

JPPC ref: hv/9144
Portal ref: N/A not submitted via portal

Planning Services
Wokingham Borough Council

Via Email

1st December 2024

Dear Sirs

**Application for a Certificate of Lawfulness
Non compliance with historic agricultural occupancy condition at
The Cedar Bungalow, Hennerton Golf Club, Crazies Hill,
Wargrave, RG10 8LT**

Please find enclosed an application for a Certificate of Lawfulness of Existing Use under Section 191(1)(c) of the Town and Country Planning Act 1990 (as amended) (principally) in respect of the occupation of the above dwelling without compliance with condition 1 of the 1998 variation planning permission relating to the occupancy of what is now 'the Cedar Bungalow' but has been previously/occasionally called the 'Colt Bungalow' (after the firm who provided the frame to build it). The applicant is the present owner of the site.

The application includes the following:-

- CLEUD application form
- Site location plan
- Fee
- Copy of planning permission(s)
- This letter
- Bundle of papers
- Statutory Declarations by:
Peter Hearn (former owner)
Zara Bone (on behalf of the present legal owner)
Margaret Ellison (current occupier)
Sylvia Dean (person with relevant knowledge)
And a
Statement by previous occupier

Background

The occupancy condition in question states:

continued overleaf...

'Condition 02 of 0/313/63 and 85/64 is varied to allow the occupation of the dwelling to person(s), solely or mainly working, or last working in the locality in agriculture or in forestry, or on the adjoining golf course and its associated ancillary uses, or a widow or widowers of such a person, and to any resident dependents'

This condition was a substitute for an earlier condition which had been in force following the grant of outline and the detailed planning permission(s) for a house for a farm worker in 1964 (ref O/313/63 & 85/64) by Berkshire County Council (Wokingham Rural District Council).

In the 1960s there was a farm on the site run by Mr Robert Hearn since the 1950s. Built in 1966 the accommodation was then needed to allow efficient operation of the farm.

However in the late 1980s economics on small farms became squeezed and the decision to diversify the farm was taken. An application to turn most of the farm to a golf course was submitted to Wokingham Borough Council. Planning permission for a 9-hole course and clubhouse was granted following an appeal to the Secretary of State by Inspectors decision in 1990.

The golf course was then laid out following the demolition of the majority of the former farm buildings in the early 1990s. This work was overseen by Mr Peter Hearn son of the 1960s applicant Robert Hearn. The course opened in 1992.

At the time of the change of the farm to golfing the accommodation at Cedar bungalow was occupied by Mr Robert Hearn who was by then a retired farmer, and the condition was being complied with.

In 2005/2006 the originally consented 9-hole course was expanded to become an 18-hole course, closing off farm use altogether.

In 1998 then owner of Cedar Bungalow Robert Hearn applied to allow use of the bungalow by farm workers, retired farm workers but also workers on the adjoining golf course. This application was granted by Wokingham BC and a new decision notice issued. A complaint has recently been made that this condition is not being complied with. This application aims to regularise what has been happening on site. The occupancy condition has now not been complied with for so long that the use is immune from enforcement action. We consider that we have supplied sufficient and sufficiently clear evidence in this submission to allow the Council to grant the application.

In 2000 Mr Robert Hearn (and spouse) moved to Charney Bassett in Oxfordshire to continue their retirement and ceased to have any involvement with Cedar Bungalow. Ownership of Cedar Bungalow was purchased by Mr Peter Hearn and his late wife Jaleh in January 2000. Peter and Jaleh Hearn were resident at Flint Barn to the north of the golf club house. They had no need for the bungalow themselves. Peter Hearn was then and is still is the owner and manager of the golf course. He has made a statement to support this application. He as former owner and controller of the site for many years and current neighbour even now is thus in a good position to affirm the use of the land, as are the other writers who all have specific knowledge of the property.

There are two dwellings next to the Cedar Bungalow occupied by third parties. They have not been approached for comment by the applicant.

In October 2000 Peter Hearn was introduced to Valley Estates a local firm of estate agents, with the aim of letting the bungalow- there being no need for it for either a farm or golf worker.

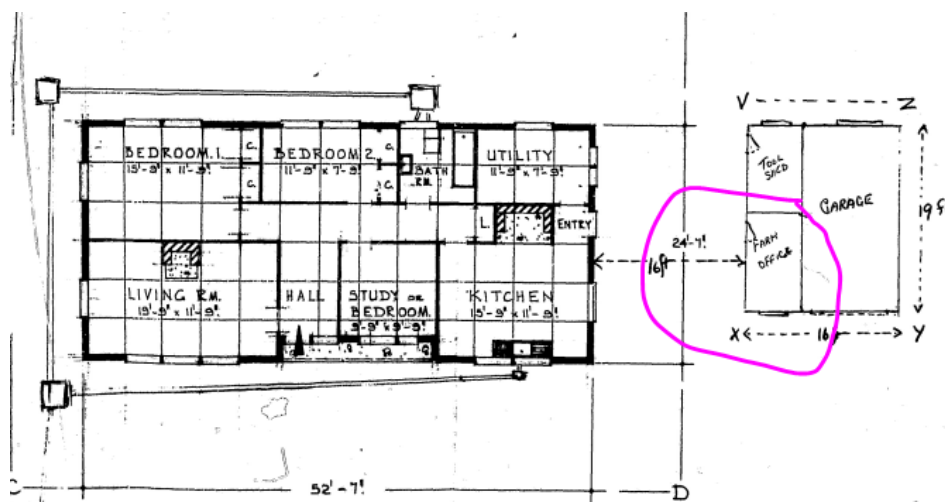
In November 2000 a tenancy was created for the Reimers family. With hindsight neither they nor any following occupiers were compliant with the occupancy.

The table attached below shows the occupancy of the property since 2000 all by people who did not comply with the occupancy restriction.

In view of the fact that the bungalow has not been occupied by people who are agricultural or forestry or golf workers (nor retired agricultural or forestry workers) for a period in excess of ten years starting from 2000, it is the case that enforcement action cannot now be taken against the occupation of the bungalow without compliance with the condition. The use of the property without compliance with that condition means that the use became lawful in late 2010. Since 2010 there has been no use of the premises that would have affected the lawfulness then accrued. Indeed the use is now some 14 or so years past the latest time when the Council could have taken action against the non-compliance.

Such is the longevity of non-compliant use we conclude therefore that a Certificate of Lawfulness of Existing Use should be issued in respect of the occupation of the bungalow without compliance with the condition. We can confirm that the breach still subsists today (at the date of the application).

Given the clear planning history of the site it is also quite plain that Condition 2 of planning permission 85/64 also has not been complied with. Since the Golf Course was created in the early 1990s there has been no working farm at Hennerton Farm. Accordingly, there could have been no possible way the office at the dwelling could have been used in connection with the working of Hennerton Farm. This aspect is added for future clarity. The 1964 approved farm office as a small area within the approved garage south of the dwelling as shown below:



None of the occupiers since 2000 have been farm workers and there has been no farm either. Thus there could be no possible compliance with the following:

Application No. **85/64**
Proposal: **Farm bungalow with garage and office at Hennerton Farm,
Orchard End, Wargrave.**

Acting as Agent on behalf of the Berkshire County Council in pursuance of their powers under the above Act, the Wokingham Rural District Council hereby PERMIT the above development to be carried out in accordance with the application and accompanying plans submitted by you and approved by the Council on the **14th** day of **May** 19 **64** subject to compliance with the conditions specified hereunder:—

1. The occupation of the dwelling shall be limited to persons employed or last employed in agriculture as defined by Section 221 (1) of the Town and Country Planning Act 1962 and the dependants of such persons.
2. The office ~~was~~ hereby permitted shall be in connection with the working of Hennerton Farm only.

Defining Lawfulness

When an application for a CLEUD is made under Section 191(4) of the 1990 Act the Council is required to consider the lawfulness of the use at the time of the application and to issue a Certificate if it is satisfied that it should do so. Lawfulness is defined by Section 191(3) as follows:

'Any matter constituting a failure to comply with any condition.....is lawful at any time if:

- a) the time for taking enforcement action in respect of the failure has then expired (i.e. 10 years as defined by s171B(3)) and
- b) it does not constitute a contravention of the requirements of any enforcement notice or breach of condition notice then in force'

Section 171B(3) of the Act gives the periods for immunity from enforcement action and states that 'In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach'. A breach of planning condition falls into 'any other breach of planning control'; it is clear that the breach began in late 2000 when the Reimers family moved in.

In this case we can demonstrate the following:

- i) that there has been a failure to comply with the condition;
- ii) that failure began in 2000;
- iii) that a period of ten years has since expired the breach began; and
- iv) the council has never issued an enforcement notice in this respect

We sincerely believe that the evidence we have produced has discharged the onus on the applicant to prove, on the balance of probabilities, that the claim for the Certificate is correct, however should you have any queries relating to this matter please do not hesitate to contact me.

We look forward to hearing that the application has been registered. For clarity the application relates to the breach of two conditions (both attached to this letter), firstly

Condition 2 (office use) of planning permission 85/64 granted on 14th May 1964 for a farm bungalow with garage and office (decision attached at and of letter)

And secondly

Condition 1 (occupancy restriction) of variation planning permission dated 06 October 1998 reference 98/68189/V for proposed variation to condition 2 on approval of O/313/63 and 85/64 to remove restriction of occupation by agricultural worker only.

Yours faithfully

Henry Venners BSc(Hons) MA MRTPI
Principal
Director of Henry Venners Ltd, a Partner of JPPC
Email: henry.venners@jppc.co.uk

Overleaf Table of events and documents appearing in bundle(s)

The actual documents contain CONFIDENTIAL personal information and data. This is a summary of the documents, which are produced separately and should remain confidential. This must not appear on the website.

Bundle 1
Relevant planning permissions

Bundle 2- Confidential
Past tenant documents

Bundle 3- confidential
letter

Bundle 4- Confidential
Statutory declarations

Bundle 5- confidential
Statement by former tenant

Summary of events, occupiers and use- Cedar Bungalow, Hennerton Golf Club

Item	Date	Event	Document produced for LDC application
1	1964	Cedar bungalow consented	Decision notice Bundle 1
2	1966	built for farm worker	
3	1992	Golf course opens	
4	6 October 1998	planning permission given to expand occupancy condition to a golf worker	Decision notice Bundle 1
5	11 January 2000	Peter and Jaleh Hearn new owners of bungalow	
6	2000	Robert Hearn moves to Charney Bassett	
7	19 oct 2000	Valley Estates introduction	
8	13 nov 2000	tenancy for Reimers signed 16 th November	Tenancy Bundle 2
9	27 April 2001	Reimers letter to Hearn notice to quit same day	Letter Bundle 2
10	24 May 2001	Reimers council tax	
11	31 May 2001	Reimers p60 from employer	Letter
12	17 th May 2001	Valley marketing letter	
13	6 th July 2001 to 4 th July 2002	Gregory and Gregory signed tenancy	Tenancy Bundle 2
14	14 th May 2002	Simmons letter for rental and agreement with them	
15	12 th June 2002	Valley estates letter for next tenants	
16	12 th June 2002	tenant check	
17	15 th June 2002 to 15 th dec 2002	Dore and Pomeranz signed tenancy	Tenancy Bundle 2
18	3 oct 2003	Valley letter re extension	
19	4 nov 2004	"	
20	23 nov 2005	"	
21	24 Jan 2006	letter to Valley from Hearn re Dore's still in position	Letter Bundle 3
22	2005/2006	Golf course becomes 18-hole	
23	4 nove 2008	letter from Valley estates extension to tenancy	
24	December 2010	Breach of condition becomes lawful	
25	2011	Ownership change to Cedar 2011 Trust	
26	5 th March 2011 for six months	Tim Price and Jane price signed tenancy	Tenancy Bundle 2
27	3 rd April 2011	Tim Price letter about 'tiredness' of property	Letter Bundle 2
28	2017	Jaleh Hearn deceased	
29	Letter of 23 rd Febr 2018	Tim Price letter to end tenancy 3 rd March 2018	Letter Bundle 2
30	March to august 2018	Property renovated*	
31	August 2018 to 30 th April 2019	James Thompson tenancy	Tenancy Bundle 2
32	1 st May 2019 to date	Margaret tenancy	Tenancy Bundle 2
33	2020	Tim Price deceased^	
34	Today 2024	Margaret(tenant) still in situ	Bundle 4 Stat Dec

* Given that the property had been built in the 1960s and had very little work of renovation it was remarked at the start of the 2011 tenancy to the Prices that the property was tired. Tim Price left nearly six years later, at which point it was decided that the property should be brought up to standard. The next occupier was already known at that point- James Thompson was wishing to renovate his own home nearby and therefore was coming to the site and it had been agreed that the property would be upgraded and as soon as the works finished it would be ready for Mr Thompson, which is what happened. In effect the property was renovated to allow Mr Thompson to come. In the circumstances given that the use in breach of condition at that point was already lawful this period of renovation is not material.

^ given Tim Price is deceased to note information about his past employment in Bundle 2

Decision notice 1

NOTICE OF CONSENT

References in this document to provisions of the Town and Country Planning Acts, 1947 to 1959, should be read as references to the appropriate provisions in the Town and Country Planning Act, 1962.

BERKSHIRE COUNTY COUNCIL
Town and Country Planning Act, 1947

WOKINGHAM RURAL DISTRICT COUNCIL,
COUNCIL OFFICES,
SHUTE END,
WOKINGHAM,
BERKS.

Mr. R. J. Hearn,
Hennerton Farm,
To **WARGRAVE,**
READING.
Berks.

Application No. **85/64**
Proposal **Farm bungalow with garage and office at Hennerton Farm,**
Crouch End, Wargrave.

Acting as Agent on behalf of the Berkshire County Council in pursuance of their powers under the above Act, the Wokingham Rural District Council hereby PERMIT the above development to be carried out in accordance with the application and accompanying plans submitted by you and approved by the Council on the **14th** day of **May** 19 **64** subject to compliance with the conditions specified hereunder:—

1. **The occupation of the dwelling shall be limited to persons employed or last employed in agriculture as defined by Section 221 (1) of the Town and Country Planning Act 1962 and the dependants of such persons.**
2. **The office use hereby permitted shall be in connection with the working of Hennerton Farm only.**

The reasons for the Council's decision to grant permission for the development subject to compliance with the conditions hereinbefore specified are:—

The development is justified only on agricultural grounds.

Except as aforesaid any permission granted is subject to due compliance with the byelaws and general statutory provisions in force in the District.

Date **20 MAY 1964**

Clerk to the Council.

N.B.—A statement of the applicant's rights is set out overleaf.

Statement of applicant's rights arising from the refusal of planning permission or from the grant of permission subject to conditions.

1.—If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions he may by notice served within one month of receipt of this notice appeal to the Ministry of Housing and Local Government, Whitehall, London, S.W.1., in accordance with section 16 of the Town and Country Planning Act, 1947. The Minister has power to allow a longer period for the giving of a notice of appeal and he will exercise his power in cases where he is satisfied that the applicant has deferred the giving of notice because negotiations with the local planning authority in regard to the proposed development are in progress. The Minister is not, however, required to entertain such an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the provisions of section 14 of the Act and of the development order and to any directions given under the order.

2.—If permission to develop land is refused, or granted subject to conditions, whether by the local planning authority or by the Minister of Housing and Local Government, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Council of the County Borough or County District in which the land is situated a purchase notice requiring that Council to purchase his interest in the land in accordance with section 19 of the Town and Country Planning Act, 1947.

3.—In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused, or granted subject to conditions by the Minister on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in section 20 and 79 of the Town and Country Planning Act, 1947.

Decision 2

WOKINGHAM DISTRICT COUNCIL

TOWN AND COUNTRY PLANNING ACTS

NOTIFICATION OF VARIATION OF PERMISSION

R J Hearn
Cedar Bungalow Hennerton Golf Course Crazies Hill
Wargrave
Berkshire
RG10 8LT

Application No : 98/68189/V

Parish : WARGRAVE PARISH

Proposal : PROPOSED VARIATION TO CONDITION 2 ON APPROVAL
O/313/63 AND 85/64 TO REMOVE RESTRICTION OF
OCCUPATION BY AGRICULTURAL WORKER ONLY

Location : Cedar Bungalow Hennerton Golf Course Crazies Hill Wargrave

The Wokingham District Council in pursuance of their powers under the above Acts and Regulations hereby **GRANT CONSENT** for the variation of the above conditions in accordance with the application and the accompanying plans submitted to the Council subject to compliance with the following conditions, the reasons for which are specified hereunder.

CONDITION(S) :

01
Condition 02 of O/313/63 and 85/64 is varied to allow the occupation of the dwelling to person(s), solely or mainly working, or last working in the locality in agriculture or in forestry, or on the adjoining Golf Course and its associated ancillary uses, or a widow or widowers of such a person, and to any resident dependants.

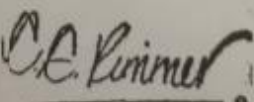
02
Nothing herein contained shall be deemed to affect or vary conditions imposed by Planning Permissions O/313/63 and 85/64 which shall continue in full force and effect save insofar as they are expressly effected or varied by this permission.

REASON(S) :

01
To avoid pressure for additional dwellings related to golf course supervision within the Green Belt and permission would not normally be granted in this location, but has been justified by special considerations.

02
For the avoidance of doubt.

Date: 06 October 1998


Development Control Manager

If this notice grants permission to proceed with the proposal the applicant is reminded that it relates to planning permission only and does not constitute approval under any other legislation including Building Regulations. The applicant should contact the Building Control Section of the District Council's Environmental Services for further information.

end