



Appeal Decision

Hearing Held on 25 July 2018

Site visit made on 25 July 2018

by Rachel Walmsley BSc MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th September 2018

Appeal Ref: APP/B9506/W/17/3190897

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

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Graham Meadowcroft against the decision of New Forest National Park Authority.
 - The application Ref 17/00451, dated 24 May 2017, was refused by notice dated 20 September 2017.
 - The development sought planning permission for horticultural dwelling without complying with a condition attached to planning permission 00059007 dated 10 July 1996.
 - The condition in dispute is No 2 which 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 in Section 336 of the Town and Country Planning Act 1990, or in forestry, including any dependents of such person residing with him or her or a widow or widower of such a person.
 - The reason given for the condition 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.
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Decision

1. The appeal is dismissed.

Procedural matter

2. The revised National Planning Policy Framework (the Framework) has been published since the appeal was lodged. Both main parties were given the opportunity to comment on any relevant implications for the appeal. I confirm that I have had regard to the responses and the Framework in reaching my decision.

Main Issue

3. This is whether the agricultural occupancy condition continues to be necessary and reasonable.

Reasons

4. The appeal site concerns a five-bedroomed house with garage and garden area and a plant nursery of some five acres which includes offices, polytunnels, glasshouses, a parking area and open storage for plants. The house was

- granted permission in 1996 and occupied the following year. The appellant and his wife and children have lived in the house whilst developing the wholesale nursery.
5. Policy DP14 of the Local Plan¹ seeks to retain an occupancy condition restricting the occupancy of a dwelling to a person solely, mainly or last working in agriculture or forestry, unless the Authority can be satisfied that the long term need for the dwelling has ceased and there is no evidence of a continuing need for housing for persons employed or last employed in the locality in agriculture or forestry or practising commoning.
 6. The meaning of agriculture should be taken from s336(1) of the Town and Country Planning Act 1990. In this way agriculture includes horticulture and the use of land as market gardens and nursery grounds. For the purposes of policy DP14, therefore, I am satisfied that the persons currently occupying the dwelling and working at the nursery are doing so under the title of agriculture.
 7. At the time planning permission was granted for the house it was established that the nursery needed the benefit of the dwelling so that a person living there could supervise the security of expensive capital equipment. I heard at the hearing that this situation has not changed, a person is required to live on site to oversee nursery operations. When plants fall over in inclement weather a person is needed to correct the plants immediately. Heating and irrigation systems need attending to on a regular basis and in emergencies, when mechanised systems fail for example, a person is needed to quickly rectify the situation. These rapid response times require a person to live on site and at all times. Together with the nursery continuing to operate, I find that the need for the dwelling has not ceased.
 8. The appellant suggests that changes in the industry means that the nursery is no longer viable and therefore, by association, there is no need for the house for agricultural purposes. I have no doubt that the market favours nurseries larger than Brockhill Nursery because of economies of scale. However, the nursery continues to supply a large and diverse range of plants to an equally diverse and often eminent range of customers. New plants are being introduced to the existing range every year and there is no indication that there is a marked decline in the number of customers which is having a discernible effect on profitability. In all, the evidence indicates a continuing and effective business.
 9. Sales at the nursery have fluctuated over the years but in more recent years there has been an increase in takings. This is due, in part, to reduced costs associated with the loss of a member of staff and a glasshouse. The resultant surplus income is small for the appellant and his wife, particularly given the hours that they work. Whilst I sympathise with this situation, I cannot ignore the fact that the nursery continues to trade and realise an income which, for the purposes of policy DP14, does not amount to an agricultural use that is obsolete.
 10. Notwithstanding this, to judge whether it remains reasonable and necessary to retain the disputed condition, account must be taken as to whether there is a

¹ New Forest National Park Local Development Framework, Core Strategy and Development Management Policies DPD, December 2010

- need in the locality for such accommodation and the attempts to sell that property with that tie in place.
11. Of the planning applications decided by the Council each year, a small number of them concern the removal of agricultural occupancy conditions. The majority of these applications are refused which suggests a need for dwellings associated with agriculture. That said, without full details of each case, this interpretation holds up poorly to scrutiny and therefore the figures supplied by the Council offer limited support in favour of the appeal.
 12. I turn, therefore, to the attempts by the appellant to sell the property with the tie in place. The appellant has faced difficulties selling the dwelling house and nursery, despite marketing it widely and at a discounted rate to account for the house with the occupancy condition. The condition makes it difficult for prospective purchasers to obtain finance and therefore consider purchasing the property. Viewings have been low in number. However, evidence suggests that the asking price for the property is high, even when taking into account the high value of property within the New Forest. An estate agent valuation estimates a value of £1,200,000 for the house which includes one acre of land. This would seem to correlate with the sale prices of properties within the area. The remaining four acres at the site was valued at between £30,000 and £60,000 per acre. It seems, therefore, that the asking price of £1,350,000 is excessive, even when accounting for a 30% discount on the house to account for the occupancy condition.
 13. I appreciate that the difficulties in selling the property is hindering the applicant and his wife in their wish to move house and settle closer to the children's schools. Nonetheless, a reliable indication of the need or otherwise for an agricultural workers dwelling can only be obtained by marketing the property at a realistic value based on the house and curtilage necessary for it to function as such. In light of my findings I cannot discount the possibility that a potential purchaser could be found by reducing the price to reflect a more realistic market value.
 14. I acknowledge that, even when taking into account a more realistic guide price, the average agricultural worker's wage is unlikely to support the purchase of a property of this value. However, this does not account for other potentially eligible occupants who may have other assets. The occupancy condition also allows for those last employed in agriculture or forestry and their dependents to occupy the dwelling or for those employed in agriculture or forestry in the general locality. I do not consider the matter of affordability, therefore, to be a reason in favour of considering the occupancy condition obsolete.
 15. From the Authority's perspective agriculture continues to play an important role within the New Forest. Traditional agriculture and the historic system of commoning are still in place. The appellant suggested that there is not a need for commoning on the land, particularly given that it is not a viable practice nor is it realistic for the site concerned given the current use of the land and the work and financial investment needed to convert the land into something suitable for commoning. Indeed, the Authority agreed that commoning would require a supplementary income to be sustainable. Nonetheless, the Authority is sympathetic to this and therefore supports diversification within agricultural uses.

16. I have before me a list of alternative uses for the appeal site which the appellant suggests are not attainable. Whilst the list is comprehensive, the reasons for dismissing them are less so. I recognise that some of the options, such as turning the land over to grassland for camping and caravanning, would be particularly onerous. The re-use of the existing buildings would involve a re-configuration of the nursery and/or some investment in services. Nonetheless there is no evidence of the costs and practical implications of these alternative uses having been closely examined. As for the options of marketing, retailing and recreation, a prevailing reason was that the appellant and his wife do not have the time, inclination or skills to realise these alternative uses. Whilst the appellant and his wife may choose not to diversify in this way, it is not a reason to conclude that these options are unworkable.
17. In all, therefore, I find that the long term need for the dwelling has not ceased and there is a continuing need for housing for persons employed or last employed in the locality in agriculture or forestry or practising commoning. As a result the agricultural occupancy condition continues to be necessary and reasonable and to remove it would be contrary to policy DP14 of the Local Plan.

Other matter

18. I have been referred by the main parties to planning decisions made by the Authority and the Planning Inspectorate on applications concerning agricultural occupancy conditions. Notwithstanding two of the appeal decisions² which were considered against policies which pre-date the current local plan, I do not have the details of the cases to draw comparisons with the one before me. In any event, each case is determined on its own merits and I have assessed the proposal on the information before me.

Conclusion

19. For the reasons given and having regard to all other matters raised, I conclude that the development would be contrary to the development plan when taken as a whole. There are no material considerations to suggest a decision other than in accordance with the development plan and therefore the appeal is dismissed.

R Walmsley

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Bob Hull	Bob Hull Planning
Graham Meadowcroft	Brockhill Nursery
Heather Meadowcroft	Brockhill Nursery

² APP/B9506/A/08/2091994 and APP/B9506/A/07/2041144

FOR THE NATIONAL PARK AUTHORITY:

Ann Braid

New Forest National Park Authority

DOCUMENTS SUBMITTED DURING THE HEARING:

Document 1 – Property particulars for South Weirs and Brighton Road

Document 2 – Copy of decision notice NFDC/96/59007.

Document 3 – A copy of appeals APP/B9506/W/17/3189678,
APP/B9506/A/12/2175536, APP/B9506/A/11/2153724,
APP/B9506/A/08/2091994 and APP/B9506/A/07/2041144.

Document 4 – Copy of businesses contacted for the sale of the appeal property

Document 5 – Copy of property marketing results, 2016-2018

Document 6 – The Authority's response to 'The Inspector's Questions'

Document 7 – Copy of the Authority's delegated report for planning application
16/00098/VAR