

Application No: 17/00451/VAR Variation / Removal of Condition

Site: Fritillaries, Brockhill Nursery, Sway Road, Tiptoe, Lymington, SO41
6FR

Proposal: Application to remove Condition 2 of planning permission
NFDC/96/59007 (Agricultural Occupancy).

Applicant: Mr G Meadowcroft

Case Officer: Ann Braid

Parish: HORDLE

1. REASON FOR COMMITTEE CONSIDERATION

Contrary to Parish Council view

2. DEVELOPMENT PLAN DESIGNATION

No specific designation

3. PRINCIPAL DEVELOPMENT PLAN POLICIES

DP1 General Development Principles
DP14 Removal of Agricultural Occupancy Conditions

4. SUPPLEMENTARY PLANNING GUIDANCE

Not applicable

5. NATIONAL PLANNING POLICY FRAMEWORK

Sec 3 - Supporting a prosperous rural economy
Sec 11 - Conserving and enhancing the natural environment

6. MEMBER COMMENTS

None received

7. PARISH COUNCIL COMMENTS

Hordle Parish Council: Recommend permission.

8. CONSULTEES

No consultations required

9. REPRESENTATIONS

- 9.1 Two letters of support received; the income from the enterprise is insufficient and the occupancy condition precludes finance from being raised against it.

10. RELEVANT HISTORY

- 10.1 Application to remove agricultural occupancy condition attached to planning permission 96/59007 (16/00809) refused on 18 November 2016
- 10.2 Garage with store over (77717) granted on 21 May 2003
- 10.3 Horticultural dwelling (96/59007) granted on 10 July 1997

11. ASSESSMENT

- 11.1 This application seeks the removal of an agricultural occupancy condition imposed on a horticultural dwelling granted planning permission in 1997. The condition states that:

"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 336 of the Town and Country Planning Act, 1990, or in forestry, including any dependents of such a person residing with him or her, or a widow or widower of such a person."

- 11.2 The reason cited for the condition on the original decision notice is that *"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 horticulture."*

A similar application seeking to remove the occupancy condition was refused last year under delegated powers.

- 11.3 The National Planning Policy Framework advises that new houses in the countryside should be avoided unless there is an essential need for a rural worker to live near his/her place of work. It follows that the removal of the occupancy condition would, in effect, create a new open-market house in the countryside, which would no longer fulfil such an essential need.
- 11.4 For this reason, Local Plan Policy DP14 states that an occupancy condition should only be removed when the Authority is satisfied that the long term need for the dwelling has ceased and there is no evidence of a continuing need for housing for people engaged in agriculture (or forestry) or for practising commoners. The explanatory paragraph in the Core Strategy (7.48) sets out the criteria to be followed to demonstrate that the long term agricultural need for the dwelling has ceased. The applicant will normally be expected to show that appropriate steps have been

taken to try to sell or market the property for rent with the occupancy condition intact and that marketing has been correctly targeted, financially realistic and sustained.

- 11.5 Consent to remove the condition was refused last year for the following reason:

"The property was granted for the current applicants in 1997 to serve the needs of their horticultural business. That business continues to remain profitable and whilst the applicant wishes to pursue other opportunities there is insufficient evidence to justify the removal of the agricultural occupancy condition; in particular the type and level of marketing undertaken and the absence of other uses, occupiers or diversification pursued at the site and therefore the strict requirements of policy DP14 of the adopted New Forest National Park Core Strategy and Development Management Policies DPD (December 2010) have not been met."

- 11.6 In resubmitting the application, the applicant has provided more information in respect of each aspect of the above reason for refusal.

- 11.7 The marketing of the property

- 11.8 Following the earlier refusal, the applicant placed the property back on the market with a different estate agent, who confirms that 16 local businesses in the horticultural and agricultural trade were contacted as part of the marketing campaign. It is also stated that the applicant spoke directly to three nursery proprietors and that there was no interest shown as a result of these contacts.

- 11.9 The property was previously marketed for sale between February and September 2016. Following the refusal last year the property was re-marketed for sale from 6 January 2017 although the property is now no longer on the market. The new estate agent advises that the property was marketed exhaustively, including online, with an asking price of £840,000 (which according to the estate reflects a 30% reduction on the open market price to take account of the occupancy condition).

- 11.10 A statement from the estate agent explains that four potential purchasers were sufficiently interested to discuss the business with the applicant but did not then take their interest further. No offers were made, with the reasons given in the estate agent's statement that there is a lack of demand for an agriculturally tied property due to the restrictive nature of the tie and difficulty in raising finance because of the existence of the occupancy condition.

- 11.11 The applicant also confirms that the property was advertised in various local publications including two specialist publications, the press and online.

- 11.12 The property needs to be marketed at a price that reflects the restriction of the occupancy condition and enables that condition to remain intact. As a rule of thumb, this is generally accepted to be some 30% lower than the open market price, but in an area such as the National Park, where property commands a high premium, it is considered that the reduction may need to be more than 30% to achieve a realistic disposal of the property with the condition intact. In this case the application property is a 200m² four bedroom home (including accommodation that has subsequently been added in the roof). Even with a reduction in place, the asking price of £840,000 for the house and £510,000 for the business as a going concern is likely to be beyond the reach of most people engaged in agriculture within the Forest.
- 11.13 There is a case to be made therefore that the property should be marketed at a lower price in order to attract a greater level of interest. The agent has referred to two local examples where the removal of an occupancy condition was allowed at appeal. In these cases the asking price was reduced by 33% and 40% respectively, but it is arguable that in this specific instance, as the property is larger and located in an area where property commands a substantial premium that the reduction would have to be even more.
- 11.14 Alternative uses and diversification
- 11.15 Policy DP14 requires that opportunities for the dwelling to become a local housing needs dwelling should be explored. The applicant has not pursued this option and has previously argued that the size of the dwelling, the associated running costs and the lack of local facilities and services would make it unsuitable to meet local housing need. Part of the application site enjoys commoners' rights but the applicant advises that the Commoners Defence Association has been notified of the availability of the property, but no interest was expressed to him.
- 11.16 The applicant has stated that as plant specialist nurseries have been taken over by chain retailers, there is less of a market for the plants propagated at Brockhills Nursery. However, it is the Authority's view that the business cannot be described as 'failing' as it has consistently returned a profit for a number of years and has supported the applicant and several members of staff. The applicant has submitted additional information relating to diversification. This consists of a table of potential uses that have been considered. These do not appear to have been considered in any depth, as each option has been discounted in a single sentence, with no detailed business plan to show why such uses would not be feasible. If the current operation is not returning enough profit, it may be that it would be necessary to close the nursery and restructure the business. Although this would be undesirable for the applicant, this option should at least be costed

and potential business plans considered before it is rejected outright as an option. Should the condition be lifted and the house sold separately from the land it is inevitable that there will be some changes to the agricultural use of the land, as it has previously been proven that the house is essential to the running of the nursery (otherwise it would not have been permitted in 1997). The separate sale of the house and the land on the open market would in all likelihood result in the land being taken out of productive agricultural/horticultural use.

- 11.17 Insufficient evidence has therefore been supplied to enable the Authority to scrutinise fully the claimed failing of the business and the array of potential solutions (including some other form of agricultural work entirely) other than the removal of the occupancy condition. The applicant believes that changes to the horticultural market have left their business unviable. Diversification has been considered, as indicated in Appendix E to the supporting statement, but none of these have been taken further. Accounts have previously been submitted which show that the business is in profit, albeit small.
- 11.18 A continuing need for agricultural dwellings in the New Forest
- 11.19 The Authority continues to receive planning applications for new agricultural dwellings. In total, 39 applications for agricultural workers' dwellings have been received since 2006 made up of a mix of dwellings and mobile homes. Of these:
- 17 were refused (with one appeal dismissed); and
 - 22 were approved, one at appeal. Of the applications that were approved, nine were temporary consents and six of these have been later superseded either by further temporary consents or by a permanent permission.
- 11.20 There are two applications currently awaiting a decision. The application records therefore show that there is a demand for these properties, and nine commoners' dwellings have also been approved since 2006.
- 11.21 During the same period, the Authority has received 57 applications for the removal or variation of an agricultural occupancy condition. Of these:
- 19 were refused (including one dismissal at appeal);
 - 31 were confirmed as immune from enforcement action through a Certificate of Lawfulness;
 - two were varied to retain the occupancy condition and allow additional occupants;
 - two were granted planning permission; and
 - three were allowed at appeal having been refused by the Authority.

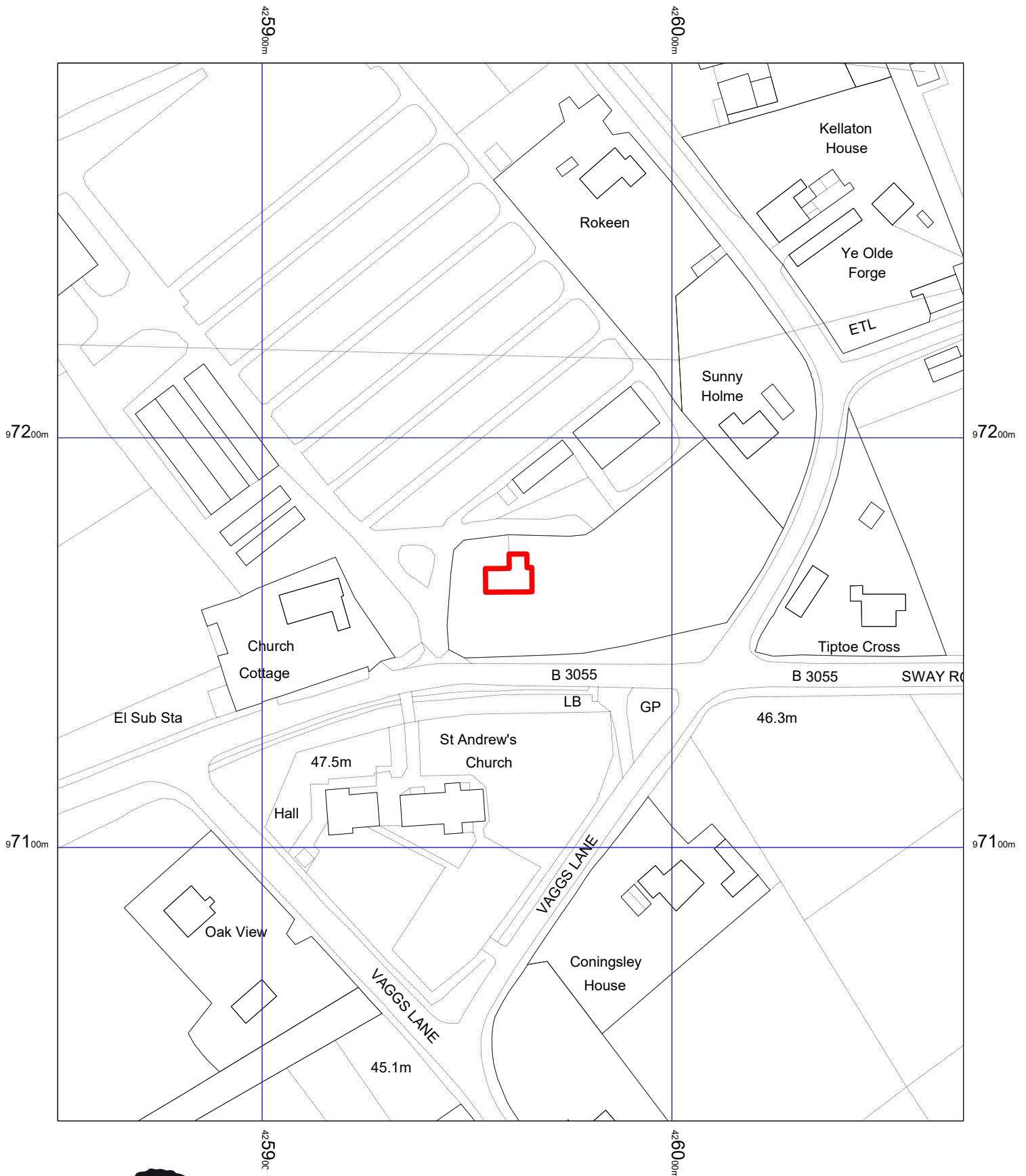
- 11.22 Based on this analysis, it will be appreciated that there is still a demand for new agricultural workers' dwellings whilst a number of existing occupiers have sought removal of the condition, either through an application for planning permission or a Certificate of Lawfulness.
- 11.23 To minimise the loss of further agricultural dwellings through the 'immunity' provisions the Authority regularly monitors compliance with the occupancy condition for each such property in the National Park. There is currently a stock of just over 100 agricultural dwellings that the Authority has been able to confirm are occupied in accordance with the condition (as further evidence of a continuing demand/need for this type of property).
- 11.24 Conclusion
- 11.25 The current application differs from the two cases referred to above (11.21) which were granted consent to remove the condition. In those two cases, the houses were built following consents in 1950 and 1966. At the time the occupancy conditions were lifted, there was no longer any agricultural activity taking place at either site, the original land having been sold off separately over time.
- 11.26 With regard to the three appeal decisions which removed the restrictive conditions, these related to two dwellings given planning permission in the 1960s and one allowed on appeal in 1988. In each case, the agricultural business on the site had failed and there was insufficient land attached to the properties in question to make it likely that new viable businesses could be established on any of the three sites.
- 11.27 It is considered that this case presents fundamental differences from these earlier appeal cases. The house the subject of this application was granted planning permission comparatively recently in 1997, when a case was made by the current applicant for the necessity for staff to live on site to support the business. The dwelling was granted planning permission in the light of these exceptional circumstances, and a successful business has been operated in the intervening years, and continues to operate. Agricultural ties should be kept in place to reflect these exceptional circumstances unless a clear case is made to lift them. In this case it has not been demonstrated that the business is failing, or that there is no demand for the property (if marketed at the right price) or that other income streams have been fully considered. The applicant currently resides at the property in full compliance with the occupancy condition.

12. RECOMMENDATION

Refuse

Reason(s)

- 1 The property was granted for the current applicants in 1997 to serve the needs of their horticultural business. That business continues to remain profitable and whilst the applicant wishes to pursue other opportunities there is insufficient evidence to justify the removal of the agricultural occupancy condition; in particular the type and level of marketing undertaken and the absence of other uses, occupiers or diversification pursued at the site and therefore the strict requirements of policy DP14 of the adopted New Forest National Park Core Strategy and Development Management Policies DPD (December 2010) have not been met.



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