



Appeal Decision

Site visit made on 21 December 2021

by Jonathan Manning BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th February 2022

Appeal Ref: APP/B9506/W/21/3274975

Fyre Stycken, Mount Pleasant Lane, Lymington, SO41 8LS

- 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 Ms Jayne Woodford against the decision of New Forest National Park Authority.
 - The application Ref 21/00024, dated 11 January 2021, was refused by notice dated 4 March 2021.
 - The application sought planning permission for erection of dwelling for agricultural worker without complying with a condition attached to planning permission Ref NFR 15422/2, dated 9 November 1971.
 - The condition in dispute is No 4 which states that: The occupier of the dwelling being a person employed or last employed in agriculture, as defined by Section 221 (1) of the Town and Country Planning Act, 1962, or in forestry, or the dependent of such a person.
 - The reason given for the condition is: The site being within the Green Belt is not one where the Local Planning Authority would permit residential development, other than that which is appropriate thereto, such as herein specified.
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Decision

1. The appeal is allowed and planning permission is granted for erection of dwelling for agricultural worker in accordance with application Ref 21/00024, dated 11 January 2021, at Fyre Stycken, Mount Pleasant Lane, Lymington, SO41 8LS, without compliance with the conditions previously imposed on planning permission Ref NFR 15422/2, dated 9 November 1971.

Procedural Matter

2. Following the exchange of evidence, I wrote to the parties to seek their views as to whether the appeal was valid under S73 of the Town and Country Planning Act 1990, having regard to the judgement *Finney*¹. Having considered the response of the appellant, I am content that it is valid and I have proceeded to determine the appeal on that basis.

Main Issue

3. The main issue of the appeal is whether the disputed condition meets the tests for planning conditions set out in the National Planning Policy Framework (NPPF), 2021.

¹ *Finney v Welsh Ministers & Others* [2019] EWCA 1868

Context

4. The application site relates to a detached property, Fyre Stycken, which is subject to an agricultural occupancy condition following the grant of planning consent in 1971. The appellant is seeking to remove the agricultural occupancy condition so that the house would become an unrestricted residential dwelling.

Reasons

5. The NPPF sets out that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Disputed condition 4 restricts the dwelling to be occupied by someone who works in agriculture.
6. A certificate of lawfulness of existing use (CLEUD) has been granted for a breach of condition 4 as the appellant does not work in agriculture. Therefore, the breach cannot be subject to enforcement action.
7. The Council are of the view that the CLEUD relates to the existing breach of the condition and a period of non-occupation of the dwelling would bring the condition back into play. In support of this view, the Council has referred to a judgment *Ellis v Secretary of State for Communities and Local Government* [2009] EWHC 634 and note that if there is a subsequent renewed non-compliance then there would be a fresh breach (the period for enforcement against the breach will begin to run again) and that a certificate of lawfulness is only valid in relation to the situation prevailing at the moment in time of the application.
8. In the case of *Ellis*, the CLEUD application was not granted by the Council and then subsequently refused at appeal. Matters associated with any non-occupation would therefore have been relevant considerations for determining the CLEUD application and appeal. However, in this case a CLEUD has been granted and I am mindful that Section 191 (6) of the Town and Country Planning Act 1990 (as amended) states '*The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed*'. Therefore, I consider the dwelling can be lawfully occupied without compliance with the occupancy restriction and a period of non-occupation would not 'undo' the CLEUD.
9. On this basis, whilst the proposal would run contrary to Policy DP32 of the New Forest National Park Local Plan 2019, condition 4 serves no purpose and is no longer necessary, relevant, enforceable or reasonable.
10. I acknowledge that the Council has provided an appeal decision² that takes a contrary view and accepted the Council's same position as it is for this appeal. However, I am unclear what evidence was before that Inspector and given the clear direction of Section 191 (6) of the Town and Country Planning Act 1990 (as amended), this does not affect my own findings.
11. The Council has raised numerous other matters particularly with regard to the need for the dwelling to remain restricted to agricultural workers. However, given my findings above, there is no need for me to consider these any further.

² APP/B9506/W/20/3258005

Conclusion

12. For the reasons given above and having regard to all other matters raised, I conclude that the appeal is allowed.
13. I have reviewed the other planning conditions imposed to the original permission and I consider that there is no need to impose them in relation to this permission, as they are either no longer relevant or have already been discharged.

Jonathan Manning

INSPECTOR