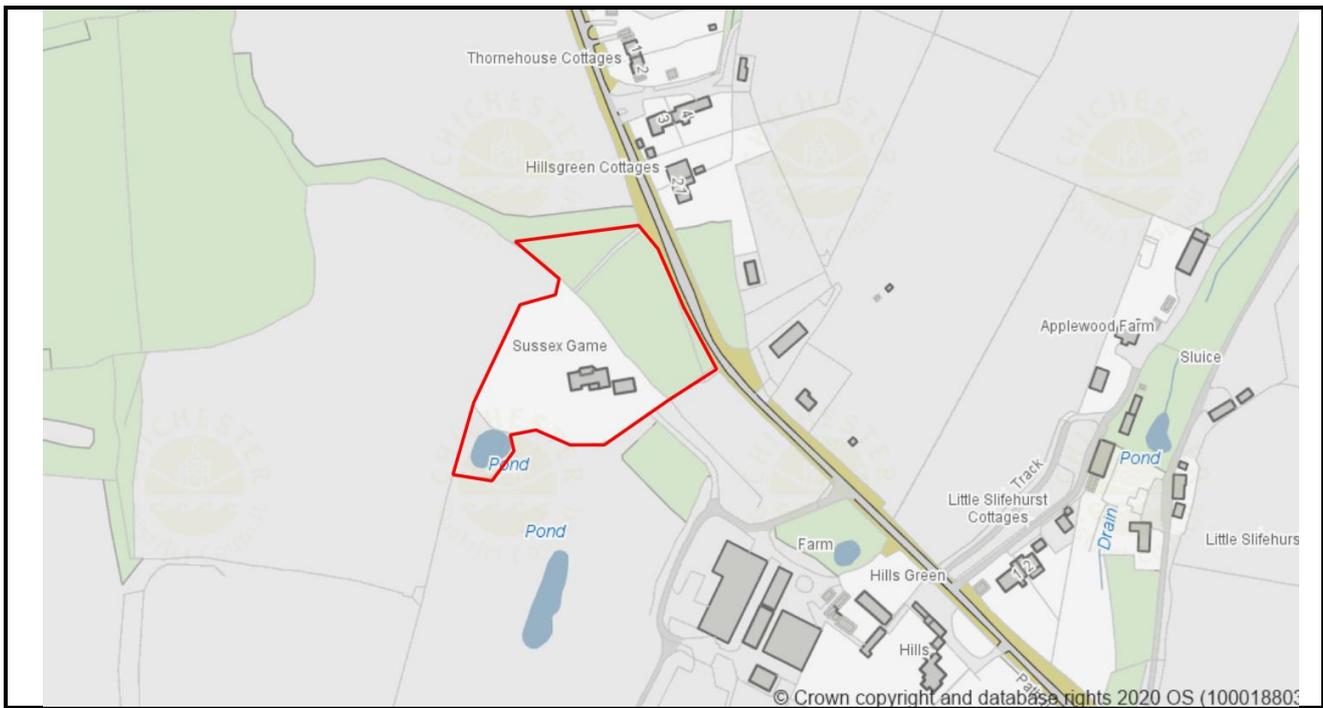


Parish: Kirdford	Ward: Loxwood
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**KD/20/02180/FUL**

<b>Proposal</b>	Proposed farmhouse, garage and access. (Removal of condition 2 of permission KD/24/74 - removal of the agricultural occupancy condition).		
<b>Site</b>	Sussex Game Farm Scratching Lane Kirdford RH14 0JN		
<b>Map Ref</b>	(E) 499809 (N) 128025		
<b>Applicant</b>	Ms S Barnett	<b>Agent</b>	Mrs Gail Pilkington

**RECOMMENDATION TO PERMIT**



	<p><b>NOT TO SCALE</b></p>	<p>Note: Do not scale from map. For information only. Reproduced from the Ordnance Survey Mapping with the permission of the controller of Her Majesty's Stationery Office, Crown Copyright. License No. 100018803</p>
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## **1.0 Reason for Committee Referral**

1.1 Parish Objection – Officer recommends Permit

## **2.0 The Site and Surroundings**

2.1 The application property is a detached two storey residential dwelling located on the west side of Scratching Lane, Kirdford and situated outside of any settlement boundary. A wood to the east of the site separates the property from the road and agricultural land surrounds the rest of the site.

## **3.0 The Proposal**

3.1 The application proposes removal of condition 2, agricultural occupancy condition, of permission KD/24/74 for a farmhouse, garage and access.

## **4.0 History**

KD/00024/74	PER	Proposed farmhouse.
93/00249/OUT	REF	The erection of a dwelling to be occupied in connection with Sussex Game Farm.
20/00848/ELD	PER	Existing lawful development certificate for occupation of dwelling, without compliance with an agriculture occupancy condition.

## **5.0 Constraints**

Listed Building	NO
Conservation Area	NO
AONB	NO
Tree Preservation Order	NO
Flood Zone 2	NO
Flood Zone 3	NO
Historic Parks and Gardens	NO

## **6.0 Representations and Consultations**

### **6.1 Kirdford Parish Council**

KPC objected to the original application on the grounds that our NP supports agricultural ties for the benefit of the farming community, and their removal leads to the eventual loss of an agricultural dwelling and the loss of an affordable home in the agricultural sector.

CDC's lack of supervision of existing planning conditions can lead to this situation. Effective monitoring and enforcement would reduce breaches and, in this case, an affordable home would be protected for the farming community. If a farm owner wishes to remove an agricultural tie, they can submit such a legitimate application at any time rather than breach a condition as a means to an end.

## 6.2 Third Party Comments

None received

## 7.0 Planning Policy

### The Development Plan

7.1 The Development Plan for the area comprises the Chichester Local Plan: Key Policies 2014-2029, the Site Allocations DPD and all made neighbourhood plans. The Kirdford Parish Neighbourhood Plan was made on the 22nd July 2014 and forms part of the Development Plan against which applications must be considered.

7.2 The principal planning policies relevant to the consideration of this application are as follows:

Policy 1: Presumption in Favour of Sustainable Development

Policy 2: Development Strategy and Settlement Hierarchy

Policy 25: Development in North of the Plan Area

Policy 33: New Residential Development

Policy 45: Development in the Countryside

Appendix E: Appropriate Marketing Guidance

### Kirdford Parish Neighbourhood Plan

7.3 The policies of the made Kirdford Parish Neighbourhood Plan relevant to this application are:

Policy H.3: Agricultural occupancy condition

### Chichester Local Plan Review Preferred Approach 2016 - 2035

7.4 Work on the review of the adopted Local Plan to consider the development needs of the Chichester Plan Area through to 2036 is now well underway. Consultation on a Preferred Approach Local Plan has taken place and following detailed consideration of all responses to the consultation, it is intended that the Council will publish a Submission Local Plan under Regulation 19 in March 2021. Following consultation, the Submission Local Plan will be submitted to the Secretary of State for independent examination. In accordance with the Local Development Scheme, it is anticipated that the new Plan will be adopted by the Council in 2022. However, at this stage, it is considered that very limited weight can be attached to the policies contained within the Local Plan Review.

### National Policy and Guidance

7.5 Government planning policy now comprises the February 2019 National Planning Policy Framework (NPPF), paragraph 11 of which states:

At the heart of the NPPF is a presumption in favour of sustainable development,  
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.

7.6 Consideration should also be given to Sections 4 (Decision-Making), 12 (Achieving well-designed places) and 14 (Meeting the challenge of climate change, flooding and coastal change)

#### Other Local Policy and Guidance

7.7 The aims and objectives of the Chichester in Partnership Community Strategy 2016-2029 which are relevant and material to the determination of this planning application are:

- Influence local policies in order to conserve and enhance the qualities and distinctiveness of our area

### **8.0 Planning Comments**

8.1 The main issues arising from this proposal are:

i) Principle of development

i) Principle of development

8.2 Planning permission was granted in 1974 for the dwelling under application KD/24/74. Condition 2 of the decision notice states:

‘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(1) of the Town and County Planning Act 1971, or in forestry (including any dependents of such a person residing within) or a widow or widower of such a person.

The site lies in an area where permission for development unrelated to the essential needs of agriculture and/or forestry would not normally be granted.’

8.3 In March this year a Certificate of Lawful Development for an existing use was submitted under application 20/00848/ELD. The Certificate was for the occupation of the dwelling without compliance with the agriculture occupancy condition. In August the Certificate was granted as it was determined that the breach of agricultural occupancy had begun more than 10 years prior to the submission of the application for the Certificate and had continued ever since. This current planning application seeks to remove condition 2 of permission KD/24/74.

8.4 As part of the submission of evidence submitted for the Certificate of Lawful Development a statutory declaration was submitted by Mrs Crouch, an owner and occupier of the dwelling. It stated:

- Mrs Crouch and her husband have lived at the dwelling since 1976.
- From 1976 the business on the farm was solely rearing pheasant and partridge chicks for the gun. Between May and July approximately 15000 pheasant chicks were hatched a week, the majority were sold as day old chicks to shoots. No birds were killed or processed on site and no birds were sent directly for slaughter for meat, they were all sold as game birds to shoots.
- Mr and Mrs Crouch retired in 1994/1995 and have not worked since.
- Their children do not work in agriculture and moved out before 1991

8.5 In 1993 planning permission was refused at the site under application 93/00249/OUT for the erection of a dwelling to be occupied in connection with Sussex Game Farm. The refusal was subsequently dismissed at appeal. The LPA's appeal statement and the Inspectors decision were included as evidence in the Certificate of Lawful Development.

8.6 One of the reasons the LPA was unable to support the 1993 application was because it was considered that the proposed dwelling would not meet an agricultural need. They stated that 'the majority of the birds are reared for shooting and thus the activity cannot be regarded as being 'agriculture' within the meaning of the Town and Country Planning Act. There is, thus no agricultural justification for a dwelling.' The use of the proposed dwelling was determined to not be for agricultural use and the application refused. The refusal was upheld by the Planning Inspector at appeal who stated that:

'The Council argues that, because most of the birds are raised for shoots, they are being produced for sport, rather than for food. Therefore, that part of your client's enterprise does not fall within the definition of agriculture which is set out in Section 336(1) of the above Act. In support of its view, the Council has cited two cases in which the courts have held that, for the purposes of other legislation, game keeping is not an agricultural occupation. The Council also contends that the processing and preparation of game is not an agricultural activity, but a materially different type of use. In my opinion, there is considerable force in the Council's argument that the rearing of game does not satisfy the statutory definition of agriculture.'

8.7 The refusal of application 93/00249/OUT and its subsequent appeal demonstrate that the dwelling was not been resided in for agricultural purposes. The statutory declaration by Mrs Crouch states that they lived at the dwelling and ran the site as game farming from 1976 to 1994/1995 and that since retirement they have continued to live at the farm. The Certificate of Lawful Development found that based on the evidence submitted, that there was no evidence to contradict the information relied upon by the applicant and on the balance of probability, the breach of condition 2 of application KD/24/74 had taken place for a period of time in excess of 10 years. The occupation of the dwelling by non-agricultural workers was therefore found lawful. Based on the evidence submitted for the Certificate of Lawful Development, the dwelling was not lawfully occupied since at least 1976 when Mr and Mrs Crouch moved in.

- 8.8 The Certificate of Lawful Development allows anyone, the current residents or anyone else in the future, to occupy the dwelling in non-compliance with condition 2 of KD/24/74. No further planning permissions would be required for them or anyone else not working in agriculture to occupy the dwelling. The owners however need to sell the property in order to meet their on-going needs, and whilst anyone can now occupy the dwelling, the continued existence of the condition could cause mortgage or finance complications and delays. For practical purposes, the owners have therefore submitted an application to remove the condition.
- 8.9 The Local Plan requirements for planning permission to remove an agricultural restriction on a property include the property to have been vigorously and exhaustively marketed for between a year and 18 months prior to the submission of the application for it to be considered acceptable. The Kirdford Parish Neighbourhood Plan also has a policy on agricultural occupancy conditions. The policy requirements includes that the removal of an agricultural condition will not be permitted unless the unit has been subject to unsuccessful marketing of its current use over a period of 12 months. Marketing of the application property has not been undertaken however, the Certificate of Lawful Development is unfettered and the benefits it provides would be transferable to subsequent occupiers, and this is a material consideration that carries consideration weight in the determining of this application.
- 8.10 While the condition was originally necessary to achieve the purpose for which it was originally intended, the existence of the Certificate of Lawful Development has the effect of making it unenforceable for all practical purposes. The Certificate of Lawful Development is therefore a significant material consideration that weighs in favour of the proposal as it makes the condition no longer enforceable. Its existence is considered to be an overriding consideration on the marketing requirements of the Local and Neighbourhood Plan and therefore the principle of the proposal is considered acceptable.

### Conclusion

- 8.11 Due to granting of the Certificate of Lawful Development which found that the property had been in breach of the agricultural occupancy condition of application KD/24/74 for more than 10 years, it is a significant material consideration in the assessment of the application. It is therefore considered that since the lawful use of the dwelling is not restricted by a condition the proposal does not conflict with the development plan and therefore the proposal is recommended for approval.

### Human rights

- 8.12 In reaching this conclusion the Human Rights of the applicants and nearby occupiers have been taken into account when reaching this recommendation and it is concluded that the recommendation to permit is justified and proportionate.

## RECOMMENDATION

**PERMIT** subject to the following conditions and informatives:-

1) The development hereby permitted shall be carried out in accordance with the plans listed below under the heading "Plans Referred to in Consideration of this Application".

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

## Decided Plans

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

Details	Reference	Version	Date Received	Status
PLAN - Location Plan	20003		28.08.2020	Approved

## Informative

1) The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

For further information on this application please contact Vicki Baker on 01243 534734

To view the application use the following link - <https://publicaccess.chichester.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=QFS5BLERFKK00>