

Report to **Planning Committee**
Date **24 April 2019**
By **Director of Planning and Environment**
Local Authority **Chichester District Council**
Application No. **SDNP/18/05093/LDE**
Applicant **Mr A Shaxson**
Application **Existing lawful development certificate for occupation of a dwellinghouse without complying with an agricultural occupancy condition.**

Address **Buryfield Cottage
Sheepwash
Elsted
Midhurst
West Sussex
GU29 0LA**

Recommendation: That the application be Refused for the reasons set out in paragraph 10 of this report.

Executive Summary

Reason for Committee Referral: Applicant is a Member of the Council.

Buryfield Cottage is a two storey detached property, sited in a rural location, to the west of Elsted. The occupation of the dwelling is currently tied by way of an agricultural occupancy condition which was placed on the property under the original planning permission for the dwelling (condition 3 of ES/12/84).

An application for a lawful development certificate has been submitted which has the intention of establishing that a breach of the restrictive condition has occurred in excess of 10 years. Should the applicant be able to demonstrate a 10 year breach of the condition it could no longer be enforced against.

The applicant has asserted that through his service as an elected member of Chichester District Council, Elsted and Treyford, and Harting Parish Council's, representing CDC on the Sussex Downs Conservation Board and South Downs Joint Committee and as a Member of the SDNPA he has been 'employed' in these

roles for a period of at least the last ten years. The view of officers is that this does not constitute employment as remuneration for being a councillor is considered reimbursement/compensation for time spent assisting the public and attending meetings etc.

The submitted evidence is considered insufficient to satisfy the Local Planning Authority that, on the balance of probability, that there has been a breach of condition 3 of planning application ES/12/84 for at least ten years. It is considered that the applicant is still complying with the condition as he was 'last employed' in agriculture and that the time spent being a Councillor is not considered to be employment for the purposes of the condition. As such, the breach of condition 3 of planning permission ES/12/84 has not occurred for the requisite 10 year period prior to the submission of the application.

For the reasons given above, the breach of condition has not been demonstrated to be lawful under Section 191 of the Town and Country Planning Act 1991, as amended. The application is therefore recommended for refusal.

1.0 Site Description

- 1.1 Buryfield Cottage is a detached two storey property sited within the open countryside. In close proximity to the dwelling, there are a number of agricultural outbuildings. The property is sited to the west of the village of Elsted, on the road that links South Harting and Elsted.

2.0 Proposal

- 2.1 The application seeks a lawful development certificate on the basis that a breach of condition 3 (agricultural use restriction) of planning permission ES/12/84 has occurred in excess of 10 years. The condition reads:

'The occupation of the dwelling shall be limited to a person solely or mainly employed or, having ceased employment, last employed in the locality in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971, or in forestry including any dependants of such a person residing with him or a widow or widower of such a person.'

3.0 Relevant Planning History

ES/12/84 - outline permission for an agricultural workers dwelling. Approved

4.0 Consultations

4.1 Parish Council Consultee

Elsted and Treyford Planning committee met on 30th October 2018 and raised no objections to this application

5.0 Representations

5.1 None received

6.0 Planning Policy Context

Legal Background and Government Guidance

- 6.1 Sections 191 and 192 of the Town and Country Planning Act 1990 provide for anyone to apply to the local planning authority for a Lawful Development Certificate (LDC). A Certificate is a statutory document certifying in the case of an application under s191, the lawfulness for planning purposes of existing operations on, or use of land, or some activity being carried out in breach of a planning condition.
- 6.2 By virtue of s191 (2), uses and operations are 'lawful' if no enforcement action may be taken against them and they are not in contravention of any Enforcement Notice, which is in force.
- 6.3 Section 171B of the Act sets out the relevant time periods in respect of when enforcement action may be taken. Where the development involving building operations or the change of use of any building to use a single dwelling is concerned, the relevant period is 4 years. In the case of all other unauthorised development, including change of use of the land and a breach of condition attached to a planning permission, the relevant period of time after which enforcement action may not be taken is 10 years.
- 6.4 In the case of this application, it is the applicant's alleged breach of planning condition 3 of planning permission ES/12/84 that is the matter for consideration.
- 6.5 The advice given in the National Planning Practice Guidance (NPPG) states that if the local planning authority is provided with information satisfying them of the lawfulness at the time of the application of the use, they shall issue a certificate to that effect and in any other case they shall refuse the application. The applicant's own evidence does not need to be corroborated by independent evidence to be accepted. The relevant test is the 'balance of probability'. In the case of applications for existing use or operations, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
- 6.6 The NPPG points out that the planning merits of the use, operation or activity do not have any relevance to the consideration of purely legal issues, which are involved in determining such applications. It goes on to stress that a certificate should indicate precisely the area of land to which it relates and precise details of what use or operations are found to be lawful, why and when. It is important to state the limits of the use at a particular date, as details will be a yardstick against which any subsequent change or intensification may be measured.

6.7 The determination of this application turns on matters of fact and in particular whether, on the balance of probability, the property has been occupied in breach of the occupancy condition for a period of ten years prior to the submission of this application. The application was registered and validated as an application for a Lawful Development Certificate on 02 October 2018 and therefore a continuous breach of the condition must have begun at least by 02 October 2008.

7.0 Planning Policy

7.1 The provisions of the Development Plan and the National Planning Policy Framework are not relevant to this type of application.

8.0 Planning Assessment

The application

8.1 In 1984 outline planning permission was granted (ES/12/84) for an agricultural workers dwelling. Condition 3 of the permission stated:

8.2 'The occupation of the dwelling shall be limited to a person solely or mainly employed or, having ceased employment, last employed in the locality in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971, or in forestry including any dependants of such a person residing with him or a widow or widower of such a person.'

Evidence submitted by the applicant

8.3 In support of the alleged breach of condition the applicant, has submitted a sworn Statutory Declaration stating that he has been in breach of the agricultural occupancy condition for more than 10 years through his numerous roles and positions held at various local authorities and representative bodies.

8.4 After the reserved matters were approved (ES/4/85) the applicant has stated that the dwelling (Buryfield Cottage) was subsequently occupied on the following basis:

- It was first occupied as part of an agricultural holding of 128ha in the ownership of Slate House Farms (Elsted) Ltd, the shareholders being Thomas Michael David Shaxson (55%) and Andrew Michael Shaxson (45%);
- 1985 - 1991: Buryfield Cottage was occupied by Mr Ronnie Parfoot (who worked as a Cowman) and family;
- 1991: Mr Andrew Shaxson moved into Buryfield Cottage as a tenant of Slate House Farms (Elsted) Ltd who owned the dwelling;

- 7th April 2004 - 20th September 2004: Mr Shaxson rented Buryfield Cottage for 6 months to a couple who were not employed in agriculture;
 - September 2004 to Present: Buryfield Cottage was occupied by Mr Andrew Shaxson.
- 8.5 Whilst the dwelling has also been occupied by the applicant's partner since 1988 she was never the sole resident and was not employed in agriculture.
- 8.6 The applicant therefore alleges that he has resided continuously at the property since September 2004, a period greater than ten years and during that time he was not "solely or mainly employed or, having ceased employment, last employed in the locality in agriculture".
- 8.7 In support of his application the applicant has set out what he considers to be his employment history. This is given for the period dating from 1987 to the present day and is set out below:
- 1987 - present: Parish councillor of Elsted and Treyford Parish Council;
 - 1995 - present: The applicant confirms that he 'effectively retired' from agriculture in 1995. Director of Raymed Ltd (The applicants submitted Statutory Declaration states the Company owned 77ha of land, a group of farm buildings at Buryfield Farm and two dwelling houses, Buryfield Cottage and Barncroft);
 - 6th May 1999 - present: District Councillor for the Harting ward of Chichester District Council;
 - 2002-2011: Sussex Downs Conservation Board and South Downs Joint Committee - 2002 -2011;
 - 2010-2015: Member of the South Downs National Park Authority (latterly as Chairman of the Planning Committee); and
 - 2015 - present: Member (currently Chairman) of Harting Parish Council.
- 8.8 Specific evidence has been provided during the course of the application detailing the dates and times of meetings that the applicant attended in 2018 as Councillor and Parish Councillor and details of the meetings that the applicant undertook when he was a Member of the South Downs National Park Authority between 2010 and 2015. There is no dispute in relation to the claims made by the applicant in relation to his service as a District Councillor, Parish Councillor and Member of the SDNPA.

Assessment

- 8.9 The key issue with this application is whether sufficient evidence has been submitted by the applicant which, on the balance of probabilities, proves that the dwelling has been occupied in breach of the restrictive condition.
- 8.10 The applicant asserts that during the relevant ten year period he has held various positions that mean that he would not have complied with condition 3 of planning permission ES/12/84 in that he has been employed in non-agricultural employment. The applicant claims that he was 'employed' in his various roles in public service as a District and Parish Councillor and as a Member of the SDNPA.
- 8.11 It is therefore appropriate to assess the applicant's evidence to determine whether compliance with the terms of the condition has occurred or whether the applicant has been living in the property in breach of the condition. This assessment is detailed below:

The applicant's role as a Director of Raymed Ltd.

- 8.12 With regard to being a Director of Raymed Ltd, the applicant is the sole director of the company. Companies House records show that the nature of the business is 'growing of cereals (except rice), leguminous crops and oil seeds' and 'supports services to forestry.' As a director of this company, Companies House states that the occupation of the applicant is as a 'Farmer.' The applicant states that he 'effectively retired' from farming in 1995 and argues that being a Director of Raymed Ltd does not count as being employed, whether in agriculture or any other form of business. The applicant does not claim that through being a Director of Raymed Ltd a breach of the restrictive condition has taken place.

The applicant's service as a District and Parish Councillor and as a Member of the SDNPA.

- 8.13 The applicant argues that subsequent to his retirement from farming in 1995 and following election as a member of CDC in 1999 he has devoted his time to being an elected representative of CDC and has subsequently been full time employed in the various roles and positions held with local authorities and representative bodies.
- 8.14 The wording of the restrictive condition explicitly refers to the term being 'employed.' With regard to the applicant's respective public service roles it is considered that the work of a Councillor (both District and Parish) does not meet the definition of being 'employed' as such positions are voluntary, with any remuneration being either reimbursement or compensation for time spent assisting the public, attending meetings as well as for expenses incurred. This remuneration is not considered to be a salary or wage. There is no employee/employer relationship with set contractual hours of work, sick or holiday leave entitlement or specific duties set out by an employer.

- 8.15 The applicant has submitted a case that accepted, under section 79 (c) of the Local Government Act 1972, that term 'work' could be used to describe the duties of an elected Local Authority Member. Officers do not however accept that the term 'employment' used in a planning condition has the same meaning as 'work' under section 79 (c) of the Local Government Act 1972. Whilst it is acknowledged that the duties of a councillor are a form of work they are not considered to be "employment".
- 8.16 The applicant is therefore not considered to be in breach of the condition in this regard.

The status of the applicant's partner.

- 8.17 With regard to the partner of the applicant being in breach of the condition for more than 10 years, it is noted that the condition only requires one of the occupants to be solely or last employed in agriculture. As set out above, it is concluded that the applicant has not been in breach of this condition and that he was last employed in agriculture. Therefore as one of the occupiers of Buryfield Cottage complies with the condition no breach has occurred.

9.0 Conclusion

- 9.1 It appears to Officers that, on the balance of probabilities, from the evidence that has been submitted with the application that one of the occupiers of the cottage was (and still is) last employed in agriculture and therefore complies with condition 3 of planning permission ES/12/84. Officers do not consider that service as a Parish and District Councillor and as a Member of the SDNPA represents 'employment' within the meaning of the term as used in the condition. Therefore, the submitted evidence is insufficient to satisfy the Local Planning Authority that, on the balance of probability, there has been a breach of condition 3 of planning application ES/12/84 for at least ten years prior to the submission of the application. Therefore, the development has not been demonstrated to be lawful under Section 191 of the Town and Country Planning Act 1991, as amended. The application is therefore recommended for refusal.

10.0 Reason for Recommendation and Conditions

10.1 It is recommended that the application be REFUSED for the reasons set out below.

1. It appears to the SDNPA, on the balance of probabilities, from the evidence that has been submitted with the application that one of the occupiers of the cottage, was last 'employed' in agriculture and is not currently employed in non-agricultural employment and is therefore continuing to comply with condition 3 of planning permission ES/12/84. The SDNPA does not consider that one of the occupiers has been 'employed' as a Parish and District councillor for at least the last ten years because the role of a Councillor does not meet the characteristics of being 'employed' within the meaning of the term used in condition 3 of ES/12/84. Therefore, the submitted evidence is insufficient to satisfy the SDNPA that, on the balance of probability, that there has been a breach of condition 3 of planning application ES/12/84 for at least ten years. As such, the breach of condition 3 of planning permission ES/12/84 has not occurred.
2. The application has been assessed and determined on the basis of the plans noted below.

Reason: For the avoidance of doubt and in the interests of proper planning.

11.0 Crime and Disorder Implications

11.1 It is considered that the proposal does not raise any crime and disorder implications.

12.0 Human Rights Implications

12.1 This application has been considered in light of the evidence submitted and the recommendation is based on factual evidence and law and not on a the basis of a subjective assessment of planning merits. Therefore it is not considered that the Human Rights of the applicant have been engaged.

13.0 Equality Act 2010

13.1 Due regard has been taken of the South Downs National Park Authority's equality duty as contained within the Equality Act 2010.

14.0 Proactive Working

14.1 The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and determining the application within a timely manner, clearly setting out the reason(s) for refusal.

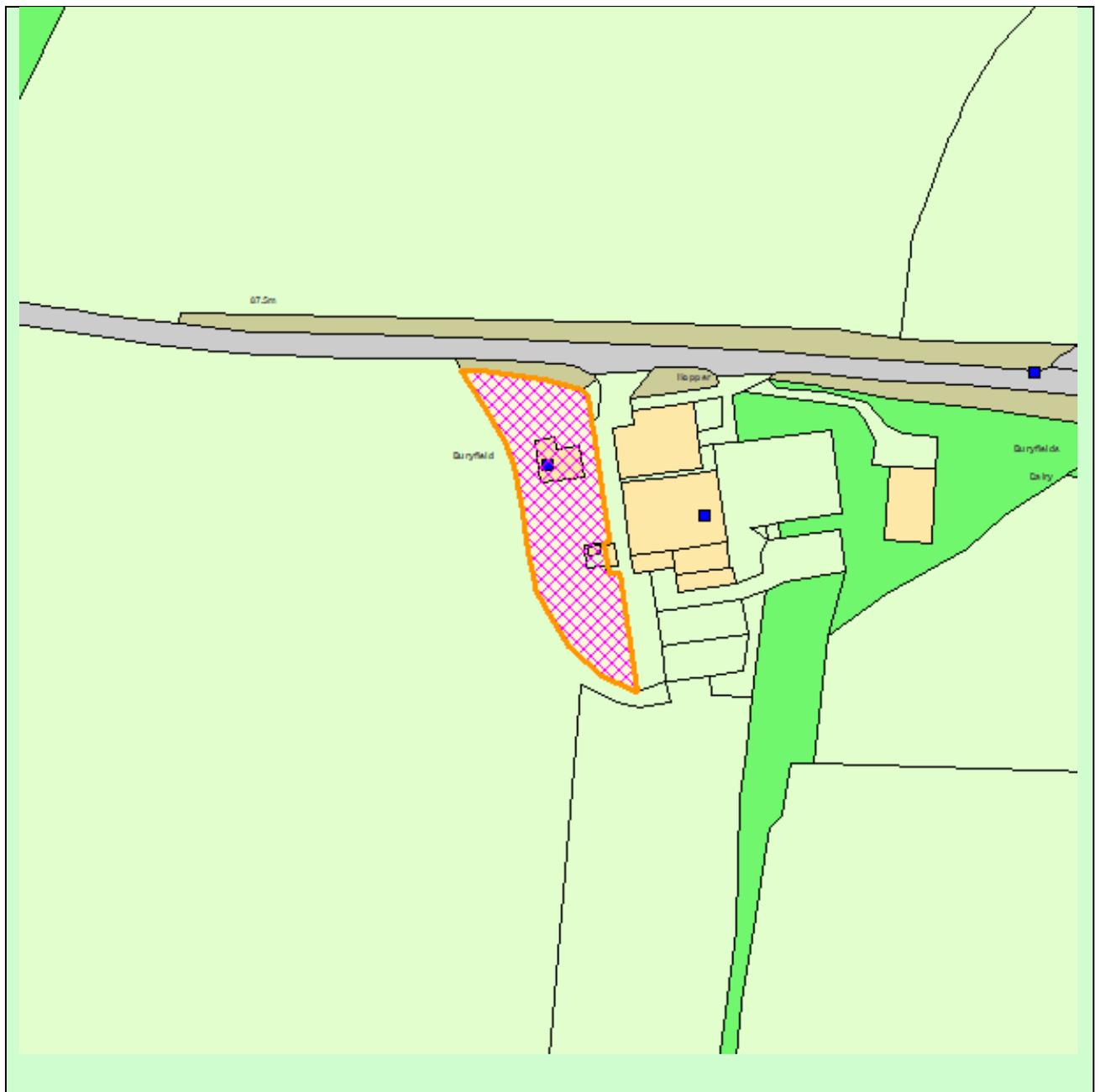
Tim Slaney
Director of Planning
South Downs National Park Authority

Contact Officer: Charlotte Cranmer
Tel: 01243 534734
email: ccranmer@chichester.gov.uk

Appendices Appendix 1 - Site Location Map
Appendix 2 – Plans Referred to in Consideration of this
Application

Appendix 1

Site Location Map



This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. South Downs National Park Authority, Licence No. 100050083 (2016) (Not to scale).

Appendix 2 – Plans Referred to in Consideration of this Application

The application has been assessed and recommendation is made on the basis of the following plans and documents submitted:

Plan Type	Reference	Version	Date on Plan	Status
Plans - Site Location Plan (A4)	SD/CHI/259/I E/001		09.10.2018	Not Approved

Reasons: For the avoidance of doubt and in the interests of proper planning.