 issuing of the certificate currently provides immunity against the condition being enforced, providing the dwelling continues to be occupied in breach of condition 2 of the original consent.
3. Whilst the breach continues, the condition (No.2) still remains on the dwelling granted on the 14th June 1962 under application reference 50/62. A copy of the permission is within appendix 2.
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. In this particular case the original description on application 50/62 never described it as an agricultural dwelling and is therefore of less relevance.

5. Planning conditions should be imposed and maintained only where they are necessary, relevant to planning and to the development. Paragraph 57 of the NPPF suggests they should be enforceable, precise and reasonable in all other respects.
6. The main issue is whether condition 2 of the 1962 consent 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.
7. We consider that the issuing of the certificate makes the original condition currently unenforceable and therefore no longer necessary.
8. The evidence contained with the lawful use certificate (260175) 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.
9. 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.
10. 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.

11. Under normal circumstances, if my client was seeking to remove the occupancy condition, I would suggest they undertake a strict marketing exercise to ascertain the demand for such a dwelling in locality, in accordance with Local Policy as per 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 in line with policy.
12. 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'. However 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.
13. The ability granted by the certificate enables the dwelling to be sold at full market value. This means if there was any demand for the rural dwellings in the locality, a farm worker would expect to pay full price for the property 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.
14. 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. The act of a compliant person purchasing the dwelling at full

market value would mean the condition retakes affect and instantly reduces the value of the dwelling by 30%.

15. 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. 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 and appendix 9 Stonehaven in Harrogate North Yorkshire.
16. Also attached are four other English appeal decisions in Howden (East Riding of Yorkshire Council attached as appendix 5) an appeal in 2016 at South Harting (appendix 6) an appeal in Skirlaugh in 2017 (appendix 7) and Wisteria Rise Ryedale North Yorkshire 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. In addition, the location of the property is no longer isolated (NPPF para 84), as it sits comfortably alongside a range of the dwellings and close to Reading and Wokingham.
18. Therefore, condition 2 of the original consent 52/60 from 1962 serves no useful purpose for 'Ostland' 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.
19. 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 - 260175

Appendix 2 – Original approval from 1962 – 52/60

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 South Harting

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

Appendix 8 – APP/U2750/W/23/3336176 Wisteria Rise North Yorkshire

Appendix 9 - APP/U2750/W/23/3335422 Stonehaven, Heyshaw Road,
Heyshaw, North Yorkshire HG3 4HD