



Application under section 73 of the Town & Country Planning Act 1990.

The removal of an occupancy condition at Line House
Lea, Ross on Wye, HR9 7LQ



THE CASE IN BRIEF

1. This document is prepared in support of the removal of an occupancy condition imposed on the dwelling known as Line House, Lea, Ross on Wye. The site is known to the Local Planning Authority, following its original consent in 1986 and more recently, an application to add an additional dwelling to the site granted on the 27th November 2015 under reference 152576.
2. This application seeks to remove the original occupancy condition that limits the occupation of Line House to a person or persons employed or last employed in the adjoining business premises or a dependant of such a person residing with him or her, or a widow or widower of such a person. We feel the condition has outlived its usefulness and is currently preventing the sale of the dwelling given that the original occupant now has permission for a smaller single storey dwelling permitted within the same site.
3. To support our case, all employees within with the adjoining business premises which is a light railway engineering business have been written to and offered the dwelling, this coincided with two independent valuations being done on the property. No employees have any desire to occupy the dwelling for the reasons detailed in the relevant section of this report.
4. Furthermore the dwelling is in a sustainable location for new rural housing and the Local Planning Authority has just recently approved a further 2 bedroom dwelling for the current occupier of Line House to move into. This approval did contain an occupancy condition, but only to overcome a highway issue.
5. In addition, due to the sites sustainability, Line House and the remainder of the site could in the future be redeveloped and there would be no reason to impose such an occupancy condition on any replacement dwelling or future dwellings.
6. Finally the dwelling is not needed for security for the business premises and the relaxation of the condition will in no way harm the viability of the light railway engineering business or cause harm to the living conditions of the occupants of Line House if it was occupied by someone unrelated to the business. Furthermore the condition was only solely imposed due to its location in an area where dwellings weren't permitted in the past. Things have now changed and small scale rural housing is permissible in this area and the business and dwelling can function

independently without needing to be linked. This should enable the Local Planning Authority to now remove the aforementioned planning condition.

Background

7. The current owner of Line House (Alan Keef) had originally set up his light railway engineering business in Oxfordshire on a family farm. He was seeking new premises to expand his business and live alongside it for convenience. The site at Lea was discovered when searching for other premises in the local area.
8. Having spotted the redundant farm feed business building, Alan recognised that the land behind the property could be used to build a home for his family and this particular site could then fit all the credentials Alan was looking for. At the time Lea was very much a struggling village and had little employment within the village. The proposal to convert the business and to construct a dwelling was welcomed by the Local Authority as it attracted a new rural business to the area that in turn would provide rural employment for several skilled engineers. It would also see the renovation of the former agricultural buildings and subsequent expansion in the following years.
9. The dwelling was applied for on the 14th March 1986 and the approval followed on 30th April 1986. The decision notice is attached as appendix 1. Condition 4 of the planning permission states:

"The occupation of the dwelling shall be limited to a person/persons employed or last employed in the adjoining industrial building or a dependant of such a person residing with him or her, or a widow or widower of a such a person."

10. The reason for the condition is as follows: "The site is one on which a dwelling would not normally be permitted unless there were exceptional circumstances. In this case consent has been granted after taking into account the needs of the applicant and the nature of the business."
11. Alan stepped back from the business to retire in 2005, handing over the day-to-day running to his son, Patrick Keef, as Managing Director. Over the last several years Line House has been deemed to not meet Alan's requirements further into retirement and he instead gained approval for a single storey bungalow within the grounds to the north west of the site. This gained approval under reference 152576 in late November 2015. The Local Planning Authority will note an occupancy tie exists on this new

permission, however the delegation report into the application clearly demonstrates that it only exists because access to the new house is via the factory yard. The condition imposed therefore overcame the objection from the council's highway engineer who had concerns over the dual access for pedestrians entering the dwelling and mixing with the industrial movements at that site. Alan Keef concurs with this concern and is currently reviewing a safer route of access to the new house that completely avoids crossing the factory yard.

THE CASE:

12. Herefordshire, like many Local Planning Authorities, has a real absence of policy for the removal of such conditions. The most longstanding test is whether the condition has outlived its original usefulness. If so, then providing it can be demonstrated that the condition serves no other rural interest then it should be removed. Paragraph 206 of the NPPF adds little to this topic, however it suggests planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Therefore it follows that they are acceptable for removal, if they are unreasonable in light of this current policy.
13. It is clearly the case here that the original functional relationship between the house and the business premises now no longer exists. The original occupant (Alan Keef) no longer has any desire to occupy the original dwelling and with the tie imposed the dwelling could never be sold. In time the dwelling may become vacant and fall into disrepair, as no one employee of the current business has the desire to fulfil the planning condition of occupation.
14. This dwelling was solely approved on the basis that it was in an area where new dwellings were not permitted in the 1980's, however the Local Planning Authority were content to allow a dwelling and link it with the new business. It seems there was no real strong case for security and it seemed it was granted under more of a case of convenience for the applicant at that time. This in itself should not have been sufficient justification to warrant its creation.
15. Also this situation is unlike most rural dwellings that are restricted by occupancy conditions relating to agriculture. As such there is normally a requirement to test the needs of the market for agricultural workers. This is undertaken through a prolonged marketing exercise over 12 months to establish if other workers in the area have any desire to occupy the dwelling. This is not the case here, as the condition makes the

only persons capable of occupying the dwellings those who are connected with the business. Notwithstanding the other justification raised, one of the tests is therefore to establish if any of those persons have any desire to occupy the dwelling.

16. Employees desire to occupy the dwelling: The company currently occupying the business premises is Alan Keef Ltd, which is the same company from the very first permission for the house in 1986. 13 people are employed at the business, three of whom are the directors including Alan, his son Patrick and daughter Alice. The employee figures have been around this figure for some years now.
17. Therefore these 13 are the only persons capable of occupying the dwelling apart from any that have been 'last employed' and since left the business. The last employed scenario would be impossible to test as any offer/advert would have to try and reach those that have retired i.e. last worked, however these would be difficult to get hold of and only one has retired from the business since 1986. Notwithstanding this, if retired they are likely to be in the later stages of their life and require something more suitable and single storey, like for instance that which the current elderly occupier Mr Alan Keef has recently sought. This two storey dwelling with a large curtilage would without doubt be unappealing to such a person. The occupation of the dwelling would also rule out any that have left the business for other employment in recent years.
18. This therefore just leaves the 13 employees of the company with the only real possibility of occupying the dwelling. Mr Alan Keef has recently gained permission for a dwelling which is more suitable in the grounds of the business therefore it remains for the 12 remaining workers to have the option of occupying the dwelling.
19. All employees capable of occupying Line House in accordance with the planning condition were offered the opportunity to purchase the property and all verbally declined the offer. Some employees formally wrote back and Appendix 2 contains these letters. The reasons they gave for not wishing to purchase the property include:
 - "No desire to live so close to work"
 - "Insufficient funds"
 - "The tie will make it hard to get a mortgage"
 - "Unmortgageable and impossible to sell in the future"
 - "The tie is too restrictive and restrictive where I live if my employment circumstances changed"

20. Therefore we consider that the above confirmation proves no person currently employed at the business has any desire to purchase Line House from Mr Alan Keef with the tie currently imposed. The main fear is that the condition is too restrictive and would tie occupants to a dwelling even if their circumstances changed and it would be simply impossible to sell in the future. Employees have also stated that getting a mortgage to fund such a purchase would also be very difficult and this is supported by the surveyor's report also. In addition not everyone would enjoy living next to their place of work, as many like to separate their work and home life. The large garden may also not appeal to most if they have no interest in gardening and its added ongoing maintenance issues. Some employees simply couldn't afford the dwelling, yet alone afford to modernise it.
21. It is clear that Alan Keef no longer has any desire to occupy a dwelling that no longer meets his needs and as such wishes to sell the dwelling to use the income to fund the building of the new bungalow, which is more suited to his needs, and assist his overall living allowances into his retirement. The dwelling if unsold will be an added financial burden on Mr Keef and as such it's unreasonable for the tie to restrict any future sale.
22. My client did obtain two valuations to ascertain its current value with the tie imposed. Jonathan Preece property agents attached as appendix 3 and Farthings Surveyors attached as appendix 4, both valued the dwelling at [REDACTED] with the tie, on the basis that it may be sold to a cash buyer willing to take a risk as it would be unmortgageable and possibly unsaleable.
23. One final matter which also effect its saleability and value is its current condition. The property would need substantial investment in it to modernise the house as it has 30 year old wooden double glazing that is rotten, an old-fashioned electric central heating and hot water system costing some £250 a month to run, two very old fashioned bathrooms, a dated kitchen and no insulation in the roof. Any purchaser, whether it be staff at the business premises or a speculative purchaser would have to spend around [REDACTED] to replace all these elements for a decent 20-year specification. This may seem expensive but the house is large with around 25 windows to be replaced and a new central heating and hot water system including oil tank and boilers to be installed. This represents a considerable investment for the new owner and a task that would put off many people and indeed the staff who could comply with the planning condition at the adjoining business premises.

24. Security: Whilst the dwelling occupies the same overall site as the business, its occupation by a worker certainly provides no additional security protection and was never a consideration for the business when it first established on the site. The dwelling is tucked away in the rear of the site. The business premises are secure and the mere physical presence of a dwelling adjacent to the business as well as the other houses that are now nearby, is sufficient to deter intruders irrespective of who occupies the dwelling. Notwithstanding this, access to the business premises and the whole of the side and frontage of the business premises cannot be viewed from the actual property because of its location in the rear corner of the site and therefore provides limited visual security.
25. The workshops are very secure and contain heavy duty equipment that is used to manufacture light railway equipment. This equipment, including presses, lathes and drills, does carry a value, however the equipment is in practice very difficult to remove due to its weight, indeed much of the equipment and stock would require specialist lifting equipment to move. Also the light railway engineering business is bespoke and much of its parts, machinery and stock is designed for a particular purpose with a comparatively concentrated target audience and therefore cannot be easily disposed of which limits its attraction to theft. It also needs to be assembled by skilled engineers. This significantly reduces the risk of theft. It is worth noting that there are no security issues that concern the business owners.
26. In addition, there have been several cases highlighted on the Compass website where it was found by inspectors that occupancy conditions relating to security are often no longer required if the existing security of the business is satisfactory. For instance, a planning obligation restricting the occupation of a dwelling at an agricultural machinery business in Yorkshire to a manager has been discharged as being unnecessary with modern security measures. The inspector was in no doubt that the security system, including closed circuit television and an alarm connected to the local police, was effective. When combined with the sophisticated anti-theft devices on modern agricultural machinery, he considered that there was no need for on-site 24-hour security. The inspector was not persuaded that there was any functional necessity for the occupation of the dwelling to be tied to the business. DCS Number: 100-068-156 Inspector: Martin Andrews; Hearing".
27. Notwithstanding this, security was not a reason for the imposition of the condition in the first place.

28. Access Whilst the dwelling is linked to the main engineering business, its access is separate (as shown on the image below). Line House was built with its own independent access driveway to the left of the gated factory premises. This enables the business premises to be secured outside of working hours and Line House and the works to operate totally independently of each other.



29. Amenity There will certainly be no risk of future complaints being generated by the new occupiers of Line House with regard to noise or amenity issues generated by the business. The business operates Monday – Friday, 8am – 5pm and is relatively low key and all metal fabrication work activities are undertaken inside the building where the machinery is situated. The lathes are quiet and produce little noise. No conditions exist on the original permission for the use to prevent outside working; however the very nature of the business means that the fabrication and assembly is done inside on the machines and in the workshop. The company has an established client base and does not rely on passing trade creating any further disturbances. The grinding and occasional hammering is also infrequent and intermittent and not a constant noise that would cause annoyance. Indeed the business is considerably quieter than many farm businesses located in the area which operate with much larger machinery and for longer working hours.

30. The operators of the business are concerned simply for their own livelihood and would not wish to have new occupants of Line House being disturbed by the activities of the business. Notwithstanding this issue it will be a 'buyers beware' scenario. Any future occupants will recognise that they will be living next to a light engineering business

and this will be a factor in the purchase and will be reflected in the price the dwelling achieves. Any noise from the factory is only intermittent and if the occupants are full time workers then they will not notice what noise is generated in normal work/day time.

31. Line House backs onto the back of the factory unit with neither the house nor the business premises having any opening windows or doors facing each other. The garden of Line House is separated from the business premises by a line of very mature Leylandii trees some 14ft in height and 5ft in depth providing visual and sound screening.
32. The business works reasonable opening hours Monday – Friday, 8am – 5pm and therefore the businesses operation is not considered to cause any loss of sleep or loss of enjoyment of Line House. We recognise that amenity may not be a significant factor, however we consider that it still needs addressing within this statement as it forms a material planning consideration.
33. Redevelopment of the site and other development in the village. Since Line House was originally permitted there have been several new housing schemes of various sizes permitted within the village increasing both private and social housing capacity.
34. Indeed Alan Keef's new house was justified in that whilst it lay to the south of the main core of the village, the settlement is designated under Core Strategy Policy RA2 'Housing in settlements outside Hereford and the market towns' as being a sustainable location for new rural housing. The centre of the village of Lea is some 500m to the north and the purpose behind RA2 is to maintain and strengthen locally sustainable communities across the rural parts of Herefordshire, sustainable housing growth will be supported in or adjacent to those settlements identified in Figures 4.14 and 4.15 (Lea is listed in this table). This will enable development that has the ability to bolster existing service provision, improve facilities and infrastructure and meet the needs of the communities concerned
35. The reason for reference above is that if Line House didn't exist then it's highly likely support would be offered for its development in today's climate and no such occupancy condition would be attached to it. It therefore follows that Line House could be demolished and replaced and no occupancy condition would be reattached to it.

36. My client has no plans to relocate the business, however, given small scale housing developments are to be supported in the area, technically a case could be made for the whole site to be redeveloped for housing and no such occupancy conditions would be added to the new dwelling. This we feel is a significant material consideration that weighs in favour of removing the occupancy condition.

CONCLUSION

37. In view of the various considerations outlined above, I believe that there are no grounds to oppose this application. We have adequately demonstrated that no persons employed within the business premises have a need to occupy the dwelling. We have also demonstrated that the business can function effectively without being linked to the dwelling in question. Furthermore Line House provides no security or amenity risk to being situated alongside the current business. Without the tie being lifted, the dwelling may become unoccupied and will be a wasted recourse that will not contribute towards the support for the existing village services in Lea. Also any new dwellings that are supported in the area under Core Strategy Policy RA 2 would not have an occupancy condition attached to it as they are classed as sustainable additions to rural housing being adjacent to the main village.
38. Therefore the condition is no longer required for its original purpose and has outlived its usefulness. There is little more that could be done to justify the separation and we hope the LPA will concur with this view.
39. I hope that the submitted application is sufficient to enable you to reach a decision on this case within the statutory 8-week period. If you require any further information please contact me at the above address.

Gareth Stent (BA Hons Dip TP MRTPI)

APPENDIX 1 Original permission

APPENDIX 2 Letters from employees

APPENDIX 3 & 4 Valuations