

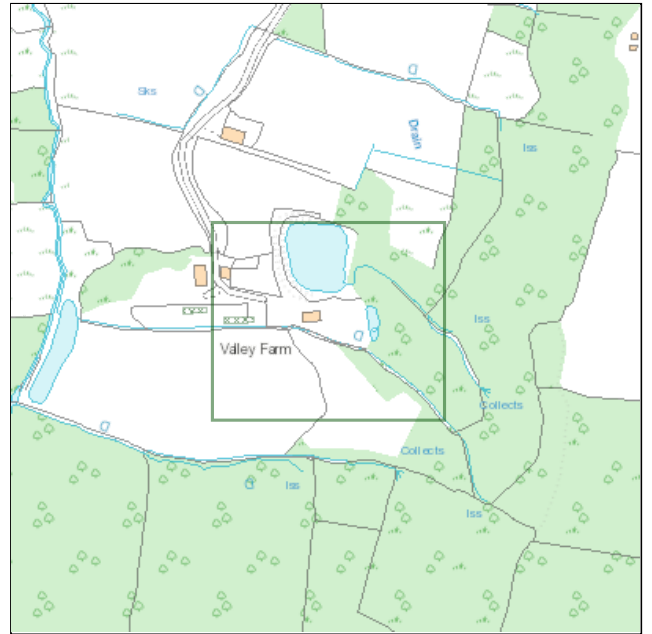
**Ward** Dunkeswell And Otterhead

**Reference** 21/0077/VAR

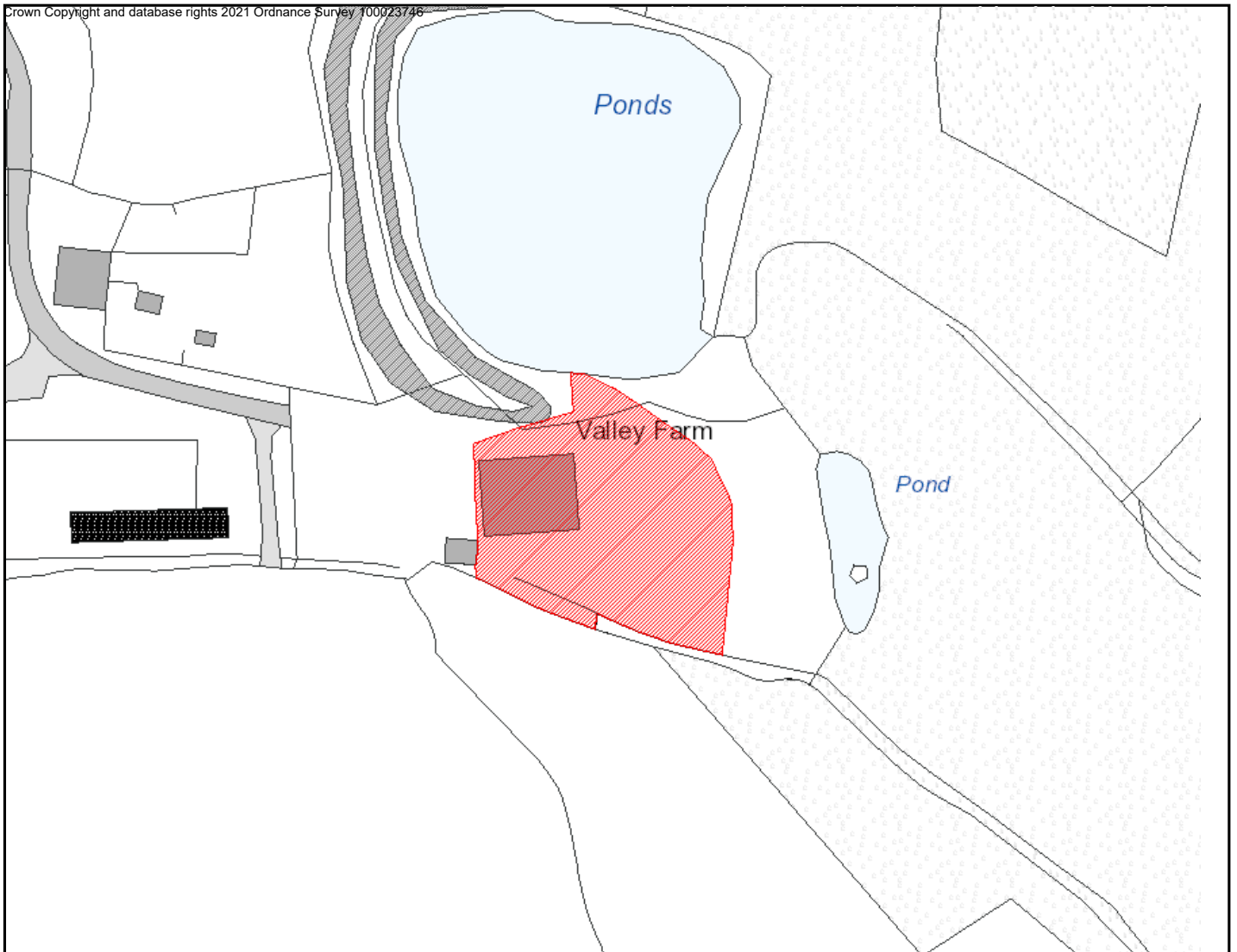
**Applicant** Doug and Sharon Trickett

**Location** Valley Farm Sheldon Honiton EX14 4QX

**Proposal** Removal of condition 2 (agricultural occupancy tie) of planning consent 06/2312/FUL (Agricultural Workers Dwelling)



**RECOMMENDATION: Approval with conditions**



		<b>Committee Date: 14<sup>th</sup> June 2021</b>
<b>Dunkeswell And Otterhead (Sheldon)</b>	<b>21/0077/VAR</b>	<b>Target Date: 09.03.2021</b>
<b>Applicant:</b>	<b>Doug and Sharon Trickett</b>	
<b>Location:</b>	<b>Valley Farm Sheldon</b>	
<b>Proposal:</b>	<b>Removal of condition 2 (agricultural occupancy tie) of planning consent 06/2312/FUL (Agricultural Workers Dwelling)</b>	

**RECOMMENDATION: Approval with conditions**

#### **EXECUTIVE SUMMARY**

**This matter is brought before the Committee in view of a difference of opinion between officers and the commenting ward member.**

**The application seeks the removal of an agricultural occupancy condition (an agricultural tie) attached to planning permission ref. 06/2312/FUL, granted in 2007, relating to the construction of a dwelling at Valley Farm, Sheldon.**

**It follows the recent grant of a certificate of lawfulness (ref. 20/1191/CPE) relating to occupation of the property in breach of the agricultural occupancy restriction for a period in excess of 10 years and is submitted to formally seek its removal from the relevant planning permission in the light of the issuing of the certificate.**

**Whilst it is clear that the dwelling has not been, or intended to be, offered for sale or rent to another rural worker in line with the provisions of Policy H5 of the Local Plan, given that it is now established that it has been occupied in an unrestricted manner for in excess of ten years, and the certificate of lawfulness has been issued to this effect, there is no justification for insisting that the building remained tied to occupation by people in agriculture.**

**It is simply the case that the property can now be lawfully occupied with no restriction. In practical terms therefore, there is no longer any such restriction that is capable of being enforced or used to justify application of the Policy H5 tests for its removal.**

**Moreover, as a result of the grant of the certificate of lawfulness, the unrestricted residential use of Valley Farm in breach of the agricultural occupancy condition is immune from any enforcement action. It is therefore the case that condition 2**

of planning permission 06/2312/FUL is no longer necessary or enforceable as it fails to meet the tests set out under paragraph 55 of the NPPF and the National Planning Practice Guidance.

The removal of the condition is therefore supported and approval is recommended.

## **CONSULTATIONS**

### **Local Consultations**

#### Dunkeswell and Otterhead - Cllr David Key

I object to the application as the development would not have been allowed if not for agricultural worker and also would increase value instead of becoming an affordable dwelling.

### **Technical Consultations**

None.

#### Other Representations

Two 'neutral' representations have been received.

#### Summary of Comments

1. Concerns over the amount of traffic that will be generated to the numerous residences being created at Valley Farm, causing a potential issue for livestock and horses crossing the access track at Shutes South.
2. Valley Farm has access rights for light traffic along the track but it is understood that permission is required from the track owners to increase its use.
3. Removal of the tie will not cause any inconvenience to normal operations or activity at Shutes Farm.

## **PLANNING HISTORY**

<b>Reference</b>	<b>Description</b>	<b>Decision</b>	<b>Date</b>
20/1191/CPE	Use of the property known as Valley Farm as a dwelling without compliance with an agricultural occupancy condition	CPE Approved	05.01.2021
06/2312/FUL	Agricultural workers dwelling	Approval with conditions	08.02.2007

## **POLICIES**

### Adopted East Devon Local Plan 2013-2031 Policies

H4 (Dwellings for Persons Employed in Rural Businesses)

H5 (Occupancy Conditions on Rural Workers Dwellings)

### Government Planning Documents

NPPF (National Planning Policy Framework 2019)

## **Site Location and Description**

Valley Farm is a land holding around 22 acres in area that is located on the eastern slope of a valley to the east of Sheldon within the designated Blackdown Hills Area of Outstanding Natural Beauty.

It lies to the south of Shoots Lane, which connects Sheldon with Dunkeswell to the east, off which it is accessed via a private lane.

Land aside, the complex comprises a relatively modern main two storey four bedroom dwelling - to which this application relates - along with a separate building known as 'The Cottage', a number of outbuildings and a lake.

## **Background**

Planning permission was granted for the construction of the dwelling, in its present form, in 2007 (application 06/2312/FUL refers).

It was granted subject to a condition (no. 2) restricting occupancy to an agricultural worker (i.e. an agricultural tie) which stated as follows:

"The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or forestry, or a widow or widower of such a person, and to any resident dependants.

(Reason - The dwelling is justified only by agricultural need and should remain available for this purpose.)"

However, in January this year a Certificate of Lawfulness (CLEUD) for the use and occupation of the property in breach of the condition was granted (under application ref. 20/1191/CPE).

The CLEUD was granted by the Council on the basis that it was satisfied, on the balance of probability and having regard to the evidence provided, that the use and occupation of the property in breach of the agricultural occupancy condition had been occurring for a period in excess of ten years preceding the date of the application. It was therefore subsequently considered lawful for planning purposes as defined under Section 191 of the Town and Country Planning Act (the Act).

## **Proposed Development**

The current application, submitted under section 73 of the Act, seeks to follow this up by formally seeking the removal of the occupancy condition itself from planning permission 06/2312/FUL.

## **CONSIDERATIONS/ASSESSMENT**

The only issue for consideration is the acceptability of the removal of the condition restricting occupation to somebody in agriculture.

The provisions of Policy H5 (Occupancy Conditions on Rural Workers Dwellings) of the adopted East Devon Local Plan state that proposals to relax occupancy conditions or a planning obligation will only be permitted where it is demonstrable that economic circumstances have changed such that:

1. There is no long term functional need for the dwelling for a rural worker; and;
2. Satisfactory evidence has been provided that the dwelling has been offered for sale or rent with its occupancy restriction at a realistic price for a reasonable period of time, and no interest has been shown in its purchase or rent, unless the property is to be sold/ leased to a Registered Social Landlord.

The nature of the objection to the removal of the occupancy restriction raised by the commenting ward member essentially relates to these provisions.

However, whilst it is clear that the dwelling has not been, or is intended to be, offered for sale or rent to another rural worker, given that it is now established that it has been occupied in an unrestricted manner for a period in excess of ten years, and the certificate of lawfulness has been issued to this effect, there would clearly be no purpose in pursuing any insistence that it be marketed in this manner.

It is simply the case that the property can now be lawfully occupied with no restriction. In practical terms therefore, there is no longer any such restriction that is capable of being enforced or used to justify application of the Policy H5 tests for its removal.

Moreover, as a result of the grant of the Certificate the unrestricted residential use of Valley Farm in breach of the agricultural occupancy condition is immune from any enforcement action. It is therefore the case that condition 2 of planning permission 06/2312/FUL is no longer necessary or enforceable as it fails to meet the tests for conditions set out under paragraph 55 of the NPPF and the National Planning Practice Guidance.

Whilst the comments made by one of the interested third parties are acknowledged, they are not material to consideration of the proposal in this case. The reference made to the numbers of units at the Valley Farm site is assumed to relate to the main dwelling (to which this current application relates) plus the separate property known as 'The Bungalow' referred to above. A certificate of lawfulness (under ref. 20/1192/CPE) has also recently been granted to the applicants for the construction and use of this building as an independent dwelling.

## **RECOMMENDATION**

APPROVE subject to the following condition:

1. The development hereby permitted shall be carried out in accordance with the following plans submitted with the original planning permission ref. 06/2312/FUL:  
Drawing no. 244/01 Rev. A  
Drawing no. 244/02 Rev. A  
Drawing no. 244/03 Rev. A  
Drawing no. 244/04  
Drawing no. 244/05  
(Reason - To define the permission.)

## NOTE FOR APPLICANT

Informative:

In accordance with the aims of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 East Devon District Council works proactively with applicants to resolve all relevant planning concerns; however, in this case the application was deemed acceptable as submitted.

### Plans relating to this application:

Location Plan            12Jan 2021

### List of Background Papers

Application file, consultations and policy documents referred to in the report.