



Appeal Decision

Site visit made on 11 June 2013

by John Murray LLB, Dip.Plan.Env, DMS, Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 June 2013

Appeal Ref: APP/E2530/X/12/2181168

5 Greenfields Lane, Folkingham, Sleaford, NG34 0SH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Martin Foster against the decision of South Kesteven District Council.
- The application Ref S11/1401/LDE, dated 17 June 2011, was refused by notice dated 10 February 2012.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is use of the land as residential garden land in connection with 5 Greenfields Lane.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Decision.

Application for costs

1. An application for costs was made by Mr Martin Foster against South Kesteven District Council. This application is the subject of a separate Decision.

Main Issue

2. The main issue is whether the Council's refusal to grant an LDC was well founded. In order to succeed on this appeal, the onus is on the appellant to prove on the balance of probability, that the use of the land had changed to use as residential garden land in connection with 5 Greenfields Lane at least 10 years prior to the application, namely by 17 June 2001, and that this use continued for at least 10 years after that change.

Reasons

3. The appellant and his wife purchased No 5 Greenfields Lane in 1985. Land Registry records confirm that, on 25 May 2000, they completed the purchase of the appeal site from a farmer, Mr Miller. This was a piece of grazing land, being part of a larger field immediately adjoining their rear garden. In a written sworn statement, the appellant says that in June 2000, he formed a hard core access track from the appeal site to Greenfields Lane, in order to bring equipment onto the site to tidy, level and prepare the land and to bring materials onto the land to erect a stock proof fence. At the same time he

removed a section of fencing to provide access from his original garden area. Since then, the appellant says that the appeal site has been used continuously as residential garden land and he has maintained it as such. It has been fenced off from the adjacent agricultural land, laid to grass, regularly mown and used as an extension to the original garden and maintained in a similar manner to that garden. Though it has less planting on it, as it is less visible from the house itself, the appeal site has been regularly used for recreational purposes by family members, such as for football and other ball games. The appellant refers to an aerial photograph, which he says was taken in the summer of 2000. He says that the appearance on that photograph of the barns in the course of conversion on Spring Lane verifies that date and indeed the Council has not disputed that it was taken in 2000. That photograph shows the appeal site having an equivalent colour and appearance to the appellant's original garden area, in contrast to the surrounding agricultural land. It also shows the access track, which appears white in colour, suggesting that it was recently formed and not yet discoloured by grass and soil. I am satisfied that it probably was taken in the summer of 2000.

4. Circular 10/97 advises that an applicant's evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the Council has no evidence of its own, or 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".
5. In fact, the appellant's evidence is corroborated by, among other things, sworn statements from 3 neighbouring residents and a letter from Mr Miller, who sold him the appeal site. The neighbours do not say precisely how they know the way in which the site was used over the period in question, but they swear that it was from personal knowledge. In any event, one of those neighbours, Malinda Dawkins, occupies the adjoining plot and the appeal site is visible from her bungalow and rear garden. She has lived there for 17 years and is well placed to testify to the use of the land over the relevant period. Similarly, Mr Miller says in his letter dated March 2011 that he continues to own the adjoining land and that, from his own personal observations, the appeal site has been used by the appellant as part of his residential garden since it was purchased in May 2000.
6. The neighbours originally made written sworn statements in November 2011, prior to the Council's determination of the application, but there were errors on the face of those statements. There were mistakes in the details of the deponents' occupations and their periods of residence and, in one paragraph, the statements indicated that they, rather than the appellant, had used the land for residential purposes. To some extent, I can understand how these factors, together with the standard wording of each statement, caused the Council to question their veracity. However, the errors were corrected in revised statements sworn on 1 August 2012, which were submitted to the Council for consideration just before this appeal was lodged. It seems likely that the need to correct previous errors, albeit relatively minor ones, would have concentrated the minds of the deponents on the need for accuracy and truthfulness. Whilst the statements could have been more detailed in terms of the basis and extent of the deponents' personal knowledge of the site and the

way it has been used, they are clear and unambiguous. I attach due weight to those sworn statements.

7. The Council refers to 2 aerial photographs obtained from Lincolnshire County Council (LCC). One bears the hand written date "2003" and the other "2005." The 2005 photograph appears to show the site as part of the appellant's extended garden and is not controversial. The one which purports to date from 2003 shows it prior to the erection of the appellant's new fence, merely as part of the adjoining agricultural field. However, the Council provides no information to verify the date of that photograph. By contrast, the appellant points out that it does not show the extension to the rear of his property, whereas Building Control records indicate that, following an inspection on 30 July 2001, the extension was certified as complete. Indeed that extension is shown in the 2000 photograph. Furthermore, the LCC photograph which the Council says was taken in 2003 does not show the new dwelling at No 1a Greenfields Lane. Planning permission was granted for this in 2002 and it was completed in 2003. In connection with an application for planning permission for a garage and store, the Council took photographs on the appeal site sometime between August 2003 and October 2003. One of those photographs clearly shows the dwelling at No 1a, complete with roof. The disputed aerial photograph must have been taken in the summer months, as it shows deciduous trees in full leaf. If it was really taken in 2003 it would have shown the dwelling on the site of No 1a, or at least a dwelling under construction. In addition, that aerial photograph does not show the new access track, which does appear on the 2000 photograph and the 2005 LCC photograph. By way of further detail, the appellant says that the red vehicle visible to the front of his house on the disputed LCC photograph was a red Volkswagen Golf, which he says he sold in 2000.
8. On the evidence before me, the 2003 date on the disputed LCC photograph cannot be correct and, on the balance of probabilities, it was taken before 2000.
9. In July 2003, the appellant submitted planning application Ref S03/1176 for a garage and store on part of the appeal site (the 2003 application). That application described the present use as "field" and, prior to determination, of the application, the Council changed the description of the development to include the change of use of agricultural land. A letter from Mr JB Evans dated 25 February 2011 confirms that he completed and submitted the application as agent for Mr Foster. He indicates that the description "field" was an error and he did not appreciate that there was any significance to that term anyway. He also says that the red line was drawn incorrectly on the application plan. In defining the southern boundary of the site, Mr Evans followed the line of an old hedge, which formerly bisected the appeal site and which was still marked on an Ordnance Survey map, even though it had been removed, save for a couple of trees. In his letter, Mr Evans says that the land was in use as garden land at the time of the 2003 application. He did not request the change in the description of the proposed development and had no reason to believe that it was anything other than a routine proposal to erect a building within the garden of the dwelling. In the circumstances, the terms of the 2003 application do not significantly undermine the other available evidence.
10. The Council contends that the photographs taken by its officer in connection with the 2003 application clearly show the site as a field. I do not accept that.

Together, those photographs show a well maintained lawn, linked to the rest of the appellant's garden by a significant gap in the low hedge and with a children's football goal in position. They are consistent with what I saw on site, which in turn is consistent with residential garden, rather than agricultural use. It seems probable that the description of the development in the 2003 application was altered by the Council to include a change of use from agriculture because garden use was evident at the time.

11. Having particular regard to the sworn statements of the appellant and neighbours; the letters from Mr Miller and Mr Evans; the aerial and other photographs; my own site inspection; and the Land Registry details, I am satisfied on the balance of probability that the use of the land had changed to use as residential garden land in connection with 5 Greenfields Lane by 17 June 2001, and that this use continued for at least 10 years after that change. There is no substantial evidence to the contrary. The disputed LCC aerial photograph cannot have been taken in 2003. Furthermore, the limited detail in the neighbours' evidence and the confusion surrounding the 2003 application are insufficient to outweigh the other evidence and I therefore conclude that the Council's refusal of an LDC was not well founded and the appeal should be allowed.

Decision

12. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

J A Murray

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 17 June 2011 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The time for taking enforcement action in respect of the use had expired and it did not constitute a contravention of any enforcement notice then in force.

Signed

J A Murray

Inspector

Date: 18 June 2013

Reference: APP/E2530/X/12/2181168

First Schedule

The use of the land as residential garden land in connection with 5 Greenfields Lane.

Second Schedule

Land at 5 Greenfields Lane, Folkingham, Sleaford, NG34 0SH

IMPORTANT – SEE NOTES OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

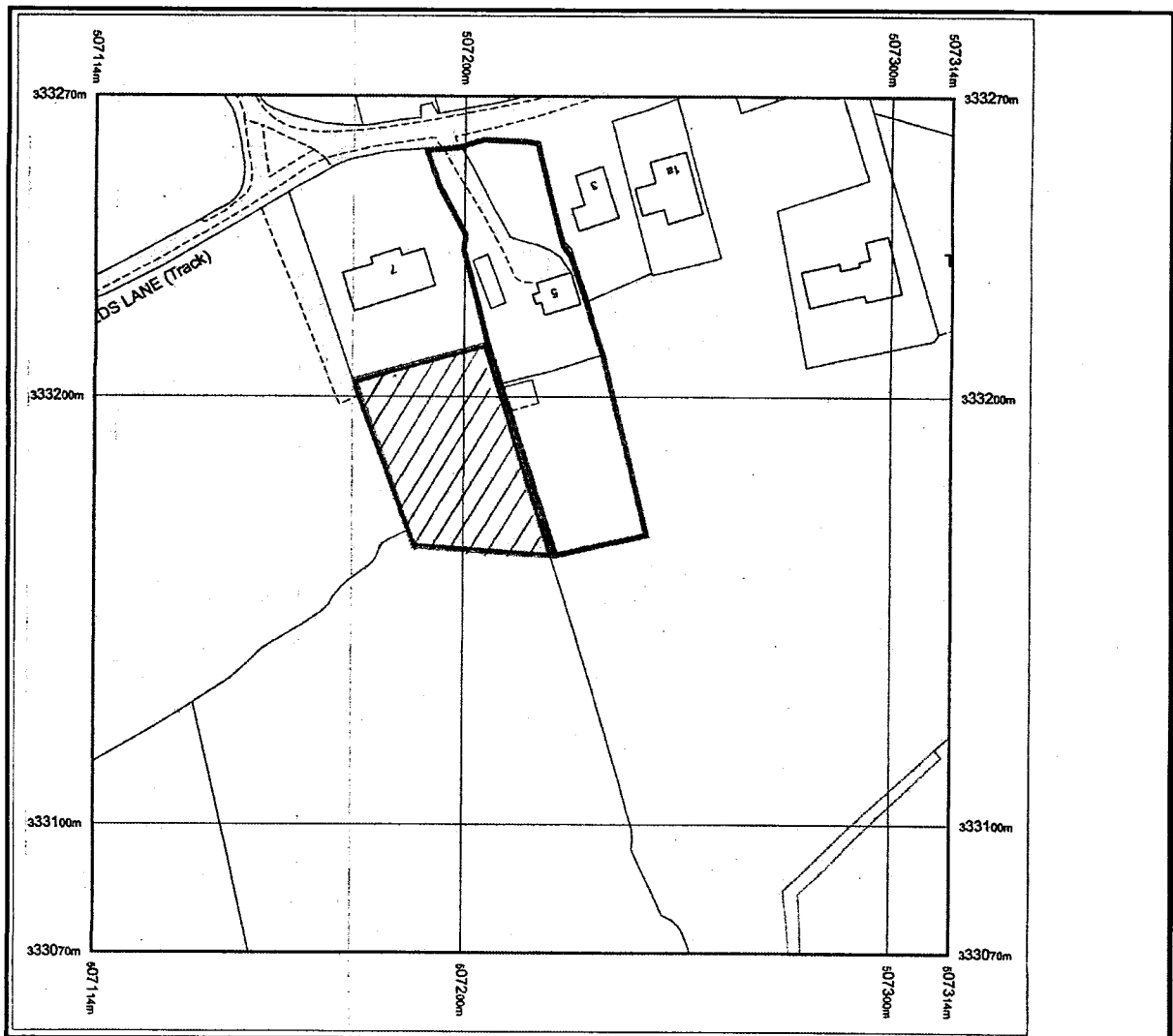
This is the plan referred to in the Lawful Development Certificate dated: 18 June 2013

by **John Murray LLB, Dip.Plan.Env, DMS, Solicitor**

Land at: 5 Greenfields Lane, Folkingham, Sleaford, NG34 0SH

Reference: APP/E2530/X/12/2181168

Scale: DO NOT SCALE





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Your Ref: ST28600004
Our Ref: APP/E2530/A/13/2195568
Date: 26 June 2013

Dear Mr Bainbridge

**Town and Country Planning Act 1990
Appeal by Larkfleet Limited
Site at Land Off Chesham Drive, Baston, Lincolnshire, PE9 9QW**

Thank you for your email of 26 June withdrawing this appeal.

The hearing arranged for 13 August 2013 has been cancelled and I confirm that we will take no further action on the case.

If you (or the Lpa) has informed anyone about the hearing arrangements, please let them know that it has been cancelled.

I have copied this letter to South Kesteven DC.

Yours sincerely

Rob Nash

Robert Nash
Case Officer

You can use the Internet to submit documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is - <http://www.pcs.planningportal.gov.uk/pcsportal/casesearch.asp>
You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button





Appeal Decision

Site visit made on 14 May 2013

by Richard E Hollox BA(Hons) BSc(Econ) MPhil FRTPI FRICS

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 June 2013

Appeal Ref: APP/E2530/A/13/2193205

Land adjacent to No 3 Casthorpe Road, Barrowby, Grantham, Lincolnshire, NG32 1DW

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr J Clark against the decision of South Kesteven District Council.
 - The application, Ref S12/2730/FULL, dated 18 October 2012, was refused by notice dated 12 February 2013.
 - The development proposed is the erection of a dwelling.
-

Decision

1. The appeal is allowed and planning permission granted for the erection of a dwelling on land adjacent to No 3, Casthorpe Road, Barrowby, Grantham, Lincolnshire, NG32 1DW in accordance with the terms of the application, Ref S12/2730/FULL, dated 18 October 2012 and in accordance with the submitted drawings as specified in Condition No 2 which are: Site Location Plan (2010/070/01A), Block Plan 2010/070/02A, 2010/070/03A, 2010/070/04A, 2010/070/05A and 2010/070/10A. The planning permission is subject to the conditions set out below in the Schedule of Conditions.

Main Issues

2. Two main issues arise in the determination of the appeal. These are:
 - a) Whether the development would harm the character and appearance of the locality; and,
 - b) Whether it would cause detriment to the living conditions of neighbours, particularly at No 1 Mill Row, as a result of dominance and loss of natural light.

Reasons

Character and appearance

3. The appeal site is part of the garden of Sunberry House and located close to the historic centre of the village. The proposal constitutes infilling within a mainly built up area. There is a variety in the type of buildings in this part of the village, in style, materials and appearance. The site is not in a Conservation Area, the boundary of which follows Mill Row and Casthorpe Road. It is, therefore, just outside it. The 19th century dwellings and other buildings along Mill Row, including Sunberry House, are sited up to the edge of the carriageway, and there is for the most part a strong visual sense of

enclosure of streets. The character is that of a pleasant and attractive residential area of some age which is well worth protecting, both inside and outside the Conservation Area.

4. The main part of the proposed dwelling fronting Casthorpe Road would be identical to the proposal for which planning permission was granted in September 2012 under planning application S12/0910. This previous permission, still extant, is an important material consideration in the determination of the appeal. As Drawing No MSP.941/001 shows, that part of the dwelling which would accommodate the garage would be taller and somewhat wider when viewed from Casthorpe Road than as previously approved. Although therefore larger, it would still be of appreciably less massing than, and so subordinate in scale to, the main part of the dwelling.
5. The development would include 2 dormer windows to the accommodation at first floor level. Windows of this type are not prevalent in this part of the village, being conspicuous by their absence along the south side of Casthorpe Road where plain roofs predominate. One dormer window can be seen at the rear of a dwelling on Mill Row, in the Conservation Area and overlooking the Playground, and there are others in some of the more recent residential schemes close to Casthorpe Road. For example, 6 dormers are clearly visible from the entrance to the private road opposite No 7 Casthorpe Road. Owing to the location of the site outside the Conservation Area, the modest scale of the dormer windows, their subordination within the roof and the number of other such windows nearby, they would not be so discordant and alien in this locality to cause any material harm to it.
6. The east elevation of the proposed dwelling would project further towards Mill Row than would have been the case with the previous scheme, but would stop short of the carriageway by approximately 2 m. It would therefore be closer to the carriageway than as previously proposed. Nevertheless, this closeness would still respect the prevailing arrangement of buildings along Mill Road. Its one and a half storey scale, its modest height and massing would not appear out of place in its surroundings. The building as a whole would be larger than many in this locality, but not greatly more so than would have been the approved scheme. In design and appearance, it would complement other dwellings along Casthorpe Road, especially Nos 3 and 5.
7. The development would have an effect on the locality simply by its presence, but not to the extent that it would constitute serious harm to it, including the setting of the Conservation Area. With the relevant conditions attached, there is no conflict with Policy EN1 of the adopted (July 2010) South Kesteven Core Strategy, including its seeking to protect and enhance local distinctiveness and sense of place and the quality and character of the built fabric. Nor is there any conflict with the policy in the National Planning Policy Framework (the Framework) to encourage good design.

Residential amenity

8. Mill Row is about 4.5 – 5.0 m wide at the point where the projecting eastern part of the dwelling would be built. This means that there would be a distance of about 6.5 – 7 m between the proposed dwelling and the facing front elevation of the closest dwelling on Mill Row, No 1. This dwelling has principal windows on this elevation. From what could be seen on site, they appear to be to a living room and bedroom. Owing to the distance between the existing and

proposed dwellings, the limited height of this part of the scheme which would be appreciably less than its main part, any overbearing effect would not be so great as to constitute dominance. Nor, with these distances, would it result in a serious loss of outlook.

9. The distance between proposed and existing buildings and the evidence of the drawings accompanying the appeal should prevent any significant loss of natural light at No 1. Indeed, the removal of trees and other vegetation at the eastern boundary of the site to allow the development to take place may reduce the amount of any loss of natural light to this dwelling. The harm to living conditions enjoyed by residents at Mill Row would not, therefore, be serious. Thus the proposal does not conflict with the aim of Policy EN1 to secure a suitable layout and scale of buildings in so far as the protection of residential amenity is concerned. Nor does it conflict with the policy in the Framework to ensure that design is of a quality which contributes positively to making places better for people.

Conditions

10. Condition No 1 is attached to comply with the Planning and Compulsory Purchase Act 2004 Section 51. Condition No 2 is attached for the avoidance of doubt and in the interests of the proper planning of the area. Condition Nos 3 and 8 are attached to ensure the satisfactory appearance of the development, particularly owing to the closeness of the site to the Conservation Area. Condition Nos 4 and 5 are attached in recognition of the limited size of the site and to prevent any overdevelopment or visual intrusion causing harm to residential amenity and/or the character of the locality.
11. Condition No 6 is attached to prevent any increased risk of flooding and pollution of controlled waters by ensuring the provision of a satisfactory means of surface and foul water drainage. Condition No 7 is attached to ensure safe access to, and egress from, the site, allowing vehicles to be driven from the site in forward gear, to provide for safety and convenience on the public highway. Condition No 9 is attached to ensure the assimilation of the development within its surroundings. Condition No 10 is attached to ensure privacy.
12. These conditions are essentially those suggested by the Council, without prejudice to its case, and the parties are content with them. They are necessary for the reasons given and are reasonable in all other respects. They enable a development to proceed where otherwise it would have been necessary to refuse planning permission. In these ways, they accord with the provisions of Circular 11/95.

Conclusion

13. I have taken account of all the other points raised. They do not, however, outweigh those planning considerations which have led to my decision.

Richard E Hollox

Inspector

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed above which are as follows: Site Location Plan (2010/070/01A), Block Plan 2010/070/02A, 2010/070/03A, 2010/070/04A, 2010/070/05A and 2010/070/10A.
- 3) No development shall take place until samples of the materials (including colour of render, paintwork and colourwash) to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority, and the development shall be carried out in accordance with the approved details.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no garage, extension, enlargement or other alteration of the building shall be carried out without planning permission having first been obtained from the local planning authority, other than that expressly authorised by this permission.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows/roof-lights other than those openings expressly authorised by this permission shall be installed without planning permission having first been obtained from the local planning authority.
- 6) No development approved by this permission shall be commenced until a scheme for the provision of surface and foul water drainage has been submitted to and approved in writing by the local planning authority, and those drainage works shall be completed in accordance with the details and timetable agreed with the local planning authority.
- 7) Before the dwelling is occupied, the access and turning space shall be completed in accordance with the approved plan, Block Plan 2010/070/02A dated May 2012, and retained for that use thereafter in perpetuity.
- 8) No works shall take place until full details of the all proposed joinery works including 1:20 sample elevations and 1:1 joinery profiles have been submitted to and approved by the local planning authority, and then scheme shall be implemented in strict accordance with the agreed details and maintained as such thereafter in perpetuity.
- 9) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved; the details shall include hard surfacing materials, refuse or other storage units, lighting etc and the soft landscape works shall include planting plans; written specifications; schedules of plants, noting

species, plant sizes and proposed numbers/densities where appropriate and an implementation programme.

- 10) Before the first occupation of the building hereby permitted, the first floor window on the side elevation serving the bathroom shall be fitted with obscure glazing to a minimum obscurity of Pilkington Level 3 or equivalent and if any part of the window is less than 1.7m above the floor of the room in which it is installed, it shall be non-opening and be retained in that manner thereafter in perpetuity.

END OF CONDITIONS