

rural location and outside of any settlement boundary, and thus is considered to be located within the open countryside.

4. Policy HG10 of the South Somerset Local Plan adopted March 2015 (LP) pertains to the removal of agricultural and other occupancy conditions. It states that planning permission for the removal of a restricted occupancy condition for an agricultural, forestry or other similar worker on a dwelling will only be given when several criterion are met. This includes evidence that there is no longer a continued need for the property on the holding or for the business, there is no long term need for a dwelling with restricted occupancy to serve local need in the locality and that the property has been marketed locally of an appropriate period (minimum 18 months) at an appropriate price and evidence of marketing is demonstrated.
5. I have been presented with no evidence that this marketing has taken place, and thus the proposal conflicts with policy HG10 of the LP. Removal of this condition would result in an unrestricted dwelling in the countryside. As such, I consider that the condition is both necessary and reasonable.
6. However, a certificate of lawfulness¹ has recently been approved in relation to the appeal site for the occupation of the dwelling without complying with Condition No 2. This follows a continuous breach of the occupancy restrictions by the appellants over a period of at least 10 years. This certificate and the benefits against enforcement action it provides would be transferable to any subsequent occupiers.
7. Consequently, the appeal property could be occupied in breach of this condition by any non-qualifying persons in perpetuity. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. In this instance the presence of the certificate of lawfulness is a material consideration which I give significant weight to.
8. I have carefully considered the contention made by the Council that they would be able to take enforcement action following any break in occupation, or that the occupation of the dwelling by a qualifying person would have the effect of breaking the continuity of the breach. The appellants have indicated that should the appeal site revert back to not having the benefit of the certificate of lawfulness, this would have the effect of significantly reducing the open market value of the property. Any qualifying person would be presented with an immediate impact on capital value. Given the potential risk to both the seller and a qualifying person means, in my view, that such a scenario is unlikely to happen.
9. The Council have drawn my attention to an appeal decision in Mid Devon² in which the inspector dismissed an appeal to remove an agricultural tie condition. In that instance there was a Certificate of lawful use, and whilst the inspector gave this weight, they did not conclude that the material considerations outweighed the harm to the development plan. I have not been presented with the full details of that case, nor the evidence which was in front of the inspector at the time the decision was made. In any event, that appeal site was in a different planning authority with different development plan

¹ LPA reference 19/03214/COL

² APP/Y1138/W/19/3229011