
Appeal Decision

Hearing held on 4 August 2016

Site visit made on 4 August 2016

by Claire Victory BA (Hons) BPI MRTPI

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

Decision date: 28 September 2016

Appeal Ref: APP/X1545/W/16/3148924

The Griffins, Tudwick Road, Tolleshunt Major, Essex CM9 8LW

- 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 and Mrs Vallis against the decision of Maldon District Council.
 - The application Ref FUL/MAL/15/00301, dated 9 March 2015, was refused by notice dated 26 October 2015.
 - The application sought planning permission for a new dwelling in connection with boarding kennels without complying with a condition attached to planning permission ref MAL/143/78, dated 9 February 1979.
 - The condition in dispute is No 3 which states that: *"the occupation of the dwelling hereby permitted shall be limited to persons wholly or mainly employed, or last employed, at Willow Rise Boarding Kennels or locally in agriculture as defined in s. 290 (1) of the Town and Country Planning Act 1971, or in forestry, or a dependent 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 permit the erection of a dwelling house on this site unconnected with the kennels or the use of the land or neighbouring land for agricultural purposes."*
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Decision

1. The appeal is allowed and planning permission is granted for a new dwelling in connection with boarding kennels at The Griffins, Tudwick Road, Tolleshunt Major, Essex CM9 8LW in accordance with the application Ref FUL/MAL/15/00301, dated 9 March 2015, without compliance with Condition 3 previously imposed on planning permission Ref MAL/143/78, dated 9 February 1979, subject to the following condition:

"The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in agriculture or forestry, or a widow or widower of such a person, and to any resident dependents."

Main Issue

2. The main issue in the appeal is whether or not the condition is reasonable and necessary having regard to the existing need for agricultural and forestry workers.
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Reasons

3. The appeal is seeking the removal of the disputed condition in order that The Griffins can be occupied as a residential dwelling by any person rather than restricted to rural workers. Policy CC16 of the Maldon Replacement District Local Plan (LP) (2005) concerns dwellings with agricultural occupancy conditions, and requires evidence that there is no prospect of the dwelling being sold, rented or leased to a person that could comply with the agricultural occupancy condition. The Council dispute that criteria a), b) and c) of that policy are met by the proposal. These relate to evidence of no further agricultural need for the property, and local and national marketing of the property for sale, rent or lease with specific reference to the occupancy condition.
4. The Griffins is a large detached dwelling, situated outside any defined settlement boundary. Thus residential development in this location would not normally be permitted, in accordance with paragraph 55 of the National Planning Policy Framework, which seeks to avoid new isolated homes in the countryside, with some exceptions, including where there is an essential need for someone to live permanently at or near their place of work in the countryside.
5. The dwelling was constructed in the late 1970s as a secondary dwelling in association with a kennels and cattery business, in addition to the original dwelling, Willow Rise (also known as Time Cottage). The appeal site excludes the kennel and cattery buildings which are managed by the occupant of Willow Rise. The Council has pointed out that no financial information has been provided as to the functioning of the existing business, but the kennels are continuing to operate independently of the appeal dwelling, and there is a legal agreement which restricts the occupation of Willow Rise to someone working at the kennels.
6. The appellants maintain that the second dwelling was for a worker at the kennels and no justification was ever provided of a need for an agricultural worker at the time of the application. However, the Council in permitting the application considered the erection of a dwelling in this location would not be acceptable unless the occupancy of The Griffins was restricted to either someone working at the kennels, or in agriculture on the site or neighbouring land.
7. LP Policy CC16 requires the property to be marketed at a price to reflect the occupancy condition. The sales price of £490,000 is at the upper end but still within the market valuation of £476,000 to £490,000, taking into account a 30% discount to reflect the occupancy condition. The Council expressed concern that only 3 properties considered as part of the valuation are comparable to the original open market value. However, there is no requirement in the LP for an independent valuation and the Council has offered no evidence to challenge the figure given by Robinson and Hall LLP, a company with extensive experience in rural estates and valuation. Accordingly I consider that the sale price offered is reasonable, although I note that there was no movement on the price for the entire 18 month duration the property was on the market, when one might consider reducing the price to attract interest.

8. With regard to local marketing, an advertisement was placed in the Essex County Standard newspaper, and Robinson and Hall undertook some targeted marketing using their own database of local farmers, adopting an 8 mile radius of the appeal site which was considered to be the furthest extent that a rural worker living at the property would reasonably travel for work elsewhere, given the limited public transport network in the vicinity. Although the Council considers that this would exclude rural workers that might come from further afield, this would be addressed by the need for national marketing within criterion c) of LP Policy CC16.
9. Turning to national marketing, the property was placed on the Right Move and Robinson and Hall websites from August 2014 until January 2016, with a break in early 2015 when the appellants were on holiday. Even accounting for the short break, this comfortably exceeds the requirement in criterion c) for 3 months of national marketing. However, whilst Mr Le Grys confirmed that Robinson and Hall LLP had done so previously for other properties, in this instance the appeal property was not targeted in any specialist farming journals, such as Farmers Weekly, the main agricultural publication.
10. Furthermore, LP Policy CC16 requires evidence of marketing for sale, rent or lease and the Council's considers three are required to satisfy the policy. The appellants have indicated that they intend to sell the property and therefore it has only been marketed for sale, which reduces the number and scope of potential occupiers of the property. Consequently there is insufficient evidence that there is no prospect of the dwelling being sold, rented or leased to a person who can comply with the agricultural occupancy condition.
11. It has been asserted that the dwelling is too large for a rural worker and that there is insufficient land retained with the dwelling to maintain an agricultural operation. Nonetheless, condition 3 does not restrict occupation of the dwelling to a particular smallholding or worker, and thus the dwelling could be occupied by any rural worker working in agriculture or forestry in the local area. Indeed, the current use of the dwelling is in accordance with the condition as it is occupied by a retired rural worker.
12. Finally, I heard that there have been a number of applications for new agricultural dwellings in the District recently, albeit relatively small, indicating that there is a continuing demand for such accommodation in the locality.
13. Taking all of the above into account, I conclude that condition 3 continues to serve a useful purpose in providing accommodation for a rural worker or their dependents, and it has not been satisfactorily demonstrated that there is no longer a long term need to retain the dwelling for this purpose. As such, the removal of the condition would be contrary to LP Policy CC16.

Conclusion

14. I have found that there is no justification for the removal of Condition 3 and that it continues to serve a planning purpose. Nevertheless, in order that the condition reflects current planning legislation and guidance, the appeal should be allowed and a fresh permission given to stand alongside the original.

Claire Victory

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Peter Le Grys, MRTPI	Robinson and Hall LLP
Mr David Brooks, FRICS	Robinson and Hall LLP
Mr Robert Vallis	Appellant
Mrs Carol Vallis	Appellant

FOR THE COUNCIL:

Mr Matthew Leigh, MRTPI	Group Manager, Planning Services, Maldon District Council
Mrs Hilary Baldwin, MRTPI	Planning Officer, Maldon District Council

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Statement of Common Ground
- 2 Application for costs, submitted by Appellants
- 3 Costs Defence, submitted by Maldon District Council