

STEPHEN JUPP

BA(Hons), LLM, MRTPI

CHARTERED TOWN PLANNER

Planning Department
Civic Offices
Havant
Hants
PO9 2AX

Friday, 21 November 2025

Dear Sir/Madam:

**Re: Saltings Cottage, Meadow Farm Nursery, Woodgaston Lane,
Hayling Island, PO11 0RL**

**Application to Discharge Legal Agreement dated 30th January
2003 which Restricts Occupation of Saltings Cottage to Persons
Employed on Meadow Farm Nursery.**

Introduction

This application is submitted under the provisions of section 106 of the Act and is an application to discharge the legal agreement dated 30th January 2003 attached to planning permission 02/56431/003 for outline planning permission of the "3 bedroom agricultural workers dwelling."

There is no prescribed application form for this type of application.

Planning permission 02/56431/003 was an outline permission granted on 1978 for "3 bedroom agricultural workers dwelling."

Condition 4 of this permission states:

"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 Section 336(1) of the Town and Country Planning Act 1990, or in forestry or a dependent of such a person residing with him or her, or a widow or widower of such a person."

In addition to the agricultural occupancy condition on the planning permission the LPA also required at that time a s106 Agreement.

PLANNING APPLICATIONS .

AUTOCAD DRAWINGS.

GENERAL ADVICE.

OBJECTION LETTERS.

APPEALS.

SITE DEVELOPMENT APPRAISALS.

LOCAL PLAN SUBMISSIONS.

EXPERT PLANNING ADVICE.

SPECIALISING IN:

DEVELOPMENT CONTROL,

AGRICULTURE,

ENFORCEMENT AND

NATURE CONSERVATION LAW

PARTNERS:

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Royal Town Planning Institute.**



The section 106 Agreement is dated 30th January 2003 and clause 8 in the Schedule states:

Not at any time to occupy or cause permit or suffer the occupation of the said agricultural dwelling other than by any person or persons (including their immediate dependants) who is/are currently working or currently employed at the adjoining business premises currently known as Meadow Farm Nursery and shown edged with a heavy black line on the plan.

The principles to be applied

Government advice is that s106 deeds should be retained where they continue to serve their initial purpose.

Where the applicant seeks the discharge of a planning obligation, the test under s.106A(6)(b) is whether the obligation “no longer serves a useful purpose”.

In Batchelor Enterprises, Sullivan J held that “useful purpose” in this context meant “useful planning purpose”. In reaching this conclusion, Sullivan J relied in part on (now repealed) policy guidance in para. C6 of DoE Circular 1/97 Planning Obligation, which stated:

“The department considers that the expression ‘no longer serves any useful purpose’ should be understood in land use planning terms. Thus, if an obligation’s only remaining purpose is to meet some non - planning objective it will generally be reasonable to discharge it.”

The current guidance in the current Planning Practice Guidance [NPPG] states at 23b-009 refers to s106A and in this regard s106A(6)(b) states that where in LPA determines that an obligation no longer serves a useful purpose, that it shall be discharged.

The Facts of this Case

A Certificate of Lawfulness for non-compliance with the agricultural occupancy condition [4] of planning permission 02/56431/003 was issued by the Council on 26 October 2023 under application APP/23/00532 [copy attached at Appendix 1], with the officer delegated report concluding on this matter:

It is considered that, on the balance of probability, there is sufficient evidence to prove that Saltings Cottage, Woodgaston Lane, Hayling Island, outlined in red on the 1:1250 Location Plan and 1:500 block plan has been continuously occupied by persons unrelated to agriculture in breach of condition 4 of 02/56431/003 for 10 years since 23 June 2013. In the absence of any evidence to the contrary it is considered the Lawful Development Certificate can be issued.

Moreover, the Officer Delegated Report [copy attached at Appendix 2] then continued:

It must also be noted that in light of this recommendation, the Section 106 Agreement on the site will no longer be relevant and an application to discharge the 106 Planning Obligation should be made.

This application is made as a direct response to that final conclusion of the case officer.

Conclusions.

Best practice on the use of S106 agreements has changed over time and particularly since the s106 agreement was made. In the past national planning policy and guidance made provision for tying agricultural dwellings to farms. However, current best practice seeks to control the occupancy and use of farm dwellings by means of a planning condition as part of a planning consent and not by the use of separate S106 agreements. Strict legal tests also limit the use of S106 agreements only to cases where it can be demonstrated that they are necessary to make development acceptable in planning terms; are directly related to the development; and are fairly and reasonably related in scale and kind to the development. National policy is also clear that S106 agreements should not be used where a planning condition can be used to do the same job.

In recent years the issue of the restricted occupancy of agricultural dwellings has been considered by Planning Inspectors in a number of appeal cases. In these cases, the Inspectors have consistently concluded that s106 agreements are not necessary and that the imposition of a planning condition is sufficient.

This follows on from a change in Government advice with the now outdated PPG7 advice on s106 agreements not being carried over into the PPS7 and with the PPS7 now being cancelled and there being no such advice within either the Framework or National Planning Policy Guidance.

Moreover, s106 agreements now have to meet the tests in the Community Infrastructure Levy Regulations 2010.

Accordingly, most LPAs have amended their local plans to reflect national planning policy and no longer require obligations in respect of agricultural dwellings.

Moreover, it is clear that the agricultural occupancy planning condition on his property has been breached for more than ten years such that the Council has recently granted a Certificate of Lawfulness for non-compliance with that condition such that the dwelling can continued to occupied by persons not employed at Meadow Farm Nursery, a business which closed during Covid19 and has no ceased to trade.

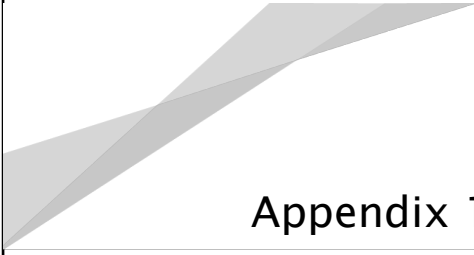
In my professional judgement the facts of this case demonstrate that the s106 deed no longer serves a useful planning purpose in that there is no longer any sound planning reasons to require the occupiers of the dwelling to be employed or last employed in either agriculture or forestry, in the light of the lawful certificate that recently has been issued by the Council.

Thus, the criteria within s106A(6)(b) is satisfied – the obligation no longer serves a useful [planning] purpose. It should therefore be discharged.

Yours sincerely,



STEPHEN JUPP
BA(Hons), LL.M., MRTPI
Chartered Town Planner



Appendix 1

Certificate of lawfulness for
non-compliance with
agricultural occupancy
condition

Mr Jupp
Stephen Jupp MRTPI
PO Box 839
Chichester
PO19 9XQ

For: Mr & Mrs Newell

Ref No.: APP/23/00532

**Town and Country Planning Act 1990: Section 191 and 192 (as amended by
Section 10 of the Planning and Compensation Act 1991)
Town and Country Planning (Development Management Procedure) (England) Order
2015
Article 39
CERTIFICATE OF LAWFUL USE OR DEVELOPMENT**

Havant Borough Council, as Local Planning Authority, certifies that on 23 June 2023 the development described in the First Schedule to this certificate in respect of land described in the Second Schedule and edged in red on the submitted Location Plan is lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended):

Planning Services

26 October 2023

FIRST SCHEDULE:

This certificate relates to the following development:

Certificate of lawfulness/Continuous occupation of dwelling by persons not employed in agriculture. as described in the written particulars, plans and other documents submitted with your application received on 23 June 2023.

SECOND SCHEDULE:

This certificate relates to land at Saltings Cottage and, Meadow Farm Nursery, Woodgaston Lane, Hayling Island as shown edged red on the submitted Location Plan received 23 June 2023.

OTHER IMPORTANT INFORMATION:

- (1) This Certificate is issued solely for the purpose of Sections 192 of the Town and Country Planning Act 1990 (as amended). It does not relate to any other application that may be required under any other part of the Town and Country Planning Act, the Building Regulations or under any other Act, Regulation, Byelaw or Order where the Council's approval may be needed. For further guidance as to the need for consent under the

Our Ref: APP/23/00532

- (2) It certifies that the development specified in the First Schedule taking place on land described in the Second Schedule would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) on the specified date and thus would not have been liable to enforcement action under part 7 of the 1990 Act on that date.
- (3) The certificate only applies to the extent of the development specified in the First Schedule taking place on land described in the Second Schedule and identified on the attached plan. Any development which is materially different from that described or which relates to other land may render the owner/occupier liable to enforcement action under section 172 of the 1990 Act.
- (4) The effect of the certificate is also qualified by the provision in section 192(4) of the 1990 Act (as amended), which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matter relevant to determining such lawfulness.
- (5) Your attention is drawn to the attached information regarding your right to appeal to the Department for Transport Local Government and the Regions, if you are aggrieved by the Council's decision.

Alex Robinson

Alex Robinson
Executive Head of Place

26 October 2023

APPENDIX 2

OFFICER DELEGATED
REPORT

Site Address: Saltings Cottage and, Meadow Farm Nursery, Woodgaston Lane, Hayling Island

Proposal: Certificate of lawfulness/Continuous occupation of dwelling by persons not employed in agriculture.

Application Type: Certificate of Lawfulness

Application No: APP/23/00532 Expiry Date: 18/08/2023

Applicant: Mr & Mrs Newell

Agent: Mr Jupp Case Officer: Tina Pickup

 Stephen Jupp MRTPI

Ward: Hayling East

Recommendation: **GRANT A CERTIFICATE OF LAWFUL USE**

1 Site Description

- 1.1 The red lined application site relates to a chalet bungalow located in the south east corner of the wider blue lined Meadow Farm Nursery site, located on the eastern side of Woodgaston Lane. The nursery site extends to some 2.25 acres and until Covid was used for the growing of plants with sales to the public. As a horticultural business the use comprised an agricultural use.
- 1.2 The dwelling the subject of this application was granted outline planning permission on 3rd February 2003 under reference 02/56431/003 and condition 4 restricted it to an agriculture workers dwelling:
- 4** *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 Section 336(1) of the Town and Country Planning Act 1990, or in forestry or a dependant of such a person residing with him or her, or a widow or widower of such a person.*
- Reason:** *The site is in an area where new dwellings are not normally permitted except where there is an overriding need in the interests of agriculture or forestry.*
- 1.3 There was also a Section 106 Agreement dated 30th January 2003 which further restricted the occupation:
- Not at any time to occupy or cause permit or suffer the occupation of the said agricultural dwelling other than by any person or persons (including their immediate dependants) who is/are currently working or currently employed at the adjoining business premises currently known as Meadow Farm Nursery and shown edged with a heavy black line on the plan.*
- 1.4 A Certificate of Lawfulness was also granted for the use of a different building within the site, to the north of the agricultural tied dwelling, as a single residential dwelling in April 2018 (see APP/17/01315). Additionally permission has been granted for land in the south-western corner of the site to be used as a scaffold yard by Mr P Newell whilst he lives at the nursery site (under APP/18/01263). The scaffold yard was then proposed to be relocated under APP/19/00785, and although permission was granted, this does not appear to have been implemented.

- 1.5 However the horticultural use of the site ceased when Meadow Farm Nursery closed in March 2020 due to lockdown. The young plants ready for sale when lockdown started were sold off via a new online company Meadow Farm Plants Direct but this firm itself only ran for 14 months. The site currently appears vacant and un-used.
- 1.6 The site lies outside of the defined built up area and therefore within the non-urban area of Hayling Island where more restrictive rural policies apply in terms of housing. There are some protected trees on the sites boundaries, and the fields immediately to the east are designated 'secondary support' areas and 'low use' land for the Solent Waders and Brent Goose Strategy.

2 Planning History

02/56431/003 - Outline Application for 3 bedroom agricultural workers dwelling (resubmission)., S106,03/02/2003
02/56431/002 - Outline application for 3 bedroom 'Agricultural' workers dwelling. Refused 9 July 2002., REF,09/07/2002
99/56431/001 - Erection of 1no. Polytunnel, PERM,07/04/2000
95/56431/000 - Erection of 1 polytunnel., PERM,09/08/1995
03/56431/004 - Reserved Matters application for three bedroomed agricultural workers dwelling., PERM,25/09/2003
APP/17/01315 - Application for certificate of lawful existing use relating to use of building as a single dwellinghouse, PERM,05/04/2018
APP/19/00320 - Raise ridge height of roof to incorporate living accommodation at first floor level to include 3No. dormers., PERM,22/05/2019
APP/23/00324 - Prior Approval for Change of use from agricultural building to 1No. dwellinghouse., PAY,20/06/2023

3 Proposal

- 3.1 Certificate of lawfulness/Continuous occupation of dwelling by persons not employed in agriculture.
- 3.2 This application is made under Section 191 (1) (c) of the Town and Country Planning Act 1990 seeking a Certificate of Lawfulness for failure to comply with a condition, and seeks to demonstrate that, on the balance of probabilities, the non-compliance with condition 4 of 02/56431/003 has occurred continuously for 10 years preceding the submission of this application. This application was made on 23 June 2023 and therefore the breach has to have been continuous since 23 June 2013.

4 Policy Considerations

Not relevant to the determination of applications made under Section 191 of the Town and Country Planning Act 1990

Listed Building Grade: Not applicable.
Conservation Area: Not applicable.

5 Legislation

Relevant legislation and guidance:
Town and Country Planning Act 1990
Planning Practice Guidance, Lawful development certificates, 2014

6 **Statutory and Non Statutory Consultations**

None - not relevant to the determination of applications made under Section 191 of the Town and Country Planning Act 1990

7 **Community Involvement**

Neighbour notification was carried out in this case, however, it is noted that this goes beyond the requirements for publicity associated with an application under Section 191:

Number of neighbour notification letters sent: 0

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 1

Comment	Officer Comment
There is a permissive riding track, omitted in all planning applications submitted to date, that runs right along the boundary between Saltings Cottage and the fields that run behind it. They have been in constant use by myself for over 20 years and at no time have I ever seen anyone other than the Newells in Saltings Cottage or another person in "The Barn".	According to Councils GIS layers there is no formal footpath or right of way adjacent the site
This planning issue was brought to your attention in 2018 by another resident in Woodgaston Lane, at the time the Newells declared they had been living in the converted shed for 4 years and you chose to ignore it.	Observation noted - but see Statutory Declarations below
One would have to ask the question as to why was this not looked at in 2018?	Noted - and regrettable that breach was not investigated by Enforcement Team in 2018

8 **Legal considerations**

The application is made under Section 191 of the Town & Country Planning Act 1990 as amended and relates to the lawfulness of a continuous breach of an agricultural occupancy condition. The planning merits of the use, and policies, are not relevant to the determination of this application.

If the application is granted, planning conditions cannot be imposed. However, in accordance with the advice in the Government's Planning Practice Guidance (PPG), the certificate should be precise and unambiguous.

The PPG advises that the applicant is responsible for providing sufficient information to support an application and the relevant test for determining applications is on the balance of probability. The PPG states:

In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

The planning application form indicates that the grounds for making this application are that the use or activity in breach of condition began more than 10 years before the date of this application. It is stated on the planning application form that condition has been continuously breached since 30-04-2013.

The evidence submitted in support of the Certificate is as follows:

Evidence and documents submitted:

- Drawing 1- 1:2500 Site Location Plan
- Drawing 2 - 1:500 Block Plan
- Covering Letter by Stephen Jupp dated 23 June 2023
- Statutory Declaration #1 - Georgina Newell dated 22 June 2023 with exhibits "GN1 - GN6" - lived at Saltings Cottage from 05/04/05 until 01/05/13 when was employed part time in agriculture on the site; established own bookkeeping business on 01/05/2018 from which point no longer employed in agriculture; moved back into Saltings Cottage on 01/05/18 with husband who has never been employed in agriculture.
- Statutory Declaration #2 - Emma Louise Miller dated 21 June 2018 - lived at Saltings Cottage between 30/4/13 and 25/3/15 and not employed in agriculture (project manager for large company)
- Statutory Declaration #3 - Helen Elizabeth Wherrett dated 20 June 2023 - lived at Saltings Cottage between 01/01/14 and 01/08/17 and again from 01/01/18 to 16/10/20 and not employed in agriculture (export manager for large company) with copies of lodger agreements
- Statutory Declaration #4 - Tina Coppen dated 4th July 2018 2 - lived at Saltings Cottage between 25/05/16 and 25/02/18 and not employed in agriculture (apprenticeship coach for retail company)

and during the course of determining this application an additional document submitted:

- Statutory Declaration - Georgina Newell dated 31 August 2023 with further information about her business and employment

Council's own Evidence:

The Council has some information and evidence about the site:

Subject to GDPR legislation, it has been established with the Election Team and Council Tax Team that the property has had people registered to vote and Council Tax has been paid continuously for the last 10 years, with no gaps in the timeline.

When APP/17/01315 was determined (another CLU for use of a different building on the site as a dwelling), another Statutory Declaration was submitted at the time by Georgina Newell stating that she lived in this other building on site from 1st May 2013. The dates provided in that 2017 application concur with the dates provided in this current application.

Assessment of the Evidence

The application was made on 23 June 2023 and therefore it needs to be proved that the dwelling has been continuously occupied by someone not solely or mainly or last employed in agriculture, nor a dependent or widow or widower of such a person since 23 June 2013. For this purpose "agriculture" is as the defined by Section 336(1) of the Town and Country Planning Act 1990:

"agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly.

The covering letter indicates that Georgina Newell lived in Saltings Cottage from when it was first built in 2005, with her first husband. He left in 2009 and so for company and extra income Georgina started to rent out rooms as a house share from April 2011. At this stage Georgina was employed at Meadow Farm Nursery on a part time basis and hence complied with condition 4 and the S106 agreement. She lived in Saltings Cottage until 1st May 2013 when she moved into the other dwelling created on the site (see APP/17/01315).

There has been a succession of lodgers renting rooms within the dwelling and the statutory declarations submitted provide a timeline with Emma Miller (now Martin) living there from before the critical date in June 2013, overlapped by Helen Wherrett, who overlapped with Tina Coppen, and then Helen Wherrett returned, again overlapping with Tina Coppen, such that, according to the statutory declarations, there were continuous lodgers sharing the house from April 2013 until 16 October 2020. Georgina and her second husband Mr Newell, together with their son, moved back into Saltings Cottage on 1st May 2018 and remain there to the present day.

The statutory declarations confirm that none of the lodgers were ever employed in agriculture. So it is clear that the breach in occupancy commenced when Georgina (as the person who did work in agriculture) moved out of Saltings Cottage on 1st May 2013, leaving lodgers unrelated to agriculture in Saltings Cottage.

Georgina and Philip Newell moved back into Saltings Cottage on 1st May 2018. But by this time Georgina was no longer employed in agriculture - her first statutory declaration states that her last day of being employed and on the payroll of Meadow Farm Nursery was 30th April 2018. She has since provided a second statutory declaration which explains better her subsequent employment - she set up her own payroll management and account management business as a sole trader on 1st May 2018 (evidence of this has been provided), and whilst she still did the books for Meadow Farm Nursery, she had other clients such that she only spent about 15% of her time on Meadow Farm Nursery work.

The definition of agriculture is key to this determination of this application and it is noted that to be engaged in agriculture work then the persons activity should be directly related to *horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock.....the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land*. However Georgina was providing a bookkeeping service to Meadow Farm Nursery which, rather than being agricultural work, is a service for the agricultural industry. As a background service rather than being directly involved in the growing and caring of the plants at the nursery, then her employment cannot be considered to constitute agriculture.

Phillip Newell, who has also lived in Saltings Cottage since 1st May 2018, has worked as a scaffolder from November 2012 until August 2021 and then in haulage services until now. Therefore he has not been employed in agriculture whilst living at Saltings Cottage.

Therefore it is considered that the breach in occupancy of condition 4 of 02/56431/003 has occurred continuously since 1st May 2013 when Georgina moved out, and lodgers not employed in agriculture then occupied Saltings Cottage, and by the time Georgina moved back in she was no longer employed in agriculture; and her husband has never been employed in agriculture. Therefore, without any evidence to the contrary, on the balance of probability, no-one solely or mainly or last employed in the locality in agriculture as defined under Section 336(1) has occupied the property for 10 years and the Lawful Development Certificate can be issued.

The Council's Solicitor agrees with this conclusion.

9 Conclusion

It is considered that, on the balance of probability, there is sufficient evidence to prove that Saltings Cottage, Woodgaston Lane, Hayling Island, outlined in red on the 1:1250 Location Plan and 1:500 block plan has been continuously occupied by persons unrelated to agriculture in breach of condition 4 of 02/56431/003 for 10 years since 23 June 2013. In the absence of any evidence to the contrary it considered the Lawful Development Certificate can be issued.

It must also be noted that in light of this recommendation, the Section 106 Agreement on the site will no longer be relevant and an application to discharge the 106 Planning Obligation should be made.

9 RECOMMENDATION:

That the Head of Place be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/23/00532 :

Havant Borough Council, as Local Planning Authority, certifies that on 23 June 2023 the development described in the First Schedule to this certificate in respect of land described in the Second Schedule and edged in red on the submitted Location Plan is lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended):

FIRST SCHEDULE:

This certificate relates to the following development:

Certificate of lawfulness/Continuous occupation of dwelling by persons not employed in agriculture. as described in the written particulars, plans and other documents submitted with your application received on 23 June 2023.

SECOND SCHEDULE:

This certificate relates to land at Saltings Cottage and, Meadow Farm Nursery, Woodgaston Lane, Hayling Island as shown edged red on the submitted Location Plan received 23 June 2023.

OTHER IMPORTANT INFORMATION:

- (1) This Certificate is issued solely for the purpose of Sections 192 of the Town and Country Planning Act 1990 (as amended). It does not relate to any other application that may be required under any other part of the Town and Country Planning Act, the Building Regulations or under any other Act, Regulation, Byelaw or Order where the Council's approval may be needed. For further guidance as to the need for consent under the Building Regulations please phone 023 9244 6571.
- (2) It certifies that the development specified in the First Schedule taking place on land described in the Second Schedule would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) on the specified date and thus would not have been liable to enforcement action under part 7 of the 1990 Act on that date.
- (3) The certificate only applies to the extent of the development specified in the First Schedule taking place on land described in the Second Schedule and identified on the attached plan. Any development which is materially different from that described or which relates to other land may render the owner/occupier liable to enforcement action under section 172 of the 1990 Act.
- (4) The effect of the certificate is also qualified by the provision in section 192(4) of the 1990 Act (as amended), which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matter relevant to determining such lawfulness.
- (5) Your attention is drawn to the attached information regarding your right to appeal to the Department for Transport Local Government and the Regions, if you are aggrieved by the Council's decision.