



**REPORT of
DIRECTOR OF STRATEGY, PERFORMANCE AND GOVERNANCE**

to
**NORTH WESTERN AREA PLANNING COMMITTEE
8 JULY 2019**

Application Number	FUL/MAL/19/00384
Location	Brick Kiln Lodge 32 Rookery Lane Great Totham
Proposal	Removal of condition 4 (occupation condition) on approved planning permission FUL/MAL/72/00235 (erection of detached bungalow and garage for agricultural use).
Applicant	Miss Leanne Jeffreys - Acorus Rural Property Services Ltd
Agent	Executors of Peter Keyes
Target Decision Date	19.06.2019 EOT 10.07.2019
Case Officer	Hannah Bowles
Parish	Great Totham
Reason for Referral to the Committee / Council	Related to Councillor J V Keyes.

1. RECOMMENDATION

APPROVE with no conditions.

2. SITE MAP

Please see overleaf.

[illegible]

3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

3.1.1 The application site is located on the southeast side of Rookery Lane, just within the settlement boundary of Great Totham. The site is occupied by an L-shaped bungalow of a simple design. Brick Kiln Farm is located some 80m east of the bungalow.

3.1.2 Retrospective planning permission is sought for the removal of Condition 4 of approved application MAR/235/72 (erection of detached bungalow and garage for agricultural use). Condition 4 states:

‘The occupation of the dwelling hereby permitted shall be limited to persons wholly or mainly employed or last employed, locally in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971, or in forestry, and a dependant of such a person residing with him (but including a widow or widower of such a person).

Reason: The local planning authority would not be prepared to permit the erection of a dwelling house on this site unconnected with the use of the land or adjoining land for agricultural purposes.’

3.1.3 It is pertinent to note that a lawful development certificate (reference 18/01443/LDE), relating to the bungalow was granted in March of this year as it was concluded:

‘The Local Planning Authority is satisfied that there is sufficient evidence to (substantiate the claim that on balance of probability Condition 4 of application MAR/235/72 has been continuously breached for a period in excess of ten years and therefore the continued use of the building contrary to the stated condition would be lawful.’

3.2 Conclusion

3.2.1 The application proposed the removal of Condition 4 of MAR/235/72. An assessment against the six tests to ensure the condition is necessary, relevant to planning and to the development, enforceable, precise and reasonable in all other respects has been undertaken. In this respect, the planning history of the site, namely the Lawful Development Certificate, confirms that the occupation of the dwelling in breach of Condition 4 is lawful.

4. MAIN RELEVANT POLICIES

Members’ attention is drawn to the list of background papers attached to the agenda.

4.1 National Planning Policy Framework 2019 including paragraphs:

- 7 Sustainable development
- 8 Three objectives of sustainable development
- 10-12 Presumption in favour of sustainable development
- 38 Decision-making

- 47-50 Determining applications
- 59-66 Delivering a sufficient supply of homes
- 117-118 Making effective use of land
- 54-56 Planning conditions and obligations

Maldon District Local Development Plan (LDP) approved by the Secretary of State

- S1 Sustainable Development
- S8 Settlement Boundaries and the Countryside
- S7 Prosperous Rural Communities
- D1 Design Quality and Built Environment
- H4 Effective Use of Land
- T2 Accessibility

Relevant Planning Guidance / Documents:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

5. MAIN CONSIDERATIONS

5.1 Principle of Development

- 5.1.1 Condition 4 of application MAR/235/72 was implemented in 1973 to ensure the bungalow was used in conjunction with Brick Kiln Farm, which is located around 80m east of the bungalow. The reason the condition was implemented is as follows:

‘The local planning authority would not be prepared to permit the erection of a dwelling house on this site unconnected with the use of the land or adjoining land for agricultural purposes.’

- 5.1.2 There has been limited information supplied with the application to justify the removal of Condition 4 of MAR/235/72. However, application 18/01443/LDE confirmed that the occupation of the dwelling, in breach of Condition 4, is lawful and therefore the use of the site in conflict with the condition can continue without any need for a planning application and with no ability for The Council to enforce the condition. With this in mind the removal of the condition is not objected to in principle.

5.2 Removing Condition 4 of MAR/235/72

- 5.2.1 The National Planning Policy Framework sets out that planning conditions should only be imposed where they are:
1. necessary;
 2. relevant to planning and;
 3. to the development to be permitted;

4. enforceable;
5. precise and;
6. reasonable in all other respects.

5.1.2 Necessary

5.1.2.1 Condition 4 of MAR/235/72 ensures that the dwelling is occupied by persons wholly or mainly employed, or last employed, locally in agriculture. This condition is considered necessary as the condition prevents the construction of a dwelling in a location which would not be deemed acceptable or policy compliant without it being used in connection with the use of the land or adjoining land for agricultural purposes. Therefore, the condition is necessary to make the development acceptable in planning terms.

5.1.2.2 Notwithstanding the above, the use of the bungalow in breach of Condition 4 is lawful, as determined by approved application 18/01443/LDE. Which concluded:

'The Local Planning Authority is satisfied that there is sufficient evidence to substantiate the claim that on balance of probability Condition 4 of application MAR/235/72 has been continuously breached for a period in excess of ten years and therefore the continued use of the building contrary to the stated condition would be lawful.'

5.1.2.3 Therefore, the Condition is not required in order to make the development acceptable in planning terms.

5.1.3 Relevant to planning

A condition must not be used to control matters that are subject to specific control elsewhere in planning legislation (for example, advertisement control, listed building consents, or tree preservation).

5.1.3.1 At the time of determining the original application MAR/235/72 the bungalow was proposed to be located outside of the settlement boundary where policies of restraint apply. The use of a condition to ensure access to the agricultural dwellings is considered to be relevant to planning.

5.1.4 Relevant to the development

It is not sufficient that a condition is related to planning objectives: it must also be justified by the nature or impact of the development permitted.

5.1.4.1 The application was for an agricultural workers' dwelling and the condition ensures that the use is controlled. Therefore, it is relevant to the development.

5.1.5 Enforceable

Unenforceable conditions include those for which it would, in practice, be impossible to detect a contravention or remedy any breach of the condition, or those concerned with matters over which the applicant has no control.

5.1.5.1 The bungalow has been used in breach of Condition 4 in excess of 10 years, as substantiated by application 18/01443/LDE. Therefore, the development is immune from enforcement action and therefore the condition is not enforceable.

5.1.6 Precise

Poorly worded conditions are those that do not clearly state what is required and when must not be used.

5.1.6.1 The Condition is considered to be precise and clear.

5.1.7 Reasonable

Conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness. Unreasonable conditions cannot be used to make development that is unacceptable in planning terms acceptable.

5.1.7.1 The Condition is no longer reasonable. The occupation of the bungalow in breach of Condition 4 is lawful.

5.1.7.2 Therefore, given the above assessment; Condition 4 of MAR/235/72 no longer meets the six tests required to implement a condition. Therefore, it is considered that the condition should be removed.

5.1.8 Other Matters

5.1.8.1 The conditions imposed on the original application related to the construction of the dwelling and timeframe for the implementation of the permission. Therefore, it is not considered necessary to carry over any conditions from the original permission.

6. **ANY RELEVANT SITE HISTORY**

- **MAR/MAL/235/72** - Erection of detached bungalow and garage for agricultural use. – Approved
- **LDE/MAL/18/01443** - Claim for a Lawful Development Certificate for the continued occupation of a dwellinghouse in breach of the agricultural occupancy condition. – Approved

7. **CONSULTATIONS AND REPRESENTATIONS RECEIVED**

7.1 **Representations received from Parish / Town Councils**

Name of Parish Council	Comment	Officer Response
Great Totham	We recommend the granting of planning permission, for the reasons listed below: The Council can confirm that the existing use has for a number of years been as a dwelling house.	Noted.

8. **RECOMMENDATION**

APPROVE with no conditions.