

**14 DCNC2005/3891/F - REMOVAL OF OCCUPANCY
CONDITION (NO.7) REF: 13164 INSPECTORS
DECISION 09.03.1994 AT LAND ADJACENT TO HOPE
POLE INN, RISBURY, LEOMINSTER,
HEREFORDSHIRE, HR6 0NQ**

**For: Mr P R Kelsall of Gallop View, Risbury,
Leominster, HR6 0NQ**

Date Received:
2nd December 2005
Expiry Date:
27th January 2006

Ward: Hampton Court **Grid Ref:**
55419, 54910
MT/CR

Local Member: Councillor K Grumbley

1. Site Description and Proposal

- 1.1 The application site lies on the south side of the C1110 road towards the east end of Risbury. The application relates to two recently erected dwellings currently subject to a planning condition requiring the occupation to be "limited to persons solely or mainly employed, or last employed, in the locality in racehorse training stables, or widow or widower of such persons or to any resident dependants".
- 1.2 Both dwellings are 4-bedroomed detached houses recently erected following approval of reserved matters determined by committee on 1 December 2004.
- 1.3 This application follows a refusal for the same proposal by Members contrary to recommendation at the meeting on 30th November 2005. The reason for refusal stated:

"The Local Planning Authority does not consider that sufficient evidence has been produced to indicate that a reasonable attempt has been made to market the properties at a price which reasonably reflects the occupational condition imposed by the Secretary of State on appeal decision ref. T/APP/C1815/A/93/230478/P5 dated 9 March 1994. Consequently the proposal is considered to be contrary to Policy A44 of the Leominster District Local Plan, and Planning Policy Statement 7: Sustainable Development in Rural Areas."
- 1.4 This application had been recommended for approval, there having been no offers made on the properties, which the Council's County Land Agent considered to be marketed as appropriate levels. However, just prior to the commencement of the meeting the Local Member reported receipt of an offer at the full asking price of £220K for 'The Conifers' the smaller of the two dwellings, from a Mr Cecil Price, who would appear to comply with the occupancy condition.
- 1.5 Accordingly the application was refused. The day after the meeting the offer was reduced to £150K. That offer remains. In addition an offer of £250K has been made on Ash Tree House the larger of the dwellings.

2. Policies

2.1 Leominster District Local Plan

A44 – Removal of agricultural or forestry occupancy conditions

2.2 Herefordshire Unitary Development Plan (Revised Deposit Draft)

H8 – Agricultural and forestry dwellings and dwellings associated with rural businesses

2.3 Planning Policy Statement 7: Sustainable Development in Rural Areas Annex A: Agricultural, forestry and other occupational dwellings

3. Planning History

NC2005/3250/F – Removal of condition. Refused 30.11.05

NC2005/2498/F – Removal of condition 7. Refused 5.10.05. This is currently subject of an appeal.

NC2004/3108/RM - Erection of 2 detached houses with garages. Approved by committee 1 December 2004.

94/800 - Application to remove condition imposed by Inspector. Refused February 1995.

93/164 - Application to remove the 2 conditions referred to above. Refused May 1993. This refusal was subject to an appeal, which was subsequently allowed. The Inspector replaced the strict occupancy condition to the current condition restricting occupation as previously stated in the introduction. Date of Inspector's decision 9 March 94.

Work to secure the permission was commenced and it was accepted that the permission remained extant.

900612 - Site for the erection of 4 cottages for occupation by full-time employers of adjacent racehorse training stables on land adjacent to Hop Pole Inn, Risbury. Subject to occupancy condition tied to adjacent training establishment and a further condition that development not be sold separately from the applicant's horse racing business. This was also subject to a Section 106 agreement, which was subsequently discharged in October 2000.

4. Consultation Summary

Statutory Consultations

4.1 None required.

Internal Council Advice

4.2 County Land Agent has previously commented that the valuations are appropriate given the occupancy conditions.

4.3 Traffic Manager has no objection.

5. Representations

5.1 Humber Parish Council state: 'The Parish Council can only make decisions based on planning criteria. It is unable to consider personal or financial matters. The Council sees no significant change of circumstances that would justify the removal of the condition. The Council supports the Northern Area Planning Committee in its refusal of previous, identical applications.

5.2 Objections have also been received from:

Mr and Mrs White, New Pentwyn, Risbury.
Mr M Kimberly, The Old Post Office, Risbury
Mr Ryall, Butterfield, Risbury.
Mr C. Price, Brockmanton Hall, Puddleston.
Mrs Ivall, Butt Oak Farm, Risbury.
Mr Shelley, The Birches, Pencombe.

Objections are summarised as follows:

- 1) The applicant is trying to get round the planning system
- 2) That offers have been received from people complying with the tie
- 3) The applicant is not a trainer
- 4) Properties not marketed at a reasonable level
- 5) The tie is so strict as to be difficult for anyone in this business to afford the properties
- 6) Removing the condition would weaken the overall approach to development in the countryside
- 7) Mr C Price advises that he reduced his offer of £220K to £150K after the meeting at which the last application was refused due to information which came his way. He does not specify what this information was. He also considers that his son and two other employees would meet the conditions.

5.3 In support of the application the applicant advises, the previous application was refused following receipt of information about an offer at the asking price by Cllr. Grumbley, and made known to committee at the meeting. He considers that this clearly influenced the committee. What it also does, he considers, is indicate that the asking price was reasonable, since Mr Price was aware of the condition on the property. He refers to correspondence to the Planning Inspectorate regarding the appeal, advising of members of his family who are interested in the properties, but who have not made that interest known to either him or his estate agent.

5.4 The applicant has previously submitted additional details of the marketing of the properties together with other properties in the area, with prices for comparison.

Marketing commenced in March 2005 in the Hereford Times at £350K and £250K respectively. Additional details were sent to the mailing list and to local livery stables, equine centres and to Hereford and Ludlow racecourses. In June, the guide price was reduced to £315K and £220K respectively, with a new marketing campaign. The open market values said to be £465K including paddock, and £325K respectively.

A number of enquiries were made up to the time of the previous application but no one complied with the occupancy condition. Since the refusals the properties continue to be advertised in the Hereford Times.

Details of other properties for sale in Risbury last year include a 2-bedroom bungalow for £230K; the property next door to Gallop View, 3 beds plus outbuildings associated with equine uses, guide price £350-400K (for sale by auction); a 4-bed house for £275K; a 4-bed house with one acre and outbuilding for £550K; the house immediately adjoining the application site to the east, 4 beds and 10 acres, for £575K; and a 3-bed bungalow for £275K.

In an attempt to understand the previous decision, the applicant sought advice on interpretation of the condition in terms of locality and racehorse stables.

He has also advised "Originally the houses were to be for myself and family. However, circumstances changed and the properties were put on the market in March 2005 at a price which reflected the 'condition'. The racing industry locally is in decline and it is considered therefore that the condition imposed in 1994 is now unreasonable and no longer serves any useful purpose.

The above is supported by the fact that since March 2005 no one has come forward that meets the condition imposed. Equally, the response from people not meeting the condition has been extremely good. Estate agent Bill Jackson is of the opinion that these family homes would sell very quickly without the restriction."

- 5.5 To summarise and conclude he advises:
- 1) Marketing has been on going for 11 months.
 - 2) No one other than Mr C. Price has come forward who meets the tie.
 - 3) This offer of £220K for the Conifers indicates that the asking price is reasonable, and cannot argue that they are not reasonably offered.
 - 4) That his offer of £250K for Ash Tree House asking price £315K was not feasible as a consequence.
 - 5) He has been invited to increase his offers but has not done so.
 - 6) That his son has his own planning application (pending decision by Main Committee at the time of preparation of this report), ref. DCNC2005/3689/O.
 - 7) None of his family who he claims to be interested have viewed either property.
 - 8) He concludes that the interest is not genuine and is a time wasting tactic.
 - 9) Government Policy PPS7 – states that no dwelling should remain empty by virtue of a condition that now serves no useful purpose.
- 5.6 The agents have confirmed the offers of £150K and £250K respectively, that Mr C. Price is unwilling at this time to offer the asking price and is waiting on an outstanding planning application of his own and until that is decided is unwilling to negotiate further.
- 5.7 The full text of these letters and the marketing details can be inspected at Northern Planning Services, Blueschool House, Blueschool Street, Hereford, and prior to the Sub-Committee meeting.

6. Officer's Appraisal

6.1 The issues here relate to:

- Whether the properties have been marketed at a price which reflects the occupancy condition and
- If so whether reasonable offers have been made by persons complying with the condition and
- Whether the condition was appropriately imposed to begin with.

6.2 Leominster District Local Plan Policy A44 makes reference to removal of agricultural or forestry occupancy conditions but there is no reference to other occupational conditions. Nevertheless, similar consideration should be given which requires the advertising of the property for sale at a price which reflects the market value with the condition attached for a reasonable period of time. The policy also refers to removal of the condition after at least 5 years of its initial occupation.

6.3 Policy H7 of the Revised Deposit Draft Unitary Development Plan states:

'Applications for the removal of occupancy conditions will only be permitted if it can be demonstrated that the original condition was unreasonably imposed or that there is no longer a current or foreseeable need for the dwelling either on the holding or in the locality and that there has been a genuine and unsuccessful attempt to market the property at a realistic price.'

6.4 PPS7, whilst not specifically referring to other occupational conditions, refers to changes which affect the longer term requirement for dwellings and that they should not be kept vacant simply by virtue of planning conditions restricting occupancy which have outlived their usefulness.

6.5 To help Members consider the merits of the application, it is necessary to give a brief history of the site, in addition to the list of applications set out in the planning history section. Outline planning permission was originally granted in 1990 for 4 dwellings with all matters reserved for subsequent approval. However, a suggested layout was submitted, not forming part of the application, showing a terrace of 4 dwellings. Notwithstanding the recommendation for refusal, the Planning Committee at the time accepted that there was a need for dwellings for employees of the racing stable on the opposite side of the road who because of their working conditions needed to live close to the site and could not reasonably commute from Leominster, the nearest town.

6.6 An attempt by the then applicant to remove the conditions both on occupancy and separate sale, was refused by that Committee in 1993. However, a subsequent appeal allowed separate sale and amended the occupancy condition from employees of the racing stable on the opposite side of the road to employees in racing locally. Given that the decision was taken that Leominster was too far away as a place to reside, the 'locality' in this instance necessarily assumes a narrower definition than might ordinarily be the case with agricultural dwellings, for instance.

6.7 Given the change to conditions, the Section 106 thereafter was out of step with the Inspector's decision. In July 1994, Leominster District Council resolved to agree to the voluntary revocation of that agreement. This was finally completed in October 2000 by the Jordans.

- 6.8 Having set the historical scene, it is now necessary to consider the attempts to market the property with the tie. The properties have been marketed since March this year, originally at a price of £350K and £250K respectively. In June, the prices were reduced to £315K and £220K. In addition to the information provided by the applicant, the applicant's Estate Agent advises that the open market value of the properties would be £465,000 and £325,000 respectively. A recent valuation by other agents are of a similar opinion.

The County Land Agent has previously commented upon the proposal and clarification sought as to values. It is accepted that the inclusion of the paddock with Ashtree House adds approximately £50K to the value of the house, thus the house value of around £415K, which when taken with normal negotiation following offers, means that the difference between his valuation and the Estate Agents in his own words is 'not that far apart'. Similarly, his valuation of The Conifers at £290K and the agents of £325K is 'not that far apart'.

Additionally, on this occasion the County Land Agent refers to the difficulty of meeting the occupancy condition regardless of the price of the properties.

- 6.9 In an attempt to clarify the restriction, the applicant was advised that 'the locality', which excludes Leominster, based on the Inspector's decision, meant as area which was within approximately 4.7m or 9 minutes driving time. For guidance, this includes Pencombe, Stoke Prior, Bodenham and Hamnish. Racehorse training stables would have the meaning as would be understood by 'the man in the street'.
- 6.10 During the consideration of the original application a number of approaches were made to this office. These have been from people wishing to retire to the area from outside the county, or from people locally who are not employed in racing. More recently an offer of £220K, the full asking price, was made, but withdrawn and reduced to £150K following refusal of the last application. There now are offers on both properties of £150K (£220K) and £250K (£315K). It is believed that Mr C. Price would comply with the condition. There is no evidence to convince officers that any other known interested parties would do so. This includes Mr C. Price's son, a farrier.
- 6.11 Given the comments previously of the County Land Agent, and an offer at the full asking price that the properties have been marketed at a reasonable price. The reduced offer of £150K is considered to be unreasonable, and the offer of £250K also considered to be so much lower than the valuation of £315K as to be unreasonable.
- 6.12 In addition to considering the marketing that has taken place, it is also necessary to consider whether the conditions were appropriately imposed in the first instance and what the change of circumstances are. The original case was made in 1990 that the accommodation was required for employees of the then applicant, working in the racing stables on the opposite side of the road. The 1993 application to remove that condition was an early indication that there was no longer a need. This is further evidenced by the attempt to remove the less stringent condition imposed by the Inspector at the appeal.
- 6.13 Consequently, it is considered that there is no continuing useful purpose to be served by the occupancy Condition and that it is reasonable for the condition to be removed.

RECOMMENDATION

That planning permission be granted. No conditions.

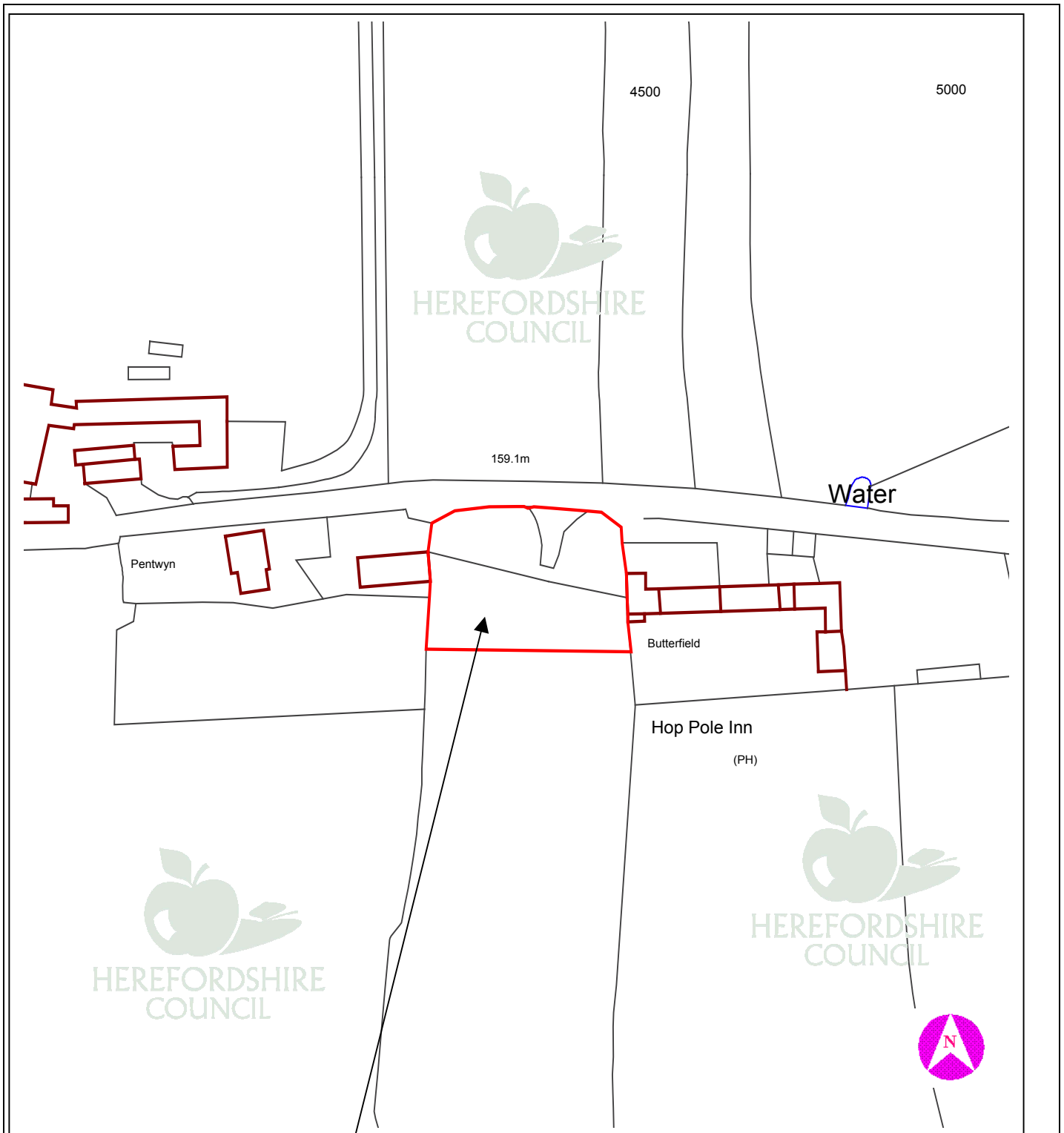
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: DCNC2005/3891/F

SCALE : 1 : 1250

SITE ADDRESS : Land Adjacent to Hope Pole Inn, Risbury, Leominster, Herefordshire, HR6 0NQ

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