

**Planning Statement for a Section 73A application to  
remove Condition 2 attached to the Planning Permission  
Ref: 35281 to enable an unencumbered C3 use of Glanwye**

**Prepared on behalf of Mr D Watkins**

**By CR Planning Solutions**

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## **1. Introduction**

- 1.1 This statement is prepared by CR Planning Solutions on behalf of Mr Watkins. The statement relates to the property, Glanwye, which is located near the village of Dinedor and is accessed via a private highway off the B4399.
- 1.2 Glanwye is located at the junction of two roads with a scatter of residential properties to the east including Dinedor Court.
- 1.3 This application is made under Section 73 of the Town and Country Planning Act 1990, as amended, and seeks to remove Condition 2 of Planning Permission Ref: 35281. This condition relates to an agricultural occupancy condition on Glanwye. This condition is also repeated within a further planning application related to an extension of Glanwye ref SH238/80 through Condition 2.
- 1.4 Despite there being 2 identical occupancy conditions related to two decision notices for Glanwye, the operative permission and that which is the subject of this application is the first application referenced 35281 and its associated Condition2.
- 1.5 This application will demonstrate that retention of the agricultural occupancy condition can no longer be justified as it fails the condition tests as set out in the paragraph 55 of the NPPF given it no longer serves a use and no longer has any effective purpose.

## **2. Application Site Planning History**

- 2.1 Planning permission (See Appendix A ref 35281), was granted by Herefordshire County Council on 13 March 1973 for the erection of an agricultural workers dwelling with garage and vehicular access on land part parcel 126a, Dinedor Court, Dinedor and was subject to Condition 2 of the decision notice which stated that:

*'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 S.290 (1) of the Town and Country Planning Act 1971 or in forestry (including any dependents of such person residing with him) or a widow or widower of such a person.'*

2.5 The permitted dwelling, named Glanwye, was built and was occupied and used as an agricultural dwelling. Mr Watkins subsequently purchased Glanwye in May 1996 and in May 2010 rented the property to [REDACTED] who has lived there on a continuous basis until the present day and is responsible for the payment of all outgoings at the property including Council Tax. [REDACTED] is employed as a builder and has never been solely or mainly employed in either agriculture or forestry. As a result, the property has not been occupied by a person employed in agriculture.

2.7 On 21 April 2023 an application for a Certificate of Lawful, Existing Use or Development (CLEUD) was submitted to Herefordshire Council supported by evidence to confirm that the agricultural occupancy condition, Condition 2 which is referred to above and repeated again in an approved application (ref SH 238/80) to extend Glanwye (Appendix B) has not been complied with for a period in excess of 10 years.

2.8 On 20 July 2023 Herefordshire Council issued a Certificate of Lawful Use (Appendix C) stating that on the balance of probabilities, the property Glanwye had been occupied in breach of the agricultural occupancy and worker conditions imposed by Condition 2 planning permission 35281 (granted 13 March 1973) and SH 238/80 (granted 25 June 1980) for a period in excess of 10 years and that this breach continues at the time of application.

2.11 Given this, and in accordance with Section 171B of the Town and Country Planning Act 1990 Act no enforcement action can now be taken given the breach has taken place on a continuous basis in excess of 10 years and as such the use of the dwelling in breach of the occupancy conditions is lawful.

### **3. Removal of Agricultural Occupancy and Worker Conditions**

3.1 Given the above, this application is being made under section 73A of the Town and Country Planning Act 1990 (as amended) and seeks the removal of the fore mentioned agricultural occupancy Condition 2 of permission 35281 (dated 13 March 1973) which is the operative permission.

3.2 In the first instance regard must be had to *Finney v Welsh Ministers & Ors* [2019] EWCA 1868 ('Finney'), which held that an application under Section 73 of the Act may not be used to obtain a varied planning permission when the change sought would require a variation to the terms of the "operative" part of the permission (i.e. the description of the

development for which planning permission had been granted). In essence, the judgement states that a local planning authority must only consider the question of the conditions, and cannot consider the description of the development to which the conditions are attached. Whilst the original permission includes reference to ‘agricultural workers’ within the description, the removal of the occupation restriction condition would alter this to provide open market dwellings. However, an Inspector found under appeal APP/E2734/W/19/3234759, that permission sought to remove condition would not be comparable to the situation in Finney, where the description of development was altered to avoid a potential conflict with the requirements of a replacement condition. As no replacement condition is proposed, such a conflict would not occur. Any new permission issued would be for the same physical building of C3 residential use, as such the proposal can be submitted under Section 73.

### 3.3 With regards to the Development Plan it is noted that:

- Section 38(6) of the Planning and Compulsory Purchase Act 2004 instructs Local Planning Authorities to determine planning applications in line with the policies of the Development Plan unless material considerations indicate otherwise. The Development Plan comprises the adopted Herefordshire Local Plan – Core Strategy and in this case the Dinedor Neighbourhood Development Plan which was made on 28 July 2021.
- Paragraph 79 of the NPPF states that isolated homes in the countryside should be avoided and are restricted to specific circumstances.
- Policy RA3 of the Core Strategy restricts housing in the open countryside to limited opportunities including those related to agriculture.
- Policy RA4 of the Core Strategy sets out requirements to be met in terms of the removal of agricultural conditions.
- Paragraph 55 of the NPPF confirms that planning conditions should be kept to a minimum and only imposed where they are:
  - Necessary,
  - Relevant to planning and to the development to be permitted,
  - Enforceable,
  - Precise and

➤ Reasonable in all other respects.

- Any condition which does not meet the six tests should not be imposed.

- 3.4 Taking account of the above, it is accepted that this application, for the removal of the fore mentioned condition, does not provide the marketing information as prescribed by Policy RA4 of the Herefordshire Core Strategy. That said and in line with Section 38(6) there are substantial and significant material considerations, apparent to this case, which overrides this policy position as detailed below.
- 3.5 A Certificate of Lawful Use (ref 231273) was issued on 20 July 2023 confirming that the use of the dwelling, Glanwye, in breach of occupancy condition 2 was lawful as the time for enforcement under section 171B (3) of the Town and Country Planning Act 1990 had passed. The Certificate of Lawful Use is a significant material consideration which runs with the land and can therefore benefit future occupiers in perpetuity.
- 3.6 Glanwye may be lawfully occupied without compliance with the terms of the restrictive condition, rendering the condition unenforceable and unreasonable for retention. As confirmed by appeal decisions APP/Y9507/W/16/3147251 and APP/H1840/W/18/3196410 and despite the conflict identified with Policy RA4 of the Core Strategy, the existence of the Certificate of Lawful Use is an overriding material consideration and consequently condition 2 no longer accords with the tests identified in the NPPF and the condition's retention cannot be justified. This position was supported in recent applications to remove an agricultural occupancy condition in Herefordshire at Parklands, Llancloudy (Ref P212404/F), Fairfield, Pembridge (Ref P202736/F), The Coppice, Ryeford (Ref P214521/O) and Bache View, Pudleston (ref 221736/F).
- 3.7 Given the lawful breach that has occurred, as well as the passing of time, the agricultural occupancy condition attached to Glanwye is unenforceable and as result is not serving any effective planning purpose. The retention of Condition 2 application of 35281 (granted 13 March 1973 is therefore considered unreasonable, and unnecessary and as a result fail the tests set out in paragraph 55 of the NPPF.

#### **4. Conclusion and Recommendation**

- 4.1 In conclusion, the Lawfulness certificate which has been issued on the 20 July 2023 confirms that the occupancy condition 2, of planning consent 35281 has been lawfully breached. The breach of this condition has become lawful given the passing of time being in excess of 10 years and no enforcement action can now be taken. Given this position, Condition 2 of the planning permission 35281 (dated 13 March 1973) serves no effective planning purpose.
- 4.2 As a result, the condition is no longer enforceable, necessary or reasonable in all other respects and fails the tests as set out in para 55 of the NPPF. This provides Herefordshire Council with sound justification to remove Condition 2 of the planning permission planning permission 35281 (granted 13 March 1973) given, it no longer serves the purpose for which they were imposed.

Appendix A: Planning Application ref 35281

Appendix B: Planning Application ref SH 238/80

Appendix C: Certificate of Lawfulness ref 231273