The Planning Inspectorate

Appeal Decisions

Site visit made on 30 October 2018

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2018

Appeal Ref: APP/B9506/C/18/3195834
Land at Nampara, Gorley Lynch, Hyde, Fordingbridge SP6 2QB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Colin Morgan against an enforcement notice issued by New Forest National Park Authority.
- The enforcement notice was issued on 19 January 2018.
- The breach of planning control as alleged in the notice is without planning permission the occupation of the dwelling on the land affected in breach of condition 6 of planning permission NFDC/76/04665.
- The requirements of the notice are to cease the occupation of the dwelling on the land affected in breach of condition 6 of planning permission NFDC/76/04665. For the avoidance of doubt the occupation of the dwelling shall be limited to a person who is wholly or mainly employed or who was last employed wholly or mainly in agriculture or forestry in the locality (or a dependant of such a person residing with him or a widow or widower of such a person).
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with correction.

Appeal Ref: APP/B9506/W/18/3195837
Nampara, Gorley Lynch, Hyde, Fordingbridge SP6 2QB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Colin Morgan against the decision of New Forest National Park Authority.
- The application Ref 17/01013, dated 23 November 2017, was refused by notice dated 19 January 2018.
- The application sought planning permission for erection of an agricultural dwelling and construction of a pedestrian/vehicular access without complying with a condition attached to planning permission Ref 4665, dated 4 May 1976.
- The condition in dispute is No 6 which states that: *"The occupation of the dwelling shall be limited to a person who is wholly or mainly employed or who was last employed wholly or mainly in agriculture in the locality as defined in Section 290 of the Town and Country Planning Act, 1971 or in forestry; or a dependant of such a person residing with him (but including a widow or widower of such a person)."*
- The reason given for the condition is: *"The Local Planning Authority would not be prepared to grant permission on site except for this special need."*

Summary of Decision: The appeal is dismissed.

Applications for costs

1. Applications for costs in respect of both appeals were made by New Forest National Park Authority against Mr Colin Morgan. The applications are the subject of a separate Decision.

Appeal A

Procedural Matter

2. The enforcement notice states that the breach of planning control falls within paragraph (a) of s171A (1) of the Act. Paragraph (a) refers to the carrying out of development without the required planning permission. As the notice is alleging a breach of a condition attached to a planning permission, it should have referred to paragraph (b) of s171A (1) instead. However, the notice clearly describes the nature of the alleged breach. The steps required to remedy the breach are also clearly set out. Therefore, the appellant could have been in no doubt as to what the Council considered he had done wrong and what he had to do to remedy the matter. Consequently, there would be no injustice caused if I were to correct the notice to refer to paragraph (b) of s171A (1).

Appeal A, ground (a) and Appeal B

Main Issue

3. The main issue is whether it has been demonstrated that the dwelling is no longer needed for agriculture or forestry in the locality.

Reasons

4. The appeal site contains a detached two bedroom chalet bungalow. The bungalow was erected following a grant of planning permission on 4 March 1976[1]. Condition 6 of the permission limited occupation of the bungalow to a person wholly or mainly employed or who was last employed in the locality agriculture or in forestry or a dependant of such persons residing with him, including the widow or widower of such a person. The stated reason for the condition made it clear that permission would not have been granted other than for a special need. The condition is similar in its scope and wording to the current model form of agricultural occupancy condition[2].

5. As I understand it the appellant has occupied the bungalow since it was erected and he was employed in the family agricultural business, Hyde Nurseries, on the adjoining land. The appellant's father also occupied a nearby dwelling ('Windwhistle') in connection with the business. Planning permissions granted in the 1980s for the retail use of buildings and a café permitted in 2003 gradually supplanted agricultural activity on the holding. In later years, the appellant was primarily employed in the retail activity until he retired in 2009, after which the leases were sold. Recently, planning permission was granted for separate retail and café uses and agricultural activity has ceased. 'Windwhistle' has been sold separately and planning permission was subsequently granted by the National Park Authority (NPA) for removal of an agricultural occupancy condition on that property.

[1] Ref: 4665.
[2] In Appendix A to Circular 11/95.

6. Policy DP14 of the New Forest National Park Core Strategy and Development Management Policies DPD (CS) states that agricultural occupancy conditions will not be removed unless 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 practicing commoning. If such evidence is produced, the policy then requires that occupancy of the dwelling is restricted to a person in local housing need.

7. The CS supporting text sets out how to demonstrate that appropriate steps have been taken to try to sell or market for rent a property with an agricultural occupancy condition and to show that the marketing has been correctly targeted, is financially realistic and sustained, in order to demonstrate that there is no long term agricultural need in the locality. This includes: contacting other local land and estate owners in the vicinity to establish whether they require further accommodation either presently or in the near future; the property being placed with local estate agents and advertised locally for a reasonable period of time at a price reflecting the occupancy condition, and; the property being advertised widely in local newspapers and appropriate publications including specialist trade organisation journals.

8. The bungalow was marketed for sale by an experienced firm of local estate agents for a period of eleven months from 15 March 2017. However, there is no firm evidence to demonstrate that the marketing exercise fully reflected the requirements in the CS, in particular that it had been advertised widely in local newspapers and appropriate publications including specialist trade journals. Further, the appellant did not contact local land and estate owners in order to establish their present and future accommodation needs. Consequently, I cannot be assured that a robust assessment of the continuing need for the bungalow was undertaken by the appellant.

9. I recognise that condition 6 limits the market for the bungalow, either for sale or at a rent reflecting its value, particularly as it is no longer associated with an agricultural business. The appellant considered that the purchase price is likely to make the bungalow unaffordable for many agricultural or forestry workers or New Forest commoners and it may be the case that only a retired farmer would be interested in selling or renting the bungalow. However, as the appellant has not provided all the information required by the CS, ultimately his assertions about the likelihood of a prospective purchaser being found who can both afford the price of the bungalow and comply with condition 6 are not grounded in compelling evidence.

10. In any event, I note that three offers to buy the bungalow were received in response to the marketing exercise. The appellant required purchasers to commit to paying a surcharge if they subsequently obtained planning permission to occupy the bungalow without complying with condition 6, to reflect the resulting uplift in the value of the property. The surcharge may have discouraged prospective purchasers and adversely affected the marketing exercise seeking to establish whether a need continues to exist in the locality. Moreover, despite his misgivings, the appellant has not supplied any other evidence which might suggest that the prospective purchasers did not comply with the condition. Therefore, an unwillingness to pay the surcharge does not constitute clear evidence of a lack prospective purchasers who would comply with the condition.

11. The NPA supplied a copy of a letter from one interested party living in the locality who had offered the full asking price for the bungalow in May 2017 and who also appears to have complied with condition 6, having been employed in agriculture for over twenty years. The existence of a willing purchaser purporting to comply with condition 6 suggests that there is a continuing need for agricultural workers' accommodation in the locality. I also note that the NPA have granted planning permission for eighteen agricultural workers' dwellings in its administrative area since 2006. This indicates a continuing general need for such accommodation in the NP.

12. The appellant drew comparison with the planning permission recently granted by the NPA for removal of the occupancy condition at 'Windwhistle'. However, I have only been supplied with limited details of the marketing exercise that was carried out prior to that application. Significantly, unlike this appeal I understand that no offers were received for 'Windwhistle'. Therefore, comparison between the length of the marketing period for both properties and their respective floor areas is largely academic. I also note that at 'Windwhistle' the NPA concluded that the dwelling was not of interest in terms of meeting a local housing need. However, in the absence of site specific evidence to that effect in this case I have no assurance that similar circumstances would apply. Accordingly, I am not persuaded that 'Windwhistle' exhibits significant similarities with this appeal.

13. The appellant also argued that the need for the bungalow had effectively been undermined as a result of the various planning permissions granted for retail and café uses on land formerly associated with the agricultural business. However, the need in relation to an individual business is only one factor in assessing the continuing agricultural need for an occupancy condition; ultimately it is whether there is a need in the locality that is determinative for the purposes of CS Policy DP14.

14. All in all therefore, the appellant's claim of a lack of a continuing agricultural need for the bungalow is not supported by the available evidence. It follows that the absence of a long term need for the bungalow and evidence of a lack of a continuing need for housing for persons employed or last employed in the locality in agriculture or forestry or for a New Forest commoner has not been demonstrated. Moreover, even if such evidence had been supplied there is no mechanism before me such as a Unilateral Undertaking under s106 of the Act, in order to ensure that occupancy of the bungalow is restricted to a person in local housing need. Consequently, removing condition 6 would not accord with CS Policy DP14. However, there would be no failure to accord with CS Policy CP12 as there would be no new residential development.

Other matters

15. Compliance with the Enforcement Notice will require the appellant to cease occupation of the bungalow in which he has lived for a long time with his wife prior to her death, having been employed on the adjoining land up to 2009. I sympathise with the situation in which the appellant finds himself. Nevertheless, his circumstances are unlikely to be significantly different to those of a number of other retired agricultural workers who might wish to move to more suitable accommodation. Given my conclusions on the main issue, there is no firm evidence to suggest that it would be unusually difficult to find occupiers for the bungalow who complied with condition 6 if it were to be

marketed in line with the CS requirements. Consequently, there is no reason to suggest that the bungalow would be left unoccupied for an extended period of time following the appellant moving out or that he would be left homeless as a result.

16. The appellant suggested that condition 6 could be varied to allow him to remain residing at the bungalow whilst otherwise preventing its occupation by persons who were not employed in the locality in agriculture or forestry. Although this matter was raised on ground (f), given the effect of s177 (1) (a) and (b) of the Act it is appropriate to deal with it under ground (a). However, varying the condition in the manner suggested would mean that the bungalow would continue to be unavailable for occupation by persons who satisfied its requirements and who were in need of such accommodation in the locality.

Conclusion on ground (a)

17. The continued occupation of the bungalow without complying with condition 6 or in the varied form suggested by the appellant does not accord with the CS. Other material considerations do not indicate that the deemed application should be determined otherwise than in accordance with the CS.

18. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the deemed application

Ground (f) appeal

19. This ground of appeal concerns whether the steps required to be taken by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity. The notice alleged that a breach of condition had taken place. It required the breach to cease by ceasing occupation of the bungalow other than in accordance with condition 6. Therefore, although the notice does not state so explicitly its purpose must be to remedy the breach of planning control by making the development comply with the terms, including conditions, of the planning permission granted in respect of the land as opposed to remedying any injury to amenity.

20. The appellant's suggested alternative to the steps set out in the notice was dealt with on ground (a). However, reducing the requirements to stop short of requiring occupancy of the bungalow in breach of condition 6 to cease would not remedy the breach specified in the notice. Therefore, any requirement other than ceasing occupancy of the bungalow in breach of condition 6 would not fulfil the notice purpose of making the development comply with the condition of the planning permission. Consequently, the requirements of the notice do not exceed what is necessary to remedy the breach and the appeal on ground (f) must fail.

Ground (g) appeal

21. This ground of appeal concerns whether the time given to comply with the requirements of the notice is too short. The NPA specified a six-month compliance period. This would allow the appellant a suitable period to undertake further marketing of the bungalow for sale or rent, to agree and complete on its sale with a successful purchaser or to install tenants, and for him to find suitable alternative accommodation. I have not been supplied with any firm evidence to suggest that it would not be possible to attract interested

purchasers and conclude a successful sale or to find tenants as well as to find an alternative place to live within that period. Consequently, there is no good reason to suggest that the bungalow might have to be left vacant for any meaningful period of time whilst condition compliant occupiers were sought. It follows that six months is not an unreasonably short period of time as it strikes an appropriate balance between allowing the appellant to take the practical steps required to achieve compliance and remedying the planning harm caused by the breach.

22. The appellant suggested that the period for compliance should be extended to be no later than a month of him ceasing occupation of the bungalow. However, this would be tantamount to granting a personal planning permission for which, given my conclusions on ground (a), there is no planning justification. Therefore, this would potentially extend the harm caused by the breach for an indefinite period. Consequently, the appeal on ground (g) must also fail.

Formal Decisions

23. It is directed that the enforcement notice be corrected by deleting the words "paragraph (a) of section 171A (1)" in the third line of section 1 and replacing them with "paragraph (b) of section 171A (1)". Subject to that correction Appeal A is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

24. Appeal B is dismissed.

Stephen Hawkins

INSPECTOR