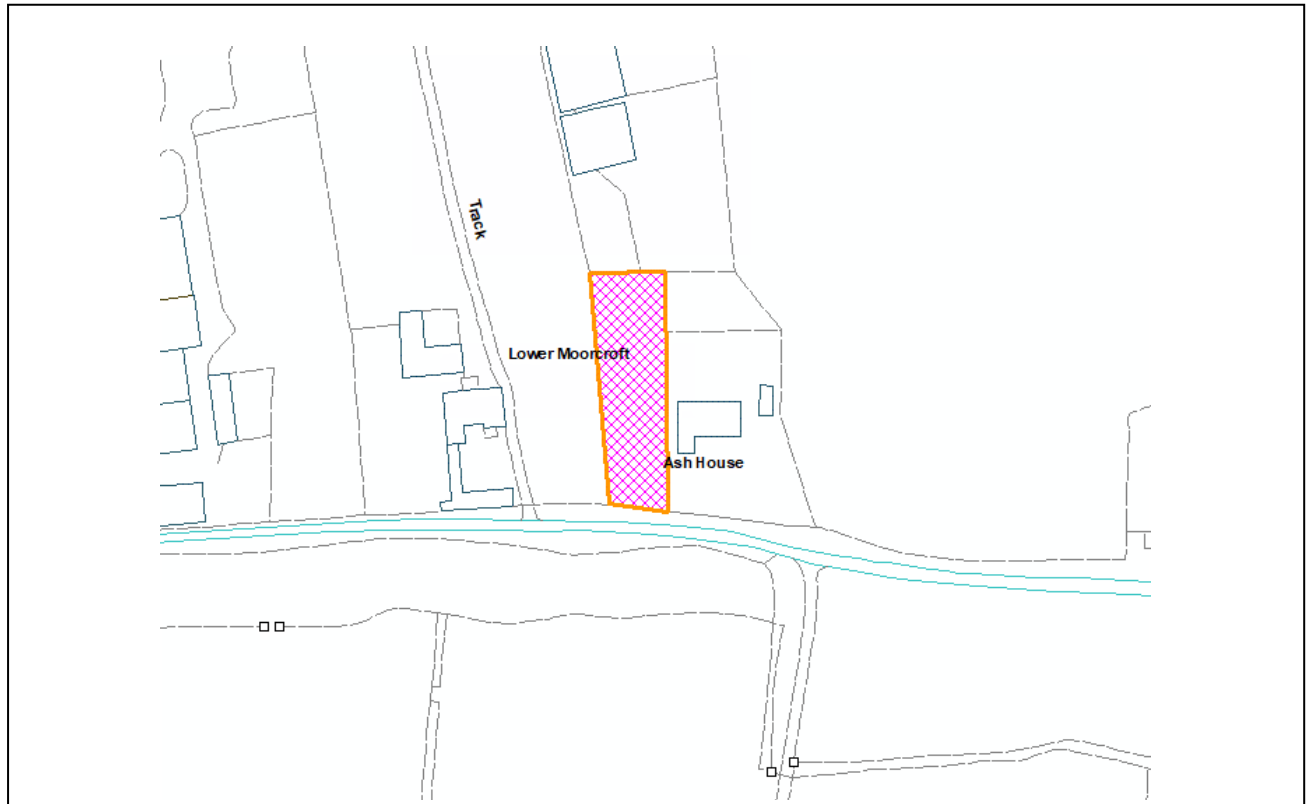


## Planning Committee

<b>Date</b>	17 January 2022
<b>Case Officer</b>	Chloe Buckingham
<b>Application No.</b>	22/01011/FUL
<b>Site Location</b>	Ashstump House, Calcotts Green, Minsterworth,
<b>Proposal</b>	Removal of agricultural occupancy condition h) of application reference TG4488/C.
<b>Ward</b>	Highnam With Haw Bridge
<b>Parish</b>	Minsterworth
<b>Appendices</b>	Existing Elevations and Floor Plans Existing Block Plan and Elevations Site Location Plan Site Plan
<b>Reason for Referral to Committee</b>	Councillor McLain has requested that the application be presented to Planning Committee.
<b>Recommendation</b>	Refuse

### Site Location



## 1. The Proposal

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Full application details are available to view online at:

<http://publicaccess.tewkesbury.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=REUMEGQDKXJ00>

### 1.1 Removal of agricultural occupancy condition h) of application reference TG4488/C:

“Condition (h) – 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 by Section 290 of the Town and Country Planning Act 1971, 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 not in an area intended for general development. Permission is granted to the present proposal solely because the dwelling is required to house a person or persons employed or last employed in agriculture or forestry.”

## 2. Site Description

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- 2.1 Ashstump House is a two-storey detached dwelling, situated approx. 100m to the west of the defined settlement boundary of Minsterworth which is considered to be a ‘service village’ in the hierarchy of settlements defined in the Tewkesbury Borough Local Plan (2011-2031). Although Church Lane is within Flood Zone 3, the property itself is within Flood Zone 1 (lowest risk) as shown on the Environment Agency’s most up-to-date Flood Maps. Ashstump House has an agricultural tie to Elms Farm which is located approx. 120m to the west of Ashstump House and is an agricultural holding of 85 acres. The farm used to be a dairy farm, but this ceased in 2007 and the farm is now used to grow winter cereals alongside forage crops. A small cattle “Bed and Breakfast” also operates from the site, as well as 6 suckler cattle which are reared for beef. A small flock of sheep also graze the land. The land ownership also includes a small paddock to the north of the residential curtilage.

## 3. Relevant Planning History

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Application Number	Proposal	Decision	Decision Date
TG4488/C	Outline Application for the erection of an agricultural workers’ dwelling. Alterations to existing vehicular and pedestrian access	PERMIT	Permitted 16th May 1988
88G/4488/01/03	Reserved Matters for the Erection of an agricultural workers dwelling with integral garage. Alteration to access.	PERMIT	16th January 1989

## 4. Consultation Responses

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Full copies of all the consultation responses are available online at

<https://publicaccess.tewkesbury.gov.uk/online-applications/>.

- 4.1 **Minsterworth Parish Council:** No objection.

## **5. Third Party Comments/Observations**

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Full copies of all the representation responses are available online at <https://publicaccess.tewkesbury.gov.uk/online-applications/>.

- 5.1 The application has been publicised through the posting of a site notice for a period of 21 days.
- 5.2 Third Party Comments: 4 support comments received. The main points are:
- Three letters received declaring no interest in purchasing or renting the dwelling.
  - The agricultural tie is no longer required.
  - In light of the developments locally it makes sense for it to be available on the open market as much needed housing.

## **6. Relevant Planning Policies and Considerations**

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### **6.1 Statutory Duty**

Planning law requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise

The following planning guidance and policies are relevant to the consideration of this application:

### **6.2 National guidance**

National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG).

### **6.3 Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) – Adopted 11 December 2017**

SP2 (Distribution of New Development)  
SD10 (Residential Development)  
SD11 (Housing mix and Standards)  
SD14 (Health and Environmental Quality)  
INF1 (Transport Network)

### **6.4 Tewkesbury Borough Local Plan to 2011-2031 (TBLP) – Adopted 8 June 2022**

RES3 New Housing Outside Settlement Boundaries  
RES4 New housing at other rural settlements  
AGR4 Removal of occupancy conditions

## **7. Policy Context**

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- 7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the Development Plan unless material considerations indicate otherwise. Section 70 (2) of the Town and Country Planning Act 1990 provides that the Local Planning Authority shall have regard to the provisions of the Development Plan, so far as material to the application, and to any other material considerations.
- 7.2 The Development Plan currently comprises the Joint Core Strategy (JCS) (2017), saved policies of the Tewkesbury Borough Local Plan to 2011-2031 (June 2022) (TBLP), and a number of 'made' Neighbourhood Development Plans.

- 7.3** The relevant policies are set out in the appropriate sections of this report.
- 7.4** Other material policy considerations include national planning guidance contained within the National Planning Policy Framework 2021 and its associated Planning Practice Guidance (PPG), the National Design Guide (NDG) and National Model Design Code.

## **8. Evaluation**

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### Principle of development

- 8.1** The original reason for attaching the agricultural tie to the dwelling was because the site was not in an area intended for general development and permission was granted solely because the dwelling was required to house a person or persons employed or last employed in agriculture or forestry. This is consistent with the more recently published NPPF which advises that isolated homes in the countryside should be avoided unless there are special circumstances, such as for an agricultural worker.
- 8.2** Policy SP2 of the JCS sets out the strategy for the distribution of new development across the JCS area, and JCS Policy SD10 ('Residential Development') specifies that, within the JCS area, new housing will be planned in order to deliver the scale and distribution of housing development set out in Policies SP1 and SP2. It sets out that housing development will be permitted at sites allocated for housing through the development plan, including Strategic Allocations and allocations in district and neighbourhood plans. Policy SA1 of the JCS formally designates seven Strategic Allocations on the edges of existing urban areas and focuses on the need to deliver comprehensive development in each of these areas. The application site is not located within any of these Strategic Allocations.
- 8.3** JCS Policy SD10 specifies that, on sites that are not allocated, housing development and conversions to dwellings will be permitted on previously developed land in the existing built-up areas of Gloucester City, the Principal Urban Area of Cheltenham and Tewkesbury town, rural service centres and service villages except where otherwise restricted by policies within district plans. And is outside any defined residential boundary. Outside these areas there is generally insufficient facilities to support development and are not considered suitable locations for residential development.
- 8.4** The site is located approximately 100m to the west of the defined settlement boundary of Minsterworth which is a 'service village' in the hierarchy of settlements defined in the Tewkesbury Borough Local Plan (2011-2031).
- 8.5** The application site is not allocated in the plan and lies outside of the built-up area of the nearest town or village. Criteria 4(ii) of JCS Policy SD10 sets out that housing development on other sites (those not allocated within the plan or comprising previously developed land) will be permitted where 'It is infilling within the existing built-up areas' of, (and amongst other areas), Tewkesbury Borough's villages (except where otherwise restricted by policies within district plans). The supporting commentary states that 'For the purposes of this policy (4 ii), infill development means the development of an under-developed plot well related to existing built development.'

**8.6** Policy RES3 of the Tewkesbury Borough Local Plan (TBLP) sets out criteria for new housing outside of settlement boundaries and supports dwellings essential for rural workers to live permanently at or near their place of work in the countryside, subject to Policy AGR3. However, Policy AGR4 of the TBLP states that the removal of occupancy conditions on rural workers dwellings will only be permitted where:

1. The occupational dwelling no longer serves a need in connection with the agricultural holding, forestry or rural enterprise site to which it relates and there is no agricultural, forestry or essential rural business need elsewhere that it could reasonably serve, nor is it likely that any such needs will arise in the foreseeable future.

2. Satisfactory evidence has been provided that the dwelling has been marketed for sale or rent with its occupancy restriction, at a realistic price for a reasonable period of time (for at least 18 months or an appropriate period as agreed with the Local Planning Authority), and no interest has been shown in its purchase or rent.

**8.7** Policy AGR4 of the local plan considers that marketing of the property to be around 30% below the open market value for a period of at least 18 months and targeted towards the occupation sector and likely client group.

**8.8** In addition, it is also considered to be a good approach to market the property for rent to cover all possibilities, as recommended by the RICS agricultural occupancy condition guidance notes.

#### Marketing

**8.9** Whilst the Council has received three support letters from local farmers stating that they have no interest in purchasing or renting the property, there is no evidence that the applicant has marketed the dwelling at 30% below market value. The applicant has stated that Ashstump House has 4 bedrooms and has been recently valued at £500,000 (market value) or £350,000 (30% reduction with agricultural tie), and this valuation is considered to be accurate. The applicant has stated that the dwelling is currently being marketed by Thomas & Thomas for sale for £400k, which is only a 20% reduction, and as such, the 30% reduction has not been applied properly (the property should be marketed for £350k rather than £400k), and that it has been on the market for a couple of months so far, which is less than the 18 months necessary. The applicant has stated that it has been advertised in the usual ways online (website, Zoopla etc) and there is a sign at the property. However, there is no mention of any direct, targeted marketing through specific farming channels, such as in national farming publications. There is also no evidence has been provided to suggest that the property has been marketed in accordance with the RICS agricultural occupancy condition guidance notes.

**8.10** A Statutory Declaration has been submitted alongside this application by the applicant which confirms the timeline and points made above in relation to the history of the site and both also confirms that Elms Farm does not have any requirement for a secondary agricultural worker's dwelling and that this has been the case since 2012. Whilst the applicant has stated that the Statutory Declaration confirms, 'that in the period since 2012 when I ceased to work at Elms Farm, I have been in touch with several farms in the locality of Minsterworth, including Marwents Farm, Bennetts Farm Ltd and Purlieu House to mention that Ashstump House would be available for their agricultural workers should it be required. However, there has never been any interest.' However, this is not considered to be satisfactory to show that the property has been marketed for 18 months nor in the

appropriate manner prior to the submission of this application.

- 8.11** On the basis of the above it is considered that the applicant has not provided evidence of sufficient marketing as required by Policy AGR4.

Existing and foreseeable need

- 8.12** The farm holding consists of 85 acres and includes a small paddock to the north of the residential curtilage.
- 8.13** The farm used to be a dairy farm, but this ceased in 2007 and the farm is now used to grow winter cereals alongside forage crops. A small 'cattle' bed and breakfast also operates from the site, meaning they rear young cattle for a nearby farmer and receive an income per head for doing so from the farmer. The young cows arrive anywhere between 6 weeks and several months old and are kept at Elms Farm for circa 8 months until they are ready to either enter a beef finishing system or be entered into a dairy herd. Alongside this, there is a small number of suckler cattle (6 at present) and their progeny which are reared for beef. The farm, which was historically laid to grass and maize, now grows winter cereals alongside the forage crops, and these are harvested for animal feed and straw for bedding. A small flock of sheep also graze the land.
- 8.14** An Agricultural Appraisal prepared by the Farm Consultancy Group has been submitted and highlights that the existing agricultural use of Elms Farm only requires one agricultural worker, being the applicant who lives on site in the main farmhouse. The appraisal states that Elms Farm is no longer suitable for any intensive farming uses and would not meet modern standards as a commercial dairy operation. The appraisal and applicant explain that the costs associated with the necessary improvements to meet modern standards would not be viable and that the farm itself is not large enough. The appraisal has gone on to explain that as a result of the limited intensity of the agricultural use following the cessation of the commercial dairy in 2007, the activities only need to be undertaken by the applicant himself, who lives on site and there is now no requirement for the additional dwelling.
- 8.15** However, as set out in the Reasoned Justification for Policy AGR4, agricultural workers' dwellings do not necessarily need to be sited in the holding at which the agricultural worker works. Whether the need remains for a dwelling for a compliant agricultural or forestry worker located further afield needs to be considered.
- 8.16** In addition, it is indicated in the planning statement that the agricultural unit based on its size would no longer be viable for the purposes of supporting a profitable farm business in this location. However, whilst the site may not be viable as a commercial dairy farm, other types of farming have not been explored.
- 8.17** The applicant has explained that an application has recently been submitted on Elms Farm (App Ref – 22/01104/FUL) for a residential development of 40 dwellings. The applicant has explained that this application would effectively cease the agricultural operation on the site and is also supported by detail which outlines that the agricultural use of the site is unviable. It is noted that this current application is located within the settlement boundary for Minsterworth, but the application has not yet been determined and it cannot be assumed that planning permission would be forthcoming.

- 8.18** It is notable that a potential agricultural worker could also own/rent land located elsewhere away from the site. There is no mention of any direct marketing through specific farming channels, such as in national farming publications, which would attract agricultural workers from further afield.

#### Affordability for agricultural workers

- 8.19** The applicant has stated that Ashstump House has 4 bedrooms and has been recently valued at £500,000 (market value) or £350,000 (30% reduction with agricultural tie). The rent for a property of this size would likely be in the region of £2,000 - £2,500 p/m. These figures are considered accurate. The applicant has also stated that the average salary for agricultural workers is £23,252.21 and forestry workers is £26,138.60 (Source - <https://www.checkasalary.co.uk>), and as such the property value would be far in excess of what would be affordable for an agricultural or forestry worker. The monthly mortgage or rent would be equivalent to 100% salary or more. These figures are considered accurate.
- 8.20** The applicant has stated that a search on Zoopla (dated 2nd September 2022) shows that there are currently 330 properties within 5 miles of Minsterworth priced below £350,000 (41no. 1 beds / 115no. 2 beds / 144no. 3 beds / 30no. 4+ beds). The Council has also undertaken a search of Zoopla on 25<sup>th</sup> November 2022 and has found a total of 442 properties at or below £350,000 with a similar split over 1-bed, 2-bed, 3-bed and 4-bed properties. It is therefore a fact that there are a significant number of more affordable market properties in the near locality that could be occupied by agricultural workers.
- 8.21** It is further agreed that Minsterworth has been expanded greatly since the start of the plan period (2011) and many new dwellings have not yet been constructed.
- 8.22** It is agreed that there could be more affordable properties in the locality. However, as insufficient marketing evidence has been provided because the 30% reduction has not been applied properly (the property has been marketed with a 20% reduction rather than the necessary 30% reduction), the property has been on the market for only two months, and there has been no exploration of the interest of the site for agricultural workers further afield, the scheme fails to comply with policy AGR4.

#### The Applicant's case

- 8.23** The applicant considers policy AGR4 to be too simplistic to consider this application solely against a marketing report. They state that it is not wholly necessary to provide marketing for the following reasons. The applicant has explained that the starting point for the assessment of the removal of the agricultural occupancy condition is whether the condition would still meet the necessary tests (NPPF Para 56), which essentially asks the question whether the condition would be imposed if the application for a new dwelling on the site was submitted today.
- 8.24** The applicant explains that this principle was established by legal challenge (Hambleton DC v SSE & Others [1994]) and entitles the decision maker to consider the current circumstances (including changes to policy and guidance) when considering planning applications to remove agricultural ties. This Judgement found that the decision maker was entitled to take account of the probability that the occupancy condition would not have been imposed had there been a contemporary application for planning permission.

**8.25** As explained above, Officers consider that the starting point for the consideration of this proposal is the adopted development plan, including the requirements of Policy AGR4. Furthermore, the site in question lies outside of the defined housing development boundary and the Council can also now demonstrate a 5-year housing land supply and so the tilted balance does not apply. The applicant has stated that there have been a number of new dwellings permitted within and just outside of the housing development boundary for Minsterworth, however, the permissions outside of the housing development boundary were permitted when the Council could not demonstrate a 5-year land supply and the tilted balance was engaged. Therefore, if a new application for an agricultural dwelling was submitted on this site now, the Council would still find it reasonable and necessary to attach the agricultural tie condition.

**8.26** Whilst it is accepted that the NPPF does not deal specifically with the removal of agricultural ties, it is considered reasonable to consider; (a) how the business has been marketed; (b) whether there is an existing functional need that exists on the holding; and, (c) whether or not there is a foreseeable need for such dwellings in the locality, all of which have been discussed in the preceding report.

## **9. Conclusion**

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**9.1** It is considered that limited information has been submitted regarding whether there is an agricultural, forestry or essential rural business need elsewhere that the dwelling could reasonably serve. Furthermore, no evidence has been provided to show that the dwelling has been marketed for sale or rent with its occupancy restriction, at a realistic price for a reasonable period of time (for at least 18 months or an appropriate period as agreed with the Local Planning Authority). The proposal is therefore contrary to Policy AGR4 of the adopted development plan.

## **10. Recommendation**

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**10.1** The proposal fails to accord with policy AGR4 of the Tewkesbury Borough Plan 2011-2031 as outlined above, it is therefore recommended the application be **refused** for the following reasons:

## **11. Reason**

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**1** Insufficient information has been submitted to demonstrate if there is an agricultural, forestry or essential rural business need elsewhere that the agriculturally tied dwelling could reasonably serve, or that appropriate marketing of the dwelling at a realistic price for a reasonable period of time has been carried out. The proposal is therefore contrary to Policy AGR4 of the Tewkesbury Borough Local Plan 2011-2031 (June 2022).

## **12. Informatives**

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**1** In accordance with the requirements of the NPPF the Local Planning Authority has sought to determine the application in a positive and proactive manner by offering pre-application advice, publishing guidance to assist the applicant, and publishing the to the Council's website relevant information received during the consideration of the application thus enabling the applicant to be kept informed as to how the case was proceeding.